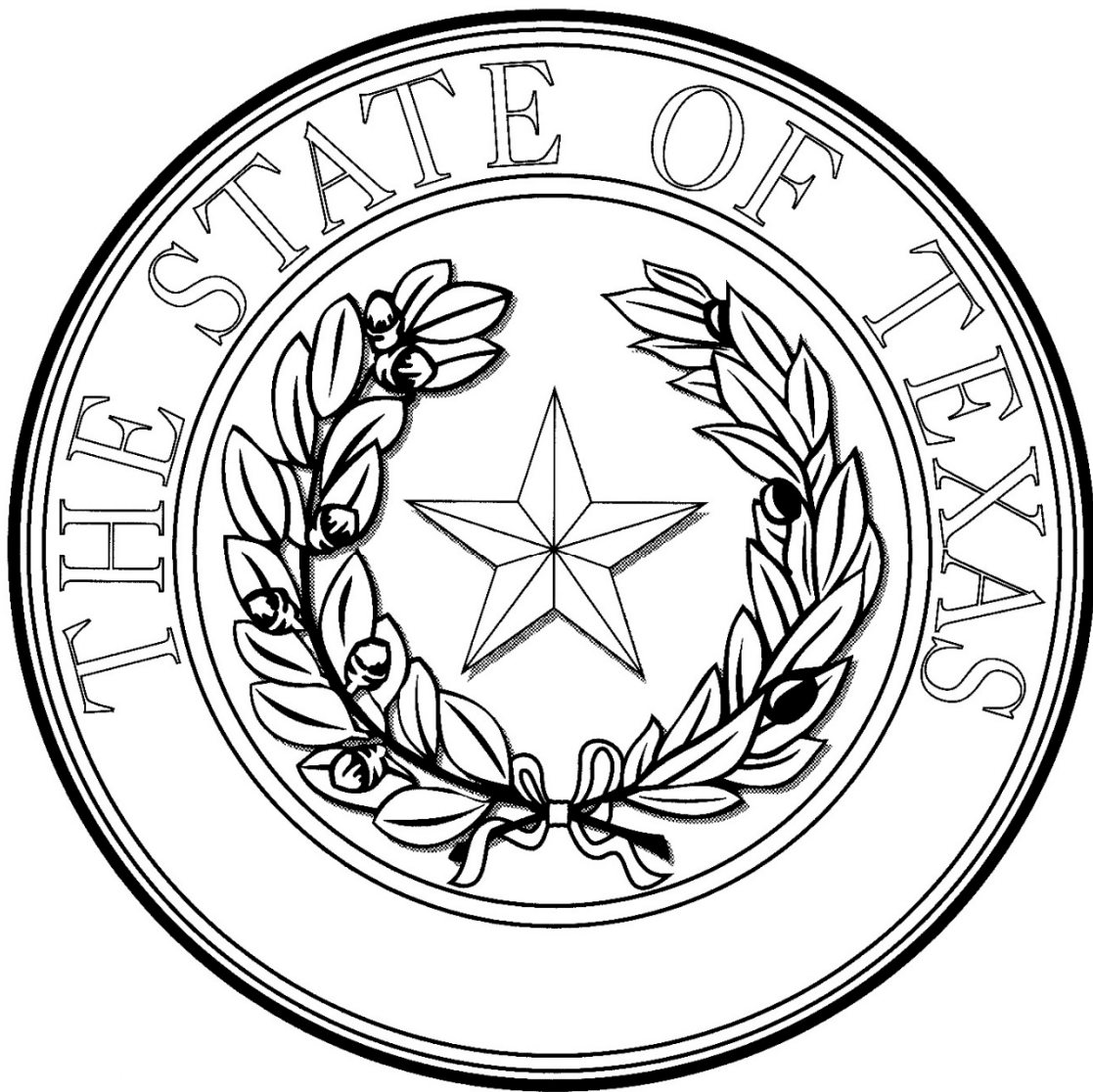

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 10, 2026

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Steven "Steve" Barksdale of Athens, Texas (replacing Katheryn L. "Kathy" Sanders of Athens whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Martin B. Black of Buffalo, Texas (replacing Carl "Dwayne" Somerville of Mexia whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Tyler M. Jackson of Liberty, Texas (replacing David Blake Leonard of Liberty whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Richard A. "Rich" Lavinski of Palestine, Texas (replacing Brenda K. Walker of Palestine whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2029, Jeffrey H. "Jeff" Bradley of Huntsville, Texas (Mr. Bradley is being reappointed).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2029, Bruce E. Bynum of Forney, Texas (replacing Victoria K. "Tori" Lucas of Terrell whose term expired).

Appointments for September 14, 2026

Appointed as the District Attorney of the 696th Judicial District, Dallam, Hartley, Moore, and Sherman Counties for a term to expire December 31, 2028, Cullen E. Cook of Dalhart, Texas (replacing Erin Land Anchondo of Dumas who resigned).

Appointments for September 15, 2026

Appointed to the One-Call Board of Texas for a term to expire August 31, 2027, Michael D. "Mike" McCloskey of Liberty Hill, Texas (replacing Andrew Elijah Keefer of Austin who resigned).

Appointed to the One-Call Board of Texas for a term to expire August 31, 2029, Michael E. Holdman of Robinson, Texas (replacing William O. "Bill" Geise of Austin whose term expired).

Appointed to the One-Call Board of Texas for a term to expire August 31, 2029, John D. Mason of Dallas, Texas (Mr. Mason is being reappointed).

Appointed to the One-Call Board of Texas for a term to expire August 31, 2029, Marcela S. Navarrete of El Paso, Texas (Ms. Navarrete is being reappointed).

Appointed to the One-Call Board of Texas for a term to expire August 31, 2029, Keith L. Wall of Spring, Texas (Mr. Wall is being reappointed).

Greg Abbott, Governor

TRD-202604005



Proclamation 41-4311

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Aransas, Atascosa, Bee, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Coleman, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Jacinto, San Patricio, Schleicher, Shackelford, Starr, Sutton, Terrell, Throckmorton, Upton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Willacy, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 14th day of September, 2026.

Greg Abbott, Governor

TRD-202603998



Proclamation 41-4312

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 4, 2025, as amended and renewed in subsequent proclamations, certifying that the heavy rainfall and flooding event that began on July 2, 2025, and that included heavy rainfall and flash flooding, caused widespread and severe property damage, injury, or loss of life in several counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster in Bandera, Bexar, Burnet, Caldwell, Coke, Comal, Concho, Edwards, Gillespie, Guadalupe, Hamilton, Kendall, Kerr, Kimble, Kinney, Lampasas, Llano, Mason, Maverick, McCulloch, Menard, Real, Reeves, San Saba, Schleicher, Sutton, Tom Green, Travis, Uvalde, and Williamson Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. Any statutes that might prevent the transfer of bodies to families as soon as possible are hereby suspended, including Sections 264.514 and 264.515 of the Texas Family Code and Articles 49.04, 49.05, 49.10, and 49.25 of the Texas Code of Criminal Procedure. Further, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 14th day of September, 2026.

Greg Abbott, Governor

TRD-202603999



Proclamation 41-4313

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions persist in certain counties in Texas and that the presence of drought conditions in certain counties contributes to increased wildfire danger;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Aransas, Armstrong, Bailey, Bandera, Bee, Bexar, Blanco, Brewster, Briscoe, Burnet, Caldwell, Cameron, Carson, Castro, Childress, Clay, Collingsworth, Comanche, Concho, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Grayson, Hale, Hall, Hansford, Hardeman, Hartley, Hays, Hemphill, Hidalgo, Hutchinson, Irion, Jasper, Jim Wells, Karnes, Kendall, Kerr, King, Kleberg, Knox, Lamb, Lavaca, Lipscomb, Live Oak, Llano, Lubbock, Moore, Motley, Nueces, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, San Patricio, Sherman, Swisher, Tom Green, Travis, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, and Wilson Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 14th day of September, 2026.

Greg Abbott, Governor

TRD-202604000



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

RQ-0654-KP

Requestor:

The Honorable Kevin Sparks
Chair, Senate Committee on Natural Resources
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether use of standardized contracts by oil and natural gas pipeline and midstream companies result in unfair anticompetitive practices (RQ-0654-KP)

Briefs requested by October 1, 2026

RQ-0655-KP

Requestor:

Ms. Jacqueline R. Habersham
Executive Director
State Commission on Judicial Conduct
Post Office Box 12265
Austin, Texas 78711

Re: Whether the State Auditor's Office may access records of the State Commission on Judicial Conduct (RQ-0655-KP)

Briefs requested by October 1, 2026

RQ-0656-KP

Requestor:

The Honorable B.D. Griffin
Montgomery County Attorney
501 North Thompson, Suite 300
Conroe, Texas 77301

Re: Procedural requirements applicable to county commissioners courts and county clerks for adoption of an Archive Plan and fees (RQ-0656-KP)

Briefs requested by October 5, 2026

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202603947

Justin Gordon
General Counsel
Office of the Attorney General
Filed: September 9, 2026



RQ-0657-KP

Requestor:

The Honorable Sean Teare
Harris County District Attorney
1201 Franklin Street, Suite 600
Houston, Texas 77002

Re: Whether the Axon TASER 10 qualifies as a "firearm" under Texas Penal Code § 46.01(3) (RQ-0657-KP)

Briefs requested by October 12, 2026

RQ-0658-KP

Requestor:

The Honorable Chris Taylor
Tom Green County Attorney
122 West Harris
San Angelo, Texas 76903

Re: Regarding Texas Local Govt Code Section 232 and the provision of street names and 911 addresses that are exempt from plating requirements (RQ-0658-KP)

Briefs requested by October 12, 2026

RQ-0659-KP

Requestor:

The Honorable Bryan Hughes
Chair, Senate Committee on State Affairs
Texas State Senate
Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether Texas Health and Safety Code prohibits the involuntary
commitment of persons diagnosed with dementia (RQ-0659-KP)

Briefs requested by October 12, 2026

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202604009

Justin Gordon

General Counsel

Office of the Attorney General

Filed: September 16, 2026



PROPOSED RULES

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

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

TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 122. TEMPORARY USE OF STATE BUILDINGS AND GROUNDS BY TELEVISION OR FILM PRODUCTION COMPANIES

13 TAC §§122.1 - 122.11

The Office of the Governor ("OOG") proposes amendments to 13 TAC §122.1, concerning Background and Purpose; §122.2, concerning Definitions; §122.3, concerning Eligibility; §122.4, concerning Ineligibility; §122.5, concerning Application Process; §122.6, concerning Approval Process; §122.7, concerning Applicant's Responsibilities; §122.8, concerning Process During Production Activity; §122.9, concerning Seven Days of Location Fee Waivers; §122.10, concerning Rights of the Location and the Texas Film Commission; and §122.11, concerning Disqualifications. The proposed amendments are being made as a result of the OOG's review of Chapter 122 under Texas Government Code §2001.039. The proposed amendments will update terminology, improve readability and clarity, align the chapter with current agency practice, and better conform the rules to Texas Government Code §2165.008.

EXPLANATION OF PROPOSED AMENDMENTS

Chapter 122 implements Texas Government Code §2165.008, which governs the temporary use of state buildings and grounds by television or film production companies. As part of the rule review conducted under Texas Government Code §2001.039, the OOG has determined that the reasons for initially adopting Chapter 122 continue to exist, but that amendments are appropriate to update the rules, improve clarity, remove outdated language, and better reflect current procedures used by the Texas Film Commission and state agencies when considering requests for production activity on state property.

The proposed amendments to §122.1 revise the background and purpose section to clarify the statutory basis for the chapter, update the description of the chapter's purpose, and remove obsolete or unnecessary historical language.

The proposed amendments to §122.2 revise the definitions section to update terminology, remove obsolete or duplicative language, conform defined terms to the terms used in the chapter, and improve clarity and consistency.

The proposed amendments to §122.3 revise the eligibility requirements for conducting production activity on state property and for receiving a waiver of location fees. The amendments clarify certificate of insurance requirements, reimbursement obligations for costs incurred, and project eligibility requirements.

The proposed amendments to §122.4 consolidate and clarify the ineligibility provisions, including ineligibility based on failure to meet the eligibility requirements in §122.3 or based on project content that is obscene as defined by Texas Penal Code §43.21.

The proposed amendments to §122.5 update the application process, including revisions to the manner in which an applicant may obtain and submit a Request for Use Application, the timing for submitting an application, and the materials required to support an application. The amendments also add requirements relating to submission of a content document.

The proposed amendments to §122.6 revise the approval process to clarify Commission review of applications, communication with applicants, coordination with the state agency or entity having charge and control of the property, approval by both the Commission and the agency or entity, potential denial of an application, and execution of a location agreement before production activity occurs.

The proposed amendments to §122.7 revise provisions relating to applicant responsibilities, including payment of applicable location fees, security deposits, reimbursement of costs incurred, licensing fees, and conduct while on state property. The amendments also clarify notice and payment procedures for costs incurred.

The proposed amendments to §122.8 clarify supervision of production activity, including the ability of the Commission and the applicable agency to determine the appropriate level of on-site supervision and any specific conditions necessary for the production activity. The amendments also clarify the Commission's ability to be present on location and request documentation to verify compliance with the approved application and location agreement.

The proposed amendments to §122.9 clarify the process for allowing up to seven days of location fee waivers for each state property during a state fiscal year, clarify that the Commission may determine the allocation of those days, and clarify that the waiver does not apply to support locations, security deposits, costs incurred, licensing fees, or other fees or charges.

The proposed amendments to §122.10 clarify the rights of the applicable state agency and the Commission to decline a proposed use of state property, modify or deviate from procedural steps by mutual agreement, coordinate communications between the applicant and the agency, or withdraw from participation in arrangements for use of state property consistent with Texas Government Code §2165.008 and this chapter.

The proposed amendments to §122.11 revise the disqualification provisions for clarity and consistency with the rest of the chapter, including provisions relating to required documentation, false or misleading information, payment obligations, obscene content,

ineligible projects, and failure to comply with applicable conduct requirements or instructions issued by the Commission or the agency during production activity.

FISCAL NOTE

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

PUBLIC BENEFIT AND COSTS

Ms. Whallon has also determined that during each of the first five years in which the proposed amendments are in effect, the rule changes will yield the anticipated public benefit of clearer, more current, and more administrable rules governing the temporary use of state buildings and grounds by television or film production companies. The proposed amendments will improve transparency for production companies, state agencies, and the public by clarifying application, approval, supervision, fee, reimbursement, and disqualification procedures.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Since the OOG has determined that the proposed amendments 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

Ms. Whallon has determined that the proposed amendments will not affect a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) will not create or eliminate a government program;
- (2) will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) will not require an increase or decrease in future legislative appropriations to the OOG;
- (4) will not require an increase or decrease in fees paid to the OOG;
- (5) do not create a new regulation;
- (6) will expand, limit, or repeal existing regulations only to the extent the amendments clarify, update, and reorganize existing requirements governing the temporary use of state property for production activity;
- (7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- (8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

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

SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendments may be submitted for 30 days following the date of publication of this notice by mail to Stephanie Whallon, Office of the Governor, Texas Film Commission, P.O. Box 12428, Austin, Texas 78711, or by email to tfcrules.comments@gov.texas.gov with the subject line "Chapter 122 Proposed Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on October 26, 2026.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §2165.008, which authorizes and governs the temporary use of state buildings and grounds by television or film production companies and requires approval by the Texas Film Commission and the state agency or other state governmental entity having charge and control of the property.

The amendments are also proposed as a result of the OOG's review of Chapter 122 under Texas Government Code §2001.039.

CROSS REFERENCE TO STATUTE

Texas Government Code §2165.008. No other statutes, articles, or codes are affected by the proposed amendments.

§122.1. Background and Purpose.

(a) Background. This chapter implements section 2165.008 of the Texas Government Code, relating to the temporary use of state property by television or film production companies. [House Bill 374 establishes the rules and processes for the temporary use of state properties by a production company for production activity. It also establishes that a state property can be used seven days during a fiscal year without charge, other than the reimbursement of additional costs. This Act takes effect September 1, 2007.]

(b) Purpose.

(1) The purpose of these rules is to establish procedures for the application, approval, and supervision of production activity on state property under section 2165.008 of the Texas Government Code.

(2) [(+)] Texas has had a prodigious film industry for decades, and has always been popular with filmmakers worldwide for its varied and beautiful locations. It has been the Texas Film Commission's (Commission) [TFC] responsibility since 1971 to help filmmakers find the right Texas location, and state properties are a location asset the Commission can promote [have always been popular choices]. Establishing rules and processes for filming at these locations will allow for a smooth process and make it easier for filmmakers to utilize state property [use their] preferred locations, as well as take the burden of communicating with and supervising production companies off the state property.

(3) [(2)] The Texas Film Commission is also responsible for attracting production activity to Texas because of its positive impact on the State's economy and workforce. The use of state properties for free for seven days of each fiscal year will be another tool that the Commission [TFC] can use to attract filmmakers to Texas, increasing our competitive edge.

§122.2. Definitions.

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

(1) Act--Section 2165.008 of the Texas Government Code, relating to the temporary use of state buildings and grounds by television or film production companies.

~~[(1) Actual costs--The costs incurred during production activity that have not already been paid for by the production company prior to the activity.]~~

(2) Agency--The state agency or other entity having charge and control of a state property, as described in the Act.

(3) Applicant--A production company or its authorized representative that submits a Request for Use Application to the Commission seeking approval to conduct production activity on state property.

~~[(2) Applicant--The entity coordinating locations for the Production Company, who acts as the representative of the Production Company for the locations.]~~

(4) ~~[(3)]~~ Certificate of Insurance ~~[liability insurance]~~--A document issued by an insurer that provides proof of insurance coverage meeting the requirements established by the Commission, and that names the State of Texas as an additionally insured. ~~[The paper record showing that the Production Company has purchased insurance, the amount insured for, and who is insured under the policy.]~~ Each Certificate of liability insurance furnished by a Production Company pursuant to this chapter shall reflect the coverage amounts required by the desired location, but such coverage amounts shall in no event be lower than the following (unless waived in writing by the Texas Film Commission in any particular respect): \$1 million in Commercial General Liability, including bodily injury and property damage with \$1 million of umbrella coverage, \$1 million Automobile Liability including bodily injury and property damage, plus Workers' Compensation coverage in accordance with statutory limits and employers' liability with limits of \$100,000 bodily injury for each accident, \$100,000 bodily injury by disease and \$500,000 policy limit covering all personnel who provide services. In the event that the Production Company is self-insured for Workers' Compensation coverage, it can provide written documentation of this fact on its letterhead, signed by an officer. Each policy must include a waiver of subrogation, unless waived in writing by the Texas Film Commission.

(5) ~~[(4)]~~ Commercials--Either an individual commercial, series of commercials, music video, infomercial, interstitial, or still shoot, that is made for the purpose of promoting a product, service, or idea.

(6) Commission--The Texas Film Commission, a division of the Texas Economic Development and Tourism Office in the Office of the Governor.

(7) Costs Incurred--Costs an agency incurs as a result of a production company's use of state property under the Act that have not already been paid for by the production company prior to the activity.

~~[(5) Desired location--The building or grounds that a production company is applying to use.]~~

~~[(6) Episodic television--A project, either narrative or documentary, consisting of a series of installments usually following the same story are that is intended for distribution via broadcast or digital distribution via cable, satellite, the internet, or mobile electronic device.]~~

(8) ~~[(7)]~~ Feature Film--Either a narrative or documentary project intended for distribution in theaters or by DVD, internet, or mobile electronic device.

(9) ~~[(8)]~~ Filming days--The phase of the project during which the content is recorded.

(10) ~~[(9)]~~ Fiscal year--The period between September 1st and August 31st of the next calendar year.

(11) ~~[(10)]~~ In-state spending--The amount of money spent by a production company in Texas during all stages of the project.

(12) ~~[(11)]~~ Licensing Fee--An amount charged to the Applicant for the use of the state property's likeness and image.

(13) ~~[(12)]~~ Location--A building or ground where production activity will take place.

(14) ~~[(13)]~~ Location fee--An amount charged to the Applicant for each day production activity occurs at the location ~~[on the property.]~~

(15) ~~[(14)]~~ Production activity--Any activity the production company engages in while on location, including, but not limited to, preparation, filming, parking, catering, and take down.

(16) ~~[(15)]~~ Production company--The entity producing and creating the project, who is ultimately responsible for all production activity.

~~[(16) Production insurance--A financial transaction between a production company and an external company securing all responsibility of damages and accidents while on location to the production company.]~~

(17) Request for Use Application--The application that will be completed by the Applicant to ask for the use of a state property for production activity.

(18) Security deposit--A monetary amount given to the state property before commencement of production activity at that location which gives the state agency some protection for damage done to the location by the production company ~~[Production Company]~~.

(19) State property--All locations owned and operated by the State of Texas for public or private use.

(20) Support location--An area of the property that is being used for production activity other than filming that can either be part of the filming location or a stand-alone location.

(21) Television Program ~~[project]~~--Either a narrative or documentary project, including, but not limited to episodic series, miniseries, television movie (MOW), television pilot, or television episode, that is intended for distribution via broadcast or digital distribution via cable, satellite, the internet, or mobile electronic device.

§122.3. Eligibility.

(a) To ~~[In order for a production company to]~~ be eligible to conduct production activity on a state property, an applicant ~~[they]~~ must: ~~[meet the following requirements.]~~

(1) provide a certificate of ~~[must have production]~~ insurance in the amount required by the Commission ~~[the desired location]~~ that names the State of Texas as an additionally insured, consistent with section 2165.008(c)(2) of the Act; ~~[and]~~

(2) demonstrate financial ability to reimburse the agency for any costs incurred during the production activity; and

(3) ~~[(2) must]~~ be a film, television, or commercial project for educational, industrial, or commercial purposes.

(b) A production company that meets the requirement of subsection (a) of this section may also be eligible for a waiver of location fees under section 2165.008(e) of the Act if it demonstrates one of the following: [to receive some or all of their filming days free from location fees if they meet the following minimum requirements]

(1) a minimum in-state spending of \$250,000 for film or television projects; or [must have production insurance in the amount required by the desired location that names the State of Texas as an additionally insured; and]

(2) [must have a minimum in-state spending of \$250,000 for film or television projects; or] a minimum in-state spending of \$100,000 for commercials.

§122.4. Ineligibility.

A production company is ineligible to conduct production activity on a state property or to receive a waiver of location fees under this chapter if it fails to meet the eligibility requirements set forth in §122.3 of this title (relating to Eligibility) or if the content of the project is obscene, as defined by section 43.21 of the Texas Penal Code.

[(a) A production company will not be eligible to conduct production activity on a state property if they fall under one of the following conditions:]

[(1) The production company does not have production insurance in the amount required by the desired location that names the State of Texas as an additionally insured; and/or]

[(2) The content of the project is obscene in nature, as defined by Texas Penal Code §43.21.]

[(b) A production company is ineligible to receive a waiver of location fees if they fall under one of the following conditions:]

[(1) The production company does not have production insurance in the amount required by the desired location that names the State of Texas as an additionally insured; and/or]

[(2) The production company does not meet the minimum in-state spending requirements.]

§122.5. Application Process.

(a) Once a production company has decided to use a state property for production activity, the company [they] must complete a Request for Use Application. The application [Application] can be found at the [Texas Film] Commission web [Web] site [<http://www.governor.state.tx.us/divisions/film>], or by contacting the [Texas Film] Commission if electronic [internet] access is unavailable [not available] or special assistance [needs facilitation] is required.

(b) Applications must be received before the commencement of production activity at the [desired] location[,], and must include the following:

(1) a completed Request for Use Application; [and]

(2) a certificate of [liability] insurance in the amount required by the Commission [desired location] that names the State as an additionally insured; and[.];

(3) a content document:

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

(B) for Episodic Television Series: the full script of the first episode to be filmed in Texas;

(C) for Commercials, Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational

or Instructional Videos: the scripts, storyboards, or detailed outlines/summaries of content;

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

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

(c) An applicant [Applicant] must submit a separate [fill out an] application for each state property proposed for [they wish to] use.

§122.6. Approval Process.

(a) Applications [All applications] will be reviewed in the order they are received by the [Texas Film] Commission.

(b) Upon receipt of an [Once a production company submits an] application, the [Texas Film] Commission will provide electronic notice to [email] the applicant [Applicant] confirming receipt [notifying them that their application has been received].

(c) The [Texas Film] Commission [staff] will [then] review the application and supporting materials to determine whether [if] the production company meets the eligibility [minimum] qualifications of this chapter[,], and whether [that all] the information provided is complete [clear] and reasonable. The Commission [Staff] will contact the applicant [Applicant] to verify [that all] the information provided [on the application is correct]. At that time, applicants may [Applicants will have the ability to] amend their application. The [Texas Film] Commission will determine whether an amendment requires the applicant [Applicant's amendment(s) may require them] to reapply[, and/or submit [whether] additional documentation [from the Production Company is required for the approval process].

(d) After review, the [The Texas Film] Commission [Staff] will notify in writing the [state] agency of [governing] the applicant's request. [Applicant's desired location in writing of the request of use once the application has been reviewed.] The [state] agency and the [Texas Film] Commission will jointly determine whether [if] the request is feasible based on location availability, description of production activity, and location's capabilities.

(e) Both the Commission and the agency must approve the application before production activity may occur, in accordance with section 2165.008(b) of the Act. [The Texas Film Commission Staff will notify the Applicant in writing of whether or not their request has been approved once the application has been approved by all necessary parties.]

(f) Either the Commission or the agency may deny an application if the proposed production activity would interfere with the conduct of state business or for any other reason permitted under section 2165.008(c) of the Act.

(g) [(f)] Upon approval by all necessary parties, the Commission will notify the applicant in writing of the approval. Following approval [Once the Applicant has been approved], a location agreement must [contract with] be executed between the applicant [Applicant] and the State of Texas, acting through the Commission and the agency, for use of the property.

§122.7. Applicant's Responsibilities.

(a) The applicant must pay all required [Applicant is responsible for paying] location fees.

(1) The [Texas Film] Commission, in coordination [conjunction] with the [Applicant's desired location and the state] agency [governing that property], will determine the location fee [to be charged] for each day of [that] production activity [will occur on the

property] based on the length of use, loss of business, and impact on the property. The location fee will be stated in the location agreement [contract] between the applicant [Applicant] and the State of Texas [state property,] and is non-negotiable [after that point].

(2) The applicant must [Applicant shall] deposit all required [the] location fees to the credit of the State of Texas, Comptroller of Public Accounts, [and is expected to do so] on or before the first day of production activity. Failure to comply with this subsection [follow these rules] may result in [the] immediate disqualification [of the Applicant] or other appropriate administrative action [similar consequences].

(b) An applicant [Applicant] may be required to pay a security deposit to the [state] agency [governing the desired location] in an [the] amount determined jointly by the [Texas Film] Commission and the agency. Failure to comply with this requirement [follow these rules] may result in [the] immediate disqualification [of the Applicant] or other appropriate administrative action [similar consequences].

(c) The applicant [Applicant] is responsible for reimbursing the agency for all [paying any] actual costs incurred as a result of production activity, as provided in section 2165.008(f) of the Act.

(1) Reimbursable [An Applicant is required to reimburse the state property for actual costs incurred during the use of the location. These] costs include, but are not limited to, necessary personnel repairs to the property from damage, trash removal, and excessive electricity and water use.

(2) The state agency will [shall] notify the applicant [Applicant] in writing of any actual costs incurred that require [the Applicant is responsible for] reimbursement [reimbursing]. The applicant [Applicant] must submit payment [reimburse the cost] no later than the 21st day after the date [on which] the written notification is received.

(d) The applicant [Applicant] may be required to pay a licensing fee to the [state] agency [governing the desired location] in an [the] amount determined jointly by the [Texas Film] Commission and the agency. Failure to comply with this requirement [follow these rules] may result in [the] immediate disqualification [of the Applicant] or other appropriate administrative action. [similar consequences.]

(e) The applicant [Applicant], production company, [Production Company] and all personnel engaged in production activity must [its employees are required to] maintain a code of conduct while on state property [any time they are on location] that includes, but is not limited to, the following:

- (1) no smoking;
- (2) no alcohol;
- (3) no illegal drugs;
- (4) no soliciting;
- (5) adherence to any [following] location-specific dress code; and
- (6) any other [code of] conduct rules required by the agency or location [specific location].

§122.8. Process During Production Activity.

(a) The [Texas Film] Commission and the agency will supervise all production activity conducted on state property by a production company.[-, and]

(b) The Commission and the agency will determine, on a case-by-case [ease by ease] basis, the level of on-site supervision

[supervisory] and any specific conditions necessary [needed] for the production [particular] activity.

(c) The [Texas Film] Commission may be present [reserves the right to be] on location during production activity to verify compliance with the approved application and location agreement[-] and may [to] request additional documentation from the production company as necessary to ensure [determine] that [they used the] state property is used as [in the manner] agreed [upon].

§122.9. Seven Days of Location Fee Waivers.

(a) The [Texas Film] Commission may allow each state property to be used without a location fee charge for up to seven days during each state fiscal year and [year, and] may determine the allocation of those days. The location fee waiver applies only to [can only be used for] filming days[-] and does not apply to [cannot count for] areas of [the] state property used solely as [a] support locations [location].

(b) The waiver does not apply to any other fees or charges including, but not limited to, security deposits, [and] actual costs incurred, or licensing fees.

(c) Projects that are eligible to receive location fee waivers are identified [listed] in §122.3 of this title (relating to Eligibility).

§122.10. Rights of the Location and the [Texas Film] Commission.

(a) An agency may [All state properties and the agencies that govern those properties have the right to] decline to permit production activity on its [their] property if the proposed [for reasons including, but not limited to, that the] use would [will] significantly interfere with the conduct of state business or for any other reason authorized by section 2165.008(c) of the Act. An [A state] agency and the Commission may, by mutual agreement, modify or [can decide to] deviate from the procedural steps [processes listed] in this chapter when necessary to address operational needs or unique circumstances. [after an initial application has been sent to the Texas Film Commission if it is determined to be the best course of action by both the Texas Film Commission and the agency.] An [A property and/or a state] agency may [can] also designate [elect for] the [Texas Film] Commission to act as a [the] liaison for coordination and communication between the applicant and the agency [the location].

(b) The [Texas Film] Commission may withdraw from participation in [reserves the right to take themselves out of the contract and] negotiations or contract arrangements for use of [a] state property if [it is determined that] the request does not conform to [fit within the parameters of the rules set forth in] this chapter or at the request of [if it is desired by] the [state] agency. The [Texas Film] Commission may also [reserves the right to] decline a request for [of] use for any reason.

§122.11. Disqualifications.

A production company [Production Company] may be prohibited from conducting production activity on a state property at any time for any of the following reasons:-]

- (1) failure [Failure] to submit required or additional documentation [documents];
- (2) submission [Submission] of false or misleading information;
- (3) failure [Failure] to pay location fees, costs incurred, or any security deposit on time;
- (4) use of state [Using the] property to produce obscene content [for pornographic scenes], as defined by section 43.21 of the Texas Penal Code [§43.21];

(5) submission of an ineligible [Ineligible] project, as described [listed] in §122.4 of this title (relating to Ineligibility); or [and]

(6) failure to comply with the [Not following] location's code of conduct or with any instruction issued by the Commission or the agency during production activity.

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 14, 2026.

TRD-202603977

Stephanie Whallon

Director

Texas Film Commission

Earliest possible date of adoption: October 25, 2026

For further information, please call: (512) 463-2000



CHAPTER 123. MEDIA PRODUCTION DEVELOPMENT ZONES

13 TAC §§123.1 - 123.10

The Office of the Governor ("OOG") proposes amendments to 13 TAC §123.1, concerning Short Title, Background, and Purpose; §123.2, concerning Definitions; §123.3, concerning Request for MPDZ Exemption; §123.4, concerning Request Review by Nominating Body; §123.5, concerning Application for MPDZ Exemption; §123.6, concerning Application Review; §123.7, concerning Economic Impact Analysis; §123.8, concerning Information Requested by Texas Film Commission; §123.9, concerning Media Production Advisory Committee; and §123.10, concerning Miscellaneous Provisions. The proposed amendments are being made as a result of the OOG's review of Chapter 123 under Texas Government Code §2001.039. The proposed amendments will update terminology, improve readability and clarity, align the chapter with current agency practice, and better conform the rules to Texas Government Code Chapter 485A and Texas Tax Code §151.3415.

EXPLANATION OF PROPOSED AMENDMENTS

Chapter 123 implements Texas Government Code Chapter 485A, concerning Media Production Development Zones. Chapter 485A establishes procedures for recognition of media production development zones, designation of qualified media production locations, certification of qualified persons, and related review by the Texas Film Commission, the Comptroller of Public Accounts, nominating bodies, and the Media Production Advisory Committee. As part of the rule review conducted under Texas Government Code §2001.039, the OOG has determined that the reasons for initially adopting Chapter 123 continue to exist, but that amendments are appropriate to update the rules, improve clarity, remove outdated language, and better reflect current procedures used in administering the Media Production Development Zone program.

The proposed amendments to §123.1 revise the short title, background, and purpose section to clarify the statutory basis for the chapter, update the description of the program, and remove obsolete or unnecessary language.

The proposed amendments to §123.2 revise the definitions section to update terminology, conform defined terms to Texas Government Code Chapter 485A, add or revise definitions used in the chapter, and improve clarity and consistency.

The proposed amendments to §123.3 update the process for a request for an MPDZ exemption, including the required contents of a request, the manner in which required forms may be obtained, the supporting documents that must be submitted, the format for submission, and the ability of the Nominating Body, the Commission, or the Comptroller to request additional information.

The proposed amendments to §123.4 revise the process for review of a request by a Nominating Body, including notice to the Requestor and the Commission, criteria to be considered by the Nominating Body, action on a request, submission of an application to the Commission, extension of review time for good cause, and recognition of a media production development zone.

The proposed amendments to §123.5 update the application process for an MPDZ exemption, including the contents of a completed application, the manner in which the application form may be obtained, the format for submission, and the ability of the Commission or Comptroller to request additional information.

The proposed amendments to §123.6 revise the Commission's application-review process, including review for completeness, review of whether the nominated location qualifies for designation, review of whether the nominated location is in a media production development zone, return of incomplete applications, referral of materials to the Comptroller, Comptroller certification regarding positive state revenue impact, review by the Media Production Advisory Committee, approval of applications, certification of qualified persons, designation of qualified media production locations, approval of media production development zones, and denial notices.

The proposed amendments to §123.7 revise the economic impact analysis requirements to align the analysis with the requirements of Texas Government Code §485A.106(b)(5) and the format required by the Comptroller.

The proposed amendments to §123.8 revise provisions relating to information requested by the Commission from a Qualified Person, Nominating Body, appraisal district, or other relevant source to fulfill the Commission's statutory obligations under Texas Government Code Chapter 485A.

The proposed amendments to §123.9 revise provisions relating to the Media Production Advisory Committee, including the committee's purpose, tasks, reporting requirements, and independence requirements. The amendments clarify the committee's role in reviewing applications and making recommendations to the Commission.

The proposed amendments to §123.10 revise miscellaneous provisions relating to Commission discretion, finality of Commission decisions within the agency, notice regarding potentially unauthorized tax exemptions, and the handling of public information requests involving a Requestor or application.

FISCAL NOTE

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

PUBLIC BENEFIT AND COSTS

Ms. Whallon has also determined that during each of the first five years in which the proposed amendments are in effect, the rule changes will yield the anticipated public benefit of clearer, more current, and more administrable rules governing Media Production Development Zones. The proposed amendments will improve transparency for Requestors, Nominating Bodies, state agencies, and the public by clarifying request, application, review, certification, designation, reporting, and public-information procedures.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Since the OOG has determined that the proposed amendments 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

Ms. Whallon has determined that the proposed amendments will not affect a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) will not create or eliminate a government program;
- (2) will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) will not require an increase or decrease in future legislative appropriations to the OOG;
- (4) will not require an increase or decrease in fees paid to the OOG;
- (5) do not create a new regulation;
- (6) will expand, limit, or repeal existing regulations only to the extent the amendments clarify, update, and reorganize existing requirements governing Media Production Development Zones;
- (7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- (8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

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

SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendments may be submitted for 30 days following the date of publication of

this notice by mail to Stephanie Whallon, Office of the Governor, Texas Film Commission, P.O. Box 12428, Austin, Texas 78711, or by email to tfcrules.comments@gov.texas.gov with the subject line "Chapter 123 Proposed Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on October 26, 2026.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §485A.052, which requires the OOG to adopt rules necessary to implement Texas Government Code Chapter 485A, concerning Media Production Development Zones.

The amendments are also proposed as a result of the OOG's review of Chapter 123 under Texas Government Code §2001.039.

CROSS REFERENCE TO STATUTE

Texas Government Code Chapter 485A and Texas Tax Code §151.3415. No other statutes, articles, or codes are affected by the proposed amendments.

§123.1. Short Title, Background, and Purpose.

(a) Short title. The program implemented ~~[contemplated]~~ by this chapter may be referred to as the Production Facilities Incentive.

(b) Background. Chapter 485A of the Texas Government Code establishes the ~~[The]~~ Texas Media Production Development Zone Act which offers exemptions to the Limited Sales, Excise, and Use Taxes to Qualified Persons ~~[qualified persons]~~ who build, construct, renovate, improve, or expand a media production facility within the state.

(c) Purpose. The Texas Media Production Development Zone Act was enacted to maintain and strengthen the media production industry in Texas in the face of strong competition from other states. Soundstages and other production facilities are ~~[would be key]~~ assets in this effort.

§123.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. [Words defined in Texas Government Code, Chapter 485A, and not defined in this chapter shall have the meanings provided by Texas Government Code, Chapter 485A.]

(1) Act--The Media Production Development Zone Act~~[, Texas Government Code]~~, Chapter 485A of the Texas Government Code~~[.]~~

(2) (No change.)

(3) Commission--The Texas Film Commission, a division of the Texas Economic Development and Tourism Office, in the Office of the Governor.

(4) ~~[(3)]~~ Media Production Development Zone (MPDZ) Exemption--The sales and use tax exemption authorized by section 151.3415 of the ~~[The exemption of certain property from sales, excise, and use taxes pursuant to the Act and]~~ Texas Tax Code and administered under the Act~~[, §151.3415.]~~

(5) ~~[(4)]~~ Metropolitan Statistical Area--An area of the state described on the State Metropolitan Statistical Area Reference Table, as maintained by the Texas Demographic Center or its successor [State Data Center, University of Texas at San Antonio].

(6) ~~[(5)]~~ Nominating Body--Has the meaning assigned by section 485A.002(4) of the Act [The governing body of a municipality or county, as defined in the Act.]

(7) [(6)] Requestor--The title holder of real property, or the leaseholder in a written, non-residential, real property lease with at least four years remaining in the current lease term, on or in which a media production location is proposed.

(8) [(7)] Region--For the purposes of section [§]485A.103(d) of the Act, a grouping of counties based [described] on the Comptroller Economic Region table[, as maintained by the Texas State Data Center, University of Texas at San Antonio].

(9) Qualified Person--Has the meaning assigned by section 485A.201 of the Act.

(10) Media Production Facility--Has the meaning assigned by section 485A.002(1) of the Act. Parking structures, kitchen spaces and dressing rooms may be included where integral to the facility.

§123.3. Request for MPDZ Exemption.

(a) A Requestor who seeks an [desires a] MPDZ Exemption shall submit a written request to the Nominating Body having jurisdiction over the proposed media production location.

(b) A [completed] request for an MPDZ Exemption must [shall] include:

(1) a current Request for Exemption form obtained from the Commission [Texas Film Commission (TFC)] via telephone, internet, or other means if additional special needs facilitation is required [website], filled out completely and signed by an authorized representative of the Requestor;

(2) - (6) (No change.)

(7) an economic impact analysis, in the form specified in §123.7 of this chapter;

(8) [a] financial statements [statement] and background information on the Requestor;

(9) such other written documents on which the Requestor relies to qualify for and obtain an [a] MPDZ Exemption; and

(10) such other written documents containing information reasonably requested by the Nominating Body, the Commission [TFC], or the Comptroller, to be provided within a reasonable time not to exceed 20 days from request, unless extended for good cause [which shall be provided within 20 days of the date of the request. The TFC may, for good cause, allow additional time to comply with a request].

(c) The request contents shall be provided in at least one electronic copy that is a searchable portable document format (PDF). [the following formats:]

[(1) one original hard copy of the complete request in a three ring binder with tabs separating each section of the documents submitted; and]

[(2) one electronically digitized copy formatted in searchable portable document format (PDF) or other format acceptable to the office.]

(d) (No change.)

§123.4. Request Review by Nominating Body.

(a) Within 7 days of receipt of a request for MPDZ Exemption, the Nominating Body shall deliver to the Commission the electronic [Texas Film Commission (TFC) a digitized] copy of the request in searchable portable document format (PDF).

(b) If the Nominating Body determines that the Requestor has submitted a complete request and, by official action, decides to consider that request, then the Nominating Body shall provide written notice to the Requestor and [to] the Commission [TFC] that includes:

(1) - (2) (No change.)

(c) In reviewing a request, the Nominating Body shall consider:

(1) whether the proposed media production location meets the requirements of the Act, including section 485A.102;

(2) whether the Requestor has the ability and financial wherewithal to successfully complete the building, constructing, renovating, or expanding of the proposed media production facility within 18 months from certification as a Qualified Person [qualified person] under §123.6(g)(1) [§123.6(f)(1)] of this chapter; and

(3) whether the proposed financial incentives are in the best interest of the Nominating Body [and this state].

(d) Subject to subsection (f) of this section, within [Within] 90 days after [of] deciding to consider a completed request, the Nominating Body shall [either]:

(1) deny the request;

(2) take no official action, in which case the request shall be considered denied on the 91st day after deciding to consider a completed request; or

(3) [(+)] adopt a written ordinance or order nominating the proposed media production location which shall include:

(A) written findings as to each criterion listed in section [§]485A.102 of the Act;

(B) the [written] information [as] listed in section [§]485A.105 of the Act; and

(C) a determination that granting the MPDZ Exemption to the Requestor is in the best interest of the Nominating Body. [and this state; and]

[(D) designate and direct a representative of the Nominating Body to execute an Application for Exemption pursuant to §485A.106 of the Act and submit same to the TFC;]

[(2) deny the request; or]

[(3) take no official action and the request shall be considered denied on the 91st day after the request consideration start date.]

(e) Upon adoption of an ordinance or order under subsection (d)(3) of this section, the Nominating Body shall designate and direct a representative to execute an Application for Designation under section 485A.106 of the Act and submit the application to the Commission.

(f) [(e)] If, for good cause and before the 90th day after deciding to consider a completed request, a [A] Nominating Body determines it needs additional time to consider a request under subsection (d) of this section, the Nominating Body shall, by [may, for good cause and upon] written notice, notify [to] the Requestor and the Commission of such necessity. The Nominating Body shall work with the Commission to determine the date by which the final determination must be made. The Nominating Body shall provide in the notice the date by which the Nominating Body shall make its final determination on the request. [with a copy to the TFC, take more than 90 days to consider a request under subsection (d) of this section.]

(g) [(f)] The Commission shall not consider a media production location nominated under this section unless the media production location is located in a media production development zone. If the area in which the nominated location is situated has not previously been recognized as a [, the Nominating Body at the same time shall also adopt a written ordinance or order recognizing the] media production development zone, the Nominating Body shall, at the same time that it adopts

the nominating ordinance or order under subsection (d)(3) of this section, adopt a separate ordinance or order recognizing the zone [in which a location nominated under subsection (d)(1) of this section is located]. This ordinance or order must [shall] include:

- (1) (No change.)
- (2) written findings as to each criterion listed in section [§]485A.101 of the Act; and
- (3) (No change.)

§123.5. Application for MPDZ Exemption.

(a) A Nominating Body that has recognized a zone, nominated a location, and certified a Qualified Person [person] for the purposes of an [a] MPDZ Exemption shall submit a written application to the Commission [Texas Film Commission (TFC)].

(b) A completed application must [shall] include:

(1) the current Application for Designation [Exemption] form obtained from the Commission [TFC website], filled out completely and signed by an authorized representative of the Nominating Body, with all specified attachments; and

(2) such other written documents containing information reasonably requested by the Commission [TFC] or the Comptroller to be provided within a reasonable time not to exceed 20 days from request, unless extended for good cause. [which shall be provided within 20 days of the date of the request. The TFC or Comptroller may, for good cause, allow additional time to comply with a request.]

(c) The application contents shall be provided in at least one electronic copy that is a searchable portable document format (PDF). [in the following formats:]

{(1) one original hard copy of the complete application in a three ring binder with tabs separating each section of the documents submitted; and}

{(2) one electronically digitized copy formatted in searchable portable document format (PDF) or other format acceptable to the TFC.}

(d) The application shall be submitted in any manner acceptable to the Commission [TFC].

§123.6. Application Review.

(a) Upon receipt of an Application for MPDZ Exemption from a Nominating Body, the Commission [Texas Film Commission (TFC)] shall review the application to determine:

(1) whether the application is complete with respect to section [in accordance with §]485A.106 of the Act and [with the provisions of] this chapter;

{(2) whether the nominated location qualifies for designation as a media production location; and}

(2) [(3)] whether the nominated location is in a media production development zone and, if not [previously reviewed], whether the recognized zone qualifies for approval as a media production development zone, and[.];

(3) whether the nominated location qualifies for designation as a media production location.

(b) The Commission [TFC] shall provide to the Nominating Body written notice that [either]:

(1) the application is complete and the Commission is considering it [and is being considered]; or

(2) the application is incomplete and the Commission is returning it [is being returned] to the Nominating Body [for remediation].

(c) If the Commission returns an incomplete application to a Nominating Body under this section, the Commission may identify the deficiencies in the application that the Nominating Body must correct.

(d) [(e)] Upon acceptance of an application for consideration, the Commission [TFC] shall deliver to the Comptroller [Comptroller's office]:

(1) an electronic [a digitized] copy of the Requestor's request;

(2) an electronic [a digitized] copy of Nominating Body's application; and

(3) (No change.)

(e) [(d)] Within 30 days of receipt of the items in subsection (d) [(e)] of this section, the Comptroller [Comptroller's office] will [shall] provide in writing to the Commission [TFC] certification as to whether the proposed project will have a positive impact on state revenue. Should the Comptroller [Comptroller's office] request additional information from the Requestor or the Nominating Body, the time it takes a party to provide the additional information will [shall] not count toward the 30 days.

(f) [(e)] Upon receipt of certification of positive state revenue impact from the Comptroller [Comptroller's office], the Commission [TFC] shall, as soon as practicable, call a meeting of the Media Production Advisory Committee to[, as soon as practicable]:

(1) (No change.)

(2) provide a written recommendation to the Commission [TFC] with respect to the pending application.

(g) [(f)] If the Commission [TFC] approves an application, it shall provide to the Requestor, with a copy to the Nominating Body, a letter indicating:

(1) certification of the Requestor as a Qualified Person [qualified person];

(2) approval granting the MPDZ Exemption to the Qualified Person [qualified person]; and

(3) the expiration date for such MPDZ Exemption established in accordance with section 485A.111 of the Act [exemption].

(h) [(g)] If the Commission [TFC] approves an application, it shall, as needed, simultaneously approve the project's recognized zone as a media production development zone, and designate the project's nominated location as a qualified media program location. It shall communicate these actions in writing to the Nominating Body and the Requestor.

(i) [(h)] If the Commission [TFC] denies an application, it shall provide written notification to the Nominating Body and the Requestor.

§123.7. Economic Impact Analysis.

(a) (No change.)

(b) The economic impact analysis shall be conducted in accordance with the requirements of [presented in the format promulgated by] the Comptroller [Comptroller's office] and must satisfy the elements of section 485A.106(b)(5) of the Act. [include:]

{(1) an estimate of the amount of revenue to be generated to the state by the project or activity;}

[(2) an estimate of any secondary economic benefits to be generated by the project or activity;]

[(3) an estimate of the amount of state taxes to be exempted, as provided by Texas Tax Code, §151.3415; and]

[(4) any other information required by the Comptroller for purposes of making the certification required by §485A.109(b) of the Act.]

§123.8. *Information Requested [Reports] by Texas Film Commission.*

(a) In order to fulfill its statutory obligation under the Act, the Commission [Texas Film Commission (TFC)] may request information from any Qualified Person [qualified person], Nominating Body, appraisal district, or any other relevant source.

(b) The entities receiving a request from the Commission [TFC] under this section shall provide the information requested in the form and in the manner designated by the Commission [TFC].

§123.9. *Media Production Advisory Committee.*

(a) Purpose. The [Created pursuant to §485A.107 of the Act, the] Media Production Advisory Committee (MPAC), established under section 485A.107 of the Act, reviews applications submitted to the Commission [Texas Film Commission (TFC)] under the Act and makes recommendations on designation of qualified media production locations. [The advice and recommendations expressed by the MPAC provide the TFC and the Comptroller's office with a broader perspective regarding media production matters that will be considered in determining whether to approve an application.]

(b) Tasks. The MPAC shall:

(1) review each application for designation of qualified media production locations [eligible to be certified under the Act,] and make a recommendation to the Commission [TFC with respect to those applications]; and

(2) perform other duties as determined by the Commission [TFC].

(c) Reporting requirements. The MPAC shall [will] report to the Commission [TFC] by way of consultation at called meetings.[;] No [no] formal reports, other than the MPAC's [committee's] written recommendation with respect to [on] an application, are required unless requested by the director of the Commission [TFC].

(d) Independence. Each MPAC member shall in fact and in appearance be independent of any media production location, facility, or Qualified Person [qualified person] who has been nominated, recognized, qualified, or certified under the provisions of the Act and this chapter.

(1) An [A] MPAC member lacks independence *prima facie* if such member, or any member of his or her immediate family, with regard to any media production location, facility, Qualified Person [qualified person], or the Requestor:

(A) - (B) (No change.)

(2) If an MPAC member lacks independence, that member must be recused from any meeting about such location, facility, Qualified Person [qualified person], or the Requestor and may not hear, discuss, deliberate on, or vote on the determination of the recommendation thereon.

§123.10. *Miscellaneous Provisions.*

(a) Not every application will qualify for an [a] MPDZ Exemption. The Commission retains discretion to approve, deny, or decline to

act on an application consistent with the Act and applicable law [Texas Film Commission (TFC) is not required to act on or approve any application]. All decisions by the Commission under this chapter [TFC] are final within the agency and not subject to further administrative review.

(b) If the Comptroller receives written notice from the Nominating Body or the Commission [TFC] that a Qualified Person [qualified person] was not entitled to an [a] MPDZ Exemption or was entitled to a lesser amount than an approved application received, the Comptroller shall investigate that determination and provide a written response to the Nominating Body that concludes either that the approved application may have or may not have received unauthorized tax exemptions. If the Nominating Body and the Comptroller agree that an approved application may not have been entitled to a tax exemption, they shall promptly notify the Qualified Person [qualified person], the appropriate taxing authorities, and the Commission [TFC].

(c) The Commission is a [TFC] division of the Texas Economic Development and Tourism Office in the Office of the Governor and [is] a state agency subject to [and must comply with] the Texas Public Information Act [(PIA)]. If a public information request relating to a Requestor or an application is received, the Office of the Governor will, when current contact information is available, promptly notify the Requestor of the request, take appropriate steps to protect confidential information in consultation with the Office of the Attorney General, and provide the Requestor an opportunity to participate in that process. [In the event that a public information request related to the Requestor and/or an application is submitted to the agency, the Office of the Governor will promptly notify the Requestor of the request if current contact information is available, take all appropriate actions with the Attorney General of Texas to prevent release of confidential information, including asserting exemptions under the PIA, and provide the Requestor with full information and opportunity to participate in such process if current contact information is available.]

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 14, 2026.

TRD-202603978

Stephanie Whallon

Director

Texas Film Commission

Earliest possible date of adoption: October 25, 2026

For further information, please call: (512) 463-2000



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.41

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.41 relating to Cost of Service. The amended rule will define the expenses that are prohibited from inclusion as components of cost of service. The amended rule will also identify certain criteria related to ratemaking rate base and establish the timing for commission review of transaction and closing costs associated with the acquisition for sales, transfers, or mergers that involve a fair market valuation under 16 TAC §24.238, relating to Fair Market Valuation.

The proposed amendments are necessary to remove uncertainty with regards to longstanding commission precedent and statutory interpretation. At its July 30, 2026, open meeting, the commission adopted amendments to §24.41 as part of its implementation of House Bill (HB) 2712, as enacted by the 89th Texas Legislature (R.S.). Due to a scrivener's error after the open meeting, existing rule language unrelated to the implementation of HB 2712 and not proposed for amendment as part of that rulemaking proceeding was omitted from the version of the rule text that is currently in effect. This omitted language is directly reflective of statutory language and well-established commission interpretations of statutory language that have not changed. Restoring this language will prevent misinterpretations of the commission's current policy on the affected topics.

The amended rule also makes minor clerical and stylistic changes.

The scope of this rulemaking proceeding is limited to the correction of errors, the restoration of omitted language, and clerical and stylistic edits. Comments recommending substantive modifications to this rule, relitigating issues addressed in the commission's July 30, 2026, adoption order, or addressing related forms or filing instructions are beyond the scope of this rulemaking proceeding.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Smeltzer, Division Director, Rules and Projects division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Smeltzer has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the correction of an administrative error and the realignment of commission rules with longstanding commission precedent and statutory interpretations. There will not be any probable economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 15, 2026. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be filed by October 15, 2026. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission also requests information related to the costs, benefits, or effects 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 commission will consider these comments in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 59086.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and

should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amended rule is proposed under Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.185(b) which requires that utility rates to be based on the original cost of property used by and useful to the utility during the test year in providing service; Texas Water Code §13.185(g) which authorizes the commission to promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes; and Texas Water Code §13.305 which prescribes the ratemaking rate base associated with the acquisition of a water or sewer utility.

Cross Reference to Statute: Texas Water Code §§13.041(a) and (b); 13.185(b) and (g); 13.305.

§24.41. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on rate base.

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's test year expenses will be considered. A change in rates must be based on a test year as defined in §24.3 of this title (relating to Definitions of Terms) and, as applicable, comply with the requirements of §24.26 (relating to Test Year). Payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in Texas Water Code (TWC) §13.185(e).

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, may include, but are not limited to, the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service.

(B) Depreciation expense based on original cost and computed on a straight-line basis over the useful life of the asset as approved by the commission.

(i) Depreciation expense is allowed on all depreciable utility property owned by the utility, including CWIP reasonably projected to be in service during a combined test year or future test year, and depreciable utility plant, property and equipment retired by the utility, subject to the requirements of subparagraph (c)(2)(C) of this section. Depreciation expense is not allowed for property provided under explicit customer agreements or funded by customer contributions in aid of construction. Depreciation expense is allowed for all developer or governmental entity contributed property. A utility must calculate depreciation on a straight-line basis over the expected or remaining life of the asset, but is not required to use the remaining life method if salvage value is zero. A utility that does not use group depreciation and proposes to change the useful life of an asset with an accumulated de-

preciation balance must not change the accumulated depreciation balance and must adjust depreciation expense going forward based on the changed useful life.

(ii) The depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. For a utility that uses group accounting, salvage value will be applied to the asset group in depreciation studies. For a utility that uses itemized accounting, salvage value will be applied to specific assets

(C) Assessments and taxes other than income taxes.

(D) Federal income taxes on a normalized basis. Federal income taxes must be computed according to the provisions of TWC §13.185(f), if applicable.

(E) Funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

(F) Advertising, contributions and donations. The actual test year expenditures for advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service must not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the utility for services rendered to the public. The following expenses are the only expenses that may be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(i) funds expended advertising methods of conserving water;

(ii) funds expended advertising methods by which the consumer can achieve a savings in total utility bills; and

(iii) funds expended advertising water quality protection.

(G) Credit card and electronic payment processing fees. Expenditures or fees charged by banks or companies for accepting and processing credit card, debit card or other forms of electronic payment from customers for water and sewer utility service may be allowed as a cost of service.

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) through (F) of this paragraph;

(H) interest expense of processing a refund or credit of sums collected in excess of the rate ordered by the commission;

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

(J) the costs of purchasing groundwater from any source if:

(i) the source of the groundwater is located in a priority groundwater management area; and

(ii) a wholesale supply of surface water is available.

(c) Return on rate base. The return on rate base is the rate of return times rate base.

(1) Rate of return. The commission will allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and will fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission will consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt, plus adjustments for premiums, discounts, and refunding and issuance costs.

(ii) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(C) The commission will consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(D) The commission may consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital.

(2) Rate base. The rate of return is applied to the rate base. Assets retired before June 19, 2009, must be removed from rate base before the rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:

(A) If a utility or its facilities were valued using the process for establishing fair market value in Texas Water Code (TWC) §13.305, the dollar value of the "ratemaking rate base," is as defined in TWC §13.305(a)(2) and §24.238(b)(4) of this title[;] (relating to Fair Market Valuation)[;] less accumulated depreciation.

(i) The installation date of the ratemaking rate base is the filing date of the commission's final order approving the acquisition of the ratemaking rate base in an application filed under TWC §13.301.

(ii) The ratemaking rate base will include an accrual for Allowance for Funds Used During Construction (AFUDC), as defined in §24.238(b)(2) of this title, for any post-acquisition improvements to the ratemaking rate base. The accrual will begin on the date the improvement cost was incurred and end on the earlier of:

(I) the fourth anniversary of the date the improvement was placed in service; or

(II) the filing date of the commission order in which the ratemaking rate base is first approved by the commission as part of the rate base set in a base rate proceeding.

(iii) For book and ratemaking purposes, depreciation on any post-acquisition improvement to the ratemaking rate base will be deferred and considered in the utility's next base rate proceeding.

(iv) Transaction and closing costs associated with the acquisition will be reviewed in the acquiring utility's first base rate proceeding after the transaction has been concluded.

(B) Original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility during the test year in providing service.

(C) Original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility.

(i) For original cost under this subparagraph or subparagraph (B) of this paragraph, the commission may adjust rate base and the rate of return on equity associated with the cost of plant and equipment that has been estimated by trending studies or other methods not based on or verified by historical records.

(ii) Original cost in this subparagraph or subparagraph (B) of this paragraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the current owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system.

(iii) On all assets retired from service, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation in its net plant calculation in the first full rate change application, excluding alternative rate method applications as described in §24.75 of this title[;] (relating to Alternative Ratemaking Methodologies) [Rate Methods;] it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset must be combined with over-accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount must be amortized over a reasonable period of time taking into account prudent regulatory principles.

(iv) Accelerated depreciation is not allowed.

(v) For a utility that uses group accounting, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:

- (I) investment by homogenous category;
- (II) expected level of gross salvage by category;
- (III) expected cost of removal by category;
- (IV) the accumulated provision for depreciation as appropriately reflected on the company's books by category;
- (V) the average service life by category;
- (VI) the remaining life by category;
- (VII) the Iowa Dispersion Pattern by category;

and

(VIII) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

(vi) Reserve for depreciation under this subparagraph or subparagraph (B) of this paragraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. Depreciation must be computed on a straight-line basis over the expected useful life or remaining life of the item or facility regardless of whether the salvage value is zero or not zero.

(I) If individual accounting is used, the following requirements apply to retirements:

(-a-) Accumulated depreciation must be calculated based on book cost less net salvage value of the asset.

(-b-) The utility must provide evidence establishing the original cost of the asset, the cost of removal, salvage value, any other amounts recovered; the useful life of the asset, or remaining life as may be appropriate; the date the asset was taken out of service; and the accumulated depreciation up to the date it was taken out of service.

(-c-) The utility must show that it used due diligence in recovering maximum salvage value of a retired asset.

(-d-) The utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation must include any additional depreciation expense accrued past the estimated useful or remaining life of the asset.

(-e-) The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered.

(-f-) Retired assets must be specifically identified.

(-g-) The requirements relating to the accounting for the reasonableness of retirement decisions for individual assets and the net salvage value calculations for individual assets apply only to a utility using itemized accounting.

(II) For a utility that uses group accounting, the depreciation study must provide the information in subclause (I) except that retirements may be accounted for by category. Retired assets must be reported for the asset group in depreciation studies.

(III) TWC §13.185(e) applies to utility business transactions with affiliated interests involved in the retirement, removal, or recovery of assets.

(IV) For assets retired after June 19, 2009, the retired assets must be included in the utility's first application for a rate change after the date the asset was retired and must be specifically identified if the utility uses itemized accounting.

(vii) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC §13.185(e);

(viii) utility property funded by written customer agreements or customer contributions in aid of construction such as surcharges must not be included in original cost or invested capital.

(D) Working capital allowance to be composed of, but not limited to the following:

(i) reasonable inventories of materials and supplies held specifically for purposes of permitting efficient operation of the utility in providing normal utility service.

(ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests are subject to the standards set forth in TWC §13.185(e); and

(iii) a reasonable allowance for cash working capital. The following will apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for utilities must not exceed one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) For Class C and Class D utilities, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass-through provision or through charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(III) For Class B utilities, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass-through provision or charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(IV) For Class A utilities, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-) The lead-lag study will use the cash method. All non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return, including interest on long-term debt and dividends on preferred stock, will not be considered.

(-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the utility.

(-d-) All funds received by the utility except electronic transfers will be considered available for use no later than the business day following the receipt of the funds in any repository of the utility, e.g., lockbox, post office box, branch office. All funds received by electronic transfer will be considered available the day of receipt.

(-e-) The balance of cash and working funds included in the working cash allowance calculation will consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense must be calculated by measurement of the interval between the mid-point of the annual service period and the actual payment date of the utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount must be included in rate base.

(V) If cash working capital is required to be determined by the use of a lead-lag study under subclause (IV) of this clause and either the utility does not file a lead-lag study or the utility's lead-lag study is determined to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, zero will be presumed to be the reasonable level of cash working capital.

(VI) A lead lag study completed within five years of the application for a rate or tariff change is adequate for determining cash working capital unless sufficient persuasive evidence suggests that the study is no longer valid.

(VII) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III) and (V) of this clause.

(3) Deduction of certain items from rate base. In the consideration of applications filed under TWC §13.187 or §13.1871, the commission will deduct certain items from rate base, including but not limited to the following:

(A) accumulated reserve for deferred federal income taxes;

(B) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(C) contingency and property insurance reserves;

(D) contributions in aid of construction; and

(E) other sources of cost-free capital, as determined by the commission.

(4) Construction work in progress (CWIP).

(A) This subparagraph applies to a utility that elects to use a historic test year or to a utility that elects to use a combined test year or future test year for CWIP that the utility projects to not be in service through the end of the test year. The inclusion of CWIP is an exceptional form of relief that must be proven by clear and convincing evidence. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include CWIP in rate base to the extent that the utility has proven that:

(i) the inclusion is necessary to the financial integrity of the utility; and

(ii) major projects under construction have been efficiently and prudently planned and managed.

(B) This subparagraph applies to a utility that elects to use a combined test year or a future test year that projects CWIP to be in service through the end of its selected test year.

(i) The commission will review CWIP to determine the extent the utility projects some or all of CWIP to be in service through the end of the combined test year or future test year.

(ii) CWIP that the utility projects will be in service by the end of the combined test year or the future test year will be included in rate base. The utility has the burden of proving that CWIP

is reasonably projected to be in service (i.e., installed) through the end of the combined test year or future test year;

(5) Requirements for post-test year adjustments.

(A) A post-test year adjustment to test year data for known and measurable rate base additions may be considered only if:

(i) the addition represents a plant which would appropriately be recorded for investor-owned utilities in National Association of Regulatory Utility Commissioners (NARUC) account 101 or 102;

(ii) the addition comprises at least 10% of the utility's requested rate base, exclusive of post-test year adjustments and CWIP;

(iii) the addition is in service before the rate year begins;

(iv) the attendant impacts on all aspects of a utility's operations, including but not limited to, revenue, expenses and invested capital, can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed; and

(v) the test year is a historic test year.

(B) Each post-test year plant adjustment described by subparagraph (A) of this paragraph will be included in rate base at the reasonable test year-end CWIP balance, if the addition is constructed by the utility, or the reasonable price, if the addition represents a purchase, subject to original cost requirements, as specified in TWC §13.185.

(C) Post-test year adjustments to historical test year data for known and measurable rate base decreases will be allowed only if:

(i) the decrease represents:

(I) plant which was appropriately recorded in NARUC account 101 or 102;

(II) plant held for future use;

(III) CWIP, not including mirror CWIP; or

(IV) an attendant impact of another post-test year adjustment.

(ii) the decrease represents a plant that has been removed from service, sold, or removed from the utility's books prior to the rate year; and

(iii) the attendant impacts on all aspects of a utility's operations, including but not limited to, revenue, expenses and invested capital, can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(d) Recovery of positive acquisition adjustments.

(1) When a utility acquires plant, property, or equipment for which commission approval is required under §24.239 of this title[.] (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental)[.] a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

(A) the property is used and useful in providing retail water or sewer service at the time of the acquisition or as a result of the acquisition;

(B) reasonable, prudent, and timely investments will be made, if required, to bring the system into compliance with all applicable rules and regulations;

(C) as a result of the transaction:

(i) the customers of the system being acquired will receive higher quality or more reliable retail water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable retail water or sewer service;

(ii) regionalization of retail public utilities, meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service, was achieved; or

(iii) the acquiring utility will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

(D) any and all transactions between the buyer and the seller entered into as a part or condition of the acquisition are fully disclosed to the commission and were conducted at arm's length;

(E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired; and

(F) the rates charged by the acquiring utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

(2) The owner of the acquired retail public utility and the final acquiring utility must not be affiliated. In a multi-stage transaction in which a purchase of voting stock or acquisition of controlling interest transaction under §24.243 of this title[;] (relating to Purchase of Voting Stock or Acquisition of Controlling Interest in a Utility)[;] is followed by a transfer of assets in what is essentially a single sales transaction, a positive acquisition adjustment is allowed only where the multi-stage transaction was fully disclosed to the commission in the application for approval of the initial stock or change of controlling interest transaction.

(3) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight-line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(4) The authorization for and the amount of an acquisition adjustment will be determined only as a part of a rate change application.

(5) The acquisition adjustment will be included in rates only as a part of a rate change application.

(e) Negative acquisition adjustment. When a utility acquires plant, property, or equipment under §24.239 of this title[; relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental,] and the original cost of the acquired property less depreciation exceeds the actual purchase price, the utility must record the negative acquisition adjustment separately from the original cost of the acquired property. For purposes of ratemaking, the following will apply:

(1) If a utility acquires plant, property, or equipment from a nonfunctioning retail public utility through a sale, transfer, or merger,

receivership, or the utility is acting as a temporary manager, a negative acquisition adjustment must be recorded and amortized on the utility's books with no effect on the utility's rates.

(2) If a utility acquires plant, property, or equipment from a retail public utility through a sale, transfer, or merger and paragraph (1) of this subsection does not apply, the commission may recognize the negative acquisition adjustment in the ratemaking proceeding, by ordering the amortization of the negative acquisition adjustment through a bill credit for a defined period of time or by other means determined appropriate by the commission. Except for good cause found by the commission, the negative acquisition adjustment will not be used to reduce the balance of invested capital.

(3) Notwithstanding paragraph (2) of this subsection, the acquiring utility may show cause as to why the commission should not account for the negative acquisition adjustment in the ratemaking proceeding.

(f) Subsections (d) and (e) of this section do not apply to plant, property, or equipment acquired through a transaction based on the fair market valuation process set forth in §24.238 of this title[; relating to Fair Market Valuation].

(g) Intangible assets will not be allowed in rate base unless the requirements in paragraphs (1), (2) and (3) of this subsection are met. If the requirements in paragraphs (1) and (2) of this subsection are met, but the requirement in paragraph (3) of this subsection is not met, the amount will be amortized over a reasonable period and the amortization will be allowed in the cost of service as a non-recurring expense. Unamortized amounts will not be included in rate base. The requirements are as follows:

(1) The amount requested has been verified by documentation as to amount and exact nature;

(2) Testimony establishes the reasonableness and necessity and benefit of the expense to the customers; and

(3) Testimony establishes how the amount is properly considered an actual asset purchased or installed, or a source of supply, such as water rights.

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 11, 2026.

TRD-202603959

Katelyn Lewis

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 25, 2026

For further information, please call: (512) 936-7044



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.1

The State Board of Dental Examiners (Board) propose an amendment to rule 22 TAC §101.1, pertaining to general qualifications for dental licensure. The proposed amendment allows applicants to submit their National Practitioner Data Bank reports electronically.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule is reducing certain licensing requirements that may burden applicants.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

The Board is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, 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 rule.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles or codes are affected by this proposal.

§101.1. *General Qualifications for Licensure.*

(a) Any person desiring to practice dentistry in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

(1) Is at least 21 years of age;

(2) Has submitted documentation of proof of United States citizenship, legal permanent residency in the United States, or federal work authorization. This requirement applies for initial and renewal applications. The applicant must submit one of the following:

(A) a valid, unexpired driver's license or state identification certificate issued by a state or territory of the United States that complies with the minimum document requirements and issuance standards for federal recognition under the REAL ID Act of 2005, Public Law 109-13, unless the driver's license is marked "Limited Term" or "Temporary";

(B) a valid, unexpired driver's license or state identification certificate that does not comply with REAL ID issued by one of the following states: Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, or Wyoming;

(C) a valid passport. Valid passport is defined as:

(i) an unexpired passport or passport card issued by the United States government; or

(ii) an unexpired passport issued by the government of another country accompanied by a current permanent resident card or unexpired immigrant visa issued by the United States Department of Homeland Security;

(D) a valid, unexpired license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(E) a United States Certificate of Naturalization (Form N-550 or N-570); or

(F) a United States Certificate of Citizenship (Form N-560 or N-561);

(3) Is professionally fit, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license in any jurisdiction, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;

(4) Has successfully completed a current course in basic life support;

(5) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(6) Has paid all application fees required by the Dental Practice Act and Board rules;

(7) Has submitted fingerprints for the retrieval of criminal history record information;

(8) Has completed a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission; and

(9) Has submitted a National Practitioner Data Bank self-query report upon initial licensure. [The report results must remain in the original sealed envelope.]

(d) In conjunction with the application, the applicant must provide any information requested by the Board pursuant to §254.019(b) of the Dental Practice Act. If an applicant fails to comply with this subsection, then the applicant is subject to disciplinary action, which includes administrative fines and public disciplinary sanctions.

(e) Applications for licensure must be delivered to the office of the Board.

(f) An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant with an explanation of additional documentation or information needed.

(g) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions.

(h) An applicant for licensure is ineligible if they are in violation of a board order at the time of application.

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 11, 2026.

TRD-202603956

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 25, 2026

For further information, please call: (737) 363-2333



22 TAC §101.8

The State Board of Dental Examiners (Board) proposes amendments to rule 22 TAC §101.8, pertaining to persons with criminal backgrounds. The amendments, if adopted, update the Board's disciplinary guidelines concerning the imprisonment of a licensee following a felony conviction or deferred adjudication, in accordance with Senate Bill 1080.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does limit an existing regulation by narrowing the grounds for mandatory revocation of a license to comply with state law; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

The Board is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, 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 rule.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles or codes are affected by this proposal.

§101.8. *Persons with Criminal Backgrounds.*

(a) The purpose of this section is to establish automatic sanctions, mandatory sanctions, recommended sanctions, guidelines and criteria for the disciplinary actions to be taken by the Board against applicants and licensees with criminal backgrounds.

(b) Definitions. In this section, the following terms shall apply:

(1) "Applicant" means a person applying for a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(2) "Conviction" shall mean a conviction under federal law or the law of any state, district, or territory of the United States. A conviction shall be considered "final" upon the imposition of a sentence of imprisonment, parole, probation, community supervision, or other punishment after such conviction. Pursuant to Texas Occupations Code §53.021(e)(1), the Board shall consider placement of a defendant under deferred adjudication community supervision, or a similar deferral of adjudication of guilt under federal or state law, as a final conviction for

all licensing and disciplinary purposes under the Texas Occupations Code and Board rules.

(3) "Final Disposition" shall mean the date on which the applicant or licensee completed the imposed sentence after conviction, including any period of parole or probation, or completed the conditions of deferred adjudication community supervision or similar deferral of adjudication of guilt, as shown by the certified records of the court or supervising government authority.

(4) "Health Care Professional" shall have the meaning provided in Texas Occupations Code §108.051.

(5) "License" means a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(6) "Licensee" means the holder of a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(7) "Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants" means any criminal violation of the Texas Dental Practice Act; any criminal violation of a law related to the billing and payment for dental care services; any criminal violation of a law related to the treatment and care of patients; and any criminal violation of a law related to the preservation and protection of patient records or patient protected health information.

(c) Automatic Denial or Revocation of Dental or Dental Hygiene License. Based upon Chapter 108, Subchapter B, of the Texas Occupations Code, certain convictions shall result in automatic denial of an application for a dental or dental hygiene license, or revocation of a current dental or dental hygiene license. A person who is denied or a licensee who has their license revoked under this subsection may reapply for the license, or apply for reinstatement of the revoked license, if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal, or after the expiration of the period for which the person is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(1) Automatic Denial of Application. The following convictions shall result in automatic denial of an application for licensure as a dentist or dental hygienist submitted on or after September 1, 2019.

(A) Any conviction resulting in the requirement that the applicant register as a sex offender under Chapter 62, Code of Criminal Procedure.

(B) Any previous conviction of or placement on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force.

(C) Any previous conviction or placement on deferred adjudication community supervision for the commission of an offense under Texas Penal Code §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections:

(i) committed when the applicant held a license as a health care professional in this state or another state;

(ii) committed in the course of providing services within the scope of the applicant's health care professional license; and

(iii) in which the victim of the offense was a patient of the applicant.

(2) Automatic Revocation of License. The following convictions shall result in automatic proceedings to revoke the license of a dentist or dental hygienist. The Board shall revoke a license and update

the Board's records to reflect the revocation immediately on receiving notification pursuant to Texas Occupations Code §108.053(b). If the Board receives notice through another source, the Board shall pursue a revocation action through Texas Occupations Code §263.003.

(A) Any conviction resulting in the requirement that the licensee register as a sex offender under Chapter 62, Code of Criminal Procedure.

(B) Any conviction of or placement on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force.

(C) Any conviction or placement on deferred adjudication community supervision for the commission of an offense under Texas Penal Code §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections:

(i) committed while the licensee held a license as a health care professional in this state or another state;

(ii) committed in the course of providing services within the scope of the licensee's health care professional license; and

(iii) in which the victim of the offense was a patient of the licensee.

(d) Imposition of Mandatory Sanctions for Criminal Convictions. Based upon Texas Occupations Code §263.006 and the interests of public health and safety, the Board shall impose the following mandatory sanctions on licensees for the following offenses. In the event that a sanction from subsection (c) of this section is also applicable to a licensee, the Board shall impose the automatic sanction instead of the sanction under this subsection. The Board may not reinstate or reissue a license suspended or revoked under this section unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the licensee whose license was suspended or revoked. The Board must base that determination on substantial evidence contained in an investigative report.

(1) Felony Convictions. The Board shall revoke the license of a current licensee who receives a final felony conviction under federal law or the law of any state, district, or territory of the United States.

(2) Assaultive Offenses. The Board shall revoke the license of a current licensee who receives a misdemeanor final conviction under Chapter 22 of the Texas Penal Code, other than a misdemeanor punishable by fine only.

(3) Mandatory Registration as Sex Offender. The Board shall revoke the license of a current licensee who receives a final conviction requiring the licensee register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(4) Violation of Certain Court Orders, Protective Orders, or Conditions of Bond. The Board shall revoke the license of a current licensee who receives a Class A or Class B misdemeanor final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code.

(e) Imposition of Recommended Sanctions for Criminal Convictions. Based upon statutory authorization and the interests of public health and safety, the Board shall impose the following recommended sanctions for the following offenses, based on the Board's determination that these offenses relate to the practice of dentistry, and the Board's determination that allowing a licensee to practice dentistry or provide dental services under a license issued by the Board provides an opportunity for further criminal conduct. In the event that a sanction from subsections (c) or (d) of this section is also applicable to a licensee, the Board shall impose the automatic or mandatory sanction

instead of the recommended sanction under this subsection. If more than one recommended sanction applies to the conviction of a licensee or applicant, the Board shall apply the highest recommended sanction applicable. The Board may only increase these recommended sanctions upon an affirmative finding that persuasive aggravating factors require elevation of the sanction for the protection of public health and safety. The Board shall reduce the following sanctions only upon an affirmative finding of persuasive mitigating factors presented by the applicant or licensee, as applicable. The Board shall articulate these aggravating or mitigating factors in any order adopting the sanctions to be imposed on the licensee.

(1) Current Licensees. The Board shall impose the following disciplinary sanctions based upon convictions which occurred after the Board issued a license.

(A) Conviction for Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants. Pursuant to Texas Occupations Code §263.002(a)(10), the Board shall take disciplinary action for convictions related to the practice of dentistry. The Board has determined that violations of law relating to the practice of dentistry and dental hygiene are directly related to patient safety and care, and holding a license allows for the opportunity to engage in further criminal activity causing harm to the public. As a result, the Board shall impose a five-year probated suspension for a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants.

(B) Conviction of Misdemeanor Involving Fraud. Pursuant to Texas Occupations Code §263.002(a)(2), the Board shall take disciplinary action for misdemeanor convictions involving fraud. The Board has determined that holding a license allows access to sensitive patient records and information, which requires the licensee to demonstrate the ability and capacity required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension for a final conviction of a misdemeanor under Chapter 32 of the Texas Penal Code, or an equivalent section of federal law or the law of any state, district, or territory of the United States.

(C) Offenses under the Texas Controlled Substances Act, Texas Dangerous Drugs Act and Related Offenses. The Board has determined that holding a license allows access to controlled substances, dangerous drugs and other substances that represent the potential for abuse and drug diversion, which requires the licensee to demonstrate the ability and capacity required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension on a current licensee who receives a Class A misdemeanor final conviction under Chapter 481, 483, or 485, Texas Health and Safety Code. The Board may impose a Reprimand for a Class B misdemeanor final conviction pursuant to subsection (e)(1)(D) of this section.

(D) Other Class A and B Misdemeanor Offenses. The Board shall not automatically impose a disciplinary sanction, but may impose a disciplinary sanction after weighing the considerations required by Texas Occupations Code Chapters 53 and 263, and as listed in subsections (g) - (i) of this section.

(2) License Applicants. The Board shall impose the following disciplinary sanctions based upon convictions that occurred prior to the submission of an application for a license.

(A) Felony Convictions. The Board has determined that holding a license allows access to confidential patient records and information, controlled substances and dangerous drugs, and patients in sensitive and compromised physical conditions, which requires the

applicant to demonstrate the ability and capacity required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. Pursuant to Texas Occupations Code §263.001(a)(5), the Board shall deny an applicant who received a final felony conviction under federal law or the law of any state, district, or territory of the United States that is still pending final disposition. The Board shall impose a five-year probated suspension on an applicant with a final conviction for a felony that is less than five years from the date of final disposition. From five to ten years after the date of final disposition, the Board shall impose a one-year probated suspension. After ten years from the date of final disposition, the Board shall take no action.

(B) Conviction for Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants. The Board has determined that violations of Texas law relating to the practice of dentistry are directly related to patient safety and care, and holding a license allows for the opportunity to engage in further criminal activity causing harm to the public. Pursuant to Texas Occupations Code §263.001(a)(4) and (a)(6), the Board shall deny an applicant who received a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants that is still pending final disposition, but which occurred prior to the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a one-year probated suspension on an applicant with a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(C) Mandatory Registration as Sex Offender. The Board has determined that holding a license allows access to controlled substances and dangerous drugs, and patients in sensitive and compromised physical conditions, including minor patients and patients with mental and physical disabilities, which requires the ability and capacity required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, if the applicant is not subject to Texas Occupations Code §108.052, the Board shall deny an applicant who received a final conviction requiring the applicant register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(D) Assaultive Offenses. The Board has determined that holding a license allows access to patients in sensitive and compromised physical conditions, which requires the applicant to demonstrate the ability and capacity required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, if the applicant is not subject to Texas Occupations Code §108.052, the Board shall deny an applicant who received a misdemeanor final conviction under Chapter 22 of the Texas Penal Code, other than a misdemeanor punishable by fine only, within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction for an assaultive offense, other than a misdemeanor punishable by fine only, that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(E) Violation of Certain Court Orders, Protective Orders, or Conditions of Bond. The Board has determined that holding a license allows access to confidential patient records and information, and patients in sensitive and compromised physical conditions, which

requires the applicant to demonstrate the ability and capacity required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall deny an applicant who received a Class A or Class B misdemeanor final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code, within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(F) Offenses under the Texas Controlled Substances Act, Texas Dangerous Drugs Act and Related Offenses. The Board has determined that holding a license allows access to confidential patient records and information, controlled substances, and dangerous drugs, which requires the applicant to demonstrate the ability and capacity required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension on an applicant who received a Class A misdemeanor final conviction under Chapter 481, 483, or 485, Texas Health and Safety Code that is less than five years from the date of final disposition. The Board may impose a Reprimand for a Class B misdemeanor final conviction that is less than five years from the date of final disposition, pursuant to subsection (e)(2)(G) of this section. After five years from the date of final disposition, the Board shall take no action.

(G) Other Class A and B Misdemeanor Offenses. The Board shall not automatically impose a disciplinary sanction, but may impose a disciplinary sanction after weighing the considerations required by Texas Occupations Code Chapters 53 and 263, and as listed in subsections (g) - (i) of this section.

(f) Pursuant to Texas Occupations Code §53.021(b), the Board shall revoke a license upon the imprisonment of the licensee following a: ~~[felony conviction or deferred adjudication, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.]~~

(1) felony conviction or deferred adjudication for:

(A) an offense that directly relates to the duties and responsibilities of a licensee;

(B) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(C) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure;

(2) felony community supervision revocation;

(3) revocation of parole; or

(4) revocation of mandatory supervision.

(g) The Board may impose any authorized disciplinary action on an applicant or licensee because of a person's conviction of a crime, other than a Class C misdemeanor, that:

(1) serves as a ground for discipline under the Dental Practice Act or other Texas law applicable to the applicant or licensee; or

(2) the Board has determined directly relates to the duties and responsibilities of a licensee, after consideration of each of the following factors:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant or licensee previously had been involved;

(D) the relationship of the crime to the ability and capacity required to perform the duties and discharge the responsibilities of the license; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the license.

(h) In determining the appropriate disciplinary action to take where the Board is not mandated to take a certain disciplinary action, the Board shall consider the following factors listed in paragraphs (1) - (7) of this subsection when determining whether to impose any authorized discipline:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's fitness, including letters of recommendation.

(i) The applicant or licensee has the responsibility, to the extent possible, to obtain and provide to the Board the recommendations described by subsection (h)(7) of this section.

(j) An applicant or licensee shall disclose in writing to the Board any arrest, conviction or deferred adjudication against him or her at the time of initial application and renewal. Additionally, an applicant or licensee shall provide information regarding any arrest, conviction or deferred adjudication to the Board within 30 days of a Board request. An application shall be deemed withdrawn if the applicant has failed to respond to a request for information or to a proposal for denial of eligibility or conditional eligibility within 30 days. Pursuant to Texas Government Code §2005.052, making a false statement or material misrepresentation when applying or renewing a license, refusing to provide requested information to the Board, or failing to provide all of the criminal history requested by the Board represents grounds for denial of the application or suspension or revocation of the license.

(k) Notice of Pending Denial of License. Prior to denying a license application for prior criminal convictions as permitted by Texas Occupations Code Chapter 53, the Board shall provide written notice to the person of the reason for the intended denial and allow the person not less than 30 days to submit any relevant information to the Board, as required by Texas Occupations Code §53.0231.

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 11, 2026.

TRD-202603953



CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.1

The State Board of Dental Examiners (Board) propose an amendment to rule 22 TAC §103.1, pertaining to general qualifications for hygiene licensure. The proposed amendment allows applicants to submit their National Practitioner Data Bank reports electronically.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule is reducing certain licensing requirements that may burden applicants.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

The Board is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, 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 rule.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last

day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles or codes are affected by this proposal.

§103.1. General Qualifications for Licensure.

(a) Any person desiring to practice dental hygiene in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

(1) Is at least 18 years of age;

(2) Has submitted documentation of proof of United States citizenship, legal permanent residency in the United States, or federal work authorization. This requirement applies for initial and renewal applications. The applicant must submit one of the following:

(A) a valid, unexpired driver's license or state identification certificate issued by a state or territory of the United States that complies with the minimum document requirements and issuance standards for federal recognition under the REAL ID Act of 2005, Public Law 109-13, unless the driver's license is marked "Limited Term" or "Temporary";

(B) a valid, unexpired driver's license or state identification certificate that does not comply with REAL ID issued by one of the following states: Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, or Wyoming;

(C) a valid passport. Valid passport is defined as:

(i) an unexpired passport or passport card issued by the United States government; or

(ii) an unexpired passport issued by the government of another country accompanied by a current permanent resident card or unexpired immigrant visa issued by the United States Department of Homeland Security;

(D) a valid, unexpired license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(E) a United States Certificate of Naturalization (Form N-550 or N-570); or

(F) a United States Certificate of Citizenship (Form N-560 or N-561);

(3) Is professionally fit, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;

(4) Has graduated from an accredited high school or holds a certificate of high school equivalency, General Equivalency Diploma (GED);

(5) Has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) with a degree in dentistry or a degree or certificate in dental hygiene, or has graduated from a CODA-accredited school or college of dental hygiene with a degree in dental hygiene;

(6) Has taken and passed the examination for dental hygienists given by the American Dental Association Joint Commission on National Dental Examinations;

(7) Has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds);

(8) Has successfully completed a current course in basic life support;

(9) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year prior to application;

(10) Has paid all application, examination and licensing fees required by the Dental Practice Act and Board rules;

(11) Has submitted fingerprints for the retrieval of criminal history record information;

(12) Has completed a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission; and

(13) Has submitted a National Practitioner Data Bank self-query report upon initial licensure. [~~The report results must remain in the original sealed envelope.~~]

(d) Applications for licensure must be delivered to the office of the Board.

(e) An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant with an explanation of additional documentation or information needed.

(f) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions.

(g) An applicant for licensure is ineligible if they are in violation of a board order at the time of application.

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 11, 2026.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 25, 2026

For further information, please call: (737) 363-2333

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CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners (Board) proposes an amendment to rule 22 TAC §104.1, pertaining to continuing education requirements. The proposed amendment will allow dentists and dental hygienists to complete their continuing education hours, including clinical hours, through self-study. The Board has required clinical hours to be completed through a live course. However, allowing clinical hours to be completed through self-paced or online formats will improve accessibility, efficiency, and affordability while maintaining educational quality.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

The Board is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, 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 rule.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with

state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles or codes are affected by this proposal.

§104.1. Continuing Education Requirements.

As a prerequisite to the biennial renewal of a dental or dental hygiene license, proof of completion of 24 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the biennial period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2018, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 16 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Effective January 1, 2021, a licensed dentist whose practice includes direct patient care must complete not less than 2 hours of continuing education annually, and not less than 4 hours for each biennial renewal, regarding safe and effective pain management related to the prescription of opioids and other controlled substances. These 4 hours may be used to satisfy the 16-hour technical and scientific requirement. The courses taken to satisfy the safe and effective pain management requirement must include education regarding:

- (i) reasonable standards of care;
- (ii) the identification of drug-seeking behavior in patients; and

(iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(C) Up to 8 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics. Dentists may complete continuing education courses described by §111.1 of this title (relating to Additional Continuing Education Required) to satisfy a portion of the risk-management requirement.

(D) The 24-hour requirement, including clinical hours, [Up to 8 hours of coursework] may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(E) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 24-hour requirement.

(F) Hours of coursework in practice finance may not be considered in the 24-hour requirement.

(3) As part of the 24-hour requirement, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

(4) Each licensee shall complete the jurisprudence assessment every four (4) years. This requirement is in addition to the twenty-four (24) hours of continuing education required biennially for the renewal of a license.

(5) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 24-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the one year immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(6) Examiners for the American Board of Dental Examiners (ADEX) and Central Regional Dental Testing Services-States Resources for Testing and Assessments (CRDTS-SRTA) will be allowed credit for no more than 12 hours biennially, obtained from calibration and standardization exercises associated with the examinations.

(7) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(8) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(9) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 12 hours of continuing education credit biennially to apply towards the biennial renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director, or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

(10) A course instructor who offers continuing education through a provider listed in §104.2 of this title is eligible to receive 2 hours of continuing education credit for every 1 hour of instruction provided. This credit applies per course, per renewal period.

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 11, 2026.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 25, 2026

For further information, please call: (737) 363-2333



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.6

The State Board of Dental Examiners (Board) propose an amendment to rule 22 TAC §114.6, pertaining to general qualifications for registration or certification. The proposed amendment allows applicants to submit their National Practitioner Data Bank reports electronically.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule is reducing certain licensing requirements that may burden applicants.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

The Board is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, 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 rule.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles or codes are affected by this proposal.

§114.6. General Qualifications for Registration or Certification.

(a) Any person who desires to provide dental assistant services requiring registration or certification must obtain the proper registration or certification issued by the Board before providing the services, except as provided in Texas Occupations Code §265.001(d) and §114.11 of this chapter.

(b) Any applicant for registration or certification must meet the requirements of this chapter.

(c) To be eligible for registration or certification, an applicant must provide with an application form approved by the Board satisfactory proof to the Board that the applicant:

(1) has fulfilled all requirements for registration or certification outlined in this chapter;

(2) has submitted documentation of proof of United States citizenship, legal permanent residency in the United States, or federal work authorization. This requirement applies for initial and renewal applications. The applicant must submit one of the following:

(A) a valid, unexpired driver's license or state identification certificate issued by a state or territory of the United States that complies with the minimum document requirements and issuance standards for federal recognition under the REAL ID Act of 2005, Public Law 109-13, unless the driver's license is marked "Limited Term" or "Temporary";

(B) a valid, unexpired driver's license or state identification certificate that does not comply with REAL ID issued by one of the following states: Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, or Wyoming;

(C) a valid passport. Valid passport is defined as:

(i) an unexpired passport or passport card issued by the United States government; or

(ii) an unexpired passport issued by the government of another country accompanied by a current permanent resident card

or unexpired immigrant visa issued by the United States Department of Homeland Security;

(D) a valid, unexpired license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(E) a United States Certificate of Naturalization (Form N-550 or N-570); or

(F) a United States Certificate of Citizenship (Form N-560 or N-561);

(3) has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds);

(4) has not had any disciplinary action taken in this state or any other jurisdiction;

(5) has successfully completed a current course in basic life support;

(6) has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(7) has paid all application, examination and registration or certification fees required by the Dental Practice Act and Board rules;

(8) has completed a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission; and

(9) has submitted a National Practitioner Data Bank self-query report upon initial registration or certification. ~~[The report results must remain in the original sealed envelope.]~~

(d) Applications for dental assistant registration and certification must be delivered to the office of the State Board of Dental Examiners.

(e) An application for dental assistant registration or certification is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application will be returned to the applicant with an explanation of additional documentation or information needed.

(f) The Board may refuse to issue a registration or certificate or may issue a conditional registration or certificate to any individual who does not meet the requirements of subsection (c)(3) or (4) of this section, or who:

(1) presents to the Board fraudulent or false evidence of the person's qualification for registration or certification;

(2) is guilty of any illegality, fraud, or deception during the process to secure a registration or certification;

(3) is habitually intoxicated or is addicted to drugs;

(4) commits a dishonest or illegal practice in or connected to dentistry;

(5) is convicted of a felony under federal law or law of this state; or

(6) is found to have violated a law of this state relating to the practice of dentistry within the 12 months preceding the date the person filed an application for a registration or certification.

(g) If the Board chooses to issue a conditional registration or certificate, the individual may be required to enter into an agreed settlement order with the Board at the time the registration or certificate is issued.

(1) The order may include limitations including, but not limited to, practice limitations, stipulations, compliance with court ordered conditions, notification to employer or any other requirements the Board recommends to ensure public safety.

(2) In the event an applicant is uncertain whether he or she is qualified to obtain a dental assistant registration or certification due to criminal conduct, the applicant may request a Criminal History Evaluation Letter in accordance with §114.9 of this chapter, prior to application.

(3) Should the individual violate the terms of his or her conditional registration or certificate, the Board may take additional disciplinary action against the individual.

(h) An applicant whose application is denied by the Board may appeal the decision to the State Office of Administrative Hearings.

(i) An individual whose application for dental assistant registration/certification is denied is not eligible to file another application for registration/certification until the expiration of one year from the date of denial or the date of the Board's order denying the application for registration/certification, whichever date is later.

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 11, 2026.

TRD-202603955

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 25, 2026

For further information, please call: (737) 363-2333



CHAPTER 116. DENTAL LABORATORIES

22 TAC §116.3

The State Board of Dental Examiners (Board) proposes amendments to rule 22 TAC §116.3, pertaining to the registration and renewal of a dental laboratory. The amendments: remove repetitive statutory language, remove repetitive language found in the Board's dental laboratory application, update the rule to reflect the Board's current licensing process, and include grammatical changes.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the removal of repetitive language and updating the rule to reflect the Board's current licensing process.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for

small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

The Board is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, 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 rule.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles or codes are affected by this proposal.

§116.3. Registration and Renewal.

(a) A dental laboratory shall be registered according to the provisions of Occupations Code, Subchapter D, §§266.151 - 266.154.

(b) To qualify for a dental laboratory registration, the applicant must submit an application, including the following information:

~~{(1) the name, physical address, phone number, and email address of the laboratory;}~~

~~{(2) the name, address, phone number, and email address of the laboratory owner;}~~

(1) ~~{(3)}~~ if the laboratory owner is an individual, then he or she must submit documentation of proof of United States citizenship, legal permanent residency in the United States, or federal work authorization. This requirement applies for initial and renewal applications. The applicant must submit one of the following:

(A) a valid, unexpired driver's license or state identification certificate issued by a state or territory of the United States that complies with the minimum document requirements and issuance standards for federal recognition under the REAL ID Act of 2005, Public Law 109-13, unless the driver's license is marked "Limited Term" or "Temporary";

(B) a valid, unexpired driver's license or state identification certificate that does not comply with REAL ID issued by one of the following states: Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, or Wyoming;

(C) a valid passport. Valid passport is defined as:

(i) an unexpired passport or passport card issued by the United States government; or

(ii) an unexpired passport issued by the government of another country accompanied by a current permanent resident card or unexpired immigrant visa issued by the United States Department of Homeland Security;

(D) a valid, unexpired license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(E) a United States Certificate of Naturalization (Form N-550 or N-570); or

(F) a United States Certificate of Citizenship (Form N-560 or N-561);

~~{(4) the date the laboratory opened or will open for business;}~~

~~{(5) type of ownership;}~~

~~{(6) if the laboratory is a corporation, the state in which the corporation is incorporated;}~~

~~{(7) if the laboratory is a subsidiary corporation, the name of the parent company, the state in which the parent company is incorporated, and the percent of stock that the parent company owns in the subsidiary;}~~

~~{(8) the laboratory manager's name, phone number, and email address;}~~

~~{(9) if the laboratory owner or manager has ever been convicted of a misdemeanor or a felony, an explanation and court disposition documents;}~~

~~{(10) if the applicant has ever held a laboratory registration in Texas, the owner's name, manager's name, CDT of record, laboratory name, address, DBA, and lab registration number;}~~

~~{(11) if the applicant, owner, or manager has ever been the subject of a disciplinary investigation or action, including a cease and desist order, in any jurisdiction, an explanation of that investigation or action;}~~

~~{(12) the notarized signature of the laboratory owner or general manager;}~~

(2) ~~{(13)}~~ if a certified dental technician of record is required:

(A) the name, home address, telephone number, email address, and notarized signature of the laboratory's certified dental technician of record;

(B) a copy of the certified dental technician's current certification card with the expiration date indicated; and

(C) a statement as to whether the certified dental technician of record is the certified dental technician of record for any other

dental laboratory in the state of Texas, and if so, the dental laboratory's Texas registration number; and

(3) ~~[(14)]~~ any other information required by the Board.

(c) Board staff shall review each application for registration or renewal of registration to determine if the applicant meets the requirements of Occupations Code, Chapter 266. The following materials must be submitted:

(1) A complete initial or renewal application ~~[or renewal]~~, with all required information;

(2) proof of compliance with §116.6 of this chapter;

(3) the appropriate fee; and

(4) effective January 1, 2009, for initial registrations only and once every three years for registration renewals, proof of completion of the Texas Jurisprudence Assessment for dental laboratories. The Jurisprudence Assessment must be taken by the laboratory owner or the laboratory's general manager.

(d) It shall be the duty of each laboratory owner or manager to notify the Board in writing within 60 days of:

(1) a change in ownership or management of the laboratory;

(2) a change in location of the laboratory;

(3) closure of the laboratory;

(4) a change of designated CDT, in which case the notice must be accompanied by proof of current CDT certification for the replacement CDT;

(5) a change of designated employee, if the laboratory is exempted under §116.5 of this chapter. A change of designated employee will require proof within six (6) months of the change that the designated employee meets continuing education requirements; or

(6) a change in mailing address for the owner or manager of the laboratory.

~~[(e) Any laboratory owner applying for a new laboratory registration who has pending fees and/or penalties due from a previous laboratory registration when such laboratory was closed for non-compliance with subsection (d) of this section must first remit to the Board any fees and penalties due on that previous registration before the new registration application will be considered by the Board.]~~

~~[(f) An initial registration certificate issued under this chapter on or after September 1, 2009 expires on the 30th day after the date the registration certificate is issued if the holder of the registration certificate fails to pay the required registration certificate fee on or before that date.]~~

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 11, 2026.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 25, 2026

For further information, please call: (737) 363-2333

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 146. TRAINING AND CERTIFICATION OF PROMOTORES OR COMMUNITY HEALTH WORKERS

25 TAC §§146.1, 146.2, 146.4 - 146.8

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes amendments to §146.1, concerning Definitions; §146.2, concerning Applicability and Exemption; §146.4, concerning Certification of Training Programs; §146.5, concerning Eligibility Requirements and Application Procedures for Community Health Worker Instructors; §146.6, concerning Eligibility Requirements and Application Procedures for Promotores or Community Health Workers; §146.7, concerning Professional and Ethical Standards; and §146.8, concerning Enforcement; and the repeal of §146.3, concerning Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update Texas Administrative Code (TAC) Chapter 146 to improve clarity and consistency in rule language, codify requirements and standards of Texas Department of State Health Services (DSHS) for certification of CHW training centers, instructors, and promotores, and add references to 25 TAC §1.81, concerning Recognition of Out-of-State License of a Military Service Member or Military Spouse, and §1.91, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans, to allow military service members, military spouses, and veterans to apply for alternative certification or certification exemptions to act as a Community Health Worker (CHW) in Texas. In addition, this proposal repeals 25 TAC §146.3, concerning the Promotor(a) or Community Health Worker Training and Certification Advisory Committee, as this committee was discontinued effective November 4, 2025.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §146.1 updates and clarifies definitions used in Chapter 146. The amendment revises terminology to refer to DSHS, updates several definitions for plain language and clarity, updates the description of core competencies, and removes definitions that are no longer needed, including definitions related to the commission, commissioner, committee, executive commissioner, and program.

The proposed amendment to §146.2 updates applicability and exemption provisions. The amendment clarifies who is subject to the chapter, adds references allowing military service members, military spouses, and military veterans to apply for alternative certification or certification exemptions to act as a CHW in Texas. The amendment references the DSHS website for application forms, instructions, and certification information, and removes a provision related to specialty certification that is no longer included in rule text.

The proposed repeal of §146.3 removes the Promotor(a) or CHW Training and Certification Advisory Committee provisions from Chapter 146 because those provisions are no longer necessary in this chapter. The advisory committee was discontinued effective November 4, 2025.

The proposed amendment to §146.4 updates certification requirements for training programs using plain language. The amendment codifies the standards that DSHS evaluates a training program's curricula and adds where applicants can find application information for certificates.

The proposed amendment to §146.5 updates eligibility requirements and application procedures for CHW instructors using plain language. The amendment also adds standards for certification for persons with disabilities.

The proposed amendment to §146.6 updates eligibility requirements and application procedures for promotores or CHWs for clarity and plain language. The amendment also replaces older department references with DSHS and standards for certification for persons with disabilities.

The proposed amendment to §146.7 updates professional and ethical standards for clarity and plain language. The amendment revises nondiscrimination language and updates continuing education requirements.

The proposed amendment to §146.8 updates enforcement provisions for clarity and plain language. The amendment removes a separate notice provision from rule text, and clarifies the effect of denial, suspension, or revocation on future eligibility for certification.

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 or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS determined during the first five years 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 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 a new regulation;
- (6) the proposed rules will expand and repeal existing regulations;
- (7) the proposed rules will increase 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 proposal primarily

updates rule text, terminology, and administrative requirements for certification and renewal.

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

Manda Hall, M.D., Deputy Commissioner, Community Health Improvement Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be clearer and more current rules governing the training and certification of promotores or CHWs, instructors, and training programs.

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 proposal primarily updates, clarifies, and reorganizes existing requirements.

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 25R025" in the subject line.

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 system; Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner 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.

The amendments affect Texas Government Code §524.0151 and HSC Chapters 48 and 1001.

§146.1. Definitions.

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

(1) Applicant--A person who applies to the Texas Department of State Health Services (DSHS) [the department] for a certificate of competency as a promotor(a) or community health worker, an instructor, or a training program.

(2) Certificate--A document [Certificate] issued by DSHS to a promotor(a) or community health worker, instructor, or training program [by the department].

(3) Certified Training Curriculum--An educational plan [, community health training curriculum] approved by DSHS to train [the department for the purpose of training] promotores or community health workers or instructors.

(4) CHW--Community Health Worker.

[(4) Commission--The Texas Health and Human Services Commission.]

[(5) Commissioner--The Commissioner of the Department of State Health Services.]

[(6) Committee--Promotor(a) or Community Health Worker Training and Certification Advisory Committee.]

(5) [(7)] Compensation--Financial payment, stipend, or [Receiving payment or receiving] reimbursement for expenses.

(6) [(8)] Core Competencies--The knowledge, skills, and qualities that an individual must demonstrate to be eligible for certification as a community health worker or community health worker instructor under this chapter. The core competencies include: [Key skills for a promotor(a) or community health worker required for certification by the department as listed in policy at www.dshs.texas.gov.]

- (A) communication skills;
- (B) interpersonal skills and relationship-building;
- (C) service coordination and navigation skills;
- (D) capacity-building skills;
- (E) advocacy skills;
- (F) teaching and education skills;
- (G) organizational skills;
- (H) knowledge of specific health issues; and
- (I) evaluation and research skills.

(7) [(9)] DSHS [Department]--The Texas Department of State Health Services.

[(10) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission.]

(8) [(11)] Instructor--A person certified by DSHS to teach and train promotores or community health workers on [the department to provide instruction and training in] one or more core competencies [to promotores or community health workers].

[(12) Program--The Promotor(a) or Community Health Worker Training and Certification Program established by the department to provide standards and guidelines for issuance of a certificate.]

(9) [(13)] Promotor(a) or Community Health Worker--A person who, with or without compensation, serves as [provides] a liaison between health care providers and patients through activities such

as assisting in case conferences, providing patient education, making referrals to health and social services, conducting needs assessments, distributing surveys to identify barriers to health care delivery, making home visits, and providing bilingual language services.

(10) [(14)] Training Program [program]--An organization approved by DSHS to teach and train [the department to deliver a certified training curriculum to] promotores or community health workers or instructors.

§146.2. Applicability and Exemption.

(a) This [The provisions of this] chapter applies [apply] to:

(1) a training program that delivers a DSHS certified training curriculum for promotores or community health workers;

(2) an instructor who [representing that the instructor] trains promotores or community health workers; or

(3) a certified promotor(a) or community health worker [representing that the promotor(a) or community health worker performs as a certified promotor(a) or community health worker].

(b) Certification under this chapter is voluntary for a promotor(a) or community health worker who provides services without receiving compensation and mandatory for a promotor(a) or community health worker who provides services for compensation.

(c) A military service member, military spouse, or military veteran may apply for alternative community health worker or instructor certification, or for certification exemption under §1.81 of this title (relating to Recognition of Out-of-State License of a Military Service Member and Military Spouse) and §1.91 of this title (relating to Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans).

(d) [(e)] DSHS must make application forms, instructions, [Application] and certification information available to the public on the DSHS website [procedures are outlined in policy and can be found online at www.dshs.texas.gov].

[(d) The department or commission may develop a specialty certification and continuing education for promotores or community health workers or instructors that may be certified by the department directly.]

§146.4. Certification of Training Programs.

(a) Eligibility [Minimum eligibility] requirements for training programs. The following requirements apply to organizations applying for training program certification:

(1) physical location in Texas;

(2) experience within the past two years in training promotores or community health workers, health care professionals, or paraprofessionals and training [experience within the past two years and] related to the core competencies; and

(3) affiliation with one or more instructors currently certified by DSHS [the department].

(b) Application requirements for training programs. Organizations applying for training program certification must submit: [The department specifies the required information and documentation that an applicant shall complete and notifies the applicant if the application is incomplete.]

(1) a completed DSHS training program certification application;

(2) a plan to provide training on an annual basis;

(3) a curriculum consistent with the type of training the organization will provide, such as a certification course for promotores or community health workers or instructors, continuing education, or both; and

(4) if using a DSHS-certified curriculum from another DSHS-certified training program, a description of any changes to the curriculum and documentation from the certified training program agreeing to share the curriculum.

{(e)} Application approval. The department approves an application which complies with the requirements set in policy and which properly documents applicant eligibility.}

(c) [(d)] Denied [Disapproved] applications.

(1) DSHS will deny [The department may disapprove] an application if the applicant:

(A) has not met the eligibility and application requirements for training programs explained in this section [set out in this chapter]; or

(B) has failed or refused to provide the [properly complete or submit] required information or has knowingly presented false or misleading information in the application [process].

{(2)} If the department determines that an application should not be approved because it is incomplete, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application.}

(2) [(3)] If an application is denied for reasons other than being [An applicant whose application has been disapproved for a reason other than that it is] incomplete, the applicant may appeal the decision using [disapproval under] the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(d) [(e)] Change [Changes] of name and address. Training programs must [shall] notify the department of changes in organization name, contact information, mailing address, or physical location within 30 calendar days after the change.

(c) [(f)] Certificate.

(1) DSHS will issue a certificate to each approved [Upon approval of the application, the department issues the] training program. The [a] certificate will include the [with an] expiration date and a certificate number.

(2) DSHS [The department] replaces a lost, damaged, or destroyed certificate with [upon] written request to chw@dshs.texas.gov.

(f) [(g)] Standards for [the] approval of certification and continuing education curricula. A training program seeking approval of certification must submit curricula that satisfy the requirements of this section. The curricula must include: [Training programs shall follow the guidelines set in policy regarding standards for certification and continuing education curricula for promotores or community health workers or instructors.}

- (1) required core competencies;
- (2) learning objectives;
- (3) instructional materials;
- (4) supporting citations, as applicable;
- (5) training methodology; and
- (6) participant evaluation methods.

(g) [(h)] Training program responsibilities. A training program must [shall]:

(1) resubmit revised curricula for certification [submit an addendum, in a format specified by the department and in compliance with policy,] when revising a current, DSHS certified curriculum;

(2) ensure curricula are provided by a certified instructor, unless otherwise approved by DSHS [the department];

(3) provide training to promotores or community health workers or instructors as applicable to the training program's certifications that includes:

(A) at least one certification course per year; and

(B) at least one continuing education course per certification cycle; and

{(4)} report the names of persons to the department who have successfully completed the training program within seven business days of program completion in a format specified by the department; and}

(4) [(5)] maintain a [an accurate] record of each participant's [person's] attendance [and participation] for a minimum of [not less than] three years.

(h) [(i)] Certificate renewal.

(1) A training program must [shall] renew the certificate every two years [in accordance with policy].

(2) Failure to receive renewal notification from DSHS [the department] before the expiration date will not excuse failure to file for renewal.

(3) [(2)] Failure to meet the requirements in subsection (g)(3) [(h)(3)] of this section will [shall] result in denial of the certificate renewal.

(i) [(j)] Late renewals.

(1) A training program may renew certification within 12 months of the original expiration date [whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application]. The training program must [shall] not provide training for community health workers or instructors until the certificate has been renewed. [A certificate not renewed within one year after expiration cannot be renewed.]

(2) A training program with a certification expired for more than 12 months [whose certification has been expired for more than one year] must meet the requirements under subsection (a) of this section and apply for a new certificate.

(j) [(k)] Right to inspect. DSHS [The department] reserves the right to inspect facilities and documentation and to monitor training programs.

§146.5. Eligibility Requirements and Application Procedures for Community Health Worker Instructors.

(a) Eligibility [Minimum eligibility] requirements for instructor certification. The following requirements apply to a person [persons] applying for certification:

(1) Texas residency;

(2) at least 18 years of age;

(3) lack of a physical or mental disability that, consistent [impairment, which in accordance] with the Americans with Disabilities Act, prevents the applicant from safely performing the essential functions of a promotor(a) or community health worker instructor

[interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served]; and

(4) achievement of core competencies [in instruction or training as identified in policy] through completion of a DSHS-certified 180-hour [certified] competency-based CHW instructor training program within the past three years, or through DSHS [department] verification of at least 1,000 hours related training experience within the past three years.

(b) Application requirements for instructors. A person who wants to be certified as an instructor must submit required documentation such as: [The department specifies the required information and documentation that an applicant shall complete and the department notifies the applicant if the application is incomplete.]

- (1) a completed DSHS instructor certification application;
- (2) a current color photograph showing all facial features;
- (3) a resume;
- (4) documentation demonstrating eligibility through ei-

ther:

(A) a community health worker instructor course certificate of completion; or

(B) an Experience Verification Form completed and submitted directly to DSHS by the applicant's supervisor, employer, or professional reference if applying based on teaching or training experience; and

- (5) proof of Texas residency.

[(e) Application approval. The department approves any application which complies with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.]

(c) [(d)] Denied [Disapproved] applications.

(1) DSHS [The department] may deny [disapprove] the application if the applicant:

(A) has not met the [eligibility and application] requirements to be an instructor as explained in this section [set out in this chapter];

(B) has not completed or submitted any required information or has provided false or misleading information during [failed or refused to properly complete or submit any required information or has knowingly presented false or misleading information in] the application process;

(C) has engaged in unethical conduct as defined in §146.7 of this chapter (relating to Professional and Ethical Standards);

(D) has been convicted of a felony or misdemeanor directly related to the [duties and] responsibilities of a promotor(a) or community health worker or instructor as explained [set out] in §146.8 of this chapter (relating to Enforcement); or

(E) has a physical or mental disability that, after an individualized assessment and with consideration of reasonable accommodations, prevents the applicant from safely performing the essential functions of a promotor(a) or community health worker instructor. Any denial under this subparagraph must be based on objective evidence and be consistent with the Americans with Disabilities Act.

[(E) has developed an incapacity which in accordance with the Americans with Disabilities Act prevents the person from

practicing with reasonable skill, competence, and safety to the public as the result of:]

[(i) an illness;]

[(ii) drug or alcohol dependency; or]

[(iii) another physical or mental condition or illness.]

[(2) If the department determines that the application should not be approved because it is incomplete, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application.]

(2) [(3)] If DSHS denies the application because the eligibility requirements are not met, DSHS sends a letter explaining the denial [the department determines that the application should not be approved because experience requirements are not met, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application after sufficient experience is obtained].

(3) [(4)] An applicant with a denied [whose] application [has been disapproved] for a reason not mentioned in paragraph (1) or (2) of this subsection, or because it is incomplete, can appeal the denial under [other than paragraph (2) or (3) in this subsection, may appeal the disapproval under] the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(d) [(e)] Change [Changes] of name and address.

(1) DSHS [The department] changes the status of a certification to inactive if [upon receipt of notification that] the certificate holder no longer lives in Texas.

(2) DSHS certified instructors must notify DSHS of contact information changes and submit legal documentation for [Notification of] name changes [shall be submitted to the department and include a copy of a marriage certificate, court decree evidencing such change, Texas driver's license or identification card, or a social security card reflecting the new name before a certificate or identification card is issued by the department].

(e) [(f)] Certificate.

(1) DSHS will issue a certificate to each approved [The department issues the] instructor. The [a] certificate will include the [with an] expiration date and a certificate number. [An identification card shall be included for a certified instructor.]

(2) DSHS [The department] replaces a lost, damaged, or destroyed certificate or identification card with [upon] written request to chw@dshs.texas.gov.

(f) [(g)] An instructor must work with a DSHS certified [be affiliated with an approved] training program [in order] to provide DSHS certified [department-certified] training to certified promotores or community health workers or instructors.

(g) [(h)] Certificate renewal.

(1) An instructor must [shall] renew certification [the certificate] every two years [in accordance with policy].

(2) Failure to receive renewal notification from DSHS [the department] before the expiration date will not excuse failure to file for renewal.

(3) [(2)] An instructor must complete at least 20 contact hours of continuing education acceptable to DSHS [the department] and related to the core competencies during each certification period.

(4) [(3)] Before certificate expiration, an instructor may request one 90-day extension to complete the continuing education requirement and apply for certificate renewal.

(h) [(i)] Late renewals.

(1) An instructor can renew certification within 12 months after it expires by sending DSHS a [A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the] completed renewal application. [An instructor must submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.]

(2) An instructor with a certification expired for more than 12 months [A person whose certification has been expired for more than one year] must meet the requirements under subsection (a) of this section and apply for a new certificate.

§146.6. Eligibility Requirements and Application Procedures for Promotors or Community Health Workers.

(a) Eligibility [Minimum eligibility] requirements for promotor(a) or community health worker certification. The following requirements apply to a person [persons] applying for certification:

(1) Texas residency;

(2) at least 16 years of age;

(3) lack of a physical or mental disability that, consistent [impairment, which in accordance] with the Americans with Disabilities Act, prevents the applicant from safely performing the essential functions of a promotor(a) or community health worker instructor [interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served]; and

(4) achievement of core competencies [identified in policy] through completion of a DSHS-certified 180-hour [certified] competency-based CHW [training provided by an approved] training program within the past three years, or through verification of at least 1,000 hours of related experience within the past three years.

(b) Application requirements for a promotor(a) or community health worker. A person who wants to become a promotor(a) or community health worker must submit required documentation such as: [The department specifies the required information and documentation that an applicant shall complete and the department notifies the applicant if the application is incomplete.]

(1) a completed DSHS community health worker certification application;

(2) a current color photograph showing all facial features;

(3) documentation demonstrating eligibility through either:

(A) a community health worker course certificate of completion; or

(B) an Experience Verification Form completed and submitted directly to DSHS by the applicant's supervisor, employer, or professional reference if applying based on experience in a CHW role; and

(4) proof of Texas residency.

[(e) Application approval. The department approves any application which complies with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.]

(c) [(d)] Denied [Disapproved] applications.

(1) DSHS [The department] may deny [disapprove] the application if the applicant:

(A) has not met the eligibility and application requirements for a promotor(a) or community health worker as explained in this section [set out in this chapter];

(B) has not completed or submitted all the required information or has provided false or misleading information during [failed or refused to properly complete or submit any required information or has knowingly presented false or misleading information in] the application process;

(C) has engaged in unethical conduct as defined in §146.7 of this chapter (relating to Professional and Ethical Standards);

(D) has been convicted of a felony or misdemeanor directly related to the job duties and responsibilities of a promotor(a) or community health worker or instructor as explained [set out] in §146.8 of this chapter (relating to Enforcement); or

(E) has a physical or mental disability that, after an individualized assessment and with consideration of reasonable accommodations, prevents the applicant from safely performing the essential functions of a promotor(a) or community health worker instructor. Any denial under this subparagraph must be based on objective evidence and be consistent with the Americans with Disabilities Act.

[(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act prevents the person from practicing with reasonable skill, competence, and safety to the public as the result of:]

[(i) an illness;]

[(ii) drug or alcohol dependency; or]

[(iii) another physical or mental condition or illness.]

[(2) If the department determines that the application should not be approved because it is incomplete, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application.]

(2) [(3)] If DSHS denies the application because the eligibility requirements are not met, DSHS sends a letter explaining the denial [the department determines that the application should not be approved because experience requirements are not met, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application after sufficient experience is obtained].

(3) [(4)] An applicant with a denied [whose] application [has been disapproved] for a reason not mentioned in paragraph (1) or (2) [other than paragraph (2) or (3)] of this subsection, or because it is incomplete, may appeal the denial using [disapproval under] the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(d) [(e)] Change [Changes] of name and address.

(1) DSHS [The department] changes the status of a certification to inactive if [upon receipt of notification that] the certificate holder no longer lives in Texas.

(2) DSHS certified promotor(a) or community health workers must notify DSHS of contact information changes and submit legal documentation for [Notification of] name changes [must be submitted to the department and include a copy of a marriage certifi-

cate, court decree evidencing such change, Texas driver's license or identification card, or a social security card reflecting the new name before a certificate or identification card is issued by the department].

(e) [(f)] Certificate.

(1) DSHS will issue [The department issues] the approved promotor(a) or community health worker a certificate with an expiration date and a certificate number. [An identification card shall be included for a promotor(a) or community health worker.]

(2) DSHS [The department] replaces a lost, damaged, or destroyed certificate or identification card with [upon] written request to chw@dshtexas.gov.

(f) [(g)] Certificate renewal.

(1) A promotor(a) or community health worker must [shall] renew certification [the certificate] every two years [in accordance with policy].

(2) Failure to receive notification from DSHS [the department] before the expiration date will not excuse failure to file for renewal.

(3) [(2)] A promotor(a) or community health worker must complete at least 20 contact hours of continuing education acceptable to the department and related to the core competencies during each certification period.

(4) [(3)] Before certificate expiration, a promotor(a) or community health worker may request one 90-day extension to complete the continuing education requirement and apply for certificate renewal.

(g) [(h)] Late renewals.

(1) A promotor(a) or community health worker can renew certification within 12 months after it expires by sending DSHS a [A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the] completed renewal application. [A promotor(a) or community health worker must also submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.]

(2) A promotor(a) or community health worker with a certification expired for more than 12 months [A person whose certification has been expired for more than one year] must meet the requirements under subsection (a) of this section and apply for a new certificate.

§146.7. Professional and Ethical Standards.

[(a)] A certified training program, instructor, and promotor(a) or community health worker must follow [shall observe and comply with] the professional and ethical standards of practice [set forth] in this chapter [subchapter]. A violation of the professional and ethical standards constitutes unethical conduct or conduct that discredits or tends to discredit the profession of promotores or community health workers or instructors and is grounds for disciplinary action.

(1) Professional representation and responsibilities.

(A) An instructor or promotor(a) or community health worker must [shall] not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading.

(B) An instructor or promotor(a) or community health worker must [shall] not engage in conduct that is prohibited by state,

federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol.

(C) An instructor or promotor(a) or community health worker must [shall] not discriminate based on race, creed, sex, [gender, sexual orientation,] religion, national origin, age, physical disability, or economic status in the performance of community health work services or training.

(D) An instructor or promotor(a) or community health worker must [shall] maintain knowledge and skills for continuing professional competence by participating in continuing education [programs] and activities that cover at least one core competency and meet the applicable requirements in §146.5(g)(3) [as set out in §146.5(h)(2)] of this chapter (relating to Eligibility Requirements and Application Procedures for Community Health Worker Instructors) and §146.6(f)(3) [§146.6(g)(2)] of this chapter (relating to Eligibility Requirements and Application Procedures for Promotores or Community Health Workers)[, concerning continuing education requirements].

(E) An instructor or promotor(a) or community health worker must not provide [shall refrain from providing] services that are outside the scope of the profession and must [shall] refer a client for [these] services [that] the instructor or promotor(a) or community health worker is unable to provide [meet].

(F) An instructor or promotor(a) or community health worker must [shall be responsible for competent and efficient performance of the instructor or promotor(a) or community health worker assigned duties and shall] report [to the department] incompetence and illegal or unethical conduct of members of the profession to DSHS.

(G) An instructor or promotor(a) or community health worker must [shall] not retaliate against any person who reports [reported] in good faith [to the department] alleged incompetence; misrepresentation; or illegal, unethical, or negligent conduct of any instructor or promotor(a) or community health worker to DSHS.

[(H)] An instructor or promotor(a) or community health worker shall notify the department of changes in preferred mailing address and telephone number, and email address, if applicable.]

(H) [(I)] A training program must [shall] not make any misleading, deceptive, or false representation in connection with offering or obtaining approval of a DSHS certified curriculum.

(I) [(J)] A DSHS certified training program must [of a certified curriculum shall] not discriminate in decisions regarding student recruitment, selection of applicants, training, or instruction based on race, creed, sex, [gender, sexual orientation,] religion, national origin, age, physical disability, or economic status.

(2) Relationships with clients.

(A) An instructor or promotor(a) or community health worker must [shall] not accept gifts or money [gratuities] for preferential consideration of a [the] client. The instructor or promotor(a) or community health worker must avoid [shall guard against] conflicts of interest.

(B) An instructor or promotor(a) or community health worker must [shall] not violate any [provision of any] federal or state statute or regulation relating to confidentiality of client communication and records.

§146.8. Enforcement.

(a) DSHS [The department] may deny [disapprove], suspend, or revoke a certification if the applicant or certification holder:

(1) ~~has been convicted of a felony or misdemeanor that relates to the job [a criminal conviction that relates to the duties and responsibilities] of a training program, instructor, or promotor(a) or community health worker and DSHS will consider [; based on]:~~

- (A) the nature and seriousness of the crime;
- (B) the length of time since the crime occurred;
- (C) how the certification may have facilitated the crime;

and

(D) the extent to which certification could create an opportunity to engage in further criminal activity of a similar nature;

(2) ~~falsely represents to be [oneself as] a certified training program, instructor, or promotor(a) or community health worker without a certification issued under this chapter;~~

(3) ~~obtains or attempts to obtain a certification under this chapter using false information or through bribery;~~

(4) ~~violates §146.7 of this chapter (relating to Professional and Ethical Standards); or~~

(5) ~~has a certification in another jurisdiction denied, revoked, suspended, or otherwise subjected to adverse action.~~

(b) In determining enforcement under this section, DSHS ~~[the department]~~ considers:

- (1) the pattern of behavior and severity of the violation;
- (2) the length of time since the violation occurred;
- (3) any potential harm to the public; and
- (4) any previous violation by the applicant or certification holder.

~~[(e) If the department disapproves, suspends, or revokes a certification under this section, the department gives the person written notice of the reason or reasons for the decision and the opportunity to request a fair hearing conducted under Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).]~~

~~(c) [(d)] A training program, instructor, or promotor(a) or community health worker [A person] whose certificate is denied, suspended, [disapproved] or revoked [under this section] is ineligible for a certificate [under this chapter] for two years from the date of the denial, suspension, [disapproval] or revocation. Upon denial [disapproval], suspension, or revocation, the certificate holder must [shall] return a certificate or an identification card to DSHS [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.

Filed with the Office of the Secretary of State on September 9, 2026.

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Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 25, 2026

For further information, please call: (512) 915-8078



25 TAC §146.3

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 system; Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner 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.

The repeal affects Texas Government Code §524.0151 and HSC Chapters 48 and 1001.

§146.3. Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

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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Cynthia Hernandez

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Department of State Health Services

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For further information, please call: (512) 915-8078



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 361. GUARDIANSHIP SERVICES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§361.3, 361.25, 361.51, 361.53, 361.55, 361.57, 361.59, 361.61, 361.67, 361.69, 361.71, 361.73, 361.75, 361.79, 361.83, 361.151, 361.153, 361.155, 361.201, 361.203, 361.205, 361.207, and 361.209; new §§361.1, 361.21, and 361.23; and the repeal of §§361.1, 361.21, 361.23, and 361.81.

BACKGROUND AND PURPOSE

Effective March 15, 2022, the HHSC rules for guardianship services were administratively transferred from Texas Administrative Code (TAC), Title 40 Chapter 10, to TAC Title 26 Chapter 361. The rules were transferred from Title 40 to Title 26 due to the transfer of functions from the former Department of Aging and Disability Services to HHSC.

The purpose of this proposal is to update the guardianship requirements, practices, and procedures. The proposed amendments update the definitions used in the chapter and remove outdated terminology.

The proposal also updates agency names by replacing "DADS" with "HHSC."

SECTION-BY-SECTION SUMMARY

SUBCHAPTER A GENERAL PROVISIONS

The proposed repeal of §361.1, Introduction, is needed because the content of the rule contains information covered in proposed new §361.1, Purpose, §361.21, Eligibility for Services, and §361.23, Assessment.

Proposed new §361.1, Purpose, incorporates the content of §361.1, Introduction, which is proposed for repeal, to provide an overview of the HHSC Guardianship Services Program's purpose.

The proposed amendment to §361.3, Definitions, removes the definition of "Agency" that is currently used in the rules and replaces it with the definition of "Guardianship program." This change is made to use the term guardianship program in the rules to refer to other guardianship programs. The proposed amendment removes terms that contain "DADS" and the term "Diminished capacity" because they are not used in the chapter. The proposed amendment makes changes to add the acronym for a term at the beginning of the definition. This allows the acronyms to be used in the rules without first spelling them out. The proposed amendment adds definitions of "Alternatives to guardianship," "Guardian," "Incapacitated person," and "Supports and services," which are defined in the Texas Estates Code and used in the chapter. The term "Guardianship Services Program" is added to define the HHSC program referenced in this chapter. "HHSC" is added to define the agency in these rules. The term "Individual" is added to describe the people who receive services from the HHSC Guardianship Services Program (GSP) and from contractors. The proposed amendment revises the definitions of "Assessment," "CME--Certificate of Medical Examination," "Contractor," "DID-- Determination of intellectual disability," "Judicial Branch Certification Commission," "Person-directed planning," "Quality assurance plan," and "Service plan" to update terminology and make them easier to read and understand.

SUBCHAPTER B ELIGIBILITY AND ASSESSMENT OF INDIVIDUALS FOR GUARDIANSHIP SERVICES

The proposed repeal of §361.21, Eligibility for Services, is needed because the content of the rule contains information covered in proposed new §361.21, Eligibility for Services.

Proposed new §361.21, Eligibility for Services, provides clear information about the eligibility requirements for the GSP to match current statutes and memorandums of understanding with the Department of Family and Protective Services (DFPS). To match the Child Protective Services (CPS) Memorandum of Understanding the proposed new rule includes that an individual must be referred by a CPS employee; a person with an intellectual disability or alleged to be a person with an intellectual disability, must be a person with a Determination of Intellectual Disability as defined in 26 TAC §304.102, and a person who meets the requirements of Texas Estates Code §1101.104. The proposed new rule includes details about referrals when a person is at least 17 years of age or 18 years of age. The proposed new rule describes the requirement in Texas Estates Code §1103.003 that the guardianship of an individual meeting the criteria in proposed new subsection (a) may not take effect before the date of the individual's 18th birthday. This allows the HHSC GSP to file an application no earlier than 180 days before the individual's 18th birthday in accordance with Texas Estates Code §1103.001, Application for Appointment. Receiving referrals at 17 years or older allows for adequate time to process the referral, conduct the assessment, and file an application for guardianship. The proposed new rule identifies the eligibility criteria for an individual referred to the GSP by the Adult Pro-

TECTIVE SERVICES DIVISION (APS) of DFPS. The proposed new rule indicates the person must be aged 65 years or older or 18 years of age or older and is a person with a disability; APS has reason to believe the individual is an incapacitated person; and APS has validated that the individual is in a state of abuse, neglect, or exploitation; and the GSP determines guardianship is appropriate. The proposed new rule includes requirements related to citizenship or legal residency in the United States to match program eligibility requirements. The proposed new rule lists additional factors considered by HHSC to decide whether to serve as permanent guardian. The proposed new rule updates language from the proposed repeal of §361.21, Eligibility for Services, to make the rule easier to read and understand.

The proposed repeal of §361.23, Assessment, is needed because the content of the rule is covered in proposed new §361.23, Assessment.

Proposed new §361.23, Assessment, describes the assessment process when the GSP receives a referral from DFPS under §361.21 or a court request under Texas Estates Code §1203.108 or Human Resources Code §161.101(d). The proposed new rule describes how the GSP processes a referral for guardianship including reviewing documentation; conducting an in-person assessment to evaluate an individual's alleged incapacity; considering alternatives to guardianship; evaluating the availability of alternate guardians; and determining whether to accept or deny a referral.

The proposed amendment to §361.25, Annual Review of a Ward's Status, changes the title of the rule to "Annual Status Review of an Individual." The proposed amendment changes all references to a "ward" to references to an "individual." The proposed amendment simplifies and condenses the language that describes what actions the GSP takes when an individual's status changes. The proposed amendment combines subsections related to alternative guardians; changes language related to modifying a guardianship to match the Texas Estates Code; adds new language to address restoring an individual's capacity; and updates language to address when a guardianship does not effectively remedy the issues or meet the needs of the individual.

SUBCHAPTER C CONTRACTOR REQUIREMENTS

The proposed amendment to §361.51, Guardianship Contracts, removes mentions of DADS and makes changes to use plain language.

The proposed amendment to §361.53, Eligibility To Be a Contractor, changes the requirements for a contractor to be eligible to apply for a guardianship contractor to match statutory requirements for guardianship programs, including requirements from the Judicial Branch Certification Commission for guardianship programs and the certification of guardians. The proposed amendment then removes the requirements in subsections (b) and (c) because they are included with the changes in subsection (a). The proposed amendment adds the requirement for a contractor's application with HHSC to identify the geographical areas served and the population groups for whom the contractor provides services. The proposed amendment reformats and clarifies the requirement describing when a contractor must terminate an employee and the description of the actions of a contractor that the GSP may use to decide current or future eligibility to contract with HHSC.

The proposed amendment to §361.55, Acceptance of Referrals from DADS, changes the title to "Acceptance of Referrals

from HHSC" and removes references to DADS. The proposed amendment removes a contractor application requirement because this requirement is being added in the proposed amendment to §361.53. The proposed amendment renumbers the remaining subsections and edits the remaining rules to improve clarity and readability.

The proposed amendment to §361.57, Policies and Procedures Required of Contractors, adds details about what circumstances lead to a contractor no longer serving as guardian and require notice to the HHSC GSP. The proposed amendment makes changes to use plain language.

The proposed amendment to §361.59, Qualifications and Training Requirements for Contractor Employees, removes the current requirement to provide an adequate number of qualified employees, and the list of qualifications for contractor employees, and replaces them with the requirement for the contractor to follow the Judicial Branch Certification Commission standards regarding maximum caseloads and the requirement to employ case managers certified as guardians by the Judicial Branch Certification Commission. These changes are made because the Judicial Branch Certification Commission is the entity responsible for standards regarding maximum caseloads and guardian certification requirements. The proposed amendment updates and clarifies the employee training requirements for contractors, including removing certain trainings and replacing them with training that explains an overview of the Judicial Branch Certification Commission Code of Ethics and Minimum Standards for Guardianship. This change is made because the Judicial Branch Certification Commission provides standards to make decisions and requirements for certified guardians. The proposed amendment requires a contractor to maintain a personnel record on every employee.

The proposed amendment to §361.61, Qualifications and Training Requirements for Volunteers of Contractors, removes references to DADS and reorganizes rule language to make the rules easier to read and understand. The proposed amendment requires a contractor to maintain a personnel record on every volunteer.

The proposed amendment to §361.67, Criminal Background Checks, changes the title of the rule to "Background Checks" to match the language required by the Department of Public Safety when conducting a background check. The amendment also updates statute references to match current statute titles.

The proposed amendment to §361.69, Quality Assurance Plan, removes the word "ward" and reorganizes rule language to make the rules easier to read and understand.

The proposed amendment to §361.71, Fiscal Management, removes references to DADS, updates to use person-first language, and makes minor wording changes to improve clarity and readability.

The proposed amendment to §361.73, Roles and Responsibilities of Case Managers, changes the title to "Roles and Responsibilities of a Contractor Providing Guardianship Services." The proposed amendment removes requirements that are required for all guardianship programs or all guardians. The proposed amendment also expands language to be specific in the rule about the roles and responsibilities of a contractor. For example, the proposed amendment lists reasons for case closure and removes requirements related to guardian of the estate.

The proposed amendment to §361.75, Reporting of Abuse, Neglect, or Exploitation, indicates abuse, neglect, or exploitation of an individual is reported to the appropriate investigating authority. The proposed amendment, because reporting is not limited to DFPS, removes subsection (b) and the rest of the rule is reformatted. The proposed amendment reorganizes rule language to make the rules easier to read and understand.

The proposed amendment to §361.79, Responsibilities of the Guardian of the Person, requires a contractor, when appointed guardian of the person, to manage the individual's case according to the court order appointing the contractor as guardian and the requirements in the Texas Estates Code for Guardian of the Person. The proposed amendment adds a contractor's responsibility to manage the individual's finances to clearly explain what is expected of the contractor. The proposed amendment uses person-first language and makes changes for clarity and readability.

The proposed repeal of §361.81, Responsibilities of Guardian of the Estate, removes an outdated rule because the GSP does not refer an individual to a contractor for appointment as the guardian of the individual's estate.

The proposed amendment to §361.83, Service Plans for Wards, changes the rule title to "Service Plan for Individuals." The proposed amendment removes some specific services plan requirements and replaces them with references to the Judicial Branch Certification Commission Minimum Standards for Guardianship.

SUBCHAPTER D RECORDS MANAGEMENT being retitled as CASE RECORDS MANAGEMENT

The proposed amendment to §361.151, Confidentiality of Records, makes minor rule edits for clarity and use of person-first language. The proposed amendment removes confidentiality standards for DADS employees because this rule is for contractors. The proposed amendment removes references to releasing records to an attorney ad litem because an attorney ad litem is not involved when a contractor becomes the successor guardian to HHSC. The proposed amendment removes language about a contractor releasing information to a social services or medical agency without permission from the current guardian. This change is made because a contractor does not manage cases unless the contractor is appointed as guardian.

The proposed amendment to §361.153, Documentation Requirements, changes the title of the rule to "Case Records of an Individual." The proposed amendment removes the rules for a contractor to maintain financial and contractor-related records because these rules have been moved to proposed §361.155. The proposed amendment adds requirements for searching and documenting the results from the National Sex Offenders Registry website for unsupervised visits because these rules have been removed from proposed §361.67. The proposed amendment removes the requirement for a contractor to maintain personnel records for employees and volunteers because these rules have been moved to §361.59 for employees and §361.61 for volunteers. These changes are being made to improve the organization of these rules within the chapter. The proposed amendment includes the requirements for a contractor to make case records available to the GSP during monitoring visits, for the contents of a case record, and for documenting contacts with an individual.

The proposed amendment to §361.155, Maintenance of Records, adds the requirements removed from §361.153 about

maintaining financial and contract-related records and then re-formats the rest of the rule. The proposed amendment removes references to DADS and updates and clarifies the requirement if there is a change in the location of the records or the contact to access the records.

SUBCHAPTER E CONTRACTOR MONITORING AND COMPLIANCE

The proposed amendment to §361.201, Monitoring Reviews, removes references to DADS and "ward" and makes minor edits to improve clarity.

The proposed amendment to §361.203, Complaint Investigations, removes references to DADS and "ward" and makes minor edits to improve clarity.

The proposed amendment to §361.205, Fiscal Monitoring, removes references to DADS and "ward" and makes minor edits to improve clarity.

The proposed amendment to §361.207, Sanctions, removes references to DADS and "ward" and makes minor edits to improve clarity. The proposed amendment updates the TAC reference for a contractor's right to appeal.

The proposed amendment to §361.209, Administrative Review, removes references to DADS and "ward" and makes minor edits to improve clarity. The proposed amendment clarifies that a contractor's request for an administrative review must be received by the GSP within 10 calendar days after the date the contractor receives the written review findings.

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 does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new regulations;
- (6) the proposed rules will expand, limit, and 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 conform to current procedures and there are no requirements to alter business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Rosa Berumen, Director, Office of Guardianship Services has determined that for each year of the first five years the rules are in effect, the public benefit will be accurate and clear rules about guardianship services at HHSC and the requirements to contract with HHSC to provide guardianship services. Revisions reflect current rules, regulations, and statutes related to guardianship services.

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 the rules conform to current procedures and there are no requirements to alter current business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R041" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §361.1

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 system, and Texas Human Resources Code §161.073, which provides that the executive commissioner of HHSC may adopt rules for the administration of guardianship services.

The repeal affects Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.1. *Introduction.*

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 9, 2026.

TRD-202603924

Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (210) 267-7419



26 TAC §361.1, §361.3

STATUTORY AUTHORITY

The amendment 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 system, and Texas Human Resources Code §161.073, which provides that the executive commissioner of HHSC may adopt rules for the administration of guardianship services.

The amendment and new section affect Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.1. Purpose.

(a) The Guardianship Services Program (GSP) receives referrals from DFPS as provided in Texas Human Resources Code §48.209.

(b) The GSP:

(1) assesses an individual for capacity;

(2) applies for guardianship of the individual if guardianship is appropriate;

(3) serves as the agent for the guardian, HHSC, to support the individual's well-being, dignity, and personal preferences to the extent possible; and

(4) provides guardianship services in accordance with Texas Estates Code Title 3 and the minimum standards for guardianship services established by the Judicial Branch Certification Commission under Texas Government Code §155.101.

§361.3. Definitions.

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

(1) Alternatives to guardianship--This term has the same meaning as defined in Texas Estates Code §1002.0015.

[(a)] A term used in this chapter that is defined in Texas Estates Code, Chapter 1002 has the same meaning as defined in that section of the code.]

[(b)] [In addition, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:]

[(1)] Agency--A state or local government or private not-for-profit organization that operates a guardianship program as defined by Texas Estates Code, §1002.016.]

(2) Assessment--The process to determine whether [of establishing whether DADS] guardianship is appropriate for an individ-

ual referred to the GSP [by DFPS]. [The assessment includes a determination of whether the individual appears to meet the definition of an incapacitated person as defined by Texas Estates Code, §1002.017(2), and if the definition is met, whether the individual is totally without capacity or lacks capacity to do some, but not all, the tasks necessary to care for himself or herself or to manage his or her property, whether there is a less restrictive alternative to guardianship, and whether the individual meets the eligibility criteria for the DADS Guardianship Services Program.]

(3) CME--Certificate of Medical Examination. [(CME)--] A written statement from [by] a qualified health care provider that states [physician attesting to] whether, in the [physician's] medical opinion of the provider, an individual has capacity. The statement must meet the requirements of [that complies with] Texas Estates Code[, §1101.103.

(4) Contractor--A guardianship program that has a contract with HHSC [An agency with which DADS has a contract] to provide guardianship services for a fee.

[(5)] DADS--The Department of Aging and Disability Services.]

[(6)] DADS Guardianship Services Program--The program operated by DADS that provides guardianship and related services to persons with diminished capacity.]

(5) [(7)] DID--Determination of intellectual disability. [(DID)--] An examination, or an update or endorsement of a prior examination, that meets the requirements of [complies with] Chapter 304 [5], Subchapter D of this title (relating to Determination of Intellectual Disability [Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions]) and with Texas Estates Code[, §1101.104.

(6) [(8)] DFPS--The Department of Family and Protective Services.

(7) GSP--Guardianship Services Program. An HHSC program that assesses referrals for guardianship, provides guardianship services to incapacitated individuals under HHSC guardianship, and provides guardianship contract oversight and management.

(8) Guardian--This term has the same meaning as defined in Texas Estates Code §1002.012.

(9) Guardianship program--This term has the same meaning as defined in Texas Government Code §155.001.

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

(11) Incapacitated person--This term has the same meaning as defined in Texas Estates Code §1002.017.

(12) Individual--A person referred to or who is receiving guardianship services from the GSP or a person receiving guardianship services provided by a contractor under this chapter.

[(9)] Diminished capacity--Some loss of an individual's ability due to a physical or mental condition to provide food, clothing, or shelter for the individual, to care for the individual's own physical health, or to manage the individual's own financial affairs. An individual referred to the DADS Guardianship Services Program has diminished capacity, but may or may not meet the legal definition of an incapacitated person.]

(13) [(10)] Judicial Branch Certification Commission--The commission established under Texas Government Code §152.051[, Chapter 152].

(14) [(11)] Person-directed planning--An ongoing [A] process that empowers an individual and the legally authorized representative (LAR) on the individual's behalf to direct the development of a [service] plan to meet the needs of the individual [for a ward that meets the individual's personal outcomes. The service plan must identify existing supports and services necessary to achieve the individual's outcomes; identify natural supports available to the individual and negotiate needed service system supports, occur with the support of a group of people chosen by the individual and the guardian as LAR on the individual's behalf, and accommodate the individual's style of interaction and preferences regarding time and setting].

(15) [(12)] Quality assurance plan--A written plan:

(A) that describes:

(i) a contractor's system of self-monitoring; and

(ii) how the contractor ensures [to ensure] consistency and quality of care for an individual; and

(B) ensures the contractor's [provided to a ward and ensure] compliance with:

(i) the Texas Estates Code;[; other]

(ii) requirements imposed by the courts;[; and]

(iii) the Judicial Branch Certification Commission's Code of Ethics and Minimum Standards for Guardianship Services, and

(iv) the contractor's own [other] program policies and procedures[; rules, and standards].

(16) [(13)] Reporter--A person who makes a report [referral] to DFPS that alleged or suspected [staff about a situation of alleged] abuse, neglect, or exploitation, as defined in 40 TAC §§705.103, 705.105, and 705.107, respectively, has occurred or may occur of an elderly person or adult person with a disability as defined in Texas Human Resource Code §48.002.

(17) [(14)] Service plan--A plan outlining an individual's goals, needs, and preferences. [of care for a ward that ensures appropriate habilitation and rehabilitation services, including therapy, counseling, education, and training to the extent permitted by the ward's estate.]

(18) Supports and services--This term has the same meaning as defined in Texas Estates Code §1002.031.

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 B. ELIGIBILITY AND ASSESSMENT OF INDIVIDUALS FOR GUARDIANSHIP SERVICES

26 TAC §361.21, §361.23

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, and Texas Human Resources Code §161.073, which provides that the executive commissioner of HHSC may adopt rules for the administration of guardianship services.

The repeals affect Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.21. *Eligibility for Services.*

§361.23. *Assessment.*

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

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26 TAC §§361.21, 361.23, 361.25

STATUTORY AUTHORITY

The amendment 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 system, and Texas Human Resources Code §161.073, which provides that the executive commissioner of HHSC may adopt rules for the administration of guardianship services.

The amendment and new sections affect Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.21. *Eligibility for Services.*

(a) An individual referred to the GSP by the Child Protective Services Division (CPS) of DFPS is eligible for the GSP if:

(1) the individual:

(A) is referred by a designated CPS employee;

(B) is a person with an intellectual disability or alleged to be a person with an intellectual disability, the individual has a DID as defined in §304.102 of this title (relating to Definitions) that states the individual meets the criteria for a diagnosis of intellectual disability, and meets the requirements of Texas Estates Code §1101.104; and

(C) is at least:

(i) 17 years of age and in a DFPS conservatorship;

(ii) 18 years of age and:

(I) was in DFPS conservatorship on the day before turning 18 years of age; and

(II) resides in a DFPS extended foster care setting after turning 18 years of age; or

(iii) 18 years of age and:

(I) was in DFPS conservatorship on the day before turning 18 years of age; and

(II) the Family District Court extends its jurisdiction under Texas Family Code §263.603 to allow CPS to refer the individual to the GSP;

(2) CPS has reason to believe the individual is substantially unable to:

(A) provide for the individual's own food, clothing, or shelter;

(B) care for the individual's own physical health; or

(C) manage the individual's financial affairs as an adult;
and

(3) the GSP determines that HHSC becoming the guardian of the individual will effectively serve the needs of the individual.

(b) Under Texas Estates Code §1103.003, the guardianship of an individual meeting the criteria in subsection (a) of this section, may not take effect before the date of the individual's 18th birthday.

(c) An individual referred to the GSP by the Adult Protective Services Division (APS) of DFPS is eligible for the GSP if:

(1) the individual is:

(A) 65 years of age or older; or

(B) 18 years of age or older and is a person with a disability;

(2) APS has reason to believe the individual is an incapacitated person;

(3) APS has validated that the individual is in a state of abuse, neglect, or exploitation, as defined in 40 TAC §§705.103, 705.105, and 705.107, respectively; and

(4) the GSP determines that HHSC becoming guardian of the individual will provide an effective remedy for the abuse, neglect, or exploitation validated by APS.

(d) In addition to the eligibility requirements in subsections (a) and (c) of this section, an individual must have private assets available to meet the expenses of day-to-day living, or is eligible for government benefits, for example, Medicaid, Social Security, or veteran benefits, that are sufficient to provide for the individual's long-term support. The GSP is not liable for and cannot provide financial support for services provided to an individual, including the cost of long-term care or burial expenses.

(e) In addition to the eligibility requirements in subsections (a) and (c) of this section, an individual must be a citizen or legal resident of the United States.

(f) In its sole discretion, HHSC may agree to serve as permanent guardian of an individual under Texas Human Resources Code §161.101(d). To decide whether to serve as permanent guardian, HHSC considers the following additional factors:

(1) the risk of serious and imminent harm to the individual or the individual's estate if a guardian is not appointed;

(2) the likelihood that guardianship will provide an effective remedy for the risk of serious harm to the individual and that HHSC becoming guardian will effectively serve the needs of the individual;

(3) the availability to the individual in the local community of less restrictive alternatives to guardianship and other persons or guardianship programs to serve as guardian of the individual;

(4) the history of investigations conducted by APS of the individual as an alleged victim of abuse, neglect, or exploitation and the likelihood of future investigations by APS; and

(5) the availability of private assets or government benefits to pay for the needs of the individual.

§361.23. Assessment.

(a) To determine eligibility for services, the GSP conducts:

(1) an assessment for guardianship when a referral is received from DFPS as described in §361.21 of this subchapter (relating to Eligibility for Services), or a court request is received under Texas Human Resources Code §161.101(d); or

(2) an abbreviated assessment for court requests or appointments under Texas Estates Code §1203.108 to verify the conditions of this statute are met.

(b) To conduct an assessment or an abbreviated assessment, the GSP:

(1) for a DFPS referral, reviews the information documented by DFPS about the individual's conditions and circumstances when conducting the assessment; or

(2) when processing a court request under Texas Human Resources Code §161.101(d) or under Texas Estates Code §1203.108, reviews the information documented by the court and legal filings provided by the court about the individual's conditions and circumstances; and

(3) conducts an in-person assessment with the individual to evaluate the individual's alleged capacity and ability to provide for the individual's own food, clothing, or shelter, to care for the individual's own physical health or manage the individual's financial affairs and whether guardianship is appropriate to meet the individual's needs;

(4) considers additional factors for DFPS referrals received as described in §361.21 of this subchapter, or a court request received under Texas Human Resources Code §161.101(d) in determining if guardianship will effectively serve the individual's needs, including:

(A) dangerous or criminal behavior;

(B) behavioral health needs;

(C) mental health;

(D) substance use disorder; and

(E) medical and psychiatric history;

(5) determines if the individual has private assets available to meet the expenses of day-to-day living, or is eligible for government benefits, for example, Medicaid, Social Security, or veteran benefits, that are sufficient to provide long-term support;

(6) considers alternatives to guardianship or supports and services to avoid guardianship; and

(7) evaluates the availability of an alternative person or a guardianship program to serve as guardian when a guardianship is appropriate.

(c) The GSP determines whether to accept or deny a referral from DFPS or a request from the court based on the assessment completed under subsection (b) of this section.

(1) The GSP accepts a referral when the individual meets the eligibility requirements in §361.21 of this subchapter or the conditions under Texas Estates Code §1203.108 are met.

(2) The GSP denies a referral when the individual:

(A) does not meet the eligibility requirements in §361.21 of this subchapter;

(B) does not meet the conditions under Texas Estates Code §1203.108;

(C) has capacity;

(D) cannot be found; or

(E) has died.

(d) The GSP provides a notification of the assessment outcome to DFPS or the court if the assessment was done in response to the court's request.

(e) For accepted referrals, the GSP:

(1) coordinates with DFPS to obtain the required evidence under Texas Estates Code Chapter 1101 and as required by the local court; and

(2) files an application to appoint HHSC as guardian of the person or estate, or both, of the individual under Texas Estates Code §1101.001 or §1251.003.

(f) Under Texas Human Resources Code §161.101(d), a court may not appoint HHSC as permanent guardian for an individual unless HHSC files an application or otherwise agrees to serve as the individual's guardian.

(g) If a court appoints HHSC as guardian and the individual does not meet the conditions of Texas Estates Code §1203.108 or the eligibility requirements in §361.21 of this subchapter, the GSP files appropriate pleadings to rescind or reverse the appointment that state the reasons that HHSC may not be appointed guardian.

§361.25. Annual Status Review of an Individual [a Ward's Status].

(a) At least annually after HHSC's qualification [the DADS Guardianship Services Program's appointment] as guardian for an individual, the GSP [a ward, the DADS Guardianship Services Program] evaluates the individual's status [of the ward] to determine if:

(1) the individual still meets the definition of [ward is still] an incapacitated person and continues to need a guardian;

(2) an alternate guardian [person or guardianship program] is willing, able, and suitable to serve as successor guardian;

(3) alternatives [a less restrictive alternative] to guardianship are [is now] available [and the ward can be restored to capacity];

(4) a modification of the guardianship or restoration of capacity is appropriate [limited guardianship is appropriate and the ward can be partially restored to capacity]; [or]

(5) guardianship is no longer effective to remedy the issues and meet the needs of the individual; or

(6) [(5)] guardianship continues to effectively remedy the issues and meets [of the ward or meet] the needs of the individual [ward].

(b) If the GSP becomes aware of an appropriate [the DADS Guardianship Services Program determines that the ward is still an incapacitated person and an] alternate guardian, the GSP [can be identified, the DADS Guardianship Services Program] notifies the [appropriate] court [with probate jurisdiction] and may file [files] an

application for HHSC to resign as guardian pending appointment of [and have] a successor guardian [appointed].

(c) The GSP files an application with the court to modify rights when the GSP determines the powers and duties of the guardian no longer meet the needs of the individual. [If the DADS Guardianship Services Program determines that the ward is no longer an incapacitated person and no longer needs a guardian, the DADS Guardianship Services Program files an application with the court to have the ward restored to capacity. If a less restrictive alternative is appropriate and available, the DADS Guardianship Services Program refers the restored individual for the appropriate services.]

(d) The GSP files an application with the court to restore the individual's capacity after the GSP determines whether the individual has full capacity or has sufficient capacity with supports and services to care for the individual's physical and mental health and to manage the individual's property.

[(d) At any time, if the DADS Guardianship Services Program becomes aware of another guardianship program or private professional guardian who is willing, able, and suitable to serve as a ward's successor guardian, and there is no family member or friend of the ward or other interested person who is willing, able, and suitable to serve as guardian, the DADS Guardianship Services Program notifies the appropriate court with probate jurisdiction of the other guardianship program or private professional guardian's willingness and ability to serve. DADS then files an application to resign and have a successor guardian appointed.]

(e) The GSP files an application with the court for HHSC to resign and terminate the guardianship if the GSP determines the guardianship does not effectively remedy the issues or meet the needs of the individual. [If the DADS Guardianship Services Program determines guardianship does not effectively remedy the issues of the ward or meet the needs of the ward, the DADS Guardianship Services Program files an application to resign or close the guardianship.]

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SUBCHAPTER C. CONTRACTOR REQUIREMENTS

26 TAC §§361.51, 361.53, 361.55, 361.57, 361.59, 361.61, 361.67, 361.69, 361.71, 361.73, 361.75, 361.79, 361.83

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 system, and Texas Human Resources Code §161.073, which provides that the execu-

tive commissioner of HHSC may adopt rules for the administration of guardianship services.

The amendments affect Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.51. Guardianship Contracts.

(a) Texas Human Resources Code[~~§~~] §161.103 gives HHSC [~~DADS~~] the authority to contract with a guardianship program [~~an agency~~] or a political subdivision of the state for the provision of guardianship services.

(b) To the extent the legislature appropriates funds or HHSC makes funds available, HHSC [~~are appropriated by the legislature or made available by DADS; the DADS Guardianship Services Program~~] contracts with one or more contractors to file an application [~~with the probate courts and~~] to serve as successor guardian [~~of the person or guardian of the estate or both~~]. A [~~The~~] contractor must be able and willing to serve as guardian at a cost equal to or less than the cost of providing comparable guardianship services by the GSP [~~DADS Guardianship Services Program~~].

(c) To be eligible for guardianship services through a contractor, an individual must meet the eligibility requirements in §361.21 of this chapter (relating to Eligibility for Services). [~~be eligible to be a ward of the DADS Guardianship Services Program.~~]

(d) Funding from the [~~DADS~~] guardianship contract [~~contracts~~] is intended to offset the contractor's cost of providing guardianship services. A contractor must not:

(1) use contract [~~DADS~~] funds to pay for an individual's [~~a ward's~~] daily living expenses; or

(2) bill an individual [~~a ward~~] for any [~~other~~] services.

(e) A contractor must comply with the requirements in [~~this subchapter and in~~] Subchapters C - E [~~D - E~~] of this chapter (relating to Contractor Requirements, Case Records Management, and Contract Monitoring and Compliance). If a contract with HHSC [~~the DADS Guardianship Services Program~~] is terminated or is not renewed, a contractor may continue providing services using another [~~through an alternate~~] source of funds or file an application with the court [~~apply to the courts~~] to resign as guardian and request the appointment of [~~have~~] a successor guardian [~~appointed~~].

§361.53. Eligibility To Be a Contractor.

(a) To be eligible to apply for a guardianship contract, a contractor [~~with DADS, an agency~~] must: [~~meet the definition of a guardianship program in Texas Estates Code, §1002.016.~~]

(1) meet the definition of a guardianship program;

(2) follow the minimum standards for guardianship services established by the Judicial Branch Certification Commission under Texas Government Code §155.101;

(3) hold a certificate of registration issued by the Judicial Branch Certification Commission under Texas Government Code §155.253; and

(4) follow the certification requirements of the Judicial Branch Certification Commission as authorized under Texas Government Code §155.102 for all employees of the contractor who provide guardianship services to an individual under the guardianship contract.

(b) A contractor's application with HHSC must identify the geographical areas served and the population groups for whom the contractor provides services, in terms of age or other factors of the population groups the contractor serves.

[(b) An agency must agree to comply with the minimum standards for guardianship services established by the Judicial Branch Certification Commission under Texas Government Code, §155.101.]

[(e) An agency must agree to comply with the certification requirements of the Judicial Branch Certification Commission as authorized in Texas Government Code, §155.102 for all individuals who will provide guardianship services to a ward of the program on behalf of DADS.]

(c) [(d)] A contractor must [~~An agency must agree to~~] terminate an employee whose actions result in the contractor [~~who commits an action that results in the agency~~] being removed as guardian by a court. Failure [~~the courts. If the agency fails~~] to take action against such an employee or [~~has demonstrated~~] a pattern of removals [~~activity resulting in removal~~] as guardian by the courts within the previous five years, may result in the contractor becoming [~~the agency may become~~] ineligible to contract with HHSC [~~the DADS Guardianship Services Program~~].

(d) [(e)] If a contractor [~~an agency~~] is held in contempt, fined, surcharged, removed as guardian, or found not suitable to serve as guardian by the courts, the GSP may use these actions to decide current or [~~the DADS Guardianship Services Program may consider these actions in determining present and~~] future eligibility and the contractor [~~agency~~] may become ineligible to contract with HHSC [~~the DADS Guardianship Services Program~~].

§361.55. Acceptance of Referrals from HHSC [~~DADS~~].

[(a) An agency, in its application for a contract with DADS, must identify the population groups for whom it provides services, in terms of age, mobility, or other factors. The application must also specify the geographic areas within which it provides services.]

(a) [(b)] A contractor must accept all referrals from the GSP [~~DADS~~] and apply for [~~guardianship or~~] successor guardianship when an individual meets the contractor's eligibility criteria. A contractor must not accept referrals if the total number of individuals served exceeds [~~if a contractor serves the county in which the incapacitated individual resides, and if the individual qualifies for the contractor's guardianship program, provided that the contractor is under~~] the maximum service authorization level provided in the contract. If the contractor reaches [~~has reached~~] the maximum service authorization level, the GSP [~~provided in the contract, DADS~~] may offer the contractor an opportunity to apply for successor guardianship and provide services using another funding source [~~through other sources of funds~~].

(b) [(e)] If a contractor believes that the GSP [~~DADS~~] has assigned an individual for [~~guardianship or~~] successor guardianship who does not meet [~~fit~~] the contractor's [~~guardianship program's~~] eligibility criteria, the contractor may request that the GSP reconsider the referral. At the GSP management's discretion, the GSP may withdraw the referral. [~~the DADS Guardianship Services Program management and the appropriate guardianship supervisor to reconsider the referral. The DADS Guardianship Services Program management or the appropriate guardianship supervisor may, at the management's or supervisor's discretion, withdraw the referral to the contractor.~~]

§361.57. Policies and Procedures Required of Contractors.

A contractor must have written policies and procedures that:

(1) identify the contractor's management structure, including [~~of the agency and clearly reveal~~] the decision-making authority and chain of command;

(2) specify the [~~establish~~] qualifications for employees and volunteers, including [~~that indicate~~] type of position, required education [~~required~~], and any licensure requirements;

(3) describe hiring practices and ensure compliance with applicable state and federal laws;

(4) describe the training ~~[what orientation will be]~~ provided to employees and volunteers, including the [what] additional training required for ~~[will be provided if]~~ volunteers ~~[are used]~~;

(5) ensure that all allegations of abuse, neglect, or [and] exploitation are reported to the appropriate investigating agency [DFPS as mandated by state law];

(6) describe actions ~~[to be]~~ taken if an individual under guardianship experiences [a ward has] a crisis and requires [needs] emergency services [help];

(7) adhere to the Code of Ethics and Minimum Standards for Guardianship Services ~~[describe the minimum standards for guardianship]~~ adopted by ~~[rule by]~~ the Judicial Branch Certification Commission [Office of Court Administration] when serving as a guardian; and

~~[(8) include ethical standards for guardianship and estate matters;]~~

(8) ~~[(9)]~~ include procedures for:

(A) complying [compliance] with court orders and other local practices based on [upon] the court system in the geographic area;

(B) ~~[(10) include a system for] receiving complaints, recording the complaints, and documenting actions taken; [taking action; and]~~

(C) notifying the GSP when an individual:

(i) is involved in a court hearing;

(ii) has died;

(iii) no longer has the contractor as guardian because:

(I) the guardianship is closed by a court order of restoration of capacity;

(II) the contractor resigned as guardian;

(III) the court appointed a new successor guardian; or

(IV) the court terminated the guardianship; or

(iv) is involved in a significant occurrence, such as pregnancy, serious illness, or arrest; and

(D) providing the GSP with a monthly report for each individual served.

~~[(11) include procedures for communication with DADS to include:]~~

~~[(A) notification of a court hearing involving a DADS ward;]~~

~~[(B) notification of a ward's death;]~~

~~[(C) notification of a court order closing a guardianship;]~~

~~[(D) notification of an unusual occurrence, such as a pregnancy or a serious illness; and]~~

~~[(E) monthly reports to be sent to DADS.]~~

§361.59. Qualifications and Training Requirements for Contractor Employees.

(a) A contractor must:

(1) follow the Judicial Branch Certification Commission standards regarding maximum caseloads to allow an employee providing guardianship services to effectively perform the duties of a guardian to each individual referred by the GSP;

~~[(1) provide an adequate number of qualified employees to meet the needs of wards that DADS refers to the contractor;]~~

(2) employ case managers certified as guardians by the Judicial Branch Certification Commission; [who have the following qualifications:]

~~[(A) be at least 21 years of age;]~~

~~[(B) be a high school graduate or possess the general education development equivalent; and]~~

~~[(C) have:]~~

~~[(i) at least two years of relevant work experience related to guardianship; or]~~

~~[(ii) the following educational or training requirements:]~~

~~[(1) a minimum of a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship, including but not limited to medical, mental health and intellectual disability, law, business, accounting, social work, sociology, psychology, human services, protective services, and criminal justice fields; or]~~

~~[(2) completion of a course curriculum or training specifically related to guardianship approved by the Judicial Branch Certification Commission; and]~~

~~[(D) are certified as a guardian by the Judicial Branch Certification Commission;]~~

(3) provide training during orientation to an employee providing guardianship services or having direct contact with individuals [an orientation program] that covers [explains]:

(A) the responsibilities associated with the [each new] employee's position;

(B) the responsibilities of the contractor [guardianship program] to the individual [ward];

(C) the relationship of the individual [ward] to the contractor [guardianship program] and to HHSC [DADS];

(D) an overview of the Texas Estates Code and the contractor's [program's] responsibilities as guardian of the person under [per] the code;

(E) an overview of [any] rules or regulations that affect the contractor [guardianship program];

(F) an overview of the Judicial Branch Certification Commission Code of Ethics and Minimum Standards for Guardianship [aging and disability; medical issues, including medical treatment and medication; and end-of-life decisions];

(G) the principles of person-directed planning including consideration of an individual's [a ward's] personal preferences, desires, religious beliefs, and living arrangements; and

(H) the principles of informed consent, [principle of] substituted judgment, and the best interest standard for decision-making; and

(4) maintain a copy of the continuing education training required in subsection (b) of this section provided to [information presented at the orientation for] each certified guardian, including [employee and have signed] documentation of attendance. [at the orientation; and]

[(5) provide ongoing training based upon the needs of the ward as described in subsections (b) and (c) of this section and any changes in rules or state law;]

(b) A contractor must provide continuing education for a certified guardian to meet the continuing education requirements adopted by the Judicial Branch Certification Commission under Texas Government Code §152.204. [Ongoing training as required in subsection (a)(5) of this section must be documented and each participant must sign that the participant attended the training. At a minimum, training must include:]

[(1) recognizing and reporting abuse, neglect, and exploitation to the appropriate investigating agency;]

[(2) cultural sensitivity and ethics;]

[(3) financial management, including budgeting, record keeping, and bill paying;]

[(4) case management, including service planning, service delivery, and an overview of guardianship;]

[(5) housing and placement alternatives supporting the ward to live in the least restrictive setting appropriate to the ward's needs;]

[(6) community resources;]

[(7) recognition of the social needs of wards, such as recognition of birthdays, holidays, and the need for contact with family and friends; and]

[(8) information regarding alternatives to guardianship, restoration of capacity, and modification of a guardianship;]

(c) In addition to the orientation [and] training required [specified] in subsection [subsections] (a)(3) [and (b)] of this section, a contractor must provide training in the following areas to employees providing guardianship services or having direct contact with individuals [case managers in the following areas]:

(1) conditions, diagnoses, and care approaches related to the individuals [aging and disability, including mental illness, intellectual disability, related conditions, physical disabilities, and other diagnoses that affect the population being] served;

(2) legal matters [issues], including:

(A) civil commitment of persons with an intellectual disability or a [and] mental illness;[;]

(B) testifying in court; [courtroom testimony;]

(C) protocols [protocol; etiquette] in the courtroom and other venues;[;] and

(D) local court policies and procedures; and

(3) financial [estate] management, including:

(A) providing money management services; [alternatives, record keeping;]

(B) keeping records of the money management services the contractor provides to the individual; and

(C) completing financial reports the contractor is required to submit to government agencies [completion of documents that will be filed with the court].

(d) A contractor must maintain personnel records on every employee.

§361.61. *Qualifications and Training Requirements for Volunteers of Contractors.*

(a) A contractor that uses a volunteer who is not a certified guardian must ensure [that] the volunteer does not perform guardianship duties. A contractor's[; but the] volunteer may provide services that an HHSC [a DADS] volunteer may provide under Texas Human Resources Code §161.114(c).

(b) A contractor that uses a volunteer must:

(1) provide training that is relevant to the services a volunteer may provide [the volunteer will provide];

(2) assign an employee who is a certified guardian to supervise [to] the volunteer [a supervisor who is a certified guardian and an employee of the contractor];

(3) ensure that the volunteer does not provide services to an individual under the contract [a DADS ward] until documentation and observation indicate the volunteer is qualified to work with the individual [ward];

(4) ensure that the volunteer's supervisor:

(A) reviews all work completed by the volunteer;

(B) countersigns [(5) ensure that the volunteer's supervisor countersigns] all documentation the volunteer completes [completed by the volunteer]; and

(C) meets [(6) ensure that the volunteer's supervisor meets] with the volunteer at least one time a [once per] month and documents the meeting;

(5) [(7)] ensure [that] the volunteer protects the health and safety of the individual [ward];

(6) [(8)] provide additional training to the volunteer on skills needed to provide services at least annually; and

(7) [(9)] document training provided to the volunteer.

(c) A contractor must maintain personnel records on every volunteer.

§361.67. *[Criminal] Background Checks.*

(a) A contractor must ensure that each employee or [and] volunteer of the contractor who has contact with an individual or has access to the individual's assets and benefits: [a DADS ward or the estate or benefits of a ward:]

(1) has not been convicted of any crimes outlined under Texas Estates Code §1104.353; and

[(1) has not been convicted of any crimes outlined in Texas Estates Code, §1104.353;]

(2) does not have charges pending for, has not admitted guilt for, or has not been found guilty of an offense under the Texas Penal Code listed in subsection (c)(1) of this section or any like offense under the law of another state or federal law, even if probation was granted, deferred adjudication was granted on a plea of guilty, or deferred adjudication was granted on a plea of no contest and no record exists, but the contractor has independent knowledge of these facts.

[(2) is not a person meeting the specifications in Texas Estates Code, §§1104.351 - 1104.357;]

[(3) does not have charges pending from, has not admitted guilt for, or has not been found guilty of the offenses under the Texas Penal Code in subsection (b) of this section or any like offense under the law of another state or federal law, even if probation was granted, if deferred adjudication was granted on a plea of guilty, or if deferred adjudication was granted on a plea of no contest and no record exists, but the contractor has independent knowledge of these facts; and]

[(4) does not have an interest that is adverse to a ward of the DADS Guardianship Services Program or any of its contractors under Texas Estates Code, §1055.001, including:]

[(A) being an actual or potential creditor or debtor of the ward;]

[(B) being an opposing party to a ward in a lawsuit;]

[(C) being the guarantor of a ward's promissory note;]

[(D) having a duty to account to a ward other than the normal duty to account arising from guardianships under its contract; or]

[(E) having any other financial or other interest adverse to a ward.]

(b) To ensure compliance with subsection (a) of this section, HHSC obtains background history information (a background check) relating to a prospective contractor employee or volunteer who will have access to an individual or the financial benefits of an individual referred by the GSP.

[(b) To ensure compliance with subsection (a) of this section, DADS obtains criminal history record information (a criminal background check) relating to a prospective employee or volunteer of a contractor who will have access to a DADS ward, the estate of a DADS ward, or the benefits of a ward referred by the DADS Guardianship Services Program. Based on the criminal history record information, DADS notifies the contractor of the prospective employee's or volunteer's eligibility to be employed or to volunteer with a DADS ward. A contractor must not make an offer of employment to a prospective employee or allow a prospective employee or volunteer to have access to a DADS ward, the estate of a DADS ward, or the benefits of a DADS ward referred by the DADS Guardianship Services Program before DADS notifies the contractor of the person's eligibility for employment or volunteering. On an annual basis, DADS obtains criminal history record information related to an employee or volunteer of a contractor who has access to a DADS ward, the estate of a ward, or the benefits of a DADS ward referred by the DADS Guardianship Services Program.]

[(1) The following offenses under the Texas Penal Code permanently bar an individual from employment or from volunteering with a contractor:]

[(A) sexual offenses under Chapter 21;]

[(B) §22.011, Sexual Assault;]

[(C) §22.02, Aggravated Assault;]

[(D) §22.021, Aggravated Sexual Assault;]

[(E) §22.04, Injury to a Child, Elderly Individual, or Disabled Individual;]

[(F) §22.041, Abandoning or Endangering a Child;]

[(G) §22.05, Deadly Conduct;]

[(H) §22.07, Terroristic Threat;]

[(I) §22.08, Aiding Suicide;]

[(J) §22.09, Tampering with Consumer Product;]

[(K) offenses against the family under Title 6;]

[(L) criminal homicide under Chapter 19;]

[(M) kidnapping and unlawful restraint under Chapter 20, and trafficking of persons under Chapter 20A;]

[(N) §28.02, Arson;]

[(O) robbery under Chapter 29;]

[(P) burglary and criminal trespass under Chapter 30;]

[(Q) theft under Chapter 31; and]

[(R) fraud under Chapter 32.]

[(2) All other offenses under the Texas Penal Code or Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act) are a bar to employment or volunteering with a contractor but may be waived as described in subsection (c) of this section.]

(c) A contractor must not make an offer of employment to a prospective employee or allow a prospective employee or volunteer to have access to an individual or financial benefits of an individual before HHSC notifies the contractor of the prospective employee's or volunteer's eligibility for employment or volunteering.

(1) The following offenses under the Texas Penal Code permanently bar an individual from employment or from volunteering with a contractor:

(A) sexual offenses under Chapter 21;

(B) §22.011, Sexual Assault;

(C) §22.02, Aggravated Assault;

(D) §22.021, Aggravated Sexual Assault;

(E) §22.04, Injury to a Child, Elderly Individual, or Disabled Individual;

(F) §22.041, Abandoning or Endangering a Child, Elderly Individual, or Disabled Individual;

(G) §22.05, Deadly Conduct;

(H) §22.07, Terroristic Threat;

(I) §22.08, Aiding Suicide;

(J) §22.09, Tampering with Consumer Product;

(K) offenses against the family under Title 6;

(L) criminal homicide under Chapter 19;

(M) kidnapping, unlawful restraint, and smuggling of persons under Chapter 20;

(N) trafficking of persons under Chapter 20A;

(O) §28.02, Arson;

(P) robbery under Chapter 29;

(Q) burglary and criminal trespass under Chapter 30;

(R) theft under Chapter 31; and

(S) fraud under Chapter 32.

(2) All other offenses under the Texas Penal Code or Texas Health and Safety Code Chapter 481 (Texas Controlled Substances Act) are a bar to employment or volunteering with a contractor but may be waived as described in subsection (c) of this section.

(d) A contractor must ensure each contractor employee or volunteer who has contact with an individual or has access to the individual's assets and benefits:

(1) does not meet the specifications under Texas Estates Code §§1104.351 - 1104.357; and

(2) does not have an interest that is adverse to an individual under Texas Estates Code §1055.001, including:

(A) being an actual or potential creditor or debtor of the individual;

(B) being an opposing party to an individual in a lawsuit;

(C) being the guarantor of an individual's promissory note;

(D) having a duty to account to an individual other than the normal duty to account arising from guardianships under its contract; or

(E) having any other financial or other interest adverse to an individual.

(c) [(e)] If a contractor [an] employee or volunteer successfully fulfills [has successfully fulfilled] all requirements and conditions imposed by the court for an offense described in subsection (c)(2) [(b)(2)] of this section, and if there are extenuating circumstances that justify the individual's employment or volunteering with the contractor, the contractor may make a written request to the director of the GSP [the DADS Guardianship Services Program] for a waiver of an offense described in subsection (c)(2) [(b)(2)] of this section. The director of the GSP does [will] not waive the requirement for any offense described in subsection (c)(1) [(b)(1)] of this section. If the Judicial Branch Certification Commission does not approve certification or revokes current certification of an employee or volunteer as a guardian based on a criminal history, the contractor may not assign the employee or volunteer [individual] to work in any capacity with an individual [a DADS ward].

[(d) A contractor must conduct a background check through the National Sex Offenders Registry website on a person who requests an unsupervised visit with a DADS ward. The contractor must maintain documentation of a search query in the ward's file. The contractor may approve an unsupervised visit, regardless of whether the person is listed on the registry, if the contractor determines the unsupervised visit is in the best interest of the ward. If the contractor approves an unsupervised visit with a person who is listed on the registry, the contractor must document the reasons why the visit was approved.]

§361.69. Quality Assurance Plan.

(a) A contractor must develop a quality assurance plan that describes the contractor's system of self-monitoring to ensure:

(1) consistency and quality of care provided to an individual [wards of the guardianship program]; and

(2) compliance with:

(A) the Texas Estates Code;

(B) the Judicial Branch Certification Commission Code of Ethics and Minimum Standards for Guardianship;

(C) [(B)] other requirements imposed by the courts; [and]

(D) [(C)] the Guardianship Provider Handbook; [guardianship provider handbook; other]

(E) the contractor's own program policies and procedures; and [rules, and standards.]

(F) requirements under this chapter.

(b) A contractor must provide [make] a copy of the contractor's [its] quality assurance plan [available] to the GSP when requested [DADS contract monitoring staff at the request of DADS staff] and before an annual contract monitoring review.

(c) A contractor must review its quality assurance plan annually and update the plan [it] as necessary. If updated, the [The] contractor must provide a copy of the [an updated] plan to the GSP [DADS] contract manager [if the plan is updated].

§361.71. Fiscal Management.

(a) A contractor must establish policies and procedures that describe:

(1) an accounting system to ensure HHSC pays [that payment is made by DADS to] the contractor only for [if] services provided to an individual [have been rendered];

(2) a financial management system for an individual's finances, including monitoring money spent by a representative payee and tracking [system that includes] receipts and a description of the goods or services provided to an individual [for all fiscal matters for wards served by the guardianship program];

(3) a system to refund monies to HHSC [DADS] or to an individual [a ward] if needed;

(4) the contractor's compliance with state and federal laws and regulations regarding sound accounting practices [for the contractor]; and

(5) internal and external audits to be performed on a regular basis.

(b) A contractor must accept payment from HHSC [DADS] as full payment [in full] for services provided [rendered]. The contractor must not bill twice or receive additional funds for the same or other service provided to an individual [duplicate billing or receipt of other funds].

(c) A contractor must not seek or accept reimbursement from an individual for [a DADS ward to whom it provides] purchased services.

(d) A contractor must not collect:

(1) payment from an individual [a ward];

(2) a percentage of the Social Security or Supplemental Security Income check authorized under 42 U.S.C. §405(j)(4) [specified in the Omnibus Reconciliation Act of 1990]; or

(3) payment authorized by the court under [in accordance with] Texas Estates Code [§] §1155.002, [and] §1155.003, and §1155.202 while serving under an HHSC guardianship contract.

(e) A contractor must not use HHSC [DADS] funds [or DADS reimbursed staff time] to provide guardianship or other services to a person [an individual] who is not referred by the GSP or served under the contract [has not been referred by DADS].

(f) A contractor must provide all legal support to an individual necessary for the guardianship services contracted by HHSC [DADS], including contested applications for guardianship.

(g) A contractor must provide the GSP [DADS staff] access to the results of audits performed by other government agencies on an individual's financial accounts [DADS wards].

§361.73. Roles and Responsibilities of a Contractor Providing Guardianship Services [Case Managers].

(a) After a contractor receives [Upon receipt of] a referral from HHSC [DADS], the contractor [a case manager] monitors the filing of legal documents, [accountings,] reports, notifications, and taxes as required by state law.

(b) A contractor [case manager] performs [the following] duties in accordance with the court [other duties and responsibilities outlined in the] order granting guardianship, the Judicial Branch Certification Commission Code of Ethics and Minimum Standards, other responsibility as Guardian of the Person under the Texas Estates Code. A contractor also performs the following duties:

[(1) locates, secures, and manages a ward's estate;]

(1) [(2)] ensures that an individual [a ward] has access to adequate care, protection, and services based upon identified needs and the service plan;

[(3) makes decisions on medical issues such as major surgery, life-threatening illness, treatment options, and, if guardian of the estate, makes decisions regarding the ward's estate other than routine expenditures for maintenance and education;]

[(4) monitors to ensure inventory, appraisalment, list of claims, and annual accountings have been completed;]

[(5) completes annual reports of the guardian of the person;]

[(6) hires professionals, including accountants, providers, repair persons, or realtors, with the funds of a ward's estate to perform services for the ward;]

(2) [(7)] resolves issues or problems that affect an individual [a ward];

(3) [(8)] to the extent [as much as] possible, determines an individual's [considers a ward's] wishes and preferences before making decisions on the individual's behalf [choices when decisions are being made about the ward];

(4) [(9)] maintains documentation of face-to-face visits;

(5) [(10)] informs the GSP [the appropriate DADS and contractor staff] concerning major issues involving an individual [a ward] and documents all actions in the case [ward's] record; and

(6) [(11)] ensures documentation is complete and up-to-date:

(A) for [that] cases that are closed due to:

(i) restoration of capacity;

(ii) death; or

(iii) successor guardianship appointment; or [transferred, or]

(B) if the guardianship is transferred to another county [case manager, has documentation that is complete and up-to-date].

§361.75. Reporting of Abuse, Neglect, or Exploitation.

(a) A contractor must report an allegation of abuse, neglect, or exploitation of an individual to the appropriate investigating authority [a ward to DFPS] within 24 hours after [of] discovery of the alleged abuse, neglect, or exploitation. The contractor must include in the report the specific suspected abuse, neglect, or exploitation of the individual that allegedly occurred.

[(b) If the investigating authority is an entity other than DFPS, a contractor must report an allegation of abuse, neglect, or exploitation

of a ward within 24 hours of discovery of the alleged abuse, neglect, or exploitation.]

(b) [(e)] A contractor must report an allegation of abuse, neglect, or exploitation of an individual to the GSP [of a ward to the DADS guardianship supervisor in the contractor's designated DADS region] within 24 hours or by the next working day after discovery of the alleged abuse, neglect, or exploitation, whichever is later. The contractor must include in the notification to the GSP [notify the DADS guardianship supervisor of] the specific suspected abuse, neglect, or exploitation that allegedly occurred when the contractor [it is] reported the allegation of abuse, neglect, or exploitation to the investigating authority, and the actions the contractor has[. The contractor must also report what actions have been] taken to ensure the health and safety of the individual [ward].

(c) [(d)] If the alleged perpetrator is a contractor's employee, the contractor must remove the employee from working with the individual [any DADS wards] until all allegations have been investigated and a determination is made. If an allegation of abuse, neglect, or exploitation is validated [found to be valid], the contractor must take appropriate action. If the perpetrator has the right to appeal and if the appeal process determines the employee was not the perpetrator, the contractor [agency] must document the findings. If the allegation against the employee was unsubstantiated or found invalid, the contractor must retrain the employee before returning to work with an individual. [and reorient the employee before working again with DADS wards.]

§361.79. Responsibilities of the Guardian of the Person.

(a) A contractor, not [rather than] the contractor's employee or volunteer, is appointed by the court as guardian. A contractor must assign a primary case manager who meets the requirements described in §361.59(a)(2) of this subchapter (relating to Qualifications and Training Requirements for Contractor Employees) [§40.311(a)(2)] of this subchapter, to each individual [ward] served under its contract. The [with DADS. To ensure the ability to respond in a timely fashion in the event of an emergency, a] contractor must assign a back-up case manager who meets the requirements described in §361.59(a)(2) of this subchapter [staff] for when the primary case manager is unavailable.

(b) When [If] a contractor is appointed guardian of the person, the contractor must manage the individual's case [ward's person] according to:

(1) the court order appointing the contractor as guardian; and

(2) the Texas Estates Code requirements for Guardian of the Person. [guardian of the person. This responsibility may include:]

[(1) having physical possession of the ward;]

[(2) caring for, supervising, and protecting the ward;]

[(3) providing food, clothing, and shelter to the extent permitted by the ward's estate or government benefits;]

[(4) consenting to medical, surgical, and psychiatric care, except for in-patient psychiatric commitment;]

[(5) developing an annual service plan that ensures appropriate habilitation and rehabilitation services, including therapy, counseling, education, and training to the extent permitted by the ward's estate;]

[(6) encouraging the ward to participate in the development of the service plan to the extent that the ward is capable;]

[(7) building an adequate support system for the ward, including family, friends, and other appropriate collaterals;]

{(8) ensuring monthly status contacts with the ward as described in subsection (d) of this section;}

{(9) consulting with service providers periodically;}

{(10) documenting case actions in files maintained for each ward; and}

{(11) complying with all of the requirements of Texas Estates Code, Title 3, regarding guardianship of the person.}

(c) A contractor arranges care and services for the individual [ward] based on [the] identified needs [of the ward] to enhance the individual's [ward's] quality of life. The contractor ensures that the individual [ward] has access to basic care and services, including:

- (1) a safe, clean environment;
- (2) assistance in performing basic life functions;
- (3) regular, nutritious meals;
- (4) any needed medical, psychiatric, habilitative, or other services; and
- (5) adequate supervision.

(d) A contractor manages the individual's finances, including:

- (1) monitoring money spent by a representative payee;
- (2) tracking receipts and the description of the goods or services provided to an individual; and
- (3) ensuring the individual receives all income and benefits the individual is entitled to.

(c) [(d)] The contractor must have an in-person visit [a face-to-face contact] at least once a month with each individual [ward] served under [through] the contract [with DADS]. To the extent possible, the primary case manager makes the monthly visit [contacts]. If the primary case manager is unable to make a monthly visit, another certified guardian must complete the visit [contact, the contact must be made by another certified guardian]. If the individual's [ward's place of] residence prevents an in-person visit, for example, incarceration in a correctional facility, [face-to-face contact (for example, incarceration in a correctional facility);] the contractor may substitute [a] phone or virtual contact with the individual. If [ward or, if] phone or virtual contact is not possible with the individual [ward], contact with a person knowledgeable of the individual's [ward's] current condition may be substituted, for example, a correctional officer, an attorney, a judge, a probation or parole officer, or a medical doctor [(for example a jailer, an attorney, a judge, a probation or parole officer, or a medical doctor)]. The case manager or other certified guardian must document the monthly visit in the individual's [contacts in the ward's] file within 10 working days after the visit.

§361.83. *Service Plans for Individuals [Wards].*

(a) A contractor must develop and update at least annually a service plan for an individual [each ward for which it is appointed as guardian of the person]. The service plan establishes a structured and systematic approach for delivery of supports and services to an individual [a ward] that maximizes the individual's quality of care, quality of life, and overall functioning [of the ward].

(b) A contractor must develop the initial service plan within three months after qualification as guardian [after taking and filing the oath of guardianship] and must update the service plan within 60 days after the anniversary of the qualification date [annually by the due date of the annual report required by the court].

(c) A contractor may develop its own format for the service plan or may use a format provided by the GSP [DADS]. The service

plan must adhere to the Judicial Branch Certification Commission Minimum Standards for Guardianship. A service plan must be developed using the principles of person-directed planning and in a culturally competent manner, to meet the individual's preferences and needs. [include at least the following information:]

{(1) a brief description of the current status of the ward;}

{(2) a description of the needs of the ward in each of the following areas:}

{(A) living arrangements and basic care;}

{(B) medical, dental, vision, mental health, and intellectual disability services;}

{(C) family, social, and recreational needs;}

{(D) financial and legal services; and}

{(E) diet and clothing preferences;}

{(3) the plan or strategy for meeting the needs of the ward in the areas listed in paragraph (2) of this subsection; and}

{(4) actions taken to date to accomplish the plan.}

{(d) A service plan must be developed using the principles of person-directed planning and be developed in a culturally competent manner, to meet the ward's needs within the ward's cultural context. Resources such as family systems, natural helping networks, formal institutions within the ward's community, churches, and social organizations are used to resolve the ward's problems whenever possible and appropriate.}

(d) [(e)] A contractor must ensure that services are provided by employees [persons] who can adequately communicate with the individual [ward]. The contractor may facilitate communication by using a translator or by other means if the contractor's employees do not speak the individual's [ward's] language. [A non-English speaking ward and the ward's family who attempt to communicate in English may require accommodation.] Whenever possible, the contractor must offer the individual [ward] the option of communicating in the individual's [the ward's] preferred language, even if the individual [ward] can communicate adequately in English.

(c) [(f)] Whenever possible the individual's [ward's] diet and clothing must reflect cultural preferences.

(f) [(g)] The service plan for the religious needs of the individual [ward] must reflect any expressed preferences [lifelong pattern] of religious affiliation. Funeral planning for the individual [for the ward] must reflect the cultural and religious values of the individual and the individual's [ward and the ward's] family whenever possible.

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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26 TAC §361.81

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 system, and Texas Human Resources Code §161.073, which provides that the executive commissioner of HHSC may adopt rules for the administration of guardianship services.

The repeal affects Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.81. Responsibilities of Guardian of the Estate.

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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Health and Human Services Commission

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SUBCHAPTER D. CASE RECORDS MANAGEMENT

26 TAC §§361.151, 361.153, 361.155

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 system, and Texas Human Resources Code §161.073, which provides that the executive commissioner of HHSC may adopt rules for the administration of guardianship services.

The amendments affect Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.151. Confidentiality of Records.

(a) A contractor must not disclose information from the case record of an individual in any way that could identify the individual [on a ward served under the contract with the DADS Guardianship Services Program in a manner that identifies the ward] unless the disclosure of the information is necessary to perform [carry out] the duties [of the contractor, as] described in subsection (b) of this section. Texas Human Resources Code[.] §161.111 makes information about an HHSC [a DADS] guardianship case confidential, and this extends to the case record of an individual [DADS wards served through contracts with DADS]. All information in the case record of an individual is [records, reports, or working papers related to the case are] confidential and is [are] exempt from public disclosure under the Texas Open Records Act (Chapter 552, Government Code). [DFPS Adult Protective Services Division records are also confidential under Texas Human Resources Code, §48.101.]

(b) Examples of situations that might require disclosure of [pertinent] case record information about an individual [to be disclosed] include:

- (1) arranging for the provision of services;
- (2) facilitating involuntary mental health or intellectual disability commitment;
- (3) cooperating with law enforcement during a [the] criminal investigation [of abuse, neglect, or exploitation]; and
- (4) responding to a court order for disclosure.

(c) If a contractor shares information about an individual as described in subsection (b) of this section [a ward], the contractor must inform [advise] the recipient [of the information] that the information is:

- (1) confidential; and
- (2) must not be shared with anyone else [be further shared] without permission from the individual.

(d) HHSC [DADS] does not disclose to a contractor the name of a reporter who makes an allegation [a complaint] of abuse, neglect, or exploitation to DFPS. If a contractor learns the reporter's name or other identifying information, the contractor must not share this information with any other agency, except as described in subsection (f) of this section.

[(e) DADS guardianship staff may orally release the reporter's name to the courts, the district or county attorney, or law enforcement agencies if directed to do so by the judge trying the guardianship case. In the event a contractor learns a reporter's name or other identifying information, the contractor must not share this information with any other agency.]

(e) [(f)] Except for the name of a reporter who makes an allegation of abuse, neglect, or exploitation to DFPS, upon [Upon] written request to a contractor, the contractor may provide a copy of [guardianship case] information from the case record of an individual [except the name and other identifying information about a reporter, on a ward served under a DADS guardianship contract] to the following:

- (1) the individual [ward] or the individual's [ward's] guardian;
- (2) a court-appointed executor or administrator of a deceased individual's [ward's] estate;
- (3) the individual's [ward's] private attorney;
- (4) a guardian ad litem;

[(5) the attorney representing the proposed guardian in a guardianship proceeding initiated by the contractor;]

(5) [(6)] a court investigator or court visitor appointed by the court in a guardianship proceeding;

(6) [(7)] Disability Rights Texas, the federally mandated protection and advocacy system; and

(7) [(8)] out-of-state protective agencies.

[(g) Upon oral request to a contractor, the contractor may release a copy of the guardianship case information, except the name and other identifying information about a reporter, to the attorney ad litem. If the attorney ad litem requests the name of the reporter and asserts this information is necessary to the attorney's ability to adequately represent the client, the contractor must notify the DADS Guardianship Services Program and request approval to release the information to the attorney ad litem. The contractor must not release information about

the reporter to the attorney ad litem without written approval from the DADS Guardianship Services Program.]

(f) [(h)] Upon oral or written request, a contractor must release a copy of the entire case record of an individual, including the name of the reporter who makes an allegation of abuse, neglect, or exploitation to DFPS, and information from other agencies, to a law enforcement agency or prosecuting attorney for [requesting] a case under [current] criminal investigation, prosecution, or litigation against the contractor or HHSC [DADS]. A law enforcement agency must provide proof of identity before the contractor may release the requested information.

(g) [(i)] If a contractor releases information to an individual or entity as allowed under this section, the contractor must record the following information in the individual's [ward's] case record:

- (1) the name of the requestor;
- (2) the information that the contractor provided;
- (3) the date the contractor provided the information; and
- (4) a dated copy of the written or oral request [or date of the oral request].

(h) [(j)] Except for any DFPS case records and the name or other identifying information about a reporter who made an allegation of abuse, neglect, or exploitation to DFPS, when the GSP refers an individual [When the DADS Guardianship Services Program makes a referral] to a contractor, the GSP provides [DADS does not provide the entire case record unless] the contractor with the entire case record of the individual [is awarded guardianship and submits a written request for this information]. After the contractor is awarded guardianship, the GSP provides the contractor with the remaining personal identification [Upon referral to a contractor, DADS provides only the following] information as follows:

(1) oral case record information[; except the name and other identifying information about a reporter]; and

(2) written information, including: [the Client Assessment completed by the DADS guardianship specialist,]

(A) medical and psychological information[;]

(B) names and addresses of relatives[;]

(C) financial information and documents[;]

(D) personal data, for example, Social Security number, Medicaid number, and date of birth; and [(for example, Social Security number, Medicaid number, and date of birth) pertaining to the proposed ward, and]

(E) a copy of the most recent photograph on file.

(i) [(k)] A contractor must comply with federally mandated requirements when an individual is living with acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV) [restrictions concerning the sharing of the AIDS/HIV positive status of a ward or proposed ward with a proposed guardian].

(j) [(l)] If a contractor's case records include [files contain] confidential reports from other professionals [professional individuals] or agencies, for example, physicians, psychologists, law enforcement, HHSC Provider Investigations, or DFPS, [(for example, physicians, psychologists, law enforcement, the Department of Assistive and Rehabilitative Services, or DFPS);] the contractor must:

- (1) not release this information; and
- (2) refer the requester to the professional or agency. [to anyone other than the ward or the ward's guardian without first contact-

ing the issuing professional individual or agency for consent to release the information. If the professional individual or agency does not agree in writing to the request, the contractor must not release the information. If the ward or the ward's guardian requests confidential reports from a professional individual or agency, a contractor may release the information, except a police report.]

(k) [(m)] A contractor may verbally [orally] share case information, except the individual's AIDS or HIV status [name and other identifying information about a reporter and the AIDS/HIV positive status of a ward or a proposed ward], with authorized personnel of a social services or medical agency working with the individual [ward or the proposed ward] to the extent this information is necessary for the social services or medical agency to provide services [to the ward or the proposed ward].

[(n)] A contractor may release written case information, except the name and other identifying information about a reporter, to a social services or medical agency working with a ward or a proposed ward only if the proposed ward or the current guardian has authorized the release in writing. The social services or medical agency receiving the information must agree to keep the information confidential.]

§361.153. Case Records of an Individual [Documentation Requirements].

[(a)] A contractor must maintain all financial and contract-related records:]

[(1)] according to recognized fiscal and accounting practices; and]

[(2)] in accordance with DADS contract requirements.;

[(b)] A contractor must document interactions with a ward as soon as possible after the interaction. If the contractor cannot document at the time of an interaction, the documentation must:]

[(1)] be dated the day that it is written;]

[(2)] indicate the date of the interaction; and]

[(3)] be signed by or otherwise identify the individual who had the contact.;

[(e)] A contractor must sign all printed service delivery records in ink. White-out may not be used in any documentation. If there is a mistake, it must be crossed through, dated, and initialed.]

[(d)] Documentation stored via electronic means must include the name of the person who delivered the services, the date performed, and the date the entry was made.]

(a) [(e)] A contractor [Data] must:

(1) ensure case records are [be] readily accessible[;]

(2) provide read-only access [must be provided] to the GSP Oversight and Community Support Services Unit to the contractor's electronic database to review the records [the DADS contract manager] during monitoring [contract] reviews; and[, and there must be a means]

(3) be able to retrieve electronic case records [the data] in case of an electrical outage or equipment failure.

(b) [(f)] A contractor must not write or enter any time in advance [preprint or pre-enter any record of time] on a form used to document all required elements of the services delivered, as provided in the Guardianship Provider Handbook [program specific rules].

(c) [(g)] Case records [Records] must include:

(1) copies of all file stamped or certified legal documents related to the individual's guardianship [ward, preferably file-stamped

copies if documents are file-stamped by the court in the local area when submitted];

(2) financial documents, including receipts of disbursements, bank account statements, trust fund statements, and investment statements;

(3) documentation of all case actions, including legal matters, case management, financial, health and safety, monthly status updates, and interactions with the individual, which must be documented within 10 working days after the activity and include:[:]

(A) the name of the person who delivered the services;

(B) the date the services were delivered;

(C) the method of contact;

(D) the date the entry was made; and

(E) a signature or other way to identify the employee or volunteer who had the interaction;

[(4) case actions, including the monthly status update, which must be documented within 10 working days after the activity:]

(4) [(5)] significant incidents regarding progress, illness, and accidents [that may be used as part of the service plan for the ward]; and

[(6) termination records and transfer summaries;]

(5) [(7) ward] status updates of allegations of [identifying] abuse, neglect, or exploitation reported [incidents referred] to the appropriate investigative authority; [and]

(6) [(8)] a photograph of the individual, which is taken [ward updated] within 90 calendar days after the contractor's [initial] qualification as guardian and updated every two years thereafter;[:]

(7) the search query results from the National Sex Offenders Registry website for a person requesting unsupervised visits with an individual and the contractor's decision to approve or deny unsupervised visits; and

(8) if the contractor approves an unsupervised visit with a person who is listed on the registry, documentation of the reasons the contractor approved the visit.

(d) The contractor may approve an unsupervised visit, regardless of whether the person is listed on the registry, if the contractor determines the unsupervised visit is in the best interest of the individual.

[(h) A contractor must maintain personnel records on every employee and volunteer, and must also maintain records on subcontractors if utilized].

§361.155. *Maintenance of Records.*

(a) A contractor must maintain all financial and contract-related records:

(1) according to recognized fiscal and accounting practices; and

(2) in accordance with HHSC contract requirements.

(b) [(a)] A contractor must maintain all records until the later of the following occurs:

(1) seven years elapse from the expiration or termination date of the records; or

(2) all litigation, claims, and audit findings involving the records are resolved.

(c) [(b)] Upon termination of a contract, the contractor must ensure [the following]:

(1) records are stored and are accessible;

(2) someone is responsible for adequately maintaining the records;

(3) the GSP [DADS] contract manager is notified in writing regarding the location of the records and who to [DADS may] contact to access the records; and

(4) if there is a change in the location of the records or the contact to access the records, the contractor provides the GSP [a change in the person assigned to provide access to the records; the DADS] contract manager with [is provided] the updated information in writing within 10 calendar days after the date of the change.

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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For further information, please call: (210) 267-7419



SUBCHAPTER E. CONTRACT MONITORING AND COMPLIANCE

26 TAC §§361.201, 361.203, 361.205, 361.207, 361.209

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 system, and Texas Human Resources Code §161.073, which provides that the executive commissioner of HHSC may adopt rules for the administration of guardianship services.

The amendments affect Texas Government Code §524.0151 and Texas Human Resources Code §161.073.

§361.201. *Monitoring Reviews.*

(a) When a contractor accepts funds, the contractor [it] also accepts the authority of federal and state governments, including HHSC [DADS] as an agency of a state government, to perform reviews and audits and to have access to records.

(b) The GSP [DADS] conducts monitoring reviews of a contractor's guardianship services to determine [if the contractor is in] compliance with the contract and the contractor's [program] rules and requirements. The GSP conducts a [A] monitoring review [is conducted] at the contractor's location [where the contractor is providing the services] unless the GSP [DADS] specifies a different location.

(c) At the end [conclusion] of the review, the GSP [DADS] determines [the level of] compliance for [on] each guardianship principle reviewed, as listed [Guardianship principles are set forth] in the HHSC Guardianship Provider Handbook [DADS guardianship provider handbook]. If HHSC finds [DADS considers] the contractor

substantially out of compliance with the contract and with [the program] rules and requirements, the contractor is subject to corrective action and may be subject to sanctions.

(d) During the monitoring review, the contractor must provide:

(1) read-only access to the contractor's electronic database [adequate working space] for reviewing the records; and

(2) all records requested [DADS requests] for review.

(e) During the monitoring review, the GSP [DADS] may:

(1) review a sample of case records of individuals [wards' records] to determine the contractor's compliance with contract requirements;

(2) interview individuals, contractor employees, and volunteers [wards and staff];

(3) observe individuals, contractor employees, and volunteers [wards and staff];

(4) interview contractor employees or volunteers who interact with individuals [with whom agency staff interact] on a regular basis; such as individuals associated with the probate courts; and

(5) conduct other activities as appropriate.

(f) The GSP [DADS] may conduct a follow-up monitoring review to determine if the contractor has corrected the findings identified during a previous [at a preceding] monitoring review. A follow-up monitoring review may:

(1) be a focused review using targeted samples; and

(2) focus only on those guardianship principles the GSP [that DADS] determined to be out of compliance at the most recent [immediately preceding] monitoring review.

(g) The GSP [DADS] may expand a monitoring review period or the review sample at any time.

§361.203. Complaint Investigations.

(a) The GSP [DADS] conducts a complaint investigation of a contractor's services if the GSP receives a complaint related to the contractor's policies [if DADS receives complaints that relate to program rules] or procedures, or the contractor's employees or volunteers.

(b) The GSP [DADS] may conduct a complaint investigation at any time without giving notice to the contractor.

(c) The GSP [DADS] does not disclose the name of the reporter [individual] who made the complaint unless:

(1) specifically ordered to by a court of law; or

(2) requested by law enforcement [to disclose to law enforcement].

(d) During the complaint investigation, the contractor must provide the GSP:

(1) adequate working space for reviewing the records; and

(2) all records the GSP [DADS] requests for the review.

(e) The GSP [DADS] may conduct a follow-up to the complaint investigation to determine if the contractor has corrected the findings identified during the complaint investigation. A follow-up complaint investigation may:

(1) be a focused review using targeted samples;

(2) focus only on those standards that the GSP [DADS] determined to be out of compliance at the most recent [immediately preceding] complaint investigation; and

(3) include:

(A) a review of a sample of the case records of individuals [wards' records] to determine if the allegations are valid and if the complaint affects more than the individual [ward] whom the complaint concerned;

(B) interviews with individuals, contractor employees, and volunteers [wards and staff];

(C) observation of individuals, contractor employees, and volunteers [wards and staff];

(D) consultation with others, as appropriate; and

(E) other activities, as appropriate.

(f) The GSP [DADS] may expand the review period or the review sample for a complaint investigation or follow-up complaint investigation at any time.

§361.205. Fiscal Monitoring.

(a) Fiscal monitoring is the review of documentation that supports the contractor's billings as it exists at the time the GSP conducts a fiscal monitoring [DADS staff arrive to conduct the] review. HHSC [DADS] may recoup payment if the service delivery documentation does not support the contractor's billing.

(b) The GSP [DADS] may conduct a fiscal monitoring review:

(1) in conjunction with a monitoring review described in §361.201 of this subchapter (relating to Monitoring Reviews);

(2) independently of a monitoring review described in §361.201 of this subchapter;

(3) when a contract is terminated; or

(4) as a result of conducting a complaint investigation.

(c) If the GSP [DADS] identifies fiscal errors, HHSC recoups payment related to the errors in the exact amount HHSC paid the contractor [DADS recovers the funds without extrapolation].

§361.207. Sanctions.

(a) HHSC [DADS] may impose a sanction if the GSP [DADS] determines that the contractor failed to follow the terms of the contract or the contractor failed to comply with the GSP's [program] rules, policies, and procedures. Examples of these failures include:

(1) jeopardizing an individual's [a ward's] health and safety;

(2) failing to comply with a quality assurance plan [of correction];

(3) failing to follow an agreed-upon audit resolution payment plan;

(4) failing to provide services according to the contract or program requirements; and [or]

(5) a validated report of abuse, neglect, or exploitation when the perpetrator is a contractor [an] owner, employee, or volunteer who has contact with an individual or the individual's financial benefits [a ward or with the estate or benefits of a ward].

(b) HHSC [DADS] may impose a sanction described in this subsection.

(1) Plan of correction. The GSP [DADS] may require a contractor to submit a plan of correction that includes the date the findings will be corrected.

(2) Protective action plan. HHSC [DADS] may require a contractor to take immediate action and put into place an abbreviated and immediate protective action plan if the GSP [DADS] identifies health or safety issues. The plan must address the contractor's actions to be taken to ensure the health and safety of the individual [ward].

(3) Recoupment. The GSP [DADS] may collect money the contractor owes as the result of overpayments or other billing irregularities or both.

(4) Referral [~~Ward referral~~] hold. The GSP [DADS] may stop referring new individuals [~~wards~~] to the contractor. The GSP releases the [ward] referral hold [is released] when the GSP [DADS] determines the contractor has resolved the reason for the hold.

(5) Contractor hold. The GSP [DADS] may withhold a contractor's payments. The GSP releases the contractor hold [is released] when the GSP [DADS] determines the contractor has resolved the reason for the hold.

(6) Involuntary contract termination. HHSC [DADS] may terminate a contractor's contract for cause by citing the contractor's failure to follow the contract terms or comply with GSP [the terms of the contract or with DADS program] rules, policies, and procedures. When HHSC terminates a contract, HHSC [If DADS terminates a contract, DADS] conducts a financial review to determine any overpayment or underpayment [and makes a final review to determine if the contractor has met the terms of the contract]. If the account is overpaid, the contractor must reimburse HHSC [DADS] within 30 calendar days after the contractor receives [receiving] written notice from HHSC [DADS]. If the account balance is not paid in full, HHSC [by that time, DADS] may charge interest on all unpaid debts starting on the 31st day after the date the contractor received the written notice from HHSC [DADS]. HHSC computes the interest [Interest is computed] on a simple interest basis under [in accordance with the] Texas Finance Code[, Chapter 304, on the unpaid balance due. HHSC [DADS] may charge and collect interest on installment payments. If a contractor appeals the contract termination [an appeal is made], interest continues to accrue during any administrative appeal process extending beyond the 31st day after notice of a balance due. If any part of an appeal is found in the contractor's favor, HHSC dismisses the interest that accrued against the part of the appeal found in the contractor's favor [is dismissed].

(7) Suspension. HHSC [DADS] may temporarily suspend the contractor's right to conduct business with HHSC [DADS]. The causes for and conditions of suspension are described in subsection (a) of this section. A suspension is in effect until after an investigation, hearing, or trial is concluded and HHSC makes [DADS can make] a determination about the guardianship program's [agency's] future right to contract. HHSC [DADS] may hold the contractor liable for [impute] the conduct of an individual, corporation, partnership, or other association to the contractor.

(c) A contractor may appeal a sanction proposed or imposed by HHSC [an adverse action DADS takes] against the contractor's [its] contract. To appeal [an action], the contractor must request an administrative hearing [the appeal] in writing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) [1 TAC Chapter 357, Subchapter I]

§361.209. *Administrative Review.*

(a) A contractor may request an administrative review as described in subsection (b) of this section [of the review team's methodology] if the contractor suspects a formal compliance monitoring by the

GSP OCR Unit may not have been conducted according to established GSP rules and procedures.

(b) A contractor's request for an administrative review must:

(1) be in writing;

(2) identify the GSP rules and procedures the contractor believes the GSP OCR Unit [DADS] failed to follow;

(3) state the basis for believing the review was not conducted according to established rules and procedures; and

(4) be received by the GSP [DADS] within 10 calendar days after the date the contractor receives [contractor's receipt of] the written review findings.

(c) The GSP [DADS] gives the contractor written notice of the result of the administrative review via certified mail.

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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CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.51

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §551.51, concerning Workplace Violence Prevention.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill 463, 89th Legislature, Regular Session, 2025, which amended Texas Health and Safety Code §331.001 to include intermediate care facilities for individuals with an intellectual disability (ICFs/IID) and state supported living centers to the definition of "facility" for purposes of establishing workplace violence prevention requirements. The proposed rule establishes standards to protect health care professionals and facility employees from violent behavior and threats of violent behavior within ICF/IID settings.

The proposal is necessary to ensure that facilities adopt, implement, and enforce workplace violence prevention policies and plans, including committee structures, annual reviews, reporting processes, and training obligations. These requirements strengthen safety for facility employees and health care professionals by increasing preparedness, response procedures, and

protections against retaliation associated with reporting workplace violence.

SECTION-BY-SECTION SUMMARY

Proposed new §551.51(a) requires each facility to create or designate a workplace violence prevention committee responsible for developing a workplace violence prevention plan; outlines the requirements for committee membership; and allows multi-facility organizations to have a single committee to serve all facilities, if facility-specific plans are maintained.

Proposed new §551.51(b) requires each facility to adopt, implement, and enforce a written workplace violence prevention policy. The policy must require the facility to consider committee recommendations, encourage reporting, protect staff from retaliation, and ensure compliance with HHSC rule requirements.

Proposed new §551.51(c) requires each facility to adopt, implement, and enforce a written workplace violence prevention plan. The plan must be specific to the facility setting, define workplace violence, and address training, security measures, incident reporting, investigation processes, and employee input. The plan must be reviewed annually by the committee, and facilities must provide access to the plan while ensuring sensitive security information is redacted.

Proposed new §551.51(d) requires facilities to provide immediate services to health care professionals and facility employees after an incident of workplace violence, permit staff to contact law enforcement, and prohibit discrimination or retaliation against persons reporting workplace violence or advising others of their right to report.

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years the rule is 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 HHSC 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 HHSC;
- (5) the proposed rule will create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulation;
- (7) the proposed rule will increase 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

Victoria Grady has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because any additional duties to establish work-

place violence prevention requirements will be incorporated into existing facility committees already providing compliance oversight. No additional resources or appropriations are anticipated.

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 residents; does not impose a cost on regulated persons; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

David Kostroun, Chief Regulatory Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved safety for health care professionals, facility employees, and residents through required workplace violence prevention plans, policies, reporting processes, and protections against retaliation, resulting in a safer environment for the delivery and receipt of services.

Victoria Grady has also determined that for the first five years the rule is in effect, there are no anticipated economic costs for persons required to comply with the rule because facilities are already obligated to ensure safe working conditions, and the rule aligns with existing operational practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to property 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 HHSCRulesCoordinationOffice@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 26R018" in the subject line.

STATUTORY AUTHORITY

The new section 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 and Texas Health and Safety Code Chapter 331.

The new section affects Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 331.

§551.51. Workplace Violence Prevention.

(a) Workplace Violence Prevention Committee. A facility must create a workplace violence prevention committee or assign an existing committee within the facility to develop a plan for preventing workplace violence.

(1) The committee must include at least:

(A) a registered nurse who provides direct care to facility residents;

(B) a physician licensed to practice medicine in Texas who provides direct care to facility residents; and

(C) an employee who provides security services for the facility, if any and if practicable.

(2) An organization that owns or operates more than one facility may create one committee to serve all facilities in the organization if:

(A) the committee develops a violence prevention plan for each facility in the organization; and

(B) information about violence prevention stays separate and clearly identified for each facility in the organization.

(b) Workplace Violence Prevention Policy. Each facility must adopt, implement, and enforce a written policy to protect health care professionals and employees from violent behavior and threats of violent behavior at the facility. The workplace violence prevention policy must:

(1) require the facility to:

(A) provide significant consideration of the violence prevention plan recommended by the facility's committee; and

(B) evaluate any existing plan;

(2) encourage health care professionals and employees to share confidential information about workplace violence with the committee;

(3) include a process that protects health care professionals and employees from retaliation for providing information to the committee; and

(4) ensure compliance with HHSC rules about workplace violence.

(c) Workplace Violence Prevention Plan.

(1) Each facility must adopt, implement, and enforce a written workplace violence prevention plan to protect health care professionals and employees from violent behavior and threats of violent behavior at the facility. The plan must:

(A) be based on the specific setting of the facility;

(B) define "workplace violence" to include the following:

(i) any act or threat of physical force against a health care professional or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(ii) any incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care professional or employee is injured by the weapon;

(C) require the facility to provide workplace violence prevention training or education at least annually, and the training or education may be included with other required training or education for health care professionals and employees who provide direct resident care;

(D) establish a system for responding to and investigating violent incidents or potentially violent incidents at the facility;

(E) address physical security and safety measures within the facility;

(F) require the facility to ask health care professionals and employees for input when developing and carrying out the plan;

(G) allow health care professionals and employees to report incidents of workplace violence through the facility's existing occurrence reporting systems; and

(H) require the facility to adjust resident care assignments, to the extent possible, to prevent a health care professional or employee from treating or providing services to a resident who has intentionally physically abused or threatened the health care professional or employee.

(2) The plan may meet the requirements of paragraph (1) of this subsection by referencing other internal facility policies and documents.

(3) The committee must, at least annually:

(A) review and evaluate the plan; and

(B) report the results of the evaluation to the facility's governing body.

(4) Each facility must make an electronic or printed copy of the plan available on request to each health care professional or employee. If the committee finds that any part of the plan may pose a security threat if made public, the committee may redact that information before providing the plan.

(d) Responding to Incident of Workplace Violence.

(1) A facility must offer immediate services after any incident of workplace violence to each health care professional or employee directly involved in or affected by the incident. These services must include any necessary acute medical care.

(2) A facility must not discourage any health care professional or employee from contacting law enforcement or filing a police report about an incident of workplace violence.

(3) No facility or person may punish, suspend, fire, discriminate against, or retaliate against any other person who:

(A) reports an incident of workplace violence in good faith; or

(B) informs a health care professional or employee about the right to report an incident of workplace violence.

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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CHAPTER 562. LICENSED CHEMICAL DEPENDENCY COUNSELORS

26 TAC §562.24

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §562.24, concerning Standards for Private Practice.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Texas Occupations Code (TOC) §111.004(c) and (d). House Bill (HB) 1700, 89th Legislature, Regular Session, 2025, amended TOC §111.004 by adding subsection (c) and (d).

TOC §111.004(c) requires HHSC to adopt rules necessary to provide clear and concise standards for patient records and the retention of those records related to a patient's consent to treatment, data collection, and data sharing.

TOC §111.004(d) requires that any rules adopted under TOC §111.004(c) must address the specific consent documentation required for telehealth services and include provisions, based on the standard of care, for consent documentation in an audio-only format.

To implement TOC §111.004(c) and (d), the proposed amendment to §562.24 adds definitions and requirements for a Licensed Chemical Dependency Counselor (counselor) in private practice to provide counseling services as a telehealth service using electronic means.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §562.24(a) updates language to improve clarity and readability.

The proposed amendment to §562.24(b) adds new definitions to provide clarity for terms used in the subsection. The proposed amendment allows a counselor to provide counseling services using electronic means and outlines the requirements the counselor must follow, including providing in-person, face-to-face counseling services when requested.

The proposed amendment also requires the counselor to have access and security measures in place when communicating with the client electronically and outlines the criteria that must be met to use synchronous audiovisual technology and audio-only technology to provide outpatient counseling services. The proposed amendment outlines the counselor's responsibilities when technical problems occur and requires adequate security and encryption measures to protect client communications, recordings, and records that adhere to federal and state privacy laws.

The proposed amendment also requires the counselor to create safeguards to ensure adolescent clients receive counseling services separate from adult clients and to verify the identity of the client and any authorized representative.

The proposed amendment requires the counselor to provide appropriate referrals for clients that do not meet the criteria for services. The proposed amendment requires the counselor to provide the criteria for assessing appropriateness of providing services using electronic means and to document the client's verbal consent for participating in counseling services through electronic means. The proposed amendment outlines the counselor's responsibilities for obtaining verbal consent to provide counseling services using electronic means and if verbal con-

sent is not obtained, requires in-person and face-to-face counseling services to be provided instead.

The proposed amendment requires the counselor to inform the client who consents to participating in counseling services using electronic means that the counselor will monitor services for evidence of fraud, waste, and abuse; determine if the client needs additional social services or supports; document the client's verbal consent to participate in the services using electronic means and adhere to federal privacy laws for providing services through electronic means.

The proposed amendment also requires the counselor to provide the client with emergency contact information; to maintain information for client continuity of counseling services based on the client's physical location; and provide accommodations for the client on request to support the client's effective participation in counseling services including through electronic means.

The proposed amendment also updates language to improve clarity and readability and updates outdated references.

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the 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 HHSC 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 HHSC;
- (5) the proposed rule will create new regulations;
- (6) the proposed rule will expand 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

Victoria Grady has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices and the rules do not require the counselor to provide counseling services as a telehealth service.

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 the residents of Texas; does not impose a cost on regulated persons; and implements legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

David Kostroun, Chief Regulatory Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved standards for LCDs providing telehealth services. The public will also benefit from increased clarity regarding requirements for telehealth services.

Victoria Grady 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 rule does not require the counselor to provide counseling services as a telehealth service.

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 26R015" 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, TOC §504.051, which authorizes the executive commissioner to adopt rules governing the performance, conduct, and ethics for persons licensed as LCDs, and TOC §111.004, which authorizes the executive commissioner to adopt rules for health professionals providing telehealth services.

The amendment implements Texas Government Code §524.0151, TOC §504.051, and TOC §111.004.

§562.24. *Standards for Private Practice.*

(a) This subsection applies to a Licensed Chemical Dependency Counselor (counselor) in a [counseling records of an LCD's] private practice setting. A counselor providing services outside of a private practice setting shall follow the relevant regulations and standards for that setting, including those for documentation. [Documentation of professional services rendered in another setting shall be created and maintained in accordance with any legal requirements for documentation applicable to the particular setting in which they were provided.]

(1) When a counselor provides services in a private practice setting, the [The] counselor shall establish [and maintain] a record

for every client on the date [at the time of] initial service delivery begins, maintain the record throughout the clinical relationship, and retain the record in accordance with paragraph (9) of this subsection. The client record shall include:

- (A) client identifying information;
- (B) assessment results, including a statement of the client's problems, [and/or] diagnosis, or both;
- (C) plan of care;
- (D) documentation of each counseling service [all services] provided, including date, duration, and if the service was delivered in-person, face-to-face; using synchronous audiovisual technology; or using synchronous audio-only technology [method of delivery]; and

(E) a description of the client's status at the end of each counseling service [time services are discontinued].

(2) The counselor shall maintain a record of all charges billed and all payments received.

(3) All entries in the client record shall be permanent, legible, accurate, and completed in a timely manner.

(4) All documents and entries in the client record shall be dated and authenticated. Electronic records shall be authenticated [Authentication of electronic records shall be] by a digital authentication key.

(5) When correcting [it is necessary to correct] a paper or an electronic client record, the counselor [error] shall mark [be marked] through the error with a single line, then date [dated], and initial the correction [initialed by the counselor].

(6) The counselor shall protect all client records and other client-identifying information from destruction, loss, tampering, and unauthorized access, use or disclosure. Electronic client information shall be protected to the same degree as paper records and in accordance with applicable law and accepted security standards for electronic health records prevailing at the time, and shall have a reliable backup system.

(7) The counselor shall comply with all applicable state and federal laws relating to confidentiality of client records, including:

(A) the requirements of Texas Health and Safety Code[.] Chapter 611, Mental Health Records [(relating to Mental Health Records)] and

(B) Code of Federal Regulations (CFR), Title 42, Part 2, Confidentiality of Substance Use Disorder Patient Records [(relating to Confidentiality of Alcohol and Drug Abuse Patient Records)].

(8) The counselor shall not deny clients access to the content of the clients' [their] records except as provided by law, including Texas Health and Safety Code[.] §611.0045, Right to Mental Health Record [(relating to Right to Mental Health Record)].

(9) The counselor shall keep client [Client] records [shall be kept] for at least five years after the date of final service delivery. The counselor shall keep records [Records] of adolescent clients [shall be kept] for at least five years after the client becomes 18 [eighteen] years of age.

(b) This subsection applies to a counselor [an LCD] in private practice using electronic means [the internet or telephone] to provide chemical dependency counseling services.

(1) The following terms in this subsection have the following meanings unless the context clearly indicates otherwise.

(A) Access control--The security measures implemented to ensure that only authorized individuals can view, create, modify, or delete electronic client records.

(B) Electronic means--Live, synchronous, interactive counseling services delivered using telecommunications or information technology by a health professional licensed, certified, or otherwise authorized to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a client at a different physical location than the health professional. This term includes counseling services delivered using synchronous audiovisual technology or synchronous audio-only technology but does not include pre-recorded videos.

(C) Existing clinical relationship--A relationship that occurs after a person has received at least one in-person or synchronous audiovisual counseling service from the same provider within the six months prior to the initial service delivered by synchronous telephone audio-only technology.

(D) Synchronous audio-only technology--An interactive, two-way audio telecommunications platform, including telephone technology that uses only sound, and meets the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law (PL) 104-191).

(E) Synchronous audiovisual technology--An interactive, two-way audio and video telecommunications platform that meets HIPAA privacy requirements.

(F) Verbal consent--The spoken agreement of a client or a client's legally authorized representative to participate in counseling services through electronic means.

(2) A counselor using electronic means to provide counseling services:

(A) may provide services to adult and adolescent clients to the extent allowed by the counselor's license; and

(B) shall comply with all requirements of this subsection.

(3) The counselor shall ensure only the following individuals provide counseling services using electronic means:

(A) a Qualified Credentialed Counselor (QCC) acting within the scope of the QCC's license; or

(B) a Counselor Intern:

(i) with more than 2,000 hours of supervised work experience or a supervised work experience waiver under §562.9(b) of this chapter (relating to Requirements for LCDC Licensure); and

(ii) who has passed the chemical dependency counselor licensing exam.

(4) The counselor intern shall be supervised by a Certified Clinical Supervisor (CCS) as described in §562.22 of this chapter (relating to Direct Supervision of Interns).

(5) The counselor shall be equipped to provide in-person, face-to-face counseling services with an individual if requested by the individual.

(6) The counselor shall ensure all counseling services provided using electronic means have the following two forms of access control:

(A) all contact between a QCC and a client shall begin with a verification of the client through a name, password, or pin number; and

(B) all electronic communications and records associated with counseling services shall be secured to protect client confidentiality in compliance with federal and state privacy laws as outlined in paragraph (14) of this subsection.

(7) The counselor may provide outpatient individual and group counseling services to clients using synchronous audiovisual technology when the following criteria is met:

(A) the client and counselor have an existing clinical relationship; and

(B) the counselor shall comply with the requirements in this subsection before engaging the client in services using an electronic means, including all requirements for obtaining verbal consent from the client or the client's legally authorized representative before each session.

(8) The counselor may provide outpatient individual and group counseling services to clients using synchronous audio-only technology when the following criteria is met:

(A) the client and counselor have an existing clinical relationship;

(B) the provider receives and documents each client's verbal consent before each session; and

(C) the provider documents in the client's record the specific reason why the provider provided outpatient counseling services using synchronous audio-only technology.

(9) [(4)] The counselor providing counseling services using electronic means must be licensed in Texas, meet an exemption as described in §562.2 of this chapter (related to License Required), or meet the requirements described in §562.33 of this chapter (related to Licensing, Certification, or Registration of Military Service Members, Military Spouses, and Military Veterans) [must reside in and perform the services from Texas].

(10) [(2)] The Texas Health and Human Services Commission (HHSC) [department] maintains its authority to regulate the counselor regardless of whether the client is at a different physical location than the counselor during a counseling service [the location of the client].

(11) The counselor shall provide timely access to individuals qualified in the technology when technical problems occur.

(12) The counselor shall develop a contingency plan and maintain alternate means of communication for clients in case of technical problems during service provision.

(13) [(3)] The counselor shall be aware of [is subject to] the applicable laws of other states and countries where the client may reside or receive services by electronic means, including any laws limiting the counselor's practice.

(14) The counselor shall implement security and encryption measures to ensure all client communications, recordings, and records are protected and adhere to federal and state privacy laws, including:

(A) HIPAA (P.L. 104-191);

(B) Texas Occupations Code Chapter 504, Chemical Dependency Counselors;

(C) Texas Health and Safety Code Chapter 181, Medical Records Privacy; and

(D) Texas Health and Safety Code Chapter 462, Treatment of Persons with Chemical Dependencies.

(15) ~~[(4)]~~ The counselor's provision of services by electronic means ~~[medium]~~ must comply with applicable law and accepted security standards, ~~[standards at the time;]~~ including, as applicable:~~[-]~~

(A) 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; ~~[Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records);]~~

(B) Texas Health and Safety Code~~[-]~~ Chapter 611, Mental Health Records; ~~[(relating to Mental Health Records); and]~~

(C) HIPAA ~~[the Health Insurance Portability and Accountability Act of 1996 (HIPAA)]~~ (P.L. 104-191);~~[-]~~ and]

(D) the Health Information Technology for Economic and Clinical Health Act; and ~~[(HITECH Act);]~~

(E) Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009), and ~~[their]~~ implementing regulations, including:

(i) 45 CFR Part 160, General Administrative Requirements; ~~[45 Code of Federal Regulations Parts 160 (relating to General Administrative Requirements);]~~

(ii) 45 CFR Part 164, Security and Privacy; and ~~[464 (relating to Security and Privacy); and]~~

(iii) 45 CFR Part 170, Health Information Technology Standards, Implementation Specifications, and Certification Criteria and Certification Programs for Health Information Technology. ~~[170 (Health Information Technology Standards, Implementation Specifications, And Certification Criteria And Certification Programs For Health Information Technology);]~~

(16) ~~[(5)]~~ The counselor must be able to verify the identification of the client and ensure the client's appropriate age.

(17) The counselor shall create safeguards to:

(A) ensure adolescent clients receive counseling services separately from adult clients; and

(B) verify a client's identity and the identity of any authorized representative.

(18) ~~[(6)]~~ If the ~~[a]~~ counselor uses the Internet as the electronic means to transfer or send counseling, ~~[by which counseling is provided or transfers]~~ client, or other protected health information through the Internet, the counselor shall ~~[must comply with the following];~~

(A) only transfer counseling, client, and other protected health information ~~[may only be transferred]~~ using encryption that meets or exceeds the Security Standards for the Protection of Electronic Protected Health Information under 45 CFR ~~[Code of Federal Regulations]~~ Part 164, Subpart C~~[-]~~; that are in effect at the time~~[-]~~;

(B) only use e-mail communication containing counseling, client, or ~~[and/or]~~ other protected health information using the security standards outlined ~~[is subject to the restrictions set forth]~~ in subparagraph (A) of this paragraph; and

(C) ~~[the counselor must]~~ provide ~~[technical]~~ backup for technical ~~[system]~~ problems by providing a phone number to the client to call for technical support and a contingency plan for the client when a technical problem occurs.

(19) The counselor shall provide appropriate referrals for clients who do not meet the criteria for services.

~~[(7) The counselor must provide services that utilize audio or video in real time;]~~

(20) ~~[(8)]~~ Before engaging clients in services through electronic means, the ~~[The]~~ counselor must provide a description of all services offered to the client in writing and describe who is appropriate for the services. The counselor ~~[description]~~ must also provide ~~[include]~~:

(A) developed criteria, in addition to the Diagnostic and Statistical Manual of Mental Disorders, to assess clients for appropriateness of providing services using electronic means;

(B) ~~[(A)]~~ a grievance procedure, developed by the counselor, which includes the website and phone number to HHSC for filing a complaint ~~[and provide a link to department information for filing a complaint when using the Internet and the toll-free number for the department when counseling by telephone];~~

(C) ~~[(B)]~~ the counselor's credentials, education level, and training;

(D) ~~[(C)]~~ the website and phone number to HHSC for licensure verification ~~[a link to the licensure verification page when using the Internet and the toll-free number for the department when counseling by telephone];~~

(E) ~~[(D)]~~ the difference between traditional ~~[electronic]~~ counseling services provided in-person and face-to-face and ~~[traditional]~~ counseling services provided using electronic means; and

(F) ~~[(E)]~~ the potential risks to clients, including the following areas: ~~[risk regarding clinical issues, security and confidentiality;]~~

(i) clinical aspects;

(ii) security; and

(iii) confidentiality.

~~[(9) Services may only be offered by licensed chemical dependency counselors;]~~

(21) The counselor shall document and maintain in a client's record how the client's verbal consent is obtained to participate in counseling services provided using electronic means. The counselor shall provide the verbal consent documentation to HHSC on request. The document for obtaining the client's verbal consent shall include:

(A) client identifying information;

(B) the date the:

(i) counselor explained verbal consent; and

(ii) client or client's legally authorized representative gave verbal consent;

(C) documentation of the counseling service provided; and

(D) if the patient requires an accommodation, details on how staff explained treatment consent forms and the patient's rights and responsibilities.

(22) The counselor shall explain to the client or the client's legally authorized representative what verbal consent means and to what the client or client's legally authorized representative is consenting. The verbal consent a client gives to participate in a counseling service provided using electronic means only applies to one counseling service at a time. The counselor shall obtain the client's verbal consent each time before the client receives a counseling service using electronic means.

(23) If the counselor does not obtain verbal consent for a counseling service through electronic means, the counselor shall provide the service to the client in person and face-to-face.

(24) The counselor shall inform a client who consents to participate in counseling services provided using electronic means that the counselor will:

(A) monitor services for evidence of fraud, waste, and abuse;

(B) determine whether the client needs additional social services or supports;

(C) document, in writing and in the client's record, the client's verbal consent to participate in services provided using electronic means; and

(D) adhere to HIPAA, including when using technology for services provided through electronic means.

(25) [(10)] The counselor shall [must] provide an emergency contact person and phone number and emergency procedures to the client in writing.

(26) The counselor shall maintain information for client continuity of counseling services based on the client's physical location.

(27) The counselor shall provide accommodations, upon request, to support a client's effective participation in counseling, including services provided through electronic means.

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 9, 2026.

TRD-202603932

Stephanie Tourk

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: October 25, 2026

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. The amendment to §3.9901 implements Insurance Code §425.073.

EXPLANATION. An amendment to §3.9901 is necessary to comply with Insurance Code §425.073, which requires the commissioner to adopt by rule a valuation manual that is substantially

similar to the National Association of Insurance Commissioners (NAIC) Valuation Manual.

Under Insurance Code §425.073(c), when the NAIC adopts changes to its valuation manual, the commissioner must adopt substantially similar changes. This subsection also requires the commissioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 14, 2026, the NAIC voted to adopt changes to the valuation manual. Fifty-one jurisdictions, representing jurisdictions totaling 97.67% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The votes adopting changes to the NAIC Valuation Manual meet the requirements of Insurance Code §425.073(c).

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt the NAIC's changes. In addition, under Insurance Code §36.007, the commissioner cannot adopt or enforce a rule implementing an interstate, national, or international agreement that infringes on the authority of this state to regulate the business of insurance in this state, unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit this proposal because Insurance Code §425.073 requires the Texas insurance commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC, and §425.073(c) expressly requires the commissioner to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2027 NAIC Valuation Manual includes changes that:

- update the Principle-Based Reserving (PBR) credit rating maps to use the more granular NAIC designation subcategories;
- make the reinvestment credit quality guardrail both less constraining and more consistent across different PBR frameworks in VM-20, VM-21, and VM-22;
- allow companies to reflect the benefit of aggregation in the VM-20 stochastic reserve calculation; and
- set up a statistical plan for Group Annuity Mortality to allow for mortality data collection and industry table construction.

The NAIC's adopted changes to the valuation manual can be viewed at https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_red-line.pdf.

A description of the section's proposed amendment follows.

Section 3.9901. The amendment to §3.9901 replaces the date the NAIC adopted its previous valuation manual with the date the NAIC adopted its current valuation manual, adopting by reference the new valuation manual dated August 14, 2026.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendment, other than that imposed by statute. Ms. Walker made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in statute. Insurance Code §425.073 requires that changes to the valuation manual be adopted by rule and be substantially similar to changes adopted by the NAIC. As a result, the cost associated with adopting the changes to the valuation manual is a direct result of Insurance Code §425.073 and not a result of the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because the amendment does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendment is necessary to implement legislation. The proposed rule implements Insurance Code §425.073, as added by Senate Bill 1654, 84th Legislature, 2015.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 26, 2026. Consistent with Government Code §2001.024(a)(8), TDI requests public comments on the proposal, including information related to the cost, benefit, or effect of the proposal and any applicable data, research, and analysis. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2873 at 2 p.m., central time, on Tuesday, September 29, 2026. TDI will hold the public hearing remotely using online resources and in person at the Stephen F. Austin State Office Building, 1700 Congress Avenue, Austin, Texas 78701 in Room 170. Details on how to view and participate virtually in the public hearing will be made available on TDI's website at www.tdi.texas.gov/alert/event/index.html.

STATUTORY AUTHORITY. TDI proposed the amendment to §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to adopt by rule changes to the valuation manual previously adopted by the commissioner that are substantially similar to any changes adopted by NAIC to its valuation manual. Section 425.073 also requires that after a valuation manual has been adopted by rule, any changes to the valuation manual must also be adopted by rule.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073.

§3.9901. Valuation Manual.

(a) The commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 14, 2026, [43, 2025,] as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

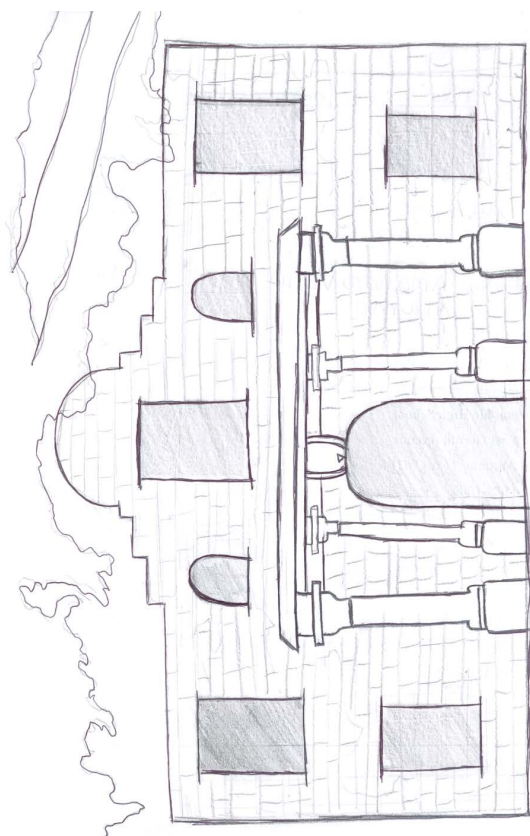
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 14, 2026.

TRD-202603966

Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 25, 2026
For further information, please call: (512) 656-6777





ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8070

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8070, concerning Hospital Augmented Reimbursement Program (HARP).

Section 355.8070 is adopted without changes to the proposed text as published in the August 7, 2026, issue of the *Texas Register* (51 TexReg 5040). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §355.8070 establishes a calculation that allows any unused HARP payment room to be distributed to other eligible hospitals within the same class based on an allocation proportionate to the remaining Medicaid charges that exceed all Medicaid payments, including supplemental payments and the portion of HARP payments attributable to the inpatient fee-for-service (FFS) Medicare payment gap.

A previous amendment to §355.8070, related to the HARP program, was adopted and effective on April 2, 2025. That amendment added the Centers for Medicare & Medicaid Services (CMS) definition of a nominal charge provider and clarified that the payment methodology for HARP payments will limit inpatient Medicaid payments, so they do not exceed inpatient Medicaid charges for all providers, except those that meet the Medicare definition of a nominal charge provider.

This amendment establishes a mechanism to distribute any unused payment room after the limitation is applied to other eligible hospitals within the same class. This amendment also includes edits to correct grammar and punctuation, spell out acronyms for clarity, and reorganize parts where necessary.

COMMENTS

The 14-day comment period ended on August 21, 2026.

HHSC received comments regarding the proposed rule from four commenters. HHSC received comments from Teaching Hospitals of Texas (THOT), Medical Center Health System, Parkland

Health, and the Texas Hospital Association (THA). A summary of comments relating to the rule and HHSC's responses follow.

Comment: Multiple commenters supported the rule amendment to distribute unused HARP payment capacity to other eligible hospitals within the same hospital class. The commenters stated that it is a reasonable and efficient amendment to the existing HARP methodology and that redistribution based on each eligible hospital's excess inpatient Medicaid fee-for-service charges is fair and administratively practical.

Response: HHSC appreciates the supportive comments. No revision to the rule was made in response to these comments.

Comment: A commenter supported the rule amendment and recommended spelling out payment methodologies for classes of hospitals that do not currently receive HARP, such as private institutions for mental diseases (IMDs), state government-owned hospitals, and state-government-owned IMDs.

Response: HHSC appreciates the comment and understands the desire to expand and include this payment methodology to the listed HARP provider classes. However, these additional hospital classes have not yet been approved by CMS for HARP supplemental payments and are not eligible for the program at this time. No revision to the rule was made in response to the comment.

STATUTORY AUTHORITY

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

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

Filed with the Office of the Secretary of State on September 11, 2026.

TRD-202603949

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) adopts amendments to §§89.1005, 89.1040, 89.1075, 89.1121, and 89.1125; the repeal of §89.1092 and §89.1094; and new §89.1092 and §89.1094, concerning special education services. The amendments to §§89.1005, 89.1121, and 89.1125 and the repeal of §89.1092 and §89.1094 are adopted without changes to the proposed text as published in the May 15, 2026 issue of the *Texas Register* (51 TexReg 3189) and will not be republished. The amendments to §89.1040 and §89.1075 and new §89.1092 and §89.1094 are adopted with changes to the proposed text as published in the May 15, 2026 issue of the *Texas Register* (51 TexReg 3189) and will be republished. The adopted revisions clarify and align requirements related to instructional arrangements, eligibility and placement, general program operations, and the distribution and allowable use of state special education funds and update approval, oversight, reporting, and funding requirements for residential and day placement programs to align with House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025.

REASONED JUSTIFICATION: The adopted amendment to §89.1005 updates provisions governing instructional arrangements and educational environments to align with the revised state special education funding framework enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The adopted amendment updates terminology, clarifies transition-period reporting requirements, and specifies how admission, review, and dismissal (ARD) committee placement decisions are reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) to support consistent statewide reporting under the revised funding framework.

The adopted amendment to §89.1040 updates eligibility criteria for special education and related services to support consistent statewide implementation. To improve clarity, the adopted amendment addresses evaluation procedures and eligibility determinations, including requirements for full individual and initial evaluations and reevaluations. Based on public comment, the rule text was revised at adoption to clarify standards for intellectual disability evaluations, incorporate Early Childhood Intervention (ECI) evaluations as data for developmental delay eligibility determinations, require consideration of factors that may affect the validity of assessment instruments and evaluation results, and update references from "licensed specialist in school psy-

chology" to "school psychologist" to align with statutory changes. Together, the adopted changes strengthen consistent and accurate identification of students eligible for special education and related services across the state.

The adopted amendment to §89.1075 addresses general program requirements and local district procedures to support consistent statewide implementation. The adopted amendment updates statutory cross references, clarifies documentation and contracting requirements, revises the timeline for providing prior written notice to parents, and specifies training requirements for district transition and employment designees. Based on public comment, subsection (h) was revised at adoption to maintain the original rule text requiring at least five school days' prior written notice until July 1, 2027, allowing school systems time to transition and implement the updated requirement, while clarifying language access requirements.

New §89.1075(i) was added at adoption to implement the transition to a ten-calendar-day prior written notice requirement, beginning July 1, 2027, and subsection (j) was revised to require annual completion of training by the transition and employment designee.

Section 89.1092 is repealed and adopted as a new rule. The new rule reorganizes and clarifies requirements applicable to residential placement programs used to provide free appropriate public education (FAPE) to students with disabilities. The new language also clarifies approval, reapproval, and monitoring requirements for providers; distinguishes between ARD committee-placed and non-ARD committee-placed residential placements; and updates requirements related to contracts, onsite monitoring, notice to TEA, and funding. Funding and reporting provisions are aligned with statutory changes enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, while other revisions clarify existing oversight and procedural expectations specific to residential placements.

Section 89.1094 is repealed and adopted as a new rule. The new rule revises the structure and oversight of public and private day placement programs used to provide FAPE. The new language also clarifies distinctions between district-operated, non-district-operated, and private day placement programs; refines approval, reapproval, and monitoring requirements for program administrators and providers; and updates contracting, onsite reviews, notice, and funding eligibility provisions. The provisions align day placement program requirements with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, by reflecting the revised state special education funding framework and eligibility for the day placement allotment, while also organizing and clarifying existing administrative and procedural requirements. At adoption, subsection (h) was revised to add the term "day" for consistency with the section and to clarify that the requirements apply to day placement programs.

The adopted amendment to §89.1121 updates the distribution of state special education funds to reflect the transition from instructional arrangements to tiers and service groups in accordance with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The amendment requires state special education funding to be based on assigned tiers and service groups under Texas Education Code (TEC), §48.102 and §48.1021; establishes transition-year funding for the 2026-2027 school year under TEC, §48.1022; and clarifies reporting through the Student Attendance Accounting Handbook adopted under 19 TAC §129.1025. These changes support consistent statewide implementation of the tier- and service group-based funding structure.

The adopted amendment to §89.1125 clarifies how state special education funds may be used under the revised funding framework enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The adopted amendment specifies permissible uses of state special education funds and reinforces that such funds must be used to support special education and related services in accordance with students' individualized education program and applicable funding requirements. The adopted changes promote transparency, consistency, and compliance in the use of state special education funds.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 15, 2026, and ended June 15, 2026, and included public hearings on June 4 and 5, 2026. Following is a summary of public comments received and agency responses.

§89.1005, Instructional Arrangements and Educational Environments

Comment: The Texas Council of Administrators of Special Education (TCASE) commented in support of the proposed revisions, including the phased timeline and delayed data reporting, but raised concerns about significant implementation burdens, ongoing underfunding, and potential funding risks, requesting additional flexibility, extended hold harmless through the 2027-2028 school year, and continued guidance and support.

Response: The agency disagrees that revisions are necessary, as TEC, §48.1022, establishes the timeline for the implementation of the new funding model. The comments related to funding levels, extended hold harmless provisions, and additional flexibility are outside the scope of the proposed rulemaking.

Comment: An individual commented in support of the revisions, emphasizing the need for clear guidance, implementation tools, and stronger oversight focused on instructional quality, noting district challenges with staffing and resources.

Response: The agency agrees and will continue to provide guidance through technical assistance.

Comment: Disability Rights Texas (DRTx) recommended revising 19 TAC §89.1005(c)(1), to exclude time spent in disciplinary settings from general education placement calculations, citing concerns about service interruptions and inaccurate reporting of student access to inclusive educational settings.

Response: The agency disagrees. The rule defines a general education setting and if a disciplinary setting meets the definition, then it would be considered a general education setting under this rule.

§89.1040, Eligibility Criteria

Comment: The Texas Fetal Alcohol Spectrum Disorders Network and one individual recommended amending §89.1040 to explicitly include fetal alcohol spectrum disorders (FASD) under Other Health Impairment (OHI), citing inconsistent eligibility determinations, misclassification of students (including under autism), and the need for improved data accuracy, appropriate supports, and better student outcomes.

Response: The agency disagrees. Limiting FASD to OHI only may not be appropriate for educational purposes. Eligibility must remain individualized based on a student's specific needs; however, FASD may be considered under OHI in some cases.

Comment: DRTx recommended revising proposed intellectual disability eligibility criteria in §89.1040 to add safeguards to

ensure eligibility determinations are based on multiple sources of individualized, evidence-based data and prohibit reliance on stereotypes or generalizations, citing concerns about misidentification.

Response: The agency agrees that eligibility determinations must be based on multiple sources of individualized data, consistent with Individuals with Disabilities Education Act (IDEA) requirements. The agency has revised the rule text in §89.1040(c)(5)(A)(ii) at adoption to clarify this standard.

Comment: DRTx recommended revising developmental delay provisions to clarify that multidisciplinary teams may consider ECI eligibility and evaluation data to support continuity of services when students transition to the public school system.

Response: The agency agrees and has revised the rule text in §89.1040(c)(13) at adoption to incorporate the use of ECI evaluations as part of the data considered for developmental delay.

Comment: The Austin/Travis County Success By 6 Coalition and Texans Care for Children commented in support of clearer developmental delay criteria but recommended stronger alignment between IDEA, Part C (ECI) and Part B, including aligning eligibility criteria, recognizing ECI evaluation data, reducing duplicative evaluations, and improving transition coordination to promote continuity of services and prevent service gaps for young children.

Response: The agency disagrees that a change is necessary at this time because the recommendation is outside the scope of this rulemaking. However, the agency will continue to collaborate with the Health and Human Services Commission, which administers IDEA, Part C, and other stakeholders to discuss the need for any future amendments that may be proposed on this topic.

Comment: The Texas Association of School Psychologists supported the proposed revisions but requested clarification of the developmental delay age range, additional safeguards to prevent misidentification of emergent bilingual students under intellectual disability criteria, and updates to reflect the statutory title change from "licensed specialist in school psychology" to "school psychologist."

Response: The agency agrees in part and disagrees in part. The agency has revised the rule text at adoption to reflect the statutory change in title from "licensed specialist in school psychology" to "school psychologist." The agency disagrees that revisions are necessary regarding the age range for developmental delay, as the proposed rule is consistent with applicable state and federal requirements. The agency will provide clarification through technical assistance regarding the identification of emergent bilingual students to support appropriate evaluation and eligibility determinations.

Comment: An individual raised concerns about the proposed intellectual disability and visual impairment eligibility criteria, citing risks of misidentification for students with sensory, communication, motor, neurological, and developmental disabilities and recommended stronger requirements to consider access needs, multidisciplinary evaluation, and reduced reliance on medical diagnosis for visual impairment eligibility.

Response: The agency disagrees that additional amendments are necessary at this time. However, the agency intends to seek additional stakeholder feedback regarding the eligibility criteria, and will consider protentional future revisions to the rule text based on that feedback.

§89.1075, General Program Requirements and Local District Procedures

Comment: TCASE opposed extending the prior written notice timeline from five school days to ten calendar days, citing potential delays in admission, review, and dismissal meetings and service implementation, reduced flexibility, and risks of outdated individualized education programs and recommended maintaining the current timeline or allowing flexibility by mutual agreement.

Response: The agency disagrees that the timeline should remain at five school days because a ten-calendar-day timeline better supports meaningful parent participation. However, based on public comment, implementation of the ten-calendar-day requirement has been delayed until July 1, 2027, to allow school systems time to prepare for the change.

DIVISION 1. GENERAL PROVISIONS

19 TAC §89.1005

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures;

and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

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

Filed with the Office of the Secretary of State on September 14, 2026.

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DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §89.1040, §89.1075

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used

in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

§89.1040. Eligibility Criteria.

(a) Special education and related services. To be eligible to receive special education and related services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), Texas Education Code (TEC), Chapter 29, Subchapter A, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include in its report any situations, conditions, or circumstances that might impact the validity of an evaluation instrument or assessment used in the data collection or review process, and the team must include, but is not limited to, the following:

(1) a school psychologist, an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). A determination of whether a student meets the criteria for autism as stated in 34 CFR, §300.8(c)(1), cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. The absence of other characteristics often associated with autism listed in 34 CFR, 300.8(c)(1), does not exclude a student from meeting eligibility as a student with autism. The team's written report of evaluation must include specific recommendations for communication, social interaction, and positive behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsection (c)(3) and (12) of this section:

(A) meets the eligibility criteria for a student who is deaf or hard of hearing specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for a student who is deaf or hard of hearing or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without the provision of special education services, will adversely affect the student's educational performance.

(3) Deaf or hard of hearing.

(A) A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for students who have a hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing must include an audiological evaluation performed by a licensed audiologist and a communication assessment completed by the multidisciplinary team. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended hearing assistive technology.

(B) A child under three years of age meets the criteria for deaf or hard of hearing if the student's record indicates that the child is experiencing a developmental delay because of hearing loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.

(4) Emotional disability. A student with an emotional disability is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for positive behavioral supports and interventions. The term emotional disability is synonymous with the term emotional disturbance and serious emotional disturbance, as these terms are used in federal or state law pertaining to students eligible for special education and related services.

(5) Intellectual disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by:

(i) a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; or

(ii) the convergence of a body of evidence from multiple direct and indirect sources after an individually administered test of cognitive abilities has been attempted or completed and the multidisciplinary team determines that standardized measures of cognitive ability are invalid, inaccessible, or inappropriate and explains why they are invalid, inaccessible, or inappropriate; and

(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), that a combination of impairments causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disabilities are expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

- (I) psychomotor skills;
- (II) self-care skills;
- (III) communication;
- (IV) social and emotional development; or
- (V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

(C) Multiple disabilities does not include deaf-blindness.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). A student's

eligibility based on an orthopedic impairment must include a medical diagnosis provided by a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). A student's eligibility based on other health impairment must include identification or confirmation of the student's chronic or acute health problem provided by a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.

(9) Specific learning disability.

(A) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disability; or environmental, cultural, or economic disadvantage.

(B) A student with a specific learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;

(ii) when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), repeated performance on progress monitoring measures, norm- or criterion-referenced tests, and statewide assessments, does not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:

- (I) oral expression;
- (II) listening comprehension;
- (III) written expression, which includes, but is not limited to, dysgraphia;
- (IV) basic reading skill, which includes dyslexia;
- (V) reading fluency skills, which includes dyslexia;
- (VI) reading comprehension;
- (VII) mathematics calculation; or
- (VIII) mathematics problem solving;

(iii) meets one of the following criteria:

(I) does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I)-(VIII) of this subparagraph when using a process based on the student's response to scientific, research-based intervention; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §300.304 and §300.305; and

(iv) does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:

- (I) a visual, hearing, or motor disability;
- (II) an intellectual disability;
- (III) emotional disability;
- (IV) cultural factors;
- (V) environmental or economic disadvantage; or
- (VI) being emergent bilingual.

(C) As part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.304-300.311, the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required when determining whether a student has a specific learning disability.

(D) In order to ensure that underachievement by a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code, §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, intervention progress monitoring results and reports, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(E) The school district must ensure that the student is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the multidisciplinary team must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) or (c)(9)(F) of this section conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) or (c)(9)(F) of this section must observe the student in an environment appropriate for a student of that age.

(F) The determination of whether a student suspected of having a specific learning disability is a child with a disability as defined in 34 CFR, §300.8, must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of chil-

dren such as a school psychologist, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:

(i) the student's general education teacher;

(ii) if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; or

(iii) for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.

(G) Suspicion, and the identification, of dyslexia or dysgraphia, in addition to the requirements of subparagraphs (A)-(F) of this paragraph, must include consideration of the following:

(i) when the specific learning disability of dyslexia is suspected or characteristics of dyslexia have been observed from a reading instrument administered under TEC, §28.0063, or a dyslexia screener under TEC, §38.003, the team established under subsections (b) and (c)(9)(F) of this section must include a professional who meets the requirements under TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule;

(ii) an evaluation for dyslexia or dysgraphia must include all of the domains or other requirements listed in TEC, §38.003, and §74.28 of this title, including any handbook adopted in the rule;

(iii) when identifying dyslexia and determining eligibility or continued eligibility for special education and related services, the ARD committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title, including any handbook adopted in the rule; and

(iv) when a student is identified with dyslexia and/or dysgraphia, the terms dyslexia and/or dysgraphia, as appropriate, must be used in a student's evaluation report. See §89.1055 of this title (relating to Individualized Education Program) for documenting in the individualized education program. For formal eligibility purposes under special education, the category of specific learning disability will be reported by a school district.

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). A student's eligibility based on a traumatic brain injury must include a medical diagnosis provided by a licensed physician.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR, §300.39(b)(3), and must include:

(i) a medical report by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has:

(I) no vision or visual loss after correction; or

(II) a progressive medical condition that will result in no vision or a visual loss after correction;

(ii) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation;

(iii) a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area; and

(iv) as part of the full individual and initial evaluation, an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The orientation and mobility evaluation must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community, and in settings unfamiliar to the student.

(B) A person who is appropriately certified as an orientation and mobility specialist must participate in an initial eligibility determination and any reevaluation as part of the multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.

(C) A child under three years of age meets the criteria for visual impairment if the child's record indicates that the child is experiencing a developmental delay because of vision loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.

(13) Developmental delay. A student with developmental delay is one who is between the ages of three through nine who is evaluated by a multidisciplinary team for at least one disability category listed in paragraphs (1)-(12) of this subsection and whose evaluation data, including Early Childhood Intervention (ECI), if applicable, indicates a need for special education and related services and shows evidence of, but does not clearly confirm, the presence of the suspected disability or disabilities due to the child's young age. In these cases, an ARD committee may determine that data supports identification of developmental delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. To use this eligibility category, multiple sources of data, including ECI, evaluation data, when available, must converge to indicate the student has a developmental delay as described by one of the following:

(A) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 2 standard deviations below the mean or at the 2nd percentile of

performance, when taking into account the standard error of measurement (SEM), in one area of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delay in that area;

(B) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 1.5 standard deviations below the mean or at the 7th percentile of performance, when taking into account the SEM, in at least two areas of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delays in those areas; or

(C) a body of evidence from multiple direct and indirect sources, such as play-based assessments, information from the student's parent, interviews, observations, work samples, checklists, and other informal and formal measures of development, that clearly document a history and pattern of atypical development that is significantly impeding the student's performance and progress across settings when compared to age-appropriate expectations and developmental milestones in one or more areas of development as listed in this paragraph.

(14) Noncategorical. A student between the ages of three through five who is evaluated as having an intellectual disability, an emotional disability, a specific learning disability, or autism may be described as noncategorical early childhood.

(d) Developmental delay eligibility guidelines. Developmental delay, as described in subsection (c)(13) of this section, and noncategorical, as described in subsection (c)(14) of this section, may be used within the following guidelines.

(1) No school district will be required to use the eligibility category of developmental delay; however, if a district chooses to use this eligibility category, it must use the definition and criteria described in subsection (c)(13) of this section.

(2) If a school district chooses to use the eligibility category described in subsection (c)(13) of this section, it may do so beginning with the 2024-2025 school year.

(3) The eligibility category of noncategorical, as described in subsection (c)(14) of this section, must no longer be used by any school district beginning with the 2025-2026 school year. Any eligible student who begins the 2025-2026 school year already identified under subsection (c)(14) of this section may maintain this eligibility category, if determined appropriate by the student's ARD committee, until the required re-evaluation before the age of six.

§89.1075. General Program Requirements and Local District Procedures.

(a) Each school district must maintain an eligibility folder for each student receiving special education and related services, in addition to the student's cumulative record. The eligibility folder must include, but will not be limited to, copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs) and supporting data.

(b) Each school district must develop policies, procedures, programs, and practices that are consistent with the state's established policies, procedures, programs, and services to implement the Individuals with Disabilities Education Act.

(c) For school districts providing special education services to students with visual impairments, students who are deaf or hard of hearing, or students who are deafblind, there must be written procedures as required in Texas Education Code (TEC), §30.002(c)(9).

(d) Each school district must ensure that each teacher who provides instruction to a student with disabilities:

(1) has access to relevant sections of the student's current IEP;

(2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and

(3) has an opportunity to request assistance regarding implementation of the student's IEP.

(e) Each school district must develop a process to be used by a teacher who instructs a student with a disability in a general education classroom setting:

(1) to request a review of the student's IEP;

(2) to provide input in the development of the student's IEP;

(3) that provides for a timely district response to the teacher's request; and

(4) that provides for notification to the student's parent or legal guardian of that response.

(f) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.

(g) School districts that contract for services for day or residential program placements must do so in accordance with 34 Code of Federal Regulations (CFR), §300.147, and §89.1092 and §89.1094 of this title (relating to Residential Placement Programs for the Provision of a Free Appropriate Public Education (FAPE) and Day Placement Programs for the Provision of a Free Appropriate Public Education (FAPE)).

(h) This subsection is effective until July 1, 2027. Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(i) Beginning July 1, 2027, whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least 10 calendar days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(j) The transition and employment designee required of each school district or shared services arrangement by TEC, §29.011, must complete the required training annually as developed by the commissioner of education within 90 calendar days of being initially designated and each time the training is updated by the commissioner. The designee must provide information about transition requirements and coordination among parents, students, and appropriate state agencies to ensure that school staff can communicate and collaborate effectively.

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

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Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



19 TAC §89.1092, §89.1094

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to

provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

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

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19 TAC §89.1092, §89.1094

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special

education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

§89.1092. Residential Placement Programs for the Provision of a Free Appropriate Public Education (FAPE).

(a) In accordance with Texas Education Code (TEC), §29.008, the commissioner of education shall maintain a list of approved residential placement programs that school districts may contract with for the provision of a free appropriate public education (FAPE) when a student's admission, review, and dismissal (ARD) committee determines the placement to be the least restrictive environment for the student. The school district that contracts with the residential program provider retains the obligation to ensure the student is provided with a FAPE in accordance with the student's individualized education program (IEP).

(b) For purposes of TEC, §29.008, educational environments described by §89.1005 of this title (relating to Instructional Arrangements and Educational Environments), the Texas Student Data System Public Education Information Management System, and this section, residential placements shall be distinguished between ARD committee-placed and not ARD committee-placed.

(c) Each school district, program, and provider must comply with all residential placement program requirements as part of the comprehensive system established and maintained under TEC, §29.001(c). The Texas Education Agency (TEA) will share any changes in requirements with all current approved and prospective providers as well as impacted districts.

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

(1) Provider--a public or private facility, institution, agency, or business as described in TEC, §29.008, with one or more residential placement program facilities that is approved to contract with a school district for the provision of special education and related services in a residential setting when the school district is unable to provide those services. A provider that contracts with a school district solely for the provision of related services is not subject to the requirements of this section.

(2) Residential placement-ARD committee-placed--a residential placement that includes the provision of special education and related services to one or more Texas public school students in a public or private residential program by a residential program provider, when the placement has been determined by the student's ARD committee to require a residential placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a FAPE. The placement is not intended for the provision of medical care or treatment.

(3) Residential placement-not ARD committee-placed--a residential placement that includes the provision of special education and related services to one or more Texas public school students in a residential facility as defined by TEC, §5.001(8), when the placement is not determined by the student's ARD committee.

(4) School district--includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(e) This section does not apply to residential placements that are not ARD committee-placed; placements in correctional facilities; court-ordered placements; ARD committee placements at Texas School for the Blind and Visually Impaired; ARD committee placements or parent placements at the Texas School for the Deaf; or placements in a state supported living center.

(f) TEA shall periodically solicit applications from residential placement program providers that seek to contract with school districts for the provision of services and shall accept applications from program providers on an ongoing basis. A current contract for student placement with a school district is not required in order to be considered for approval.

(g) All contracts for residential placements under this section must be approved by TEA. A school district must utilize TEA's list of approved residential placement program providers when considering residential placement for a student. If the school district wishes to contract with a provider not on the list, the provider must submit an application to TEA.

(h) An approved residential placement program provider that operates more than one residential placement program facility must obtain approval for each facility if the provider plans to contract with school districts for services at those facilities.

(i) A residential placement program provider must meet minimum standards established by TEA to be approved and to remain in approved status. The minimum standards will address, but not be limited to, the following:

(1) requirements regarding appropriate certification or licensure for those who will work with students placed in the program;

(2) academic and behavioral curriculum content requirements and expectations;

(3) criminal background check requirements that must be at least equivalent to those required of public school employees;

(4) health and safety standards and any local or state accreditation and permit requirements;

(5) physical plant and equipment requirements;

(6) written policies, procedures, and operating guidelines that must include necessary standards and steps to be followed to ensure each student maintains the same rights as other public school students with disabilities, including when a student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and

(7) fee schedules and guidelines for establishing fees for services.

(j) Once initially approved, a residential placement program provider must go through a reapproval process at least once every five years unless TEA has withdrawn approval before the end of the approval period or the provider has withdrawn its provider status before the end of the approval period. A provider seeking reapproval shall submit interest in reapproval in accordance with timelines and materials published by TEA. If a previously approved provider wants to be considered for approval again after its approval has expired or has been withdrawn, the provider must reapply as if the provider was seeking initial approval. Additionally:

(1) TEA may impose conditions on a residential placement program provider as necessary to ensure the provision of a FAPE for students placed in the residential placement program during the provider's approval period or while the provider is undergoing reapproval; and

(2) if TEA denies approval, denies reapproval, or withdraws approval of a residential placement program provider, a school district must take steps to remove any student currently placed in the program, or cancel a planned placement, as expeditiously as possible.

(k) TEA may conduct announced or unannounced onsite visits of a residential placement program that is serving one or more Texas public school students under this section and will monitor the program provider's compliance with the requirements of this section.

(l) Before a student's ARD committee places a student in, or refers a student to, a residential placement program, the ARD committee shall convene a meeting to review and revise as necessary an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.320-300.325, applicable state statutes, and commissioner rules in this chapter to ensure that all IEP statements, descriptions, and explanations reflect the student's current academic, functional, and developmental needs. The ARD committee must:

(1) determine whether the purpose of the placement or referral for placement is for educational purposes. An ARD committee is prohibited from placing a student in a residential placement program solely for treatment or medical issues or issues in the home, as the committee's main responsibility is to comply with the Individuals with Disabilities Education Act (IDEA) and applicable state law regarding special education; and

(2) determine whether the proposed residential placement program is the least restrictive environment that can provide FAPE to the student, unless in an emergency situation, as determined by the ARD committee and documented in the IEP.

(m) The district shall initiate and conduct an in-person, on-site review of the approved program provider's facility and program to ensure that the program is appropriate for meeting the student's func-

tional, developmental, and instructional needs before placement in the program.

(n) The student's ARD committee may only recommend a residential placement program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in a less restrictive environment. Additionally, the following requirements apply.

(1) The student's IEP must list which individualized supports and services the school district is unable to provide and which services the residential placement program will provide.

(2) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to a less restrictive environment and document this information in the IEP.

(o) The appropriateness of the placement and the program shall be documented in the IEP at least annually. The student's progress towards reintegration, the appropriateness of the reintegration criteria, and the projected reintegration date shall be documented in the IEP at least annually.

(p) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:

(1) review academic and behavioral data to verify that the program provider is implementing IEP services and any other contractual obligations, including meeting the TEA minimum standards; and

(2) verify that the educational program provided is appropriate for the student and the placement continues to be the least restrictive environment for the student.

(q) The placement of more than one student in the same program may be considered in the same onsite visit to the facility. However, the IEP of each student must be individually reviewed and a determination must be made for each student regarding the appropriateness of placement and services to be provided.

(r) Within 30 calendar days from an ARD committee's decision to place a student in an approved residential placement program, a school district must electronically submit to TEA notice of the placement and the fully executed contract in accordance with submission procedures specified by TEA.

(1) The contract for an individual student recommended for or placed in an approved residential placement program shall be reviewed by TEA. Under no circumstances shall a contract violate the minimum standards or program's established guidelines that were included as part of the provider's approval process.

(2) TEA will give the parties an opportunity to amend a contract that does not comply with the minimum standards or contains language or terms that preclude agency approval of the contract.

(3) Contracts between school districts and approved residential placement program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change to the contract. TEA has authority to approve or deny these amendments. If denied, the parties will be given an opportunity to further amend the contract to address the issue or issues that precluded TEA approval.

(s) The cost of residential placement programs will be funded according to TEC, §§29.008, 48.102, 48.1021, and 48.1022; §89.1005

of this title; §129.1025 of this title; and local and federal funds as necessary and appropriate.

(1) For approved contracts effective through July 31, 2027, each approved contract for a residential placement program shall be funded as follows:

(A) through the assigned tier and service group(s) in accordance with TEC, §48.102 and §48.1021;

(B) through a school district's local tax share as described by TEC, §29.008(b);

(C) through a reservation by the school district of 25% of its IDEA-B formula-base planning amount (or the equivalent amount of state and/or local funds); and

(D) through a reimbursement process only to the extent that the funding described in subparagraphs (A)-(C) of this paragraph are insufficient to cover the full costs of a residential placement, if the school district applies and meets all requirements to receive such reimbursement through TEA's IDEA-B discretionary residential fund set-aside.

(2) Beginning with approved contracts as of August 1, 2027, each approved contract for a residential placement program shall be funded as follows:

(A) through the assigned tier and service group(s) in accordance with TEC, §48.102 and §48.1021; and

(B) through a combination of state, local, and federal funds.

(t) School districts that contract for out-of-state residential programs shall do so in accordance with this section, except that the program provider must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.

(u) If a residential placement program is ordered by a special education hearing officer or court of competent jurisdiction, the school district shall notify TEA of the order within 30 calendar days. The program provider serving the student is not required to complete the approval procedures described in this section for the ordered placement. If, however, the school district or other school districts intend to place other public school students in the program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(v) When a student who is placed by a school district in a residential placement program changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract until July 31 or to the end of the contract period if earlier than July 31. This does not prohibit the new resident district from establishing its own contract with the approved provider and notifying the former district and TEA that the new district will take responsibility.

(w) Approved providers with current contracts for student placements entered into prior to September 1, 2026, or the effective date of the most recent amendments to this section, whichever is later, shall have until January 1, 2027, to become compliant with all current TEA requirements for residential placement programs if they wish to remain on the approved list. TEA may grant exceptions to this deadline in extenuating circumstances.

§89.1094. Day Placement Programs for the Provision of a Free Appropriate Public Education (FAPE).

(a) In accordance with Texas Education Code (TEC), §29.008, the commissioner of education shall maintain a list of approved day

placement programs that school districts may contract with for the provision of a free appropriate public education (FAPE) when a student's admission, review, and dismissal (ARD) committee determines the placement to be the least restrictive environment for the student. The school district that contracts with the day placement program provider retains the obligation to ensure the student is provided with a FAPE in accordance with the student's individualized education program (IEP).

(b) For purposes of TEC, §29.008 and §48.304, educational environments described by §89.1005 of this title (relating to Instructional Arrangements and Educational Environments), the Texas Student Data System Public Education Information Management System, and this section, day placement programs shall be distinguished between private and public day placement programs.

(c) Each school district, program administrator, and provider must comply with all day placement program requirements as part of the comprehensive system established and maintained under TEC, §29.001(c). The Texas Education Agency (TEA) will share any changes in requirements with all current approved and prospective providers as well as impacted districts.

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

(1) Private day placement program--a private day placement program includes the provision of special education and related services to one or more Texas public school students for more than 50% of the student's instructional day in a classroom or facility operated by a private provider contracted by a school district. The classroom or facility may be privately or publicly owned and may be on a district campus or other district facility. When a private day placement program that is operating in or on a publicly owned classroom or facility such as a district campus or other district facility and the program is set up to accept students from other districts, a school district wishing to place a student in the operating school district's (program administrator's) program may contract directly with the operating school district (program administrator) since the private provider has already been approved by TEA.

(2) Private provider--a private facility, institution, entity, agency, or business inside or outside of Texas that is approved to contract with a school district for the provision of special education and related services in a day placement program when the school district is unable to provide the services. A provider that a school district contracts with only for the provision of related services is not subject to the requirements of this section.

(3) Program administrator--a public or private provider that administers a day placement program as part of a cooperative available for districts to contract with on an as-needed basis.

(4) Public day placement program--district operated--a public day placement program--district operated includes the provision of special education and related services to Texas public school students from more than one school district by personnel employed by the operating school district (program administrator) for more than 50% of the student's instructional day in a classroom or facility owned and operated by the operating school district (program administrator), but the classroom or facility is not housed on a regular campus. A school district program that provides special education and related services to one or more of its resident (enrolled) students by district personnel for more than 50% of the student's instructional day in a classroom or facility owned or operated by the school district, but the classroom or facility is not housed on a regular campus is not subject to the requirements of this rule regarding establishment and approval, but the district

shall still report the establishment and operation of these programs in accordance with a schedule and method prescribed by TEA.

(5) Public day placement program--non-district operated--a public day placement program--non-district operated includes the provision of special education and related services to one or more Texas public school students for more than 50% of the student's instructional day by personnel employed with or contracted by an education service center (ESC) or the Harris County Department of Education (HCDE) in a classroom or facility owned or leased by the ESC, HCDE, or a district with which an ESC or HCDE is contracting to provide services.

(6) Public provider--a school district, an ESC, or HCDE approved to operate a public day placement program.

(7) Regular campus--a public school campus that is designed primarily to teach the general education curriculum to students with and without disabilities.

(8) School district--the definition of a school district includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(e) This section does not apply to placements in Head Start programs; at Texas School for the Blind and Visually Impaired; at Texas School for the Deaf; in transition-focused programs at district and community facilities for students who have met requirements for graduation and received a diploma but are continuing or have returned for the provision of services as authorized under §89.1070(b)(2) or (c)(1)-(3) of this title (relating to Graduation Requirements); in centralized locations for children receiving early childhood special education services; in a Regional Day School Program for the Deaf; or any program made for purposes other than ensuring the provision of a FAPE.

(f) To the extent that school districts are part of a shared services arrangement (SSA) for the provision of special education and related services and where those services are provided in a centralized location for only those districts that are members of the SSA, this section shall not apply. However, to the extent that an SSA allows students from districts that are not members of the SSA to be accepted into the SSA's centralized location's program, or when an SSA contracts with a private provider that would be subject to this rule, this section shall apply.

(g) TEA shall periodically solicit applications from public and private day placement program providers that wish to operate or provide day placement programs and services. TEA shall also accept applications from public and private providers on an ongoing basis. A current contract for student placement with a school district is not required in order to be considered for approval.

(h) All contracts for day placements under this section must be approved by TEA. A school district must utilize TEA's list of approved day placement program providers when considering day placement for a student. If the school district wishes to contract with a provider not on the list, the provider must submit an application to TEA.

(i) An approved private provider that wishes to replicate a current program with another school district must receive approval from TEA prior to establishing a new program.

(j) A school district that operates as an approved program administrator shall notify TEA within 30 calendar days from an ARD committee's decision to place its own enrolled student in its approved program.

(k) A public or private day placement program provider must meet minimum standards established by TEA to be approved and to

remain in approved status. The minimum standards will address, but not be limited to, the following:

- (1) requirements regarding appropriate certification or licensure for those who will work with students placed in the program;
- (2) academic and behavioral curriculum content requirements and expectations;
- (3) criminal background check requirements that must be at least equivalent to those required of public school employees;
- (4) health and safety standards and any local or state accreditation and permit requirements;
- (5) physical plant and equipment requirements;
- (6) written policies, procedures, and operating guidelines that must include necessary standards and steps to be followed to ensure each student maintains the same rights as other public school students with disabilities, including when a student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and
- (7) fee schedules and guidelines for establishing fees for services.

(l) Once initially approved, a day placement program provider must go through a reapproval process at least once every five years unless TEA has withdrawn approval before the end of the approval period or the provider has withdrawn its provider status before the end of the approval period. A provider seeking reapproval shall submit interest in reapproval in accordance with timelines and materials published by TEA. If a previously approved provider wants to be considered for approval again after its approval period has expired or has been withdrawn, the provider must reapply as if the provider was seeking initial approval. Additionally, the following provisions apply.

(1) TEA may place conditions on the day placement program provider to ensure the provision of a FAPE for students who have been placed in the day placement program during the provider's approval period or during a reapproval process.

(2) If TEA does not approve, does not reapprove, or withdraws an approval from a day placement program provider, a school district must take steps to remove any students currently placed in the program, or cancel a student's planned placement, as expeditiously as possible adhering to TEA established timelines.

(m) TEA may conduct announced or unannounced onsite visits at a day placement program that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(n) Before a student's ARD committee places a student in, or refers a student to, a day placement program, the ARD committee shall convene an ARD committee meeting to review and revise as necessary an IEP for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, applicable state statutes, and commissioner rules in this chapter to ensure that all IEP statements, descriptions, and explanations reflect the student's current academic, functional, and developmental needs.

(o) The district shall initiate and conduct an onsite, in-person review of the program to ensure that the program is appropriate for meeting the student's functional, developmental, and academic needs before placement in the program.

(p) The student's ARD committee may only recommend a day placement program if the committee determines that the nature and severity of the student's disability and special education needs are such

that the student cannot be satisfactorily educated on a regular campus in the school district. Additionally, the following requirements apply.

(1) The student's IEP must list which individualized supports and services a regular campus in the school district is unable to provide and which services the program will provide.

(2) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to a regular campus in the school district and document this information in the IEP.

(q) The appropriateness of the placement and the program must be documented in the student's IEP at least annually. The student's progress toward reintegration, the appropriateness of the reintegration criteria, and the projected reintegration date shall be documented in the IEP at least annually.

(r) A school district that contracts for a public or private day placement program shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:

(1) review academic and behavioral data to verify that the program provider is implementing IEP services and any other contractual obligations, including meeting the TEA minimum standards; and

(2) verify that the day placement program continues to be the least restrictive environment for the student.

(s) The placement of more than one student in the same program may be considered in the same onsite visit. However, the IEP of each student must be individually reviewed and a determination must be made for each student regarding the appropriateness of placement and services to be provided.

(t) Within 30 calendar days from an ARD committee's decision to place a student in an approved day placement program, the placing school district must electronically submit to TEA notice of the placement and the fully executed contract in accordance with submission procedures specified by TEA.

(1) The contract for an individual student recommended for or placed in an approved day placement program shall be reviewed by TEA. Under no circumstances shall a contract violate the minimum standards or program's established guidelines that were included as part of the provider's approval process.

(2) TEA will give the parties an opportunity to amend a contract that does not comply with the minimum standards or contains language or terms that preclude agency approval of the contract.

(3) Contracts between school districts and approved day placement program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change to the contract. TEA has authority to approve or deny these amendments. If denied, the parties will be given an opportunity to further amend the contract to address the issue or issues that precluded TEA approval.

(u) If a student who is placed in an approved day placement changes his or her residence to another Texas school district during the school year, the school district must notify TEA within 10 calendar days of the date on which the school district ceased contracting with the program provider for the student's placement or withdrew the student from the program. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school dis-

trict until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new program placement.

(v) If a day placement program is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The program provider serving the student is not required to go through the approval procedures described in this section for the ordered placement. If, however, the school district or other school districts intend to place other students in that same program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(w) The cost of day placement programs will be funded according to TEC, §§48.102, 48.1021, and 48.1022; §89.1005 of this title; §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook); and local and federal funds as necessary and appropriate.

(x) Approved providers with current contracts for student placements entered into prior to September 1, 2026, or the effective date of the most recent amendments to this section, whichever is later, shall have until January 1, 2027, to become compliant with all current TEA requirements for day placement programs if they wish to remain on the approved list. TEA may grant exceptions to this deadline in extenuating circumstances.

(y) To qualify for the allotment authorized by TEC, §48.304, a program must also meet the requirements of this section and any other TEA-established criteria for the award of those funds.

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

Filed with the Office of the Secretary of State on September 14, 2026.

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Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



DIVISION 4. SPECIAL EDUCATION FUNDING

19 TAC §89.1121, §89.1125

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in

a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

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

Filed with the Office of the Secretary of State on September 14, 2026.

TRD-202603964

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**DIVISION 2. CLARIFICATION OF
PROVISIONS IN FEDERAL REGULATIONS**

19 TAC §§89.1050, 89.1055, 89.1096

The Texas Education Agency (TEA) adopts amendments to §§89.1050, 89.1055, and 89.1096, concerning special education services. The amendments are adopted with changes to the proposed text as published in the April 10, 2026 issue of the *Texas Register* (51 TexReg 2328) and will be republished. The adopted amendments update statutory authority and clarify current program practices and requirements in accordance with House Bill (HB) 2, Senate Bill (SB) 568, and SB 2, 89th Texas Legislature, Regular Session, 2025.

REASONED JUSTIFICATION: Section 89.1050 defines the criteria for the admission, review, and dismissal (ARD) committee.

The adopted amendment to subsection (a) aligns reference to federal and state law by adding new statutory references and repealing statutory references in accordance with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025.

The adopted amendment to subsection (c)(1)(i) adds criteria for a career and technical education (CTE) representative of the ARD committee to be knowledgeable about the availability of CTE programs offered in the district. Based on public comment, the rule text was revised at adoption to clarify that the CTE representative may be the school district representative or a teacher, and, if the representative is a teacher, the individual may also serve as the general education teacher representative.

The adopted amendment to subsection (c)(2) adds a reference 19 TAC §89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel, to describe the certification and licensure requirements for special education personnel.

Adopted new subsection (c)(3) establishes that a prekindergarten teacher who is dual certified in general education and special education and is responsible for implementing the child's individualized education program (IEP) could represent both the general and special education teacher requirements of the ARD committee.

The adopted amendment to subsection (c)(4) establishes ARD committee membership requirements for students with visual impairments, who are deaf or hard of hearing, or who have deafblindness. Based on public comment, subsection (c)(4)(A)-(C) were revised at adoption to clarify that the required disability-specific teacher may also serve as the special education teacher representative when that teacher is the only special education teacher responsible for implementing the student's IEP. The amendment also removes the word "either" in subsection (c)(4)(C) for clarity.

At adoption, the amendment to subsection (d) was revised from the proposed requirement of at least ten school days' notice for ARD committee meetings and instead retains the original re-

quirement of at least five school days' notice for ARD committee meetings until July 1, 2027.

Based on public comment, new subsection (e) was added at adoption to implement the transition from five school days to a 10-calendar-day notice requirement beginning July 1, 2027, rather than immediately.

Based on public comment, the adopted amendment to subsection (f) has been changed to maintain the original rule text requiring the school district to schedule and convene an ARD committee meeting or provide a written refusal within five school days, and language has been added at adoption to implement the transition from five school days to a ten-calendar-day notice requirement beginning July 1, 2027, rather than immediately.

Based on public comment, to allow school systems time for implementation, new subsection (g) was added at adoption to implement the updated timeline requiring school systems to provide the parent notice of scheduling options for the ARD committee meeting within 10 school days of receipt of a written request beginning July 1, 2027.

The adopted amendment to subsection (h) clarifies that written notice must be provided in the parent's primary language or other mode of communication. At adoption, cross references were also updated to align with the renumbered subsections.

At adoption, subsection (i) was revised to retain the existing prior written notice requirement of five school days until July 1, 2027, rather than implementing the proposed ten-calendar-day requirement, to allow school systems time to transition and implement the updated timeline.

New subsection (j) was added at adoption to establish the requirements that will take effect beginning July 1, 2027, including the transition to a 10-calendar-day prior written notice requirement.

Adopted new subsections (k)-(m) clarify school district requirements for providing required information, parent notice, and ARD committee procedures when residential placements or changes in the location of special education and related services are considered, consistent with applicable state and federal law.

Section 89.1055 establishes criteria for the IEP.

The adopted amendment to subsection (a) clarifies that all elements of the rule must be followed.

Adopted new subsection (b) clarifies the timeline for review of the annual IEP.

Adopted new subsection (c) clarifies present levels of academic achievement and functional performance (PLAAFP) requirements. Based on public comment, subsection (c)(2)-(5) was revised at adoption to clarify that the PLAAFP must address the disability characteristics unique to the student and the student's related service needs, describe the student's strengths, and identify academic and functional critical needs using baseline data.

The adopted amendment to subsection (d) clarifies the responsibilities of the ARD committee in establishing measurable annual goals.

The adopted amendment to subsection (d)(1)(A) and (B) clarifies when an annual goal is required, including when course content is modified or when a special education provider is responsible for instruction or services.

The adopted amendment to subsection (d)(1) removes former subparagraph (ii), eliminating the requirement to develop an annual goal solely when a student is removed from the general education setting and course content is modified.

The adopted amendment to subsection (d)(2) clarifies the role and use of short-term objectives/benchmarks in relation to measurable annual goals.

The adopted amendment to subsection (d)(2)(A)-(C) clarifies requirements for short-term objectives/benchmarks, including minimum number and the need for distinct timeframes and components to support individualized progress monitoring. At adoption, language was added in subsection (d)(2)(B) and (C) to specify that those requirements begin July 1, 2027.

The adopted amendment to subsection (d)(2) removes former subparagraphs (i) and (ii), consolidating and clarifying when short-term objectives/benchmarks are required and that they may not be used as the criterion for mastery of the annual goal.

Adopted new subsection (e)(1)-(3) adds criteria for the service delivery schedule.

Adopted new subsection (f) adds documentation of minutes a student spends in and out of the general education setting.

Adopted new subsection (g) establishes progress monitoring for the IEP and contingencies for making up any specially designed instruction missed due to emergencies, staffing shortages, or other unforeseen circumstances.

The adopted amendment to subsection (i)(2) clarifies that alternative state assessment documentation must be completed and included in the child's IEP.

The adopted amendment to subsection (j) clarifies what services are needed for extended school year services.

The adopted amendment to subsection (k) updates a statutory cross reference to align with current state law.

The adopted amendment to subsection (n) clarifies requirements for IEP development for students with dyslexia, including alignment with §74.28, documentation of eligibility and need for evidence-based instruction, required ARD committee membership, and, at adoption, relocated paragraph (3) includes parent notification concerning the Talking Book Program in order to provide better organization of information.

Based on public comment, new subsection (o) was added at adoption to specify which proposed IEP documentation requirements for dyslexia, including instruction, program components, delivery, provider qualifications, fidelity, and progress reporting, must be implemented with an effective date of July 1, 2027, to allow school systems time to implement the changes.

Adopted new subsection (p) clarifies documentation requirements when dyslexia-related components are not applicable. At adoption, language has been added to clarify that current requirements remain in effect prior to July 1, 2027, and that subsection (o) documentation requirements apply beginning July 1, 2027.

Adopted new subsection (q) clarifies that a specific learning disability in basic reading or reading fluency may not be identified solely to circumvent dyslexia requirements and requires documentation when dyslexia is not identified.

Adopted new subsection (r) clarifies requirements for IEP development for students with dysgraphia, including alignment with

§74.28 and required documentation of eligibility and instructional decisions. At adoption, language was added to specify that the requirements in subsection (r) become effective July 1, 2027.

Adopted new subsection (s) clarifies requirements for IEP documentation for School Health and Related Services (SHARS) eligible services. Based on public comment, language was added to specify that the requirements in subsection (s) become effective beginning July 1, 2027, to allow school systems time to implement the changes.

Adopted amendments to subsections (u) and (x) clarify the language in accordance with current practice.

The adopted amendment to subsection (z) clarifies the language in accordance with current practice by updating the phrase "native language" to "primary language."

The adopted amendment to subsection (aa) clarifies and updates required IEP documentation elements, including participant identification and alignment with the ARD committee representative designation in §89.1050(c)(1)(D).

The adopted amendment to subsection (bb) clarifies requirements for providing translated IEPs, including definitions of written and audio translations and expectations for complete translation. Based on public comment, the amendment was modified at adoption to specify that the 10-school-day timeline for translation requirements begins July 1, 2027.

Adopted new subsection (dd)(4) sets criteria for extending timelines for transfer students if they are absent.

Section 89.1096 establishes provisions of services for students placed by their parents in private schools or facilities.

An amendment to the title of the section is adopted for clarification to align with SB 2, 89th Texas Legislature, Regular Session, 2025.

The adopted amendment to subsection (a) aligns state rules with federal Individuals with Disabilities Education Act (IDEA) requirements by clarifying that parentally placed private school students do not have an individual entitlement to special education services.

The adopted amendment to subsection (a)(1) clarifies the use of the rule.

The adopted amendment to subsection (a)(1)(B) clarifies that the public school evaluating the child determines if a school is a private school.

The adopted amendment to subsection (b) clarifies when a district does not have to provide educational services to a parentally placed private school student.

Based on public comment, the adopted amendment to subsection (c) retains the existing dual enrollment provisions through the end of the 2026-2027 school year to allow school systems time to transition and implement the new requirements. Beginning with the 2027-2028 school year, subsection (c) will no longer be in effect, and dual enrollment will be removed.

The adopted amendment to re-lettered subsection (d) clarifies when a parent can request an individualized services plan.

Adopted new subsections (e)-(k) establish new regulations based on SB 2, 89th Texas Legislature, Regular Session, 2025. The adopted language clarifies the IEP criteria used to determine eligibility for participation in the Texas Education Savings Account under Texas Education Code (TEC), §29.3615,

including the minimum components of an IEP developed solely for eligibility purposes, which also allowing the use of an IEP written in compliance with IDEA.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 10, 2026, and ended May 11, 2026, and included public hearings on April 23 and 24, 2026. Following is a summary of the public comments received and agency responses.

Comment: One individual requested clarification that credential requirements for related service providers include licensed professional counselors and social workers and are not limited to a single credential type.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: One superintendent opposed the proposed amendments across 19 TAC Chapter 89, stating that the changes unnecessarily increase procedural requirements, create administrative burden, and emphasize compliance over meaningful support for students without providing additional resources or improving outcomes.

Response: The agency disagrees. The proposed amendments clarify requirements, align with statutory changes, and promote consistency, transparency, and effective implementation of special education services while maintaining the ARD committee's role in individualized decision-making.

§89.1050, The Admission, Review, and Dismissal Committee

Comment: Twenty-nine individuals and Hallsville Independent School District (ISD) recommended withdrawing the phrase "and state" to describe the laws applicable in §89.1050(a), stating that the change creates ambiguity regarding applicable legal authority.

Response: The agency disagrees, as reference to state law was already in the rule. It has simply been rephrased.

Comment: Thirty individuals, Hallsville ISD, The Texas Council of Administrators of Special Education (TCASE), and The Texas Classroom Teachers Association commented in support of increased flexibility in CTE representation but requested clarification to allow qualified staff, including existing ARD committee members, to serve in the role without adding personnel, while emphasizing that the CTE teacher should remain the preferred representative to support informed decision-making.

Response: The agency agrees that clarification was needed and has modified the rule at adoption to state that the CTE representative could be the school district representative or a teacher. If the representative is a teacher, the teacher could also serve as the general education teacher representative.

Comment: Thirty individuals and Hallsville ISD commented in support of the proposed provision allowing a dual-certified prekindergarten teacher to fulfill both the general education and special education teacher roles on the ARD committee, stating that the change would provide helpful flexibility, particularly for smaller and rural districts.

Response: The agency agrees.

Comment: Forty three individuals, Hallsville ISD, The Texas Deafblind Project, and the Alliance of and for Visually Impaired Texans commented in opposition to language that would allow a teacher with deafblind certification to substitute for both the teacher of students with visual impairments and the teacher

of students who are deaf or hard of hearing, stating that both certified professionals should be required members of the ARD committee for students who are deafblind.

Response: The agency disagrees that both a teacher of students with visual impairments and a teacher of students who are deaf or hard of hearing must always serve on the ARD committee for a student with deafblindness because the rule permits a teacher with deafblind certification as an alternative. At adoption, the agency deleted the word "either" in subsection (c)(4)(C) and clarified the role of a teacher with deafblind certification in fulfilling ARD committee membership requirements.

Comment: Thirty-nine individuals, Hallsville ISD, and TCASE commented in opposition to extending the prior written notice timeline from five school days to ten calendar days when initiated by the district, citing increased administrative burden, conflicts with manifestation determination review and evaluation timelines, delays in services, and implementation challenges. TCASE additionally recommended that, if adopted, the rule should explicitly include an exception for disciplinary changes in placement and preserve a five-school-day timeline unless the parent agrees to a shorter timeframe.

Response: The agency disagrees that the prior written notice timeline should remain at five school days and maintains that a ten-calendar-day timeline better supports meaningful parent participation in educational decision-making. However, based on public comment, the adopted amendment retains the current five-school-day requirement through June 30, 2027, and delays implementation of the ten-calendar-day requirement until July 1, 2027, to allow school systems time to transition and implement the updated requirement.

Comment: One individual commented in support of the proposed 10-calendar-day ARD notice requirement, stating that it would better align with four-day school week calendars.

Response: The agency agrees. However, based on public comment, changes have been made at adoption to make this change effective July 1, 2027, rather than immediately, so that school systems can prepare for the change.

Comment: Twenty-nine individuals and Hallsville ISD commented that §89.1050(c)(4) should be clarified to specify whether certain certified teachers may simultaneously fulfill multiple ARD committee roles, including whether a visual impairment or deaf education teacher may also serve as the required special education teacher.

Response: The agency agrees that clarification may be needed. At adoption, subsection (c)(4)(A)-(D) have been modified to allow a teacher of students with visual impairments, a teacher of students who are deaf or hard of hearing, and a teacher with deafblind certification to serve as the special education teacher representative on the ARD committee if they are the only special education teacher involved in implementing the student's IEP.

Comment: Twenty-nine individuals, Hallsville ISD, and TCASE commented in support of clarifying the timeline for a district to respond to a parent request for an ARD committee meeting under §89.1050(e), re-lettered as §89.1050(f) at adoption, while recommending additional clarification regarding the notice of scheduling options and alignment of timelines.

Response: The agency agrees that clarification was needed. At adoption, the agency retained the existing requirements until July 1, 2027, and delayed implementation of the new 10-school-day notice of scheduling options requirement to allow school sys-

tems time to prepare for the change and provide a clearer transition to the new timeline.

Comment: Twenty-eight individuals and Hallsville ISD commented that the state supported living center notice requirement under §89.1050(h), re-lettered as §89.1050(k) at adoption, adds unnecessary paperwork that may not be relevant to the student's needs. TCASE requested clarification on when the requirement is triggered and raised concerns about repeated provision of materials for existing placements, recommending options for parent request or provided electronic delivery.

Response: The agency disagrees that revisions are needed because §89.1050(k) implements TEC, §29.0056 and clearly identifies when the requirement applies. However, the agency will address requests for additional implementation guidance through technical assistance.

Comment: Thirty individuals, Hallsville ISD, and TCASE commented that the proposed requirements regarding a change in "location" under §89.1050(i) and (j), re-lettered as §89.1050(l) and (m) at adoption, are vague, overly broad, and potentially burdensome. TCASE also noted parents already have the right to request an ARD meeting and recommended clarifying that requests may be made when the factors identified in those subsections apply.

Response: The agency disagrees that edits are necessary because adopted §89.1050(l) and (m) identify the factors that trigger an ARD committee meeting and expressly permit a parent to request an ARD committee meeting if the parent believes those factors apply. However, the agency will provide additional implementation guidance through technical assistance.

Comment: Twenty-seven individuals and Hallsville ISD commented that the proposed change from "native language" to "primary language" requires additional clarification regarding how a student's primary language would be determined.

Response: The agency disagrees. "Primary language spoken at home" is a term commonly used by school districts and is reflected in the home language survey.

Comment: One individual commented in support of extending the timeline for transfer student annual ARD committee meetings when the student has been absent for three or more days, stating that the additional time would allow districts to make more individualized and data-driven decisions.

Response: The agency agrees.

Comment: Eight individuals commented that the proposed rules would impose fiscal and operational burdens on districts, including increased staffing demands, paperwork, software updates, additional meetings, and higher implementation costs, contrary to the statement that there would be no fiscal impact.

Response: The agency disagrees in part, as the changes are designed to align with current law and to respond to multiple requests and queries from districts over the years. Based on public comment, however, several provisions within the rules have been changed at adoption to apply beginning with July 1, 2027, rather than immediately, so that school systems can prepare for the changes.

Comment: Four individuals commented that the proposed ARD and IEP changes are overly prescriptive and risk shifting ARD committee work away from student-centered, individualized decision-making and toward a compliance-driven process.

Response: The agency disagrees and has determined the proposed requirements do not shift ARD committee work away from student-centered, individualized decision-making.

Comment: One individual commented that an appropriately certified orientation and mobility specialist should be required on the ARD committee for students with visual impairment or deaf blindness to provide expertise related to safety, mobility, and access to the educational environment.

Response: The agency disagrees that a change is necessary. A certified orientation and mobility specialist is required by TEC, §30.0021, to be part of a student's multidisciplinary team in an initial evaluation and as part of an ARD committee in a reevaluation for a child with a visual impairment.

§89.1055, Content of the Individualized Education Program

Comment: Two individuals commented in support of the proposed amendments, stating that increased clarity in PLAAFPs, service delivery, dyslexia identification, and timelines will improve consistency, transparency, and quality of IEPs but expressed concern about increased workload and implementation challenges due to staffing constraints and requested additional guidance and training.

Response: The agency agrees that the proposed amendments promote clarity, consistency, and improved IEP development and acknowledges the need for implementation support, noting that guidance and training will be provided to assist districts in effectively implementing the new requirements.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(b), stating that the 365-day requirement eliminates existing flexibility, does not account for parent delays, emergencies, staffing shortages, or reconvening meetings, and would negatively impact the ability to recess ARD meetings.

Response: The agency disagrees. Federal law does not allow exceptions to an annual review of a student's IEP.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(c) and (d), stating that the requirements are overly prescriptive, create unnecessary administrative burden, function as unfunded mandates, and undermine ARD committee discretion and individualized decision-making.

Response: The agency disagrees. The requirements for PLAAFP and annual goals promote consistency and quality by requiring baseline data to determine a student's present level of performance and measure progress over the IEP period while maintaining the ARD committee's role in individualized decision-making.

Comment: TCASE recommended revisions to §89.1055(c) to better align PLAAFP requirements with evaluation data, including student strengths, and clearly identify critical needs to inform annual goals.

Response: The agency agrees and has revised §89.1055(c)(2)-(5) at adoption. The adopted revisions require consideration of all disability characteristics unique to the student and related services needs, add a requirement to describe the student's strengths, and clarify that baseline data must identify the student's current skills or behaviors in academic and functional areas of critical need to support the development of measurable annual goals.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(c)(2), stating that requiring ARD committees to address all disability conditions and related service needs is impractical and may result in overly lengthy IEPs that obscure priorities.

Response: The agency disagrees. The proposed amendments require consideration of all disability characteristics unique to the student and related services needs while allowing ARD committees to identify and prioritize areas of critical need for achievement within the IEP period.

Comment: One individual expressed concern that removing the requirement in §89.1055(d)(1) to establish an annual goal when a student is served outside the general education setting may reduce accountability and limit the ARD committee's ability to measure progress.

Response: The agency disagrees. The ARD committee still has the ability to measure progress and create goals as necessary to meet the students' needs. Removing the requirement does not remove the ability of the ARD committee to make the decisions regarding creating a goal or measuring progress.

Comment: TCASE raised concerns that the proposed amendment to §89.1055(f) and (g) are unclear, recommending simplified documentation of instructional minutes and clarification of requirements for procedures addressing missed services. Additionally, fifteen individuals and Hallsville ISD stated that the provisions are burdensome, unclear, and not practical to implement in situations such as staffing shortages or evolving funding requirements.

Response: The agency disagrees that changes to the rule are necessary. The requirements in §89.1055(f) and (g) provide flexibility for local implementation and expressly recognize emergencies, staffing issues, and other unforeseen circumstances. Additional clarification will be provided through guidance and training.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(j), stating that replacing references to IEP goals with "services" reduces clarity regarding the purpose of extended school year (ESY) and may blur distinctions between ESY and regular school services.

Response: The agency disagrees. The use of "services" aligns with §89.1065 and maintains clarity regarding the purpose of ESY and its distinction from the regular school program.

Comment: Sixteen individuals, Hallsville ISD, and TCASE opposed the proposed dyslexia-related amendments, stating that they duplicate existing requirements in the Dyslexia Handbook, increase paperwork, and limit ARD committee flexibility. Three individuals also raised concerns that requirements such as naming programs in the IEP and distinguishing dyslexia from specific learning disability are unnecessary and administratively burdensome.

Response: The agency disagrees in part. The provisions provide clarity regarding specially designed instruction for students with dyslexia, including necessary documentation to support fidelity of implementation and appropriate eligibility determinations, and align with the Dyslexia Handbook while maintaining the ARD committee's role in individualized decision making. However, based on public comment, changes have been made at adoption to §89.1055(n) and (o) to clarify which dyslexia-related documentation requirements apply immediately and which take effect beginning July 1, 2027.

Comment: One parent supported the proposed dyslexia documentation requirements under §89.1055(n)(3) and (6), re-lettered to §89.1055(o)(1) and (4) at adoption, stating that identifying the instructional program and documenting fidelity statements would improve consistency, but requested additional clarification to the rule language. Another individual opposed the requirement, citing increased administrative burden, reduced flexibility, and potential disputes with parents.

Response: The agency agrees that the proposed changes would improve consistency. The agency disagrees that clarification is needed because §89.1055(o)(1) and (4) clearly identify the required IEP documentation regarding the dyslexia instructional program and fidelity of implementation. These requirements support consistent implementation while preserving the ARD committee's role in individualized decision-making. The agency, however, will provide additional implementation guidance.

Comment: Fifteen individuals, Hallsville ISD, and TCASE opposed the proposed amendment to §89.1055(r), re-lettered to §89.1055(s) at adoption, relating to the documentation of SHARS, stating that it duplicates existing Texas Health and Human Services Commission requirements and imposes additional unnecessary administrative burden.

Response: The agency disagrees in part, as clearly establishing the services eligible for Medicaid reimbursement is an important part of SHARS participation. However, based on public comment, changes have been made at adoption in re-lettered subsection (s) to begin this requirement on July 1, 2027.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(t), re-lettered to §89.1055(u) at adoption, stating that requiring transition discussion beginning at age 13 is inconsistent with federal requirements and removes ARD committee discretion.

Response: The agency disagrees, clarifying that the rule preserves the existing requirement that transition services be included in the IEP in effect when the student turns 14.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(w), re-lettered to §89.1055(x) at adoption, stating that the term "appropriate" is vague and may undermine decision-making rights of adult students and create inconsistent application.

Response: The agency disagrees. The use of the term "appropriate" is not intended to diminish the legal rights of adult students but reflects the requirement that ARD committees consider each situation and determine appropriate involvement consistent with existing rules.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(z), re-lettered to §89.1055(aa) at adoption, stating that the requirement is duplicative and unnecessary because the district representative already indicates agreement or disagreement on the ARD signature page.

Response: The agency disagrees. The rule provides explicit requirements for documenting that the representative of the school district and the child's parent or adult student sign and indicate agreement or disagreement.

Comment: Sixteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(bb), re-lettered to §89.1055(cc) at adoption, stating that requiring a timeline to provide the finalized IEP is unreasonable given staffing short-

ages and caseload demands, increases administrative burden, and creates potential legal and logistical challenges.

Response: The agency disagrees in part. Parents have always been entitled to a written copy of the IEP at no cost. However, based on public comment, changes have been made at adoption in re-lettered subsection (cc) to state that the 10-school-day timeline applies as of July 1, 2027, so that school systems can prepare for the change.

Comment: Fifteen individuals and Hallsville ISD commented in support of the proposed amendment to §89.1055(cc)(4), re-lettered to §89.1055(dd)(4) at adoption, stating that it appropriately accounts for student absences, particularly for students new to a district.

Response: The agency agrees.

§89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities

Comment: TCASE commented that the proposal in §89.1096(a)(1) places responsibility on public schools to determine whether a private school qualifies as a nonprofit, creating administrative burden, and recommended that the state provide a centralized list of eligible private schools instead.

Response: The agency disagrees, as this is not within TEA's authority.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1096(a)(1)(B), stating that private school information should not be weighted as heavily as results from a Full Individual Evaluation (FIE) when determining eligibility.

Response: The agency disagrees. The private school information in this section only refers to private schools that would be eligible to participate in the equitable services required by IDEA. The section does not have any impact on FIE.

Comment: One individual opposed the use of public-school resources to conduct special education evaluations for students participating in voucher programs, stating that private education providers should be responsible for these services, and expressed concern about impacts on public school funding and staffing.

Response: The agency disagrees. Existing federal and state child find requirements require public school districts to identify, locate, and evaluate students suspected of having disabilities, including those enrolled in private schools. These obligations are not altered by participation in voucher or Texas Education Freedom Account (TEFA) programs.

Comment: Disability Rights Texas, ARC of Texas, TCASE, and three individuals opposed the removal of §89.1096(c) regarding the dual enrollment option, stating it supports inclusion and access to early intervention. The commenters requested clarification on how current students would be impacted.

Response: The agency disagrees with retaining dual enrollment. The amendment aligns with IDEA requirements, and dual enrollment is not federally required. However, based on public comment, the adopted amendment retains the existing dual enrollment provisions through the end of the 2026-2027 school year to allow school systems time to transition and implement the new requirements. The agency clarifies that students currently receiving services through dual enrollment will not experience an immediate removal of services and decisions regarding ser-

vices will continue to follow existing law and local procedures through the end of the 2026-2027 school year. Beginning with the 2027-2028 school year, the dual enrollment provisions will not be in effect.

Comment: Disability Rights Texas, the ARC of Texas, TCASE, fifteen individuals, and Hallsville ISD opposed integrating TEFA-related IEP provisions into §89.1096, stating it creates confusion, duplicates processes, increases administrative burden, and should be addressed in a separate rule, emphasizing the need for informed parent consent, greater transparency, and clear distinction that TEFA IEPs are not offers of free appropriate public education (FAPE). Texas Parent to Parent agreed with Disability Rights Texas and the ARC of Texas.

Response: The agency disagrees with separating the provisions. Inclusion within §89.1096 provides a cohesive framework aligned with statutory requirements; however, the agency acknowledges stakeholder recommendations to clarify distinctions between TEFA IEPs and IDEA IEPs, including suggestions regarding parental notice, and may consider these recommendations in future guidance.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendments, stating that the changes would create an alternative special education framework that may not meet FAPE requirements, could result in duplicative processes, and may impose unfunded mandates.

Response: The agency disagrees. The amendments appropriately implement statutory requirements related to private school placement and TEFA participation and do not alter IDEA obligations or require a separate rule structure.

Comment: Two individuals recommended recognizing the role of related service providers, including speech-language pathologists, in the Teacher Incentive Allotment (TIA) and emphasized the importance of including related service providers in ARD committee processes to reflect practical implementation.

Response: The comments related to the TIA are outside the scope of the proposed rulemaking.

Comment: Two individuals requested additional clarity regarding equitable service delivery, staffing feasibility, and continuity of care for students with communication needs, emphasizing the need for clear expectations to support consistent implementation across settings.

Response: The agency disagrees and has determined that clarification through technical assistance is more appropriate than clarification in the rule.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the Texas Education Agency (TEA) to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for completing full individual and initial evaluations of a student for purposes of special education services; TEC, §29.005, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for developing a student's individualized education program (IEP) prior to a student enrolling in a special education program; TEC, §29.010, as amended by HB 2 and SB 568, 89th Texas Legislature,

Regular Session, 2025, which requires TEA to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.011, which requires the commissioner of education to adopt procedures for compliance with federal requirements relating to transition services for students enrolled in special education programs; TEC, §29.0111, which appropriates state transition planning to begin for a student no later than the student turning 14 years of age; TEC, §29.012, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §29.3615, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes IEP evaluations for a student who is not enrolled in a school district or open-enrollment charter school; TEC, §38.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the screening and treatment for dyslexia and related disorders; Texas Government Code, §392.002, which requires the use of person first respectful language; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.131, which establishes child find for parentally placed private school children with disabilities; 34 CFR, §300.132, which establishes the basic requirement for the provision of services for parentally placed private school children with disabilities; 34 CFR, §300.133, which establishes criteria for expenditures; 34 CFR, §300.136, which establishes criteria for compliance; 34 CFR, §300.139, which establishes the criteria for location of services and transportation; 34 CFR, §300.142, which establishes criteria for use of personnel; 34 CFR, §300.143, which prohibits separate classes; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination 34 CFR, §300.320, which defines the IEP; 34 CFR, §300.322, which establishes criteria for parent participation; and 34 CFR, §300.323, which establishes criteria for when IEPs must be in effect.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.005, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.010, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.0111; 29.012, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.3615, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 38.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; Texas Government Code, §392.002; and 34 Code of Federal Regulations,

§§300.101, 300.129, 300.131, 300.132, 300.133, 300.136, 300.139, 300.142, 300.143, 300.307, 300.310, 300.311, 300.320, 300.322, and 300.323.

§89.1050. The Admission, Review, and Dismissal Committee.

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The ARD committee is responsible for all of the functions for which the IEP team is responsible under federal and state law and regulations, including the following:

- (1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);
- (2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);
- (3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);
- (4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);
- (5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);
- (6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);
- (7) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);
- (8) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);
- (9) TEC, §28.0213 (Intensive Program of Instruction);
- (10) TEC, §28.025 (High School Diploma and Certificate; Academic Achievement Record);
- (11) TEC, Chapter 29, Subchapter A;
- (12) TEC, §29.048 (Admission, Review and Dismissal Committee Duties);
- (13) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);
- (14) TEC, Chapter 30, Subchapters A, B, and C;
- (15) TEC, §33.081 (Extracurricular Activities);
- (16) TEC, §37.307 (Placement and Review of Student with Disability);
- (17) TEC, §38.034 (School Health and Related Services Program; Eligibility for Audiology Services);
- (18) TEC, §39.023 (Adoption and Administration of Instruments);
- (19) TEC, §39.025 (Secondary-Level Performance Required); and
- (20) TEC, §48.102 (Special Education).

(b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing, an individualized

family services plan meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents, as defined by 34 CFR, §300.30, of the student;

(B) not less than one general education teacher of the student (if the student is, or may be, participating in the general education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

(H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;

(I) when considering initial or continued placement of a student in career and technical education (CTE):

(i) a representative from CTE who is knowledgeable about the availability of CTE programs offered in the district, who may be a member of the committee described in subparagraph (D) of this paragraph; or

(ii) a CTE teacher who is knowledgeable about the availability of CTE programs offered in the district, who may be a member of the committee described in subparagraph (B) of this paragraph; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as emergent bilingual.

(2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.156, and further described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

(3) If a teacher is dual certified in general education and special education and is serving as a prekindergarten teacher, and the teacher is or would be the only general education teacher responsible for implementing the child's IEP, that teacher may represent both the general and special education teacher as required by paragraph (1)(B) and (C) of this subsection.

(4) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments who may be a member of the committee described in paragraph (1)(C) of this subsection if that teacher is the only special education teacher involved in implementing the student's IEP;

(B) a student who is suspected or documented to be deaf or hard of hearing, the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing who may be a member of the committee described in paragraph (1)(C) of this subsection if that teacher is the only special education teacher involved in implementing the student's IEP;

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing, or a teacher with a deafblind certification, who may be a member of the committee described in paragraph (1)(C) of this subsection if that teacher is the only special education teacher involved in implementing the student's IEP; or

(D) a student who is suspected or identified with dyslexia, when determining initial or continued eligibility, the ARD committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule.

(5) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) This subsection is effective until July 1, 2027. The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) Beginning July 1, 2027, the school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting in person to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets

the requirements in 34 CFR, §300.322, at least 10 calendar days before the meeting unless the parents agree to a shorter timeframe.

(f) This subsection is effective until July 1, 2027. Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or

(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

(g) Beginning July 1, 2027, within 10 school days of receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) provide the parent notice of scheduling options for a meeting in accordance with the procedures in subsection (e) of this section; or

(2) provide the parent with written notice explaining why the district refuses to convene a meeting.

(h) The school district must provide the parent with a written notice required under subsection (d), (e) (e)(2), or (f)(2) of this section in the parent's primary language, unless it is clearly not feasible to do so. If the parent's primary language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her primary language or other mode of communication so that the parent understands the content of the notice.

(i) This subsection is effective until July 1, 2027. Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's primary language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(j) Beginning July 1, 2027, whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's primary language or other mode of communication. This notice must be provided to the parent at least 10 calendar days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(k) When a new, proposed, or existing residential placement is discussed at a student's ARD committee meeting, the materials under TEC, §29.0056, must be provided to student's parent.

(l) When a school district is considering a change in the location of the provision of a student's special education and related services as documented in the student's IEP, the district must determine whether the change would substantially or materially alter the student's educational program. A proposed change in location must be communicated to the parent as soon as reasonably possible. When the proposed change would constitute a change in educational placement with any of the following being true, the school district must hold an ARD committee meeting and provide the parent prior written notice under 34 CFR, §300.503:

(1) the proposed change in location would revise the student's IEP;

(2) the proposed change in location would decrease the extent to which the student is educated with nondisabled peers, consistent with the least restrictive environment requirements in 34 CFR, §§300.114-300.116;

(3) the proposed change in location would alter the student's access to non-academic or extracurricular services or activities, as described in 34 CFR, §300.117; or

(4) the proposed change in location represents a different point on the continuum of alternative placements required under 34 CFR, §300.115.

(m) If the parent believes the factors in subsection (l) of this section apply to any proposed change in location, the parent may submit a written request for an ARD committee meeting and the district must respond in accordance with subsection (e) of this section.

§89.1055. Individualized Education Program.

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324, and include all applicable information under Texas Education Code (TEC), §29.0051, and this section.

(b) A student's IEP must be reviewed by the student's ARD committee at least annually, which means no later than 365 days after the date of the last annual review.

(c) A statement of the student's present levels of academic achievement and functional performance (PLAAFP) must:

(1) include how the student's disability affects the student's involvement and progress in the general education curriculum, or, for preschool children, how the disability affects the student's participation in appropriate activities;

(2) address all disability characteristics unique to the student and the student's related services needs;

(3) describe the student's strengths;

(4) identify critical needs by describing what the student's non-disabled grade-level peer is expected to do in the general education curriculum in academic areas, and include baseline data that describes the student's current skills in the area of critical need; and

(5) identify critical needs by describing baseline data that includes the student's current skills or behaviors in functional areas.

(d) To be considered a measurable annual goal under 34 CFR, §300.320(a)(2), a goal must include the components of a timeframe, condition, behavior, and criterion. The ARD committee must consider the unique needs of the student and the curriculum standards to determine where in the curriculum the student may encounter barriers due to the disability or disabilities. An annual goal must be developed in areas where a critical need is identified and must not simply be restatements of the student's enrolled grade level essential knowledge and skills as described by Chapters 110-117 and 120 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading, Texas Essential Knowledge and Skills for Mathematics, Texas Essential Knowledge and Skills for Science, Texas Essential Knowledge and Skills for Social Studies, Texas Essential Knowledge and Skills for Languages Other Than English, Texas Essential Knowledge and Skills for Health Education, Texas Essential Knowledge and Skills for Physical Education, Texas Essential Knowledge and Skills for Fine Arts, and Other Texas Essential Knowledge and Skills). While at least one measurable annual goal is required, the number of annual goals will be

determined by the ARD committee after examination of the student's PLAAFP and areas of need.

(1) Annual goals are also required in the following circumstances:

(A) when the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; or

(B) when a special education teacher or service provider is designated as the teacher of record or is the provider solely responsible for delivering academic or functional instruction or related services.

(2) Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal but cannot be used as the criterion to indicate mastery of the annual goal. An ARD committee may choose to use short-term objectives/benchmarks for any student but must use them if the ARD committee has determined that a student will not participate in the general state assessment. Guidelines for short-term objectives/benchmarks are as follows:

(A) at least two short-term objectives/benchmarks must be included in an annual goal;

(B) beginning with IEPs developed or amended as of July 1, 2027, each short-term objective/benchmark must include a timeframe, condition, behavior, and criterion; and

(C) beginning with IEPs developed or amended as of July 1, 2027, each short-term objective/benchmark within an annual goal must have distinct time frames and differ in at least one additional component to ensure clarity and individualized progress monitoring.

(e) The ARD committee must document in the student's IEP the service delivery schedule that specifies the projected date for the beginning of the specially designed instruction and any related services that will be provided to the student, as well as the following for all specially designed instruction and related services:

(1) frequency, which is how often the specially designed instruction or related service will be provided within a designated time frame;

(2) duration, which is the length of each session, if applicable, or any determined or anticipated end date of instruction or service; and

(3) location/classroom setting, which is whether the specially designed instruction or related service will be provided in a general educational location/classroom/setting or a special education location/classroom/setting.

(f) The IEP must document on average how many minutes in the student's instructional day is spent in a location/classroom/setting outside of the general education location/classroom/setting. The IEP must also document the percentage of the student's instructional day, on average, that the student spends in a general education location/classroom/setting.

(g) In addition to regular progress monitoring of the implementation of a student's IEP and the student's measurable annual goals, the school district must have procedures in place on how it will document compliance with the provision of any student's specially designed instruction and related services, including supplementary aids and services, and how the district will attempt to make up any student's missed specially designed instruction or related services and contingencies for emergencies, staffing issues, or other unforeseen circumstances.

(h) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with TEC, §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments.

(i) If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the following requirements must be met.

(1) The IEP must include a statement explaining:

(A) why the student cannot participate in the general assessment; and

(B) why the particular alternate assessment selected is appropriate for the student.

(2) The Texas Education Agency's alternate assessment participation requirements form, if one is made available to school districts, must be completed and included in the student's IEP to document the statement required under this subsection.

(j) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify the IEP services that will be addressed during ESY services.

(k) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan must also meet the requirements of TEC, §30.002.

(l) For students with autism eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, at least annually based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

(1) extended educational programming (for example: extended day and/or ESY services that consider the duration of programs/settings based on data collected related to behavior, social skills, communication, academics, and self-help skills);

(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);

(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social, behavioral, communication, and self-help skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);

(4) positive behavior support strategies based on relevant information, for example:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings and is implemented and reviewed in accordance with subsection (t) of this section;

(5) beginning at any age, consistent with subsection (v) of this section, futures planning for integrated learning and training,

living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments, including self-determination and self-advocacy skills;

(6) parent/family training and support, provided by qualified personnel with experience in autism, that, for example:

(A) provides a family with skills necessary for a student to succeed in the home/community setting;

(B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and

(C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: peer-based instruction and intervention, video modeling, social narratives, and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to ensure the correct implementation of techniques and strategies described in the IEP); and

(11) teaching strategies based on peer-reviewed, research-based practices for students with autism (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(m) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (l) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(n) For students identified with the specific learning disability of dyslexia eligible under §89.1040(c)(9) of this title, the IEP must also be developed and implemented in accordance with law, this section, and the requirements under §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted under §74.28 of this title. This includes documentation of:

(1) the determination by the ARD committee that the student meets eligibility as a child with a disability due to the specific learning disability of dyslexia and the need for evidence-based dyslexia instruction, which is a special education service;

(2) the presence and involvement of the dyslexia member required by TEC, §29.0031, as noted by the signature in the IEP documenting the member's presence and involvement at the ARD committee meeting; and

(3) the student's parent being notified, either at the ARD committee meeting or by another method, of the Talking Book Program administered by the Texas State Library of Archives Commission and other available audio book services as required by TEC, §29.0031(e).

(o) Beginning with IEPs developed or amended as of July 1, 2027, to correspond with subsection (n) of this section, IEPs must also document:

(1) decisions around appropriate reading instruction, which must include the program name and all components and delivery of dyslexia instruction as identified under §74.28 of this title, including any handbook adopted in the rule;

(2) how the district's evidence-based dyslexia instruction program addresses the required components of dyslexia instruction and whether the student's PLAAFP or other areas of the IEP show evidence that the program must be supplemented with a focus on one or more components;

(3) how the program addresses the required instructional delivery methods and whether the student's PLAAFP or other areas of the IEP show evidence that the program must be supplemented to meet the student's needs;

(4) the fidelity statements/requirements that are included with the program and how those will be delivered and/or intensified for the student;

(5) a fully trained provider of dyslexia instruction identified under §74.28 of this title being assigned to implement the program for the student; and

(6) whether the IEP goal progress report will meet the requirements for the dyslexia progress report required under TEC, §29.0031(d), or whether a separate progress report will be communicated to a parent.

(p) If the ARD committee determines that one or more of the areas specified in subsection (o)(1)-(4) of this section are not applicable to the student, the IEP must include a statement to that effect and the basis upon which the determination was made. Note that any ARD committee discussions that are required under §74.28 of this title, including any handbook adopted under §74.28 of this title, still apply prior to July 1, 2027. Subsection (o) of this section specifically applies to documentation in the IEP as of July 1, 2027.

(q) A district is prohibited from identifying a specific learning disability as one solely in basic reading or reading fluency as a means to circumvent the requirements for students identified with dyslexia. If a specific learning disability in basic reading or reading fluency is not also identified as dyslexia, the IEP must document why and how the committee came to that conclusion.

(r) Beginning with IEPs developed or amended as of July 1, 2027, for students identified with the specific learning disability of dysgraphia eligible under §89.1040(c)(9) of this title, the IEP must also be developed and implemented in accordance with law, this section, and the requirements under §74.28 of this title, including any handbook adopted under §74.28 of this title. This includes documentation of:

(1) the determination by the ARD committee that the student meets eligibility as a child with a disability due to the specific learning disability of dysgraphia and the need for special education and related services; and

(2) decisions around appropriate writing instruction, including whether the student needs explicit, systematic instruction in handwriting; handwriting and spelling; or handwriting, spelling, and written expression.

(s) Beginning with IEPs developed or amended as of July 1, 2027, for students whose special education and related services also meet the criteria for medical and transportation services eligible for reimbursement under the School Health and Related Services (SHARS) Medicaid program, and the district is or expects to become an eligible provider, the student's IEP must document those services the district plans to submit for SHARS reimbursement determined to be both necessary for a free appropriate public education for purposes of compliance with the Individuals with Disabilities Education Act and medically necessary and reasonable for purposes of Medicaid reimbursement. Each student's IEP shall contain the necessary information to comply with the requirements set by the Texas Health and Human Services Commission to help ensure that submissions for reimbursement are accurate.

(t) If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student. If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the ARD committee shall review the plan at least annually, and more frequently if appropriate, to address:

(1) changes in a student's circumstances that may impact the student's behavior, such as:

(A) the placement of the student in a different educational setting;

(B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;

(C) a pattern of unexcused absences; or

(D) an unauthorized, unsupervised departure from an educational setting; or

(2) the safety of the student or others.

(u) Not later than the first IEP to be in effect when the student turns 14 years of age, the ARD committee must discuss and address the following issues in the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:

(A) the student's parents; or

(B) the school district in which the student is enrolled;

(3) appropriate postsecondary education options, including preparation for postsecondary-level coursework;

(4) whether a functional vocational evaluation is appropriate;

(5) appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student such as a waiver program established under the Social Security Act (42 U.S.C. Section 1396n(c)), §1915(c); and

(6) the use and availability of appropriate:

(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and

(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Texas Estates Code, Chapter 1357.

(v) Beginning not later than the first IEP to be in effect when the student turns 14 years of age, or younger if determined appropriate by the ARD committee, the IEP must include:

(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals.

(w) The goals included in a student's IEP to comply with subsection (v) of this section are intended to comply with the requirements in TEC, §29.011(a)(6) and (8).

(x) Beginning not later than the first IEP to be in effect when the student turns 18 years of age (see §89.1049 of this title (relating to Parental Rights Regarding Adult Students) for notice requirement of transfer of rights), the ARD committee must discuss and address the following issues in the student's IEP:

(1) appropriate involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:

(A) is invited to participate by the student or the school district in which the student is enrolled; or

(B) has the student's consent to participate pursuant to a supported decision-making agreement under Texas Estates Code, Chapter 1357; and

(2) the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives.

(y) A student's ARD committee shall review at least annually the issues described in subsections (u), (v), and (x) of this section and, if necessary, update the portions of the student's IEP that address those issues.

(z) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The school district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose primary language is a language other than English. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus

presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

(aa) The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:

- (1) the date of the meeting;
- (2) the name, position, and signature of each member participating in the meeting; and
- (3) an indication of whether the child's parents, the adult student, if applicable, and the representative of the school district as identified in §89.1050(c)(1)(D) of this title (relating to The Admission, Review, and Dismissal Committee) agreed or disagreed with the decisions of the ARD committee.

(bb) If the student's parent is unable to speak English and the parent's primary language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's primary language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's primary language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's primary language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's primary language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's primary language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her primary language or other mode of communication.

(cc) A school district must give a parent a written copy of the student's finalized IEP at no cost to the parent as soon as possible, but, beginning with IEPs developed or amended as of July 1, 2027, no later

than within 10 school days after the date on which it is finalized. If a written translation of the student's IEP that has been developed or amended beginning on July 1, 2027, in the parent's primary language in accordance with subsection (bb)(1) of this section will exceed 10 school days, the district must inform the parent and provide it to the parent as soon as the written translation is available. The district must document internally the date on which the IEP was provided to the parent and how it was provided (e.g., web portal, email, mail).

(dd) A school district must comply with the following for a student who is new to the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(e), by either adopting the student's IEP from the previous school district or developing, adopting, and implementing a new IEP. The timeline for adopting the previous IEP or developing, adopting, and implementing a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must, if determined necessary, conduct a full individual and initial evaluation and make an eligibility determination and, if appropriate, develop, adopt, and implement a new IEP, within the timelines established in §89.1011 of this title (relating to Full and Individual Initial Evaluation). If the school district determines that an evaluation is not necessary, the timeline for the new district to develop, adopt, and implement a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(3) Students who register in a new school district in the state during the summer when students are not in attendance for instructional purposes, the provisions of paragraphs (1) and (2) of this subsection apply based on whether the students are coming from an in-state or out-of-state school district. All other provisions in this subsection apply to these students.

(4) If a student is absent from school on three or more days between the date the student is verified as being a student eligible for special education services and 20 school days, that period described by paragraphs (1) and (2) of this subsection may be extended by the number of school days equal to the number of school days during that period on which the student was absent.

(5) In accordance with 34 CFR, §300.323(g), the new school district must take reasonable steps to promptly obtain the student's records from the previous school district, and, in accordance with TEC, §25.002, and 34 CFR, §300.323(g), the previous school district must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

(6) If a parent hasn't already provided verification of eligibility and the new school district has been unable to obtain the necessary verification records from the previous district by the 15th working day after the date a request for the records was submitted by the new district to the previous district, the new school district must seek verification from the student's parent. If the parent provides verification, the new school district must comply with all paragraphs of this subsection. The new school district is encouraged to ask the parent to provide verification of eligibility before the 15th working day after the date a

request for the records was submitted by the new district to the previous district. If the parent is unwilling or unable to provide such verification, the new district must continue to take reasonable steps to obtain the student's records from the previous district and provide any services comparable to what the student received at the previous district if they communicate those to the new district.

(7) For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district. The first school day after the new district receives a copy of the student's IEP that was in effect in the previous district begins the timelines associated with paragraphs (1) and (2) of this subsection.

(8) While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.

(9) Once the new school district receives verification that the student had an IEP in effect at the previous district, comparable services must be provided to a student during the timelines established under paragraphs (1) and (2) of this subsection. Comparable services include provision of ESY services if those services are identified in the previous IEP or if the new district has reason to believe that the student would be eligible for ESY services.

§89.1096. Provision of Services for Parentally Placed Private School Children with Disabilities.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.137, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school. A school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144.

(1) For purposes of this section, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:

(A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and

(B) as determined by the public school evaluating the child for eligibility as a child with a disability under the Individuals with Disabilities Education Act (IDEA) based on documentation obtained by the public school, parent, or private school, provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.

(2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of subsections (a) and (d) of this section.

(b) When a student has been determined to be a child with a disability under IDEA but has been placed by his or her parents directly in a private school or facility, an admission, review, and dismissal (ARD) committee meeting of the district of the child's residence will determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student or if the parent declares that FAPE is not at issue when requesting an evaluation, the district is not responsible for providing educational services to the student, except as provided in 34

CFR, §§300.130-300.144, and subsection (d) of this section, until such time as the parents choose to enroll the student in public school full time.

(c) This subsection applies only through the end of the 2026-2027 school year. Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.114-300.120, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(d) Parents of a parentally placed private school child with a disability may request an individualized services plan (ISP) as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development and implementation of an ISP if the student is designated to receive services under 34 CFR, §300.132.

(e) The individualized education program (IEP) for purposes of Texas Education Code (TEC), §29.3615, when the child is not enrolled in public school must, at minimum, include the following components:

(1) a statement of the special education and related services and service delivery schedule that includes frequency, duration, and location, as well as the supplementary aids and services that would be provided to the child to enable the child to be involved in and progress in the child's enrolled grade level curriculum and to be educated and participate with children without disabilities to the maximum extent appropriate for the child's needs;

(2) an explanation of the extent, if any, to which the child would not participate with children without disabilities in a general education classroom;

(3) a statement of any individual appropriate accommodations or modifications that would be necessary for the child to make progress in the child's enrolled grade level curriculum; and

(4) the instructional arrangement or tiered funding level that is used to calculate the state special education funding allotment as determined by the decisions in paragraphs (1)-(3) of this subsection.

(f) At the ARD committee meeting at which eligibility is determined for a child who is not enrolled in public school, the ARD committee must develop the IEP described by subsection (e) or (g) of this section if the child's parent has requested one because the parent is

interested in applying for the education savings account program under TEC, Chapter 29, Subchapter J.

(g) An IEP written in compliance with TEC, §29.005, and 34 CFR, §300.320, may also be used for purposes of eligibility under TEC, §29.3615.

(h) A child who is not enrolled in public school at the time of application to the education savings account program described by TEC, Chapter 29, Subchapter J, but who previously attended public school within the last three school years and had an IEP in effect during the current school year or in at least one of the previous two school years will be reported as eligible under TEC, §29.3615, if an instructional arrangement or tiered funding level was reported through the Public Education Information Management System by the public school where the child was previously enrolled in at least one of those school years. When there are different instructional arrangements or tiered funding levels reported for one or more of the three school years, the instructional arrangement or tiered funding level that was most recently reported will be reported as eligible under TEC, §29.3615.

(i) A child who had an IEP in effect in one or both of the previous school years at the time of application to the education savings account program described by TEC, Chapter 29, Subchapter J, but who is currently still enrolled in public school without an IEP in effect will not be reported as eligible under TEC, §29.3615.

(j) The IEP developed solely for purposes of TEC, §29.3615, under subsection (e) of this section is not subject to appeal.

(k) If a parent does not agree with the ARD committee's determination of eligibility for special education and related services, the parent may use the dispute resolution processes available under IDEA, Part B, 34 CFR, §300.1. et. seq., as applicable.

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

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For further information, please call: (512) 475-1497



19 TAC §89.1053

The Texas Education Agency (TEA) adopts an amendment to §89.1053, concerning procedures for use of restraint and time-out. The amendment is adopted with changes to the proposed text as published in the May 8, 2026 issue of the *Texas Register* (51 TexReg 3039) and will be republished. The adopted amendment revises, expands, and aligns existing definitions; clarifies procedural requirements; and establishes a crisis prevention and intervention training requirement for school systems consistent with Senate Bill (SB) 133, 88th Texas Legislature, Regular Session, 2023, and House Bill (HB) 2 and SB 568, 89th Texas Legislature, Regular Session, 2025.

REASONED JUSTIFICATION: Section 89.1053 establishes the procedures governing the use of restraint and time-out for

students receiving special education and related services. The adopted amendment to the section title aligns the rule with state statute.

The adopted amendment to subsection (a) adds a requirement for crisis prevention and intervention training to align with HB 2 and SB 568 and further clarifies practices that constitute prohibited forms of confinement.

The adopted amendment to subsection (b) adds definitions for the terms crisis, crisis prevention and intervention training, imminent, law enforcement duties, seclusion, and taser and expands the existing definitions for emergency and restraint to promote clarity and consistency in implementation in alignment with SB 133, HB 2, and SB 568. Based on public comment, the definition of time-out has been revised at adoption to provide greater clarity regarding the settings in which time-out may occur, including whether other students may be present.

Adopted new subsection (d)(5) clarifies training requirements to emphasize instruction on disability-related behaviors and evidence-based, individualized positive behavioral interventions in alignment with SB 133, HB 2, and SB 568.

The adopted amendment to subsection (e) clarifies documentation and notification requirements for each use of restraint, including establishing a uniform timeline for placement of written documentation in a student's special education eligibility folder to support admission, review, and dismissal (ARD) committee review.

The adopted amendment to subsection (f) aligns with HB 2 and SB 568 by reaffirming that restraint may not be used as a disciplinary or behavior management technique or as a method to gain student compliance.

The adopted amendment to subsection (g) clarifies that the ARD committee is responsible for reviewing, at least annually, the use, amount, and effectiveness of time-out as a behavioral intervention and for considering any necessary revisions to the student's individualized education plan, behavioral intervention plan, or positive behavior supports to align with HB 2 and SB 568.

The adopted amendment to subsection (i) clarifies documentation requirements for time-out to ensure consistent data collection that enables ARD committees and TEA to monitor use, evaluate effectiveness, and verify compliance with individualized planning requirements.

New subsection (j) adds requirements and criteria for crisis prevention and intervention training to align with HB 2 and SB 568.

The adopted amendment to subsection (k) strengthens student protections by clarifying that practices must safeguard health, safety, and dignity. Based on public comment, subsection (k) was amended at adoption to expressly prohibit aversive techniques by referencing Texas Education Code (TEC), §37.0023.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 8, 2026, and ended June 8, 2026, and included public hearings on May 28 and 29, 2026. Following is a summary of public comments received and agency responses.

Comment: Three individuals expressed concern that the definition and application of the term "imminent" as it applies to serious physical harm may lead to inconsistent interpretation across districts and create uncertainty for staff during crisis situations. They recommended additional clarification, guidance, and examples to support consistent decision-making.

Response: The agency disagrees that the definition and application of the term "imminent" would lead to inconsistent interpretation, as the phrase "imminent, serious physical harm" existed in rule prior to the proposed amendment; the new text simply defines the term "imminent."

Comment: Two individuals, Texas Council of Administrators of Special Education (TCASE), Texas Parent2Parent (TxP2P), The Arc of Texas, and Disability Rights Texas (DRTx) raised concerns regarding the scope and implementation of training requirements, stating that expanded expectations for crisis prevention, de-escalation, and intervention training may result in significant operational, staffing, and fiscal impacts. They recommended clearer alignment of training requirements, broader staff inclusion, and additional state support or guidance.

Response: The agency disagrees as the rule implements the elements of TEC, §37.0021, which calls for educational staff to be trained in crisis intervention and prevention. As noted in TEC and in the rule text, crisis intervention and prevention training may be combined with other training as outlined in TEC, §21.4514.

Comment: Two individuals expressed concern regarding increased administrative burden and compliance requirements, stating that expanded documentation, data collection, and standardized timelines may reduce local flexibility and increase workload, and one of the individuals recommended development of streamlined documentation tools to reduce duplicative reporting.

Response: The agency disagrees as standardized timelines are necessary to ensure all students and parents benefit from notification and documentation should be maintained for compliance and general supervision.

Comment: One individual commented that the proposed rule lacks sufficient standardization regarding identification of "high-risk personnel," stating that leaving determinations to local discretion may result in inconsistent implementation across districts. The individual recommended development of a statewide assessment framework.

Response: The agency disagrees that additional standardization is necessary, as the rule allows for local discretion to account for varying district contexts while maintaining required safeguards to support consistent implementation.

Comment: TCASE commented that references to Tasers or incapacitation devices in restraint procedures are inappropriate and may create confusion regarding permissible practices. TCASE recommended removing such references and clearly distinguishing between school personnel restraint practices and law enforcement use of force.

Response: The agency disagrees because the language is derived directly from TEC, §37.0021, and its inclusion is necessary to align the rule with statutory requirements established by the legislature.

Comment: TCASE commented that documentation requirements should clarify that reporting does not apply to actions taken independently by commissioned peace officers unless school personnel are directly involved in the restraint.

Response: The agency disagrees, as the applicability of the statute to commissioned peace officers is defined in TEC, §37.0021.

Comment: TxP2P commented in support of strengthened training requirements, stating that all members of a crisis

intervention team, including law enforcement personnel on campuses, should receive safe physical intervention training to prevent harm to students.

Response: The agency agrees. Section 89.1053(m) and (n) outline when it is necessary for peace officers to receive training in crisis intervention and prevention.

Comment: The Arc of Texas and DRTx commented that the rule should require alignment between restraint training and crisis prevention and intervention training, stating that staff responsible for restraint should also be trained in de-escalation and prevention strategies.

Response: The agency agrees, and subsection (d)(3) requires that training on the use of restraint include prevention and de-escalation techniques and provide alternatives to the use of restraint, thereby aligning restraint training with crisis prevention and intervention practices.

Comment: The Arc of Texas and DRTx recommended strengthening post-restraint procedures, including required physical and mental health screenings and improved documentation to inform ARD committee decision-making.

Response: The agency disagrees that physical or mental health screenings should be required following the use of restraint, as such screenings may require parental consent and may not be feasible in all circumstances. Therefore, mandating this requirement would not be practicable for school systems to implement. The agency also disagrees that additional documentation requirements are necessary, as existing restraint documentation requirements provide information regarding the restraint for ARD committee consideration when appropriate.

Comment: DRTx commented on the definition of "seclusion" and use of "time-out," stating that the rule should expand the definition of "seclusion" to include blocking exits and should require tracking and reporting of time-out rather than promoting its continued use through required ARD review.

Response: The agency disagrees, as the definition of time-out in §89.1053(b)(9)(B) includes language about exits that are physically blocked. The agency does not promote the use of time-out but gives the ARD committee the ability to determine the interventions necessary for a student to receive a free appropriate public education.

Comment: One individual requested clarification on the definition of "time-out," stating that it is unclear whether settings with other students present qualify as time-out and recommended additional clarification and examples to distinguish time-out from other supervised breaks.

Response: The agency agrees that additional clarification is needed regarding the definition of time-out, including whether the presence of other students in the same room constitutes time-out or a supervised break. The definition of "time-out" in subsection (b)(9) has been revised at adoption to clarify that time-out may occur within or outside the classroom setting and with or without other students present.

Comment: One individual expressed support for crisis prevention training and trauma-informed practices and recommended continued oversight to ensure safe, consistent, and equitable responses to student behavior.

Response: The agency agrees.

Comment: One individual expressed concern that the rule does not explicitly reference statutory prohibitions on aversive techniques, stating that the omission may limit enforceability through complaints or due process and recommended incorporating these requirements into the rule.

Response: The agency agrees that additional language is needed regarding the use of aversive techniques. Subsection (k) has been revised at adoption to include a reference to the prohibition of aversive techniques as outlined in TEC, §37.0023.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner of education as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §37.0021, as amended by SB 133, 88th Texas Legislature, Regular Session, 2023, and HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the adoption of procedures governing the use of restraint and time-out for a student with a disability; and TEC, §37.0023, which prohibits aversive techniques that are intended to reduce the likelihood of a behavior recurring and requires the commissioner to adopt procedures under this section.

CROSS REFERENCE TO STATUTE. The amendment implements TEC, §29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §37.0021, as amended by SB 133, 88th Texas Legislature, Regular Session, 2023, and HB 2, 89th Texas Legislature, Regular Session, 2025; and §37.0023.

§89.1053. *Procedures for the Use of Confinement, Restraint, Seclusion, and Time-Out.*

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding restraint, time-out, and crisis prevention and intervention training. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A. In accordance with this policy, students may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

(b) Definitions.

(1) "Crisis" means a situation in which a student is experiencing a state of dysregulation that overwhelms the student's baseline coping mechanisms and:

(A) may cause impaired logical thinking, potential risk of serious physical harm to self or others, functional impairment, or involuntary physiological responses; and

(B) is best addressed by crisis prevention and intervention to return the student's behavior to a regulated state and avoid an emergency as defined in this section.

(2) "Crisis prevention and intervention training" means evidence-based strategies, including proactive ongoing use of best practices, that are designed to equip individuals to recognize, respond to, and de-escalate crises and emergencies through individualized, devel-

opmentally and neurologically responsive supports and to use, only when necessary and appropriate, safely applied physical interventions.

(3) "Emergency" means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(4) "Imminent" means likely to occur immediately or without delay, leaving no reasonable opportunity to prevent serious physical harm through less restrictive interventions. Imminent does not include situations where there is time to safely use de-escalation, redirection, or other less restrictive interventions.

(5) "Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure, subject to any limitations as determined by the board of trustees of a school district under TEC §37.081(d).

(6) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

(A) "Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.

(B) "Mechanical restraint" refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or utilized by a student that have been prescribed by an appropriate medical or related services provider.

(7) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(8) "Taser" means a device manufactured, sold, or distributed by Axon Enterprises (formally known as Taser International, Incorporated) that is intended, designed, made, or adapted to incapacitate a person by inflicting an electrical charge through the emission of a projectile or conductive stream. The term, for purposes of this section, includes a similar device manufactured, sold, or distributed by another person.

(9) "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked;

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object;

(C) that may occur within or outside the classroom setting; and

(D) that may occur with or without other students present.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint must be discontinued at the point at which the emergency no longer exists.

(3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint must not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel whose job duties may place them at high risk of utilizing restraint.

(2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(5) Training on the use of restraint must include instruction on disability-related behaviors, including behaviors associated with neurological, developmental, or emotional disabilities, and evidence-based strategies to prevent, reduce, or respond to such behaviors. This training must emphasize individualized and developmentally appropriate approaches and the use of positive behavioral interventions and supports as alternatives to physical intervention and restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) or person standing in a parental relation to the student regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent(s) or person standing in parental relation to the student within one school day of the use of restraint. In the case of residential placements, written notification must be provided to the parent(s) or person standing in parental relation to the student within 24 hours of the restraint, regardless of whether the day is a school day, weekend, or holiday.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder no later than the third school day after the restraint so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavior improvement plan or a behavioral intervention plan.

(5) Written notification must be provided to the student's parent(s) or person standing in parental relation to the student for each

use of restraint, and documentation of each restraint must be placed in the student's special education eligibility folder. For purposes of this subsection, "each restraint" refers to each time the student is restrained by either physical force or mechanical device and released, regardless of the length of time of the restraint or the time between the release and the restart of the restraint. Multiple restraints may not be combined into a single restraint notification form, reported to the campus administrator or the parent(s) or person standing in parental relation to the student as a single restraint, or reported to the Texas Education Agency (TEA) as a single restraint. The written notification of each restraint must include the following:

- (A) name of the student;
- (B) name of the individual administering the restraint;
- (C) date of the restraint and the time the restraint began and ended;
- (D) location of the restraint;
- (E) nature of the restraint;
- (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
- (G) the behavior of the student that prompted the restraint;
- (H) the efforts made to de-escalate the situation and any alternatives to restraint that were attempted;
- (I) observation of the student at the end of the restraint;
- (J) contact information for the parent(s) or person standing in parental relation to the student to whom the school district sent the required notification of restraint; and
- (K) one of the following:

(i) if the student has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or

(ii) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

(f) Clarification regarding restraint. Restraint may not be used as a disciplinary or behavior management technique or as a method to gain student compliance. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(6) of this section does not include:

- (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
- (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
- (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing,

repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i), to promote student learning and reduce and/or prevent the need for ongoing intervention; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(9) of this section with the following limitations.

(1) Physical force or threat of physical force must not be used to place, maintain, or keep a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease a targeted behavior. The student's ARD committee must review, at least annually, the use, amount, and effectiveness of time-out as a behavioral intervention and consider whether revisions to the student's IEP, behavioral intervention plan, or positive behavior supports are necessary to reduce or eliminate the need for time-out.

(3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must be trained in the use of time-out.

(2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. Documentation of each use of time-out must include:

(1) a description of the behavior specified in the student's behavior improvement plan or behavioral intervention plan that prompted the use of time out; and

(2) any data collected regarding the use of time out, as addressed in the student's IEP, behavior improvement plan, or behavioral intervention plan. The ARD committee must use any collected data to evaluate the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Crisis prevention and intervention training. Training for school employees, volunteers, or independent contractors must be provided in accordance with the following requirements.

(1) School districts must create, document, and use risk criteria based on job role, campus assignments, or incident history to determine which personnel, including support staff and law enforcement, require training and the extent of training needed.

(2) Personnel who are designated as high risk must receive training that includes non-violent crisis intervention techniques, verbal de-escalation strategies, and safe physical intervention procedures.

(3) School districts shall require training using standards from the State Board for Educator Certification's continuing education clearinghouse in accordance with TEC, §21.4514.

(4) Minimum recommended training intervals include:

(A) annually for personnel determined to have a high risk of crisis involvement; and

(B) every two years for other campus-based personnel.

(5) Crisis prevention and intervention training may be combined with, or substituted by, other required training when 51% or more of the training content addresses the requirements of this subsection, including:

(A) trauma-informed care training in accordance with TEC, §38.036; and

(B) conflict resolution and positive student relationships training in accordance with TEC, §21.451(d)(3).

(k) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health, safety, and dignity of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities. Aversive techniques, in accordance with TEC, §37.0023, are prohibited from use by a school district or by a district employee, a volunteer, or an independent contractor.

(l) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to TEA in accordance with reporting standards specified by TEA.

(m) Restrictions on peace officers and security personnel. In accordance with TEC, §37.0021(j), a peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in Grade 5 or below, unless the student poses a serious risk of harm to the student or another person.

(n) Provisions applicable to peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (l) of this section apply to the use of restraint by any peace officer performing law enforcement duties on

school property or during a school-sponsored or school-related activity.

(o) The provisions adopted under this section do not apply to:

(1) juvenile probation, criminal detention, or corrections personnel; or

(2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

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

Filed with the Office of the Secretary of State on September 14, 2026.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1001

The Texas Education Agency (TEA) adopts an amendment to §150.1001, concerning teacher appraisal. The amendment is adopted with changes to the proposed text as published in the July 3, 2026 issue of the *Texas Register* (51 TexReg 4327) and will be republished. The adopted amendment establishes new provisions related to pilot activities supporting the development or revision of the Texas Teacher Evaluation and Support System (T-TESS).

REASONED JUSTIFICATION: Section 150.1001 establishes general provisions related to teacher appraisal system selection, implementation of T-TESS, and statutory appraisal components.

The adopted amendment to §150.1001 adds new subsection (g) authorizing the commissioner to identify school districts and open-enrollment charter schools to participate in pilot activities supporting the development or revision of the T-TESS. The adopted amendment allows the commissioner to establish alternative requirements or timelines for school districts and charter schools participating in commissioner-approved pilot activities and clarifies that appraisal processes implemented in accordance with approved pilot requirements are considered in compliance with Chapter 150, Subchapter AA.

The adopted amendment is intended to support the ongoing development and continuous improvement of the T-TESS by providing a structured process for testing potential revisions to appraisal components, processes, or timelines in a limited number of school districts or charter schools. Adding pilot authority to the general provisions ensures clear rule-level authorization for pilot implementation while maintaining statewide consistency and compliance with statutory appraisal requirements.

Subsection (g) was modified at adoption to correct a clerical error from "charter schools who choose to participate" to "charter schools who agree to participate."

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 3, 2026, and ended August 3, 2026. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.351, which requires the commissioner of education to adopt a state-recommended appraisal process for teachers; and TEC, §21.352, which establishes requirements for school districts' selection of teacher appraisal systems.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.351 and §21.352.

§150.1001. General Provisions.

(a) All school districts have two choices in selecting a method to appraise teachers: a teacher appraisal system recommended by the commissioner of education or a local teacher appraisal system.

(b) The commissioner's recommended teacher appraisal system, the Texas Teacher Evaluation and Support System (T-TESS), was developed in accordance with the Texas Education Code (TEC), §21.351.

(c) The superintendent of each school district, with the approval of the school district board of trustees, may select the T-TESS. Each school district or campus wanting to select or develop an alternative teacher appraisal system must follow the TEC, §21.352, and §150.1007 of this title (relating to Alternatives to the Commissioner's Recommended Appraisal System).

(d) The commissioner may designate a regional education service center to serve as the T-TESS certification provider for the state. The designated regional education service center may collect appropriate fees under the TEC, §8.053, from school districts and open-enrollment charter schools for training and certification.

(e) Sections 150.1002 through 150.1006 of this title (relating to Assessment of Teacher Performance; Appraisals, Data Sources, and Conferences; Teacher Response and Appeals; Appraiser Qualifications; and Teacher Orientation) apply only to the T-TESS and not to local teacher appraisal systems.

(f) The statutorily required components of teacher appraisal are defined as follows.

(1) The implementation of discipline management procedures is the teacher's pedagogical practices that produce student engagement and establish the learning environment.

(2) The performance of teachers' students is how the individual teacher's students progress academically in response to the teacher's pedagogical practice as measured at the individual teacher level by one or more student growth measures.

(g) The commissioner may identify school districts and open-enrollment charter schools who agree to participate in pilot activities supporting the development or revision of the T-TESS. For pilot participants, the commissioner may establish alternative requirements or timelines related to §§150.1002, 150.1003, and 150.1005 of this title. School districts and charter schools that implement appraisal processes in accordance with commissioner-approved pilot requirements shall be considered in compliance with this subchapter.

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

Filed with the Office of the Secretary of State on September 14, 2026.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards for educator certification exams. The amendment is adopted without changes to the proposed text as published in the May 22, 2026 issue of the *Texas Register* (51 TexReg 3499) and will not be republished. The adopted amendment specifies the satisfactory scores for the educator certification examinations for Bilingual Education Spanish Supplemental.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.048(a), requires the commissioner to establish the satisfactory levels of performance required on educator certification examinations and requires a satisfactory level of performance on each core subject covered by an examination. The passing standards were established by subject-matter expert stakeholder committee groups.

Section 151.1001 specifies the passing standards for all pedagogical and content certification examinations as approved by the commissioner. The adopted amendment to Figure: 19 TAC §151.1001(b)(13) introduces passing standards for the Bilingual Education Spanish Supplemental Texas Examinations of Educator Standards (TExES) examination.

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 22, 2026, and ended June 22, 2026. Following is the comment received and agency response.

Comment: One commenter supported TEA's effort to clarify passing standards for the Bilingual Education Spanish Supplemental exam, stating that this rule will help ensure consistency across preparation programs, strengthen the pipeline of qualified bilingual educators, and improve outcomes for emergent bilingual students.

Response: The agency agrees.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory

level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 31. NUTRITION SERVICES

SUBCHAPTER A. REGISTER OF TEXAS MOTHER-FRIENDLY WORKSITES

25 TAC §31.1

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts an amendment to §31.1, concerning Register of Texas Mother-Friendly Worksites. Section 31.1 is adopted without changes to the proposed text as published in the June 26, 2026, issue of the *Texas Register* (51 TexReg 4100). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to support updates to the Texas Department of State Health Services "Mother-Friendly" business designation as directed by the Texas Health and Safety Code Chapter 165, Breast-feeding. The Texas Mother-Friendly Worksite program provides minimum criteria for the designation in Title 25 Texas Administrative Code §31.1 and maintains a listing of designated worksites.

The updates to the rule reflect the program name, Texas Mother-Friendly Worksite Program; updates program contact information and application processes; introduces a redesignation process to ensure program integrity; and introduces additional options for voluntary Silver and Gold standard level designation criteria to align with worksite lactation best practices that reflect changes in business practice and technology.

COMMENTS

The 31-day formal comment period ended July 27, 2026. DSHS received comments regarding the proposed rule from one individual commenter. A summary of comments relating to the rule and DSHS' responses follows.

Comment: The commenter requested that the rule align with paid family leave policies.

Response: DSHS disagrees as paid family leave falls outside the scope of the rule. DSHS made no revisions to the rule text in response to this comment.

Comment: The commenter recommended considering tax incentives or financial enticements for worksites to provide lactation support to employees as outlined in the rule.

Response: DSHS disagrees as tax incentives and financial enticements are outside the scope of the rule. DSHS made no revisions to the rule text in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under 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 §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001. The amendment is authorized by Texas Health and Safety Code §165.003, which authorizes the department to maintain a list of mother-friendly businesses.

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

Filed with the Office of the Secretary of State on September 11, 2026.

TRD-202603950

Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 239-8263



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT SUBCHAPTER B. RETURN TO WORK

28 TAC §137.10

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §137.10, concerning return-to-work guidelines. Section 137.10 implements Texas Labor Code §413.011. The DWC medical advisor recommends the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

The amendments to §137.10 are adopted without changes to the proposed text published in the July 31, 2026, issue of the

Texas Register (51 TexReg 5000). Section 137.10 will not be republished.

REASONED JUSTIFICATION. The amendments adopt a different set of guidelines for disability duration values. The current rule requires the use of Medical Disability Advisor, while the adopted change requires the use of ODG by MCG, published by MCG Health (ODG by MCG). Amending §137.10 is necessary to instruct insurance carriers, health care providers, and employers to use the disability duration values in the current edition of the ODG by MCG instead of those in the MDGuidelines (formerly known as Medical Disability Advisor), as guidelines for the evaluation of expected or average return-to-work timeframes. The amendments also update DWC's website address and the section's effective date, and include nonsubstantive editorial changes that make updates for plain language and agency style to improve the rule's clarity.

Labor Code §413.011(e) requires the commissioner to adopt treatment guidelines and return-to-work guidelines by rule. Section 413.011(f) requires that those guidelines must be designed to ensure the quality of medical care and to achieve effective medical cost control, and to enhance a timely and appropriate return to work.

To fulfill their role in the Texas workers' compensation system, designated doctors are required to subscribe to these guidelines, which includes purchasing access to them. The current adopted treatment guidelines are published by ODG by MCG, and include access to return-to-work guidelines. Designated doctors cannot currently use ODG by MCG's return-to-work guidelines because the return-to-work guidelines in the current rule are published by MDGuidelines. MDGuidelines will change its pricing model and raise its rates substantially starting on October 1, 2026. Since the ODG by MCG treatment guidelines subscription already includes access to return-to-work guidelines, the amendments will allow system participants to use the ODG by MCG services they already subscribe to instead of maintaining a separate, costly subscription to MDGuidelines. Amending the rule to update the reference from Medical Disability Advisor to ODG by MCG is necessary to ensure continued participation in the workers' compensation system by avoiding unnecessary administrative and monetary burdens on doctors in the system. The change will promote efficiency by allowing system participants to benefit from a single subscription instead of maintaining two separate subscriptions to substantially similar services. Avoiding those unnecessary costs also complies with the requirement in Labor Code §413.011 that the commissioner's adopted return-to-work guidelines help achieve effective medical cost control.

The return-to-work guidelines in ODG by MCG are comparable to those in MDGuidelines, and moving to the guidelines in ODG by MCG makes sense administratively, economically, and clinically. Both sets of guidelines derive disability duration values from the same foundational methodology--population-based epidemiological data stratified by diagnosis, job classification, and physical demand characteristics. The underlying evidence base for expected return-to-work timeframes does not differ materially between the two sets of guidelines. In practice, duration values calculated using both sets of guidelines have been substantively equivalent across the overwhelming majority of diagnostic categories in Texas workers' compensation claims. As a result, replacing the return-to-work guidelines with those in ODG by MCG removes an unnecessary cost and duplication of resources without any loss of clinical accuracy or adjudicative reliability. In addition, because treatment and expected disability

duration are evaluated together, using the ODG by MCG for both treatment, as is currently the case, and return-to-work disability duration calculations, as this order adopts, allows system participants to apply a single, integrated, evidence-based resource across both the treatment and return-to-work functions, which more accurately reflects actual clinical decision making.

As part of the implementation plan for this rule, DWC intends to train system participants on the use of the return-to-work guidelines in ODG by MCG.

DWC invited public comments on an informal draft posted on DWC's website on May 6, 2026, as well as on the formal proposal. DWC also held a public hearing on the proposal on August 24, 2026. DWC considered the comments it received when drafting this order.

SUMMARY OF COMMENTS AND INFORMATION SUBMITTED, AND AGENCY RESPONSE.

Commenters: DWC received six written comments by the August 31, 2026, deadline, and no oral comments at the August 24, 2026, hearing. All of the commenters included information, data, research, or analysis about the cost, benefit, or effect of the proposal. Commenters in support of the proposal were: Cheryl Olson, Sheryl Lawson, and Eleanor Armstrong for Britt Case Management; the State Office of Risk Management; the Office of Injured Employee Counsel; and Texas Mutual Insurance Company. No commenters requested changes, and no commenters were against the proposal.

Comments on §137.10. Every other state accepts ODG for treatment guidelines and return to work. Switching to ODG for return to work would be more efficient and in line with other states.

Agency Response to Comments on §137.10. DWC appreciates the comments and agrees.

Comment on §137.10. Streamlining the return-to-work guidelines with the adopted medical treatment guidelines under ODG promotes consistency, enhances efficiency, and lowers costs across the workers' compensation system.

Agency Response to Comment on §137.10. DWC appreciates the comment and agrees.

Comment on §137.10. Decreasing workers' compensation system costs is beneficial to the injured employees of Texas.

Agency Response to Comment on §137.10. DWC appreciates the comment and agrees.

Comment on §137.10. Because ODG by MCG incorporates both treatment and return-to-work guidelines within a single subscription, the proposed amendments would allow carriers and doctors to maintain a single ODG by MCG subscription while retaining access to both sets of guidelines at no additional cost.

Agency Response to Comment on §137.10. DWC appreciates the comment and agrees.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §137.10 under Labor Code §§413.011, 402.00111, 402.00116, and 402.061.

Labor Code §413.011(e) requires the commissioner to adopt treatment guidelines and return-to-work guidelines by rule. Section 413.011(f) states that the medical policies or guidelines the commissioner adopts in subsection (e) must be: (1) designed to ensure the quality of medical care and to achieve effective medical cost control; (2) designed to enhance a timely and

appropriate return to work; and (3) consistent with §§413.013, 413.020, 413.052, and 413.053.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on September 8, 2026.

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Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE SUBCHAPTER J. FINANCIAL ASSURANCE FOR RECYCLING FACILITIES

30 TAC §37.931

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §37.931.

Amended §37.931 is adopted without changes to the proposed text as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2009) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules implement House Bill (HB) 3229 passed by the 89th Texas Legislature, 2025. HB 3229 amended Texas Health and Safety Code (THSC) by adding new Chapter 376, Renewable Energy Component Recycling Facilities, which establishes new reporting, financial assurance, and penalty requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from wind turbine generators, solar energy devices, and battery energy storage systems. THSC, Chapter 376 requires owners of recycling facilities that recycle renewable energy components (henceforth called recycling facilities) to submit an annual report, by January 15, containing an inventory of unrecycled renewable energy components (including unrecycled components located

offsite that the facility has taken control or ownership of), an estimated timeline to recycle these materials, a cost estimate to recycle or dispose the materials prepared by an independent, third-party professional engineer licensed in Texas, and evidence of financial assurance for the cost estimate provided.

Adopted amendments to 30 TAC Chapter 37 are limited to implementing requirements specific to the financial assurance mechanisms authorized for these recycling facilities. While no other amendments are adopted to Chapter 37, recycling facilities impacted by this rulemaking will also be subject to existing rules in Chapter 37, including 30 TAC §§37.61, 37.141, 37.151, and Chapter 37, Subchapter J (Financial Assurance for Recycling Facilities).

As part of this rulemaking, the commission is adopting revisions to 30 TAC Chapter 328, Waste Minimization and Recycling, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

§37.931, Financial Assurance Mechanisms

The commission adopts new §37.931(3) to specify the authorized financial assurance mechanisms for recycling facilities subject to the financial assurance requirement in THSC, Chapter 376, and as adopted in 30 TAC Chapter 328, Subchapter M in this rulemaking. The commission amends §37.931 by adding a new paragraph (3) to implement THSC, §376.003(c) as established by HB 3229.

THSC, Chapter 376 allows the owner to demonstrate financial assurance using a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency. A parent company guaranty is a type of corporate guarantee. A corporate guarantee may be used to demonstrate financial assurance under existing financial assurance rules in 30 TAC Chapter 37. Under Chapter 37, a corporate guarantor must be a direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator. The adopted rules allow an owner or operator to use a corporate guarantee to demonstrate financial assurance for recycling facilities but limit the guarantor to a parent company in accordance with THSC, §376.003(c).

The commission recognizes that THSC, Chapter 376 requires the owner of a recycling facility that accepts, processes, and repurposes components from renewable energy systems to submit evidence of financial assurance to the commission. The commission understands that the legislature intends for the commission to be the beneficiary of the financial assurance and to be able to access and use any funds from the financial assurance to recycle or dispose of all unrecycled components in the event that the owner or operator of the recycling facility fails to do so. Accordingly, the adopted rulemaking requires owners or operators of recycling facilities to provide financial assurance in accordance with 30 TAC Chapter 37 to ensure that adequate funds are available to properly recycle or dispose of unrecycled components at a recycling facility. The commission's financial mechanisms (corporate guarantee, letter of credit, and payment bond) correspond to the financial assurance that may be included as acceptable forms of financial assurance in THSC, §376.003(c). The wording and requirements for the financial assurance mechanism in adopted §37.931(3) must conform to the applicable requirements for financial assurance administered by the agency in Chapter 37.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amended rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. HB 3229 requires the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system to submit a report to the agency that includes evidence of financial assurance. The adopted rules implement HB 3229 by establishing the requirements for the financial assurance. Financial assurance provides a source of funding to the agency to perform closure of a facility in the event that the owner fails to do so. The financial assurance requirement will apply to the owner of a recycling facility under THSC Chapter 376 in the absence of these rules. Because the adopted rules implement financial assurance requirements, the adopted rules do not change any existing requirements that protect the environment or reduce risks to human health from environmental exposure, nor do the adopted rules affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted rules do not exceed a standard set by federal law. The adopted amendments do not exceed an express requirement of state law or a requirement of a delegation agreement. These rules were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and TWC, that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amended rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. The adopted amended rules in Chapter 37 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the adopted rules. The adopted rules in Chapter 37 establish financial assurance requirements for the owner of a

recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system, as required by HB 3229. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no comments received regarding the CMP.

Public Comment

The commission offered public hearings on April 23, 2026, and April 27, 2026. The comment period closed on April 27, 2026. No comments were received related to 30 TAC Chapter 37 amendments. The commission received comments related to amendments made in this rulemaking to 30 TAC Chapter 328, Waste Minimization and Recycling, from Harris County Pollution Control Services (HCPCS), one individual (IND), and the Lone Star Chapter of the Sierra Club (LSCSC). One commenter was in support of the rules, no commenters were against the rules, one commenter requested clarification of the rules, and two commenters suggested changes to the proposed rules. For the response to comments received related to 30 TAC Chapter 328 amendments, see the *Response to Comments* section of the adopted preamble for 30 TAC Chapter 328, Waste Minimization and Recycling, in this issue of the *Texas Register*.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC), §361.011, which confers the commission responsibility for the management of municipal solid waste; THSC, §361.017, which confers the commission responsibility for the management of industrial solid waste and hazardous municipal waste and provides authority to control all aspects of the management of industrial solid waste and municipal hazardous waste by all practical and economically feasible methods consistent with its powers and duties under THSC Chapter 361 and other law, and THSC, Chapter 376 which establishes requirements for renewable energy component recycling facilities.

The adopted rules implement House Bill (HB) 3229, 89th Texas Legislature, Regular Session, 2025, and THSC, Chapters 361 and 376.

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

Filed with the Office of the Secretary of State on September 11, 2026.

TRD-202603951

Amy L. Browning

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0682



CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER M. REQUIREMENTS FOR RENEWABLE ENERGY COMPONENT RECYCLING FACILITIES

30 TAC §§328.401, 328.411, 328.421, 328.431, 328.441, 328.451

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§328.401, 328.411, 328.421, 328.431, 328.441, and 328.451.

New §§328.411, 328.421, 328.431, 328.441, and 328.451 are adopted with changes to the proposed text as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2011) and, therefore, will be republished.

New §328.401 is adopted without changes to the proposed text as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2011) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules implement House Bill (HB) 3229 passed by the 89th Texas Legislature, 2025. HB 3229 amended Texas Health and Safety Code (THSC) by adding new Chapter 376, Renewable Energy Component Recycling Facilities, which establishes new reporting, financial assurance, and penalty requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from wind turbine generators, solar energy devices, and battery energy storage systems. THSC, Chapter 376 requires owners of recycling facilities that recycle renewable energy components (henceforth called recycling facilities) to submit an annual report, by January 15, containing an inventory of unrecycled renewable energy components (including unrecycled components located offsite that the facility has taken control or ownership of), an estimated timeline to recycle these materials, a cost estimate to recycle or dispose the materials prepared by an independent, third-party professional engineer licensed in Texas, and evidence of financial assurance for the cost estimate provided. The commission adopts new Subchapter M, Requirements for Renewable Energy Component Recycling Facilities, in Chapter 328 to implement HB 3229.

HB 3229 also amended Texas Water Code (TWC) §5.013(a)(11) to give TCEQ jurisdiction over the responsibilities assigned by THSC, Chapter 376 and amended TWC, §7.052 to set the amount of the penalty for a violation of THSC, Chapter 376 to not exceed \$500 a day for each violation. Additionally, HB 3229

required the commission maintain a list of recycling facilities in compliance with THSC, Chapter 376 on the agency's website.

THSC, Chapter 376 is silent on many of the programmatic elements necessary to fully implement the statute, such as the activities that must be included in the cost estimate and the procedures for demonstrating financial assurance. The commission is using its general statutory authority to adopt provisions addressing these programmatic elements on which the statute is silent to provide consistency with other agency programs and clarity for regulated entities. All adopted rules are fully described in the *Section by Section Discussion* portion of this preamble.

Closure and Financial Assurance Applicability

The commission recognizes that THSC, Chapter 376 requires the owner of the recycling facility to submit evidence of financial assurance to the commission, with the commission being the beneficiary of the financial assurance and able to access and use any funds from the financial assurance to recycle or dispose of all unrecycled components in the event that the owner of the recycling facility fails to do so.

The commission's financial assurance rules are based on proper closure, in accordance with respective program rules. If closure is not properly performed, then the commission can use financial assurance to conduct closure. Typically, closure for recycling facilities under existing requirements will begin when the owner or operator provides written notification under Title 30, Texas Administrative Code (30 TAC) §330.11(c) and §328.5 for municipal solid wastes or under 30 TAC §335.6 for nonhazardous industrial wastes to the executive director of their intent to close the facility. Solely for the purpose of Subchapter M, the commission is adopting a definition of closure to mean the act, outside of daily operations, of collecting all components accepted from a wind turbine generator, a solar energy device, or a battery energy storage system, including any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility, and properly recycling or disposing of the components. To implement the requirements for financial assurance from THSC, Chapter 376, recycling facilities subject to Subchapter M may be required to perform closure. The recycling facility owner or operator's failure to perform closure when required allows the executive director to call on the financial assurance mechanism under 30 TAC §37.101.

Enforcement, Including Penalties

The commission may conduct investigations to ensure compliance with this subchapter. The commission and the attorney general, as appropriate, will enforce this subchapter and may, among other actions, institute a suit under TWC, §7.032 for injunctive relief against a person to restrain the violation or threat of violation of adopted Subchapter M.

Failure to comply with this subchapter may result in enforcement, including penalties. The amount of an administrative penalty for a violation of this subchapter will not exceed \$500 a day for each violation.

Internet Posting

In accordance with HB 3229, TCEQ will maintain a publicly available list of recycling facilities complying with THSC, Chapter 376, on its website. For owners or operators of recycling facilities reporting by January 15th, the agency will compile and publish a list by March 1st of each year. After that list has been published, the agency will maintain and update the list periodically.

As part of this rulemaking, the commission is adopting revisions to 30 TAC Chapter 37, Financial Assurance, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

Subchapter M, Requirements for Renewable Energy Component Recycling Facilities

The commission adopts new Subchapter M to implement HB 3229 and establish the reporting, financial assurance, and recordkeeping requirements for owners or operators of renewable energy components recycling facilities.

§328.401, Purpose

Adopted new §328.401 establishes the purpose of Chapter 328, Subchapter M, which is to establish procedures and requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system. Adopted new §328.401 implements THSC, Chapter 376 as enacted by HB 3229.

§328.411, Applicability

Adopted new §328.411 describes the applicability of Chapter 328, Subchapter M and implements THSC, Chapter 376 as enacted by HB 3229.

Subchapter M, through Subsection (a), applies to a facility involved in the recycling of components to recover valuable materials from a wind turbine generator, solar energy device, or battery energy storage system.

Subsection (b) states that compliance with this subchapter does not exempt nor exclude recycling facilities from the applicability of other local, state, or federal laws or regulations. The commission adopts this warning to place owners and operators of recycling facilities on notice that multiple other regulations are applicable to these activities. HB 3229 enacts new THSC, Chapter 376 and does not repeal or amend other applicable laws that apply to recycling activities or the management of solid waste.

Components subject to adopted new Subchapter M are also subject to other local, state, or federal requirements such as municipal solid waste, industrial solid waste, or hazardous waste management regulations, including universal waste. Components subject to this subchapter must be recycled or disposed of in a manner that complies with local, state, and federal laws and regulations. Components that are received from municipal sources must be managed, recycled, and disposed of in accordance with 30 TAC Chapter 328 and 30 TAC Chapter 330. Components that are classified as hazardous waste under 30 TAC §335.504 must be managed, recycled, and disposed of in accordance with 30 TAC Chapter 335.

The owner or operator of the recycling facility must operate the facility to prevent nuisances and disturbances and comply with applicable requirements of 30 TAC §§328.3, 330.15, or 335.4. Management of wastes subject to 30 TAC Chapter 335 that are received or generated at the facility may be required to comply with the waste classification requirements of 30 TAC Chapter 335, Subchapter R.

Recycling facilities are subject to recyclable material retention rules which prohibit speculative accumulation including 30 TAC §328.4(b) for recyclable materials derived from municipal sources, and 30 TAC §335.17(a)(8) for recyclable materials derived from industrial sources.

In response to comments, the commission adopts new §328.411(b) with changes from the proposed rule for clarity. The proposed phrase "solid waste laws" was replaced with "laws and regulations."

§328.421, Definitions

Adopted new §328.421 adds definitions for the terms battery energy storage system, closure, operator, owner, recycling, recycling facility, solar energy device, unrecycled components, and wind turbine generator for the purpose of adopted Subchapter M. Adopted definitions for battery energy storage system, solar energy device, and wind turbine generator uses terms consistent with THSC, Chapter 376 as enacted by HB 3229 but not explicitly defined in Chapter 376.

In response to comments, the commission adopts new §328.421(1), the definition for battery energy storage system, with changes from the proposed rule to clarify that the battery energy storage system components subject to Subchapter M are expected to come from utility scale operations. The adopted definition contains language from Texas Utility Code, §303.0001, which defines a battery energy storage resource as an electrochemical device, whether connected at the transmission or distribution level, with a capacity of one megawatt hour or greater that charges from the grid or a collocated generation resource and discharges that energy at a later time.

The definitions for closure, operator, owner, recycling, recycling facility, and unrecycled components are intended to provide context for understanding and complying with the adopted rules. The definition of closure describes the activities that must be conducted to close under Subchapter M. This definition is included to describe the activities required of the recycling facility owner or operator, typically when ceasing operations, but also in situations described in §328.441(e), to properly recycle or dispose of accepted components which results in no unrecycled components at the recycling facility or under the control of the recycling facility. In response to comments, the commission adopts new §328.421(3), which adds a definition for operator, and renumbers the remaining paragraphs to account for the added definition.

In response to comments, the commission adopts new §328.421(4), the definition for owner, with changes from the proposed rule. The adopted definition incorporates both a person who owns a recycling facility, or a person who holds title to the real property on which the recycling facility is located, including fixtures and appurtenances.

Recycling and recycling facility definitions are adopted to consistently and concisely describe what is and is not considered recycling activities and a recycling facility. Unrecycled components concisely describes components from a wind turbine generator, a solar energy device, or a battery energy storage system that have been accepted but not recycled and includes offsite components the recycling facility has assumed control of.

§328.431, Reporting Requirements

Adopted new §328.431 establishes reporting and cost estimate requirements for the owner or operator of a recycling facility that accepts, processes, and repurposes renewable energy components to recover valuable materials under adopted Subchapter M. New §328.431 implements THSC, §376.003 as enacted by HB 3229.

In response to comments, the commission adopts §328.431 with changes from the proposed rule which apply the reporting

requirements to the owner or operator, rather than solely the owner. Adopted §328.431 requires the owner or operator of a recycling facility to submit an annual report to the executive director by January 15 of each year, on forms prescribed by the executive director. Paragraphs (1) - (3), which implement THSC, §376.003(a)(1)- (3), provide the required contents of the report, including an inventory of all unrecycled components accepted but not yet recycled, an estimated timeline for recycling or disposal, and a written cost estimate. The adopted rule requires regulated entities to use an agency prescribed form, in accordance with the commission's general statutory authority, for consistency in information submitted to executive director's staff and as a way to provide additional instruction and guidance to the regulated community.

Adopted new §328.431(3), which implements THSC, §376.003(a)(3), requires owners or operators to submit a written cost estimate, in current dollars, prepared and certified by an independent professional engineer, and describes the elements required for the cost estimate. The adopted rule requires the cost estimate to be in current dollars to ensure the cost estimate accurately calculates potential closure costs and financial assurance funding.

The commission adopts §328.431(3)(A) - (C) to require the cost estimate include the cost of hiring a third-party for offsite recycling or disposal of unrecycled components, including any disposal or recycling fees by the destination facility, and loading and transportation costs. If the commission must utilize financial assurance posted by an owner or operator of a recycling facility, the commission would incur these costs by having a third-party remove and properly recycle or dispose of unrecycled components. The activities contained in the cost estimate are common items that are required in cost estimates prepared for other recycling programs, including scrap tire (30 TAC §328.71), municipal solid waste (30 TAC §328.5(c)).

The owner or operator of a recycling facility that has no inventory of unrecycled components must still submit the report to the executive director annually. New THSC, Chapter 376 requires the commission to maintain a list of recycling facilities in compliance with THSC, Chapter 376, therefore, any recycling facility (that manages renewable energy components during the year) must report their inventory, even if that inventory is zero. The agency will use these reports to establish and maintain on the agency's website a list of recycling facilities that are in compliance with THSC, Chapter 376.

§328.441, Financial Assurance Requirements

Adopted new §328.441 establishes financial assurance requirements for recycling facilities to ensure adequate funds are available for the commission to properly recycle or dispose of unrecycled components in the event that the owner or operator fails to do so. Adopted new §328.441 implements THSC, §376.003(b) and (c) as enacted by HB 3229. The commission implements the statutory financial assurance requirements by utilizing existing commission financial assurance requirements, such as the specified wording of financial assurance mechanisms, and as further established in this rulemaking in 30 TAC Chapters 37 and 328. In response to comments, §328.441 is adopted with changes from the proposed rule which apply the financial assurance requirements to the owner or operator, rather than solely the owner.

The commission adopts subsection (a) to require the owner or operator of a recycling facility that accepts, processes, and re-

purposes components from renewable energy systems to provide financial assurance in accordance with Chapter 37, Subchapter J. Subsection (a) directs and requires the owner or operator to comply with existing financial assurance requirements in Chapter 37. An owner or operator must comply with requirements for financial assurance and mechanisms in 30 TAC Chapter 37, Subchapters A - D (except §§37.31, 37.131, 37.161, and 37.241(b) in accordance with §37.921(a)) and submit the proper financial assurance mechanism documentation with their report and cost estimate by January 15.

Subsection (b) requires the owner or operator of the recycling facility to submit evidence of financial assurance with the first annual report in an amount equal to 100 percent of the cost estimate described under §328.431. For each subsequent one-year reporting period, the owner or operator must adjust the financial assurance to ensure it remains at or above the cost estimate for the current year. Subsection (b) implements THSC, §376.003(b).

Subsection (c) specifies that financial assurance mechanisms must comply with §37.931. The financial assurance mechanisms authorized for recycling facilities subject to Subchapter M are adopted in new §37.931(3). Acceptable forms of financial assurance are a corporate guarantee, a letter of credit, or a bond. Subsection (c) generally implements THSC, §376.003(c), except that the commission adopts corporate guarantee in §37.931, instead of a parent company guaranty found in THSC, Chapter 376. A parent company guaranty is a type of corporate guarantee. A corporate guarantee may be used to demonstrate financial assurance under existing financial assurance rules in 30 TAC Chapter 37. Under Chapter 37, a corporate guarantor must be the direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator. Adopted §37.931(3) allows an owner or operator to use a corporate guarantee to demonstrate financial assurance for recycling facilities but limits the guarantor to a parent company in accordance with THSC, §376.003(c). The wording of the mechanisms must comply with 30 TAC Chapter 37, Subchapter D.

Subsection (d) requires the executive director to review and approve the cost estimate and documentation for the financial assurance mechanism to provide consistency of financial assurance procedures across programs and to ensure sufficient funding is available in the event the commission must perform closure. If deficiencies are noted in the cost estimate or financial assurance documentation, the executive director will communicate the deficiency within 30 days of receipt of the report. The owner or operator will be required to make appropriate changes to the cost estimate and/or financial assurance mechanism and resubmit the revised documents, if deficiencies are noted. The executive director will include a deadline for revisions when communicating deficiencies. When approved, the executive director will communicate approval to the owner or operator and publish the name of the recycling facility on the agency's website as required by THSC, §376.004. To help ensure proper estimation and compliant financial mechanisms are submitted, draft cost estimates and financial assurance documents may be submitted for "preliminary" review by the executive director, as long as the final documents are submitted by January 15.

When reporting for subsequent years, increases or decreases to the facility's cost estimate and financial assurance will be handled in a similar manner as described above and following 30 TAC §37.141 and §37.151, with the exception of when the owner or operator submits a decreased financial assurance mecha-

nism. Updating financial assurance should generally be conducted with the annual report due by January 15. Updating financial assurance outside of this cycle should only occur if the owner or operator needs to change the type of financial assurance mechanism or permanently terminate the mechanism and should not be used to lower financial assurance during the operating year.

Financial assurance must be terminated in accordance with 30 TAC §37.61. The owner or operator must submit to the executive director a written request to terminate the financial assurance mechanism for the recycling facility and must include documentation that all unrecycled components have been recycled or disposed of and no additional components will be accepted. The executive director may conduct a site inspection to confirm the recycling facility has ceased operations and properly removed unrecycled components. If no issues are noted, the executive director will release the financial assurance mechanism. The owner or operator should terminate the financial assurance only when ceasing operations with no plans on restarting. If an owner or operator has no unrecycled components during a reporting period but plans to continue recycling operations, the owner or operator may follow the procedures to decrease financial assurance instead of terminating their financial assurance.

For facilities that are required to obtain financial assurance under Subchapter M and financial assurance under another program, the owner or operator may follow the allowances in §37.52. The universal mechanism must be a corporate guarantee, a letter of credit, or a bond, as required under amended §37.931. And the existing financial assurance must cover the cost estimate activities in §328.431(a)(3). Additionally, the owner or operator is still required to submit the annual report, including the cost estimate, and financial assurance documentation, to demonstrate adequate coverage under Subchapter M.

Subsection (e) identifies the circumstances under which the owner or operator of a recycling facility subject to Subchapter M is required to perform closure. The purpose of financial assurance can only be implemented by making the commission the beneficiary of the financial assurance and allowing the commission to call on the financial assurance. Therefore, the commission adopts the circumstances under which an owner or operator must perform closure and, if not properly conducted, the commission is authorized to call on the financial assurance in subsection (e).

The owner or operator's failure to perform closure allows the executive director to call on the financial assurance under §37.101. When an owner or operator has received a written violation from the commission, the owner or operator will have an opportunity to address the violation(s) or receive an order from the commission. If the owner or operator fails to address the violation(s), the owner or operator will be required to perform closure as described in Subchapter M. The violation(s) include: 1) when unrecycled components have been speculatively accumulated; 2) when unrecycled components cause the discharge or imminent threat of discharge of contaminants into or adjacent to the waters in the state; 3) when unrecycled components create or maintain a nuisance; or 4) when unrecycled components endanger the public health and welfare. The owner or operator must also perform closure when directed by the executive director. For the purpose of Subchapter M, the term contaminant is consistent with the definition for "contaminant" in THSC, §361.601. Speculative accumulation occurs when unrecycled components accumulate and have no feasible means of being recycled and when

at least 75% by weight or volume of the accumulated unrecycled components remain unrecycled for the one-year reporting period.

Subsection (f) authorizes the executive director to receive and spend funds as the beneficiary of the financial assurance provided in accordance with this subchapter. THSC, Chapter 376 requires the owner of the recycling facility to submit evidence of financial assurance to the agency. The commission adopts subsection (f) to authorize the executive director to receive and spend funds as a beneficiary of the financial assurance required by Subchapter M in accordance with the commission's general statutory authority.

§328.451, Recordkeeping Requirements

In response to comments, §328.451 is adopted with changes from the proposed rule which apply the recordkeeping requirements to the owner or operator, rather than solely the owner. Adopted new §328.451 establishes recordkeeping requirements for owners or operators of recycling facilities subject to Chapter 328, Subchapter M to ensure recycling facilities maintain accurate and verifiable documentation of recycling and disposal activities. Under the adopted rule, the owner or operator of a recycling facility is required to maintain records for a minimum of three years in addition to any local, state, or federal recordkeeping requirements. Examples of records include manifests, bills of lading, quantities of components recycled onsite or offsite, waste disposal records, or other documentation used in annual reports submitted to the executive director.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted new rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. HB 3229 requires the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system to submit a report to the agency and provide financial assurance. The adopted rules implement HB 3229 by establishing the requirements for the submitted report and financial assurance. The reporting requirement and financial assurance requirement would apply to the owner of a recycling facility under THSC, Chapter 376 in the absence of these rules. Because the adopted rules implement reporting and financial assurance requirements, the adopted rules do not change any existing requirements that protect the environment or reduce risks to human health from environmental exposure, nor do the adopted rules affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state

law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted rules do not exceed a standard set by federal law. The adopted amendments do not exceed an express requirement of state law or a requirement of a delegation agreement. These rules were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC and TWC, that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted new rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. The adopted new rules in Chapter 328 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the adopted rules. The adopted rules in Chapter 328 establish reporting and financial assurance requirements for the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program (CMP) during the public comment period. There were no comments received regarding the CMP.

Public Comment

The commission offered public hearings on April 23, 2026 and April 27, 2026. The comment period closed on April 27, 2026. The commission received comments from Harris County Pollution Control Services (HPCPS), one individual (IND), and the Lone Star Chapter of the Sierra Club (LSCSC). One commenter was in support of the rules; no commenters were against the rules; one commenter requested clarification of the rules; and two commenters suggested changes to the proposed rules.

Response to Comment

Comment

LSCSC commented in support of the proposed rules and the reporting deadline of January 15th. LSCSC agrees with the financial assurance criteria, including the contents of the cost esti-

mate, the requirements for financial assurance to be maintained in current dollars, and that TCEQ can use the financial assurance as needed.

Response

The commission acknowledges the support. No changes have been made in response to this comment.

Comment

HCPCS requested the rule language in 30 TAC §328.411(b) be expanded to clarify that compliance with the proposed rules does not exempt nor exclude recycling facilities from other local, state, or federal rules, regulations, or laws, rather than specifying solid waste laws.

Response

In response to this comment, the commission revised adopted rule language in §328.411(b) by replacing the phrase "solid waste laws" with "laws and regulations" for clarity.

Comment

IND requested clarification of what qualifies as a "Battery Energy Storage System" and whether all battery handlers of any kind would be subject to HB 3229 and the rulemaking.

Response

In response to this comment, the commission added rule language to the adopted definition for "Battery energy storage system" in 30 TAC §328.421 to more clearly describe the devices subject to this rulemaking, which are those from utility scale operations.

Comment

HCPCS requested TCEQ revise the proposed definition for owner in 30 TAC §328.421(3) to identify the owner as the facility owner instead of the property owner. HCPCS also requested TCEQ revise the rules to require the facility owner and/or facility operator to comply with the reporting and financial assurance requirements.

Response

In response to this comment, the commission revised adopted §328.421 to include the recycling facility owner in the definition for owner and a definition for operator, and adopted §§328.431, 328.441, and 328.451 to allow the owner or operator to comply with the requirements of the new subchapter.

Comment

HCPCS requested TCEQ revise the proposed definition for closure in 30 TAC §328.421(2) to read "The act of collecting all components accepted by the recycling facility, and properly recycling or disposing of the components, which results in taking the facility out of service."

Response

THSC, Chapter 376 does not authorize the commission to take a recycling facility out of service. Further, a recycling facility is not required to be taken out of service for TCEQ to draw on the financial assurance and conduct closure activities. No changes have been made in response to this comment.

Comment

HCPCS requested TCEQ revise 30 TAC §328.431(3) and §328.441 to include remediation and decontamination in the

cost estimate and financial assurance. HCPCS also requested TCEQ consider transportation costs for rural areas when reviewing cost estimate.

Response

While recycling facilities may be subject to these costs under other solid waste financial assurance programs, THSC, Chapter 376 does not authorize the commission to account for remediation and decontamination, only for "recycling or disposing of the (unrecycled) components." In accordance with this statutory provision, the commission adopts §328.431(3)(C) requiring the recycling facility to include "the cost for transporting unrecycled components offsite to an authorized recycling or disposal facility" in the cost estimate and will consider these costs in the review of the cost estimate. No changes have been made in response to this comment.

Comment

HCPCS requested TCEQ provide staff training and to anticipate increased delays in permit reviews and inspections related to the location of wind generators in primarily rural areas.

Response

It is not clear what staff training was requested by the commenter. The commission is required to fully implement passed legislation and ensure that staff involved in the regulation of recycling facilities under THSC, Chapter 376 and this subchapter are equipped with the skills and resources to do so. No changes have been made in response to this comment.

Comment

HCPCS requested TCEQ expand the recordkeeping requirements in §328.451 to include standards similar to those required to be kept for scrap tire storage or transfer stations, such as training and inspection logs, site operating and fire plans, and location of the records.

Response

The commission believes the records required under proposed §328.451 will be adequate to determine compliance with THSC, Chapter 376 and this subchapter. Additional recordkeeping requirements under other agency programs will continue to apply to recycling facilities. No changes have been made in response to this comment.

Comment

HCPCS requested TCEQ implement a fee program to create a fund for the cleanup of future abandoned or unauthorized renewable energy recycling facilities.

Response

THSC, Chapter 376 authorizes financial assurance for recycling facilities, but does not authorize the commission to collect a fee. No changes have been made in response to this comment.

Comment

LSCSC suggested TCEQ incorporate the requirement for TCEQ to maintain the list of compliant recycling facilities on the commission's website and who reports into the rules.

Response

The requirement for the commission to post the list of facilities complying with the statute is contained in THSC, §376.004, and is wholly applicable to the commission. Additionally, it is not nec-

essary to duplicate the statutory requirement without clarification or additions. No changes to rule made in response to this comment.

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC), §361.011, which confers the commission authority for the management of municipal solid waste; and THSC, §361.017, which confers the commission responsibility for the management of industrial solid waste and hazardous municipal waste and provides authority to control all aspects of the management of industrial solid waste and municipal hazardous waste by all practical and economically feasible methods consistent with its powers and duties under THSC, Chapter 361 and other law, and THSC, Chapter 376 which establishes requirements for renewable energy component recycling facilities.

The adopted rules implement House Bill (HB) 3229, 89th Texas Legislature, Regular Session, 2025, and THSC, Chapters 361 and 376.

§328.411. *Applicability.*

(a) This subchapter is applicable to a recycling facility that accepts, processes, and repurposes components to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system.

(b) Compliance with provisions of this subchapter does not exempt nor exclude the applicability of other local, state or federal laws and regulations.

§328.421. *Definitions.*

The following terms, when used in this subchapter, have the following meanings.

(1) **Battery energy storage system**--A battery energy storage system, including battery cells, racks, containers, inverters, battery management systems, cooling and fire suppression systems, and cables, is an electrochemical device, whether connected at the transmission or distribution level, with a capacity of 1 megawatt hour or greater, that charges from the grid or a co-located generation resource and discharges that energy at a later time.

(2) **Closure**--The act, outside of daily operations, of collecting all components accepted from a wind turbine generator, a solar energy device, or a battery energy storage system, including any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility, and properly recycling or disposing of the components.

(3) **Operator**--A person responsible for the overall operation of a recycling facility.

(4) **Owner**--A person who owns a recycling facility, or a person who has title to the real property on which a recycling facility is located.

(5) **Recycling**--A process by which components of a wind turbine generator, solar energy device, or battery energy storage system, that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the

manufacture of new products. A use of components that constitutes disposal or that releases contaminants into the environment is not recycling under this subchapter.

(6) **Recycling facility**--All contiguous land and structures, other appurtenances, and improvements on the land used for the recycling of components from a wind turbine generator, a solar energy device, or a battery energy storage system. The term includes a facility that has accepted or plans to accept unrecycled components for recycling and has not yet ceased operations.

(7) **Solar energy device**--A solar energy device, as defined by Utilities Code, §185.001, including solar modules, junction boxes, transformers, inverters, racks or trackers, and cables.

(8) **Unrecycled components**--Components from a wind turbine generator, a solar energy device, or a battery energy storage system that are accepted by the recycling facility for recycling that have not yet been recycled or used as a product. The term includes any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility.

(9) **Wind turbine generator**--A wind turbine generator, including turbine blades, nacelles, nacelle covers, towers, drivetrains, generators, magnets, power electronics, and cables.

§328.431. *Reporting Requirements.*

Using forms prescribed by the executive director, the owner or operator of a recycling facility that has accepted unrecycled components for recycling shall submit a report to the executive director no later than January 15 of each year that includes:

- (1) an inventory of all unrecycled components;
- (2) an estimated timeline for recycling or disposing of the unrecycled components; and
- (3) a written cost estimate for hiring a third-party to recycle or dispose of the unrecycled components, prepared by an independent, third-party Texas licensed professional engineer, in current dollars, that includes:

(A) the cost for offsite recycling or disposal of the inventory of unrecycled components, including any fees charged by the destination facility;

(B) the cost for loading unrecycled components into appropriate vehicles for offsite transportation; and

(C) the cost for transporting unrecycled components offsite to an authorized recycling or disposal facility.

§328.441. *Financial Assurance Requirements.*

(a) Financial assurance required for closure of the recycling facility shall be provided by the owner or operator of the recycling facility in accordance with applicable requirements of Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(b) The owner or operator of the recycling facility shall:

(1) submit with the recycling facility's first report required by §328.431 of this title (relating to Reporting Requirements), evidence of financial assurance in an amount equal to 100 percent of the cost estimate described under §328.431 of this title; and

(2) submit with each subsequent report any additional financial assurance necessary to ensure that the amount of financial assurance the owner or operator has on file with the commission for the recycling facility is at least equal to 100 percent of the cost estimate under §328.431 of this title in the subsequent report.

(c) The financial assurance mechanism used to secure financial assurance in accordance with this section must comply with §37.931 of this title (relating to Financial Assurance Mechanisms).

(d) The executive director will review and approve the cost estimate and financial assurance mechanism provided by the owner or operator. If revisions are required for the executive director to approve, the owner or operator must submit an appropriately revised cost estimate or financial assurance mechanism within timeframes specified by the executive director.

(e) Unless subject to a contrary provision of an order of the commission or an order of a court of competent jurisdiction, the owner or operator of a recycling facility must perform closure:

(1) when unrecycled components have been speculatively accumulated as established under §328.4 (relating to Limitations on Storage of Recyclable Materials) or §335.17(a)(8) (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials);

(2) if unrecycled components cause the discharge or imminent threat of discharge of a contaminant into or adjacent to waters in the state without specific authorization from the commission;

(3) if unrecycled components create or maintain a nuisance;

(4) if unrecycled components endanger the public health and welfare; or

(5) if directed to perform closure by the executive director.

(f) The executive director is authorized to receive and spend funds as a beneficiary of financial assurance established in this subchapter.

§328.451. *Recordkeeping Requirements.*

In addition to other applicable recordkeeping requirements under local, state, or federal law, the owner or operator of a recycling facility must maintain records for activities conducted under this subchapter for a minimum of three years including but not limited to manifests, bills of lading, records of quantities of components recycled onsite or offsite, records of waste disposal, and any documentation used to establish the information reported to the executive director under §328.431 (relating to Reporting Requirements). The owner or operator of the recycling facility must furnish to the executive director, upon request and within a reasonable time, records maintained under this section.

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0682



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.42

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 20, 2026, adopted an amendment to 31 TAC §65.42, concerning Deer, without changes to the proposed text as published in the July 17, 2026, issue of the *Texas Register* (51 TexReg 4683). Therefore, the proposed text will not be republished.

The amendment alters provisions governing the take of mule deer by archery equipment to eliminate calendar conflict and allows the use of firearms for the take of white-tailed deer on properties in Collin, Dallas, Grayson, and Rockwall counties that are enrolled in the department's Managed Lands Deer Program (MLDP) and meet fencing requirements established in the rule.

Under current rule, the take of white-tailed deer in Collin, Dallas, Grayson, and Rockwall counties is restricted to lawful archery equipment, including on properties enrolled in the MLDP (a habitat improvement program in which participants agree to a harvest quota specified by the department in exchange for enhanced bag limits and extended season dates). The department has received a petition for rulemaking requesting that firearms be made lawful means for the harvest of deer on MLDP properties in the affected counties, provided the property is surrounded by a high fence. The department has determined that there is no biological reason to restrict the means of take for white-tailed deer in Collin, Dallas, Grayson, and Rockwall counties generally, and certainly not on high-fenced properties enrolled in the MLDP; therefore, any lawful means may be used to take white-tailed deer in the affected counties, provided the property is enrolled in the MLDP and surrounded by a fence of least seven feet in height that is capable of retaining deer at all times. The seven-foot value was selected because it is a generally accepted standard and is the standard used in other department regulations governing deer management.

In a previous rulemaking, the commission lengthened archery seasons for mule deer. In the process, an inadvertent calendar conflict was created with other mule deer seasons, which could cause confusion. The amendment remedies that issue.

The department received 11 comments opposing adoption of the portion of the proposed rule that provides an open general season in Collin, Dallas, Grayson, and Rockwell counties on high-fenced properties enrolled in the Managed Lands Deer Program. Of those comments, 10 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because some comments consisted of multiple points or components, the department has organized the response to public comment accordingly; therefore, the number of responses is greater than the number of commenters.

Six commenters opposed adoption and stated in various ways that the rules were catering to a very small number of people.

The department disagrees with the comments and responds that the rule is intended to provide additional management flexibility to all landowners and land managers in the affected counties. No changes were made as a result of the comments.

One commenter opposed adoption and stated that lawful means for deer harvest should remain restricted to lawful archery equipment, but crossbows should be excluded. The department disagrees with the comment and responds that the intent of the rule is to liberalize means of take in the affected counties and there is no biological reason not to do so; therefore, restricting means of take to lawful archery equipment other than crossbow would defeat the intent of the rule. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that public safety could be compromised if the harvest of deer by firearms becomes lawful. The department disagrees with the comments and responds that it is already lawful in the affected counties to discharge firearms for other purposes (when not specifically prohibited by local ordinance), such as target shooting, and it is currently lawful to hunt species other than deer by firearm in the affected counties, including by centerfire firearms. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that overpopulation on high-fenced properties is the result of poor land management and therefore the rule would reward poor management. The department disagrees with the comment and responds that the department firmly believes that management decisions on private property are the purview of individual landowners and land managers, who operate under a basic regulatory framework that provides for an adequate supply of the resource for the enjoyment of the public. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule would create "expanded hunting privileges unavailable to neighboring landowners". The department disagrees with the comment and responds that the rule as adopted creates additional management flexibility for interested landowners and land managers and does not create a privilege for any landowner that does not also exist for all other landowners. No changes were made as a result of the comment.

One commenter opposed the adoption and stated that the rule would affect seasonal buck harvest in a way that would disrupt age structures that have taken many years to develop. The department disagrees with the comment and responds that individual landowners and land managers are in the best position to determine appropriate harvest strategies on their own properties under the general regulatory frameworks provided by seasons and bag limits (and in the case of landowners participating in the MLDP program, the department establishes harvest quotas for the property). No changes were made as a result of the comment.

One commenter opposed the adoption and stated that high fences are a violation of the Public Trust Doctrine. The department disagrees with the comment and responds that under Parks and Wildlife Code, §1.013, a landowner may construct or maintain fences of any height without affecting the status of wild animals as the property of the people of the state; therefore, there is no conflict with the principle of public trust with respect to wildlife resources. No changes were made as a result of the comment.

Two commenters opposed the adoption and stated that the rule will encourage landowners to erect high fences and result in increased land fragmentation. The department disagrees with the comments and responds that fencing on private property is at the discretion of the property owner and, as noted previously in a response to another comment, the department by statute may not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height on the land owned or occupied. The department further notes that all of the affected counties have experienced rapid and extensive urbanization and land fragmentation over the last 50 years that is unrelated to the department's harvest regulations. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rule encourages commercialization and shifts focus away from conservation. The department disagrees with the comments and responds that the department's harvest regulations are resource-focused, habitat-driven, and do not consider the commercial goals, if any, of individual landowners and land managers, other than to ensure a plentiful supply of the resource for public enjoyment, which is at the discretion of the landowner. No changes were made as a result of the comments.

The department received one comment opposing adoption of the portion of the proposed amendment correcting the calendar conflict in mule deer harvest rules. The commenter stated that it is "not necessary to change bow hunting mule deer." The department disagrees with the comment and responds that the rule as adopted does not alter any provision of law regarding mule deer other than to clearly indicate the times when harvest is restricted to archery equipment and the times when harvest is by any lawful means. No changes were made as a result of the comment.

The department received 19 comments supporting adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind:

Subchapter A. Independent Living Services for Older Individuals Who Are Blind, §853.2 and §853.4

Subchapter B. Services, §853.10 and §853.11

Subchapter C. Customer Financial Participation, §853.20 and §853.21

Amended §§853.2, 853.4, 853.10, 853.11, 853.20, and 853.21 are adopted without changes to the proposal, as published in the July 10, 2026, issue of the *Texas Register* (51 TexReg 4525), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 853 rule change is to ensure alignment with the recently updated Older Individuals Who Are Blind (OIB) Policy Manual (OIB policy manual), as well as applicable state and federal regulations. Following a comprehensive review, discrepancies were identified between the current Chapter 853 and updated program policy. The proposed rule amendments address those inconsistencies and incorporate minor revisions to improve clarity, consistency, and overall readability. The updates support accurate implementation of the OIB program, reinforce compliance with governing authority under 34 Code of Federal Regulations, Part 367, and align rules with the requirements outlined in the OIB policy manual.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. Independent Living Services for Older Individuals Who Are Blind

TWC adopts amendments to Subchapter A, as follows:

§853.2. Referral

Section 853.2 is amended to clarify the definition and scope of minimal services by specifying examples of services included and incorporating independent living skills training that can be effectively delivered with no more than one or two face-to-face visits by OIB program staff to an individual receiving services. The revision ensures consistency with current program practices and provides clear guidance to staff for appropriate service delivery.

§853.4. Application

Section 853.4 is amended to replace electronic "PIN" with electronic "signature" to align the rule with the OIB program's practices.

SUBCHAPTER B. Services

TWC adopts amendments to Subchapter B, as follows:

§853.10. Independent Living Plan

Section 853.10 is amended to remove the reference to form 5154, which has been retired, and updates the section to reflect the current process. The revision ensures accuracy, eliminates outdated information, and provides clear guidance aligned with current program procedures.

§853.11. Scope of Services

Section 853.11 is amended to clarify that training in using technology and independent living skills may be provided to OIB customers.

SUBCHAPTER C. Customer Financial Participation

TWC adopts amendments to Subchapter C, as follows:

§853.20. Individuals Who Receive Social Security Income or Social Security Disability Insurance

Section 853.20 is amended to clarify that customers receiving certain types of Social Security benefits are exempt from cost participation for OIB services. The revision ensures consistency with program policy and provides clear guidance regarding eligibility for services at no cost.

§853.21. Customer Participation in the Cost of Services

Section 853.21 is amended to remove subsection (c) due to an inaccurate reference to §853.11 regarding cost participation. Current §853.21(c) does not clearly specify which services are exempt from customer participation. Removing this subsection eliminates potential confusion and ensures the rule accurately reflects program policy.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The comment period ended on August 10, 2026. No comments were received.

SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

40 TAC §853.2, §853.4

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Labor Code, §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

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

Filed with the Office of the Secretary of State on September 8, 2026.

TRD-202603915

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: September 28, 2026

Proposal publication date: July 10, 2026

For further information, please call: (737) 301-9662



SUBCHAPTER B. SERVICES

40 TAC §853.10, §853.11

The rules are adopted under:

--Texas Labor Code, §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

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

Filed with the Office of the Secretary of State on September 8, 2026.

TRD-202603916

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: September 28, 2026

Proposal publication date: July 10, 2026

For further information, please call: (737) 301-9662



SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

40 TAC §853.20, §853.21

The rules are adopted under:

--Texas Labor Code, §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

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

Filed with the Office of the Secretary of State on September 8, 2026.

TRD-202603917

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: September 28, 2026

Proposal publication date: July 10, 2026

For further information, please call: (737) 301-9662



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

Chapter 91, Subchapter H, concerning Investments, consisting of §91.801, (Investments in Credit Union Service Organizations), §91.802 (Other Investments), §91.803 (Investment Limits and Prohibitions), §91.804 (Custody and Safekeeping), §91.805 (Loan Participation Investments), §91.808 (Reporting Investment Activities to the Board of Directors), and §91.809 (Purchase of Assets and Assumption of Liabilities).

Chapter 91, Subchapter I, Reserves and Dividends, consisting of §91.901 (Reserve Requirements), and §91.902 (Dividends).

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in these chapters continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

Does the rule organize the material to suit your needs? If not, how could the material be better organized?

Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?

Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to cudmail@tud.texas.gov. Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202604006
Robert W. Etheridge
Commissioner
Credit Union Department
Filed: September 16, 2026



Texas Film Commission

Title 13, Part 8

The Texas Film Commission within the Office of the Governor files this notice of intention to review 13 TAC Chapter 122, concerning Temporary Use of State Buildings and Grounds by Television or Film Production Companies. The review is being conducted in accordance with Texas Government Code §2001.039.

An assessment will be made by the Texas Film Commission as to whether the reasons for adopting the rules continue to exist. Each rule will be reviewed to determine whether to readopt, readopt with amendments, or repeal the rule.

Concurrently with this notice, the Texas Film Commission is publishing proposed readoption with amendments of 13 TAC Chapter 122 in the Proposed Rules section of this issue of the *Texas Register*. The proposed amendments are being proposed as a result of the Commission's review under Texas Government Code §2001.039.

Comments may be submitted for 30 days following the date of publication of this notice by mail to Stephanie Whallon, Office of the Governor, Texas Film Commission, P.O. Box 12428, Austin, Texas 78711, or by email to tfcrules.comments@gov.texas.gov with the subject line "Texas Film Commission Rule Review: Chapter 122."

TRD-202603975
Stephanie Whallon
Director
Texas Film Commission
Filed: September 14, 2026



The Texas Film Commission within the Office of the Governor files this notice of intention to review 13 TAC Chapter 123, concerning Media Production Development Zones. The review is being conducted in accordance with Texas Government Code §2001.039.

An assessment will be made by the Texas Film Commission as to whether the reasons for adopting the rules continue to exist. Each rule will be reviewed to determine whether to readopt, readopt with amendments, or repeal the rule.

Concurrently with this notice, the Texas Film Commission is publishing proposed readoption with amendments of 13 TAC Chapter 123 in the Proposed Rules section of this issue of the *Texas Register*. The proposed amendments are being proposed as a result of the Commission's review under Texas Government Code §2001.039.

Comments may be submitted for 30 days following the date of publication of this notice by mail to Stephanie Whallon, Office of the Governor, Texas Film Commission, P.O. Box 12428, Austin, Texas 78711, or by email to tfcrules.comments@gov.texas.gov with the subject line "Texas Film Commission Rule Review: Chapter 123."

TRD-202603976
Stephanie Whallon
Director
Texas Film Commission
Filed: September 14, 2026

Texas Juvenile Justice Department

Title 37, Part 11

In accordance with §2001.039, Government Code, the Texas Juvenile Justice Department (TJJD) proposes the review of Texas Administrative Code, Title 37, Part 11, Chapter 380: Rules for State-Operated Programs and Facilities.

TJJD will make an assessment to determine whether the initial reasons for adopting the standards in the given chapter continue to exist and whether the standards reflect current legal and policy considerations, as well as current TJJD procedure.

Comments on the review may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

TRD-202603969
Jana Jones
general counsel
Texas Juvenile Justice Department
Filed: September 14, 2026

In accordance with §2001.039, Government Code, the Texas Juvenile Justice Department (TJJD) proposes the review of Texas Administrative Code, Title 37, Part 11, Chapter 385: Agency Management and Operations.

TJJD will make an assessment to determine whether the initial reasons for adopting the standards in the given chapter continue to exist and

whether the standards reflect current legal and policy considerations, as well as current TJJD procedure.

Comments on the review may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

TRD-202603948
Jana Jones
General Counsel
Texas Juvenile Justice Department
Filed: September 10, 2026

Adopted Rule Reviews

Department of Savings and Mortgage Lending

Title 7, Part 4

The Department of Savings and Mortgage Lending (SML), on behalf of the Finance Commission of Texas (commission), has completed its review of 7 TAC Part 4, Chapter 75, Savings Banks:

The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the April 10, 2026, issue of the *Texas Register* (51 TexReg 2409). No comments were received in response to the notice.

The rules in 7 TAC Chapter 75 were adopted by the commission on behalf of SML.

As a result of the rule review conducted by SML, the commission determined that certain changes to the rules were appropriate. The proposed rule changes were published in the July 3, 2026, issue of the *Texas Register* (51 TexReg 4294), and the adopted rule changes were published in the September 4, 2025, issue of the *Texas Register* (51 TexReg 6161).

The commission, after considering the results of the rule review conducted by SML, finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapter 75.

TRD-202603968
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Filed: September 14, 2026

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of the Implementation of a Qualified Mortgage Credit Certificate Program

The Texas State Affordable Housing Corporation (the "Corporation"), a nonprofit corporation organized under the laws of the State of Texas, is implementing a qualified mortgage credit certificate program (the "Program") within the State of Texas (the "Program Area") to assist eligible purchasers. A Mortgage Credit Certificate ("MCC") is an instrument designed to assist persons better afford home ownership. The MCC Program allows first-time homebuyers an annual federal income tax credit equal to the credit rate for the MCC multiplied by the amount of interest paid by the holder on a home mortgage loan during each year that they occupy the home as their principal residence.

An eligible purchaser of a residence located within the Program Area may apply to the Corporation for an MCC through a participating lender of his or her choice at the time of purchasing a principal residence and obtaining a mortgage loan from a participating lender.

To be an eligible purchaser to receive an MCC, a purchaser must meet the following criteria:

(1) Be one of the following:

(a) A person living in Texas whose annual household income does not exceed 100% of area median family income ("AMFI") (for families of two persons or less) or 115% of AMFI (for families of three or more persons); or

(b) A full-time Texas classroom teacher, teacher's aide, school librarian, school nurse, school counselor, or an allied health or nursing faculty member whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons); or

(c) A full-time paid fire fighter, peace officer, corrections officer, juvenile corrections officer, county jailer, EMS personnel, veteran, or public security officer, working in the State of Texas whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons).

Visit www.tsahc.org for a more complete description of the maximum income limits.

(2) The applicant for the MCC cannot have had an ownership interest in his or her principal residence during the three-year period ending on the date the mortgage loan is obtained.

(3) The applicant must intend to occupy the residence with respect to which the MCC is obtained as his or her principal residence within 60 days after the MCC is issued. The MCC issued to an applicant will be revoked if the residence to which the MCC relates ceases to be occupied by the applicant as his or her principal residence.

(4) The MCC cannot be issued to an applicant in conjunction with the replacement or refinancing of an existing mortgage loan. The MCC can, however, be obtained in conjunction with the replacement of a construction period or bridge loan having a term of less than 24 months.

(5) Federal law imposes limitations on the purchase price of homes financed under the program. These limitations are periodically adjusted. Visit www.tsahc.org to view the current maximum purchase prices allowed. Two-family, three-family and four-family residences are also eligible, provided that one of the units will be occupied by the mortgagor as his or her principal residence and that the residence was first occupied for residential purposes at least five years prior to the closing of the mortgage.

Anyone receiving an MCC and selling his or her residence within nine years of the issuance of the MCC may be required to return all or a portion of the tax credit received in connection therewith to the Internal Revenue Service.

To defray the costs of implementing the Program, the Corporation will charge applicants a compliance fee, plus an MCC issuance fee.

The Corporation strongly encourages anyone who believes that he or she qualifies for an MCC to apply at the offices of a participating lender. For more information regarding the Program and its restrictions, including a list of current participating lenders, please contact Joniel LeVecque, Senior Director of Single Family Programs, at (512) 477-3561 or by email at jlevecque@tsahc.org.

TRD-202603946

David Long

President

Texas State Affordable Housing Corporation

Filed: September 9, 2026

Texas Alcoholic Beverage Commission

DRAFT Marketing Practices Advisory - MPA027, Refunds, Credits, or Exchanges

Join TABC staff on October 8, 2026, at 10:00 a.m. by videoconference to discuss this amended advisory. The advisory has been amended to incorporate the brewer's self-distribution license and to update the allowable timeline for effectuating retailer refunds, credits, and exchanges. The advisory has also been reworded for clarity and includes updated statutory citations. For more details on the stakeholder meeting, please visit TABC's webpage at <https://www.tabc.texas.gov/about-us/agency-meetings/>. It is TABC's intent to receive comments for up to 30 days following the stakeholder meeting. Comments should be emailed to advisories@tabc.texas.gov.

DRAFT MARKETING PRACTICES ADVISORY - MPA027

Refunds, Credits, or Exchanges

To: Members of the Alcoholic Beverage Industry

This advisory intends to clarify the statutory provisions, exceptions, and agency authorized practices related to the legitimate business justifications for distributors, wholesalers, self-distribution brewers, and wineries issuing product refunds, credits, and exchanges to retailers.

Product Refunds and Exchanges

The Alcoholic Beverage Code ("Code") generally treats alcoholic beverages sold to retailers as a final sale-title to the product transfers to the retailer upon delivery without an opportunity for product exchanges or returns for a refund. In fact, providing a retailer with the right to return alcoholic beverages may constitute an illegal consignment sale. Except in the limited circumstances outlined in this advisory, wineries, brewers with a self-distribution license, distributors, and wholesalers may not provide a refund for or an exchange of alcoholic beverages sold to a retailer. Retailers may however make claims to replace product delivered in a damaged condition. In these instances, replaced product should be the same or similar in nature to the damaged product. TABC has historically viewed this authorization to include refunds for the damaged product in lieu of a replacement and allowed the refunds to be issued through a credit placed on the retailers account. **Claims to refund or replace product delivered in a damaged condition should be completed within the below stated time period for inaccurate orders.**

In light of the agency's duty to protect the public's health and safety, TABC has routinely used its enforcement discretion to extend the refund/replacement authorization to products deemed to pose a consumer safety issue caused during the manufacturing process. To effectuate an exchange due to consumer safety concerns, upper-tier members must immediately notify TABC of the issue and seek exchange approval. Nonetheless, refunds and product replacements may not be provided for alcoholic beverages that are damaged while in a retailer's possession.

With the stated intent of protecting malt beverage "product quality," the Code also authorizes distributors and brewers with a self-distribution license to, during a regular delivery and with the retailer's permission, withdraw and replace malt beverages possessed by a retailer in their undamaged original packaging. The distributor must replace the withdrawn product with identical malt beverages (i.e. the same brand, quantity, and packages). The withdrawal must occur before the date the product's brewer considers the malt beverages to be inappropriate for sale to consumers (i.e. the product's expiration date), and may not exceed an amount equivalent to 25 cases of 24 12-ounce containers. This statutory allowance is specific to malt beverages and does not extend to wine or distilled spirits.

Inaccurate Orders

TABC recognizes that the statutory authorizations discussed above do not account for product that was delivered in error and that in many circumstances, especially for high volume orders, retailers are unable to immediately account for unordered products and refuse a delivery. In accordance with TABC's duty to ensure fair competition, the agency will not consider the following to be a violation of the Code:

Prior to the next scheduled delivery, but not more than 15 days after the date of delivery, a refund or credit may be provided by a distributor, wholesaler, brewer with a self-distribution license, or winery for a delivery that is inconsistent with the order placed by the retailer.

Distributors, wholesalers, applicable brewers, and wineries should provide retailers with a credit memo or exchange receipt stating the reason for and date of the credit or exchange. A copy of these records must be retained by each party along with its regular business records.

Although TABC will not consider the above actions as a violation, industry members should be cognizant of the prohibitions against consignment sales. A practice or pattern of frequent or repeated exchanges claiming to be necessary because of inconsistent deliveries may indicate, and may be used as evidence of, the occurrence of illegal consignment sales. Similarly, industry members should be mindful that credits provided to retailers may be viewed and prosecuted as unlawful inducements or prohibited trade practices, especially if adequate

records supporting the basis for the credit are not maintained. TABC will take regulatory action against all involved parties in cases where a distributor's, wholesaler's, or winery's actions allow a retailer to exchange product or obtain a refund or credit for reasons other than those stated in this advisory.

Statement from TABC

This advisory is issued pursuant to §5.57 of the Alcoholic Beverage Code. It has been approved by Andrea Maceyra, Chief of Regulatory Affairs, and represents the opinion of the staff of the Commission. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this advisory, you may contact TABC in writing at P.O. Box 13127, Austin, Texas 78711; by email at advisories@tabc.texas.gov; or by phone at (512) 206-3411.

TRD-202604002

Matthew Cherry

Senior Counsel - Office of General Counsel

Texas Alcoholic Beverage Commission

Filed: September 16, 2026

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas, and the State of Texas v. Ted Booher and Rapid Marine Fuels, LLC*; Cause No. 2021-56988, in the 281st Judicial District, Harris County, Texas.

Nature of the Suit: Defendant Rapid Marine Fuels, LLC (the "Defendant") operated a used oil recycling facility located in La Porte, Texas. Harris County, Texas filed an enforcement action against the Defendant for local code violations and violations of state environmental laws. The State of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), joined the lawsuit as a necessary and indispensable party and filed its own separate enforcement claims against the Defendant for violations of the Texas Health and Safety Code, Texas Water Code, regulations issued thereunder, and a TCEQ administrative order.

Proposed Settlement: The proposed Agreed Final Judgment awards the State of Texas \$1,125,000 in civil penalties to settle the environmental enforcement claims, \$50,375 to settle the claim for unpaid administrative penalties, and \$100,000 in attorney's fees. The proposed Agreed Final Judgment additionally awards Harris County, Texas \$125,000 to settle its environmental enforcement claims, \$800,000 to settle its local code enforcement claims, and \$100,000 in attorney's fees. The parties agreed that the permanent injunction granted against Defendant in December 2024 continues to be in effect. This settlement does not resolve the State of Texas's claims against any other party in the lawsuit.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed set-

tlement, should be directed to Roel Torres, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: Roel.Torres@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202604010
Justin Gordon
General Counsel
Office of the Attorney General
Filed: September 16, 2026

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - August 2026

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period August 2026 is \$53.55 per barrel for the three-month period beginning on May 1, 2026, and ending July 31, 2026. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of August 2026, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period August 2026 is \$1.36 per mcf for the three-month period beginning on May 1, 2026, and ending July 31, 2026. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 2026, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of August 2026 is \$82.45 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of August 2026, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of August 2026 is \$2.78 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of August 2026, from a qualified low-producing gas well.

Inquiries should be submitted to Chris Blackwell, General Counsel and Associate Deputy Comptroller, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on September 16, 2026.

TRD-202604008
Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
Filed: September 16, 2026

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.009, and §304.003 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/21/26 - 09/27/26 is 18.00% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/21/26 - 09/27/26 is 18.00% for commercial² credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 10/01/26 - 10/31/26 is 6.75%.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

TRD-202604004
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 16, 2026

Credit Union Department

Application to Expand Field of Membership (September)

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Tarrant County's Credit Union, Fort Worth, Texas, to expand its field of membership. The proposal would permit members of the Cornerstone Credit Union Foundation in Texas to be eligible for membership of the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days of the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all the information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202604003
Robert W. Etheridge
Commissioner
Credit Union Department
Filed: September 16, 2026

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later

than the 30th day before the date on which the public comment period closes, which in this case is **October 26, 2026**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A physical copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Additionally, copies of the proposed AO can be found online by using either the Chief Clerk's eFiling System at <https://www.tceq.texas.gov/goto/efilings> or the TCEQ Commissioners' Integrated Database at <https://www.tceq.texas.gov/goto/cid>, and searching either of those databases with the proposed AO's identifying information, such as its docket number. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at Enforcement Division, MC 128, P.O. Box 13087, Austin, Texas 78711-3087 and must be postmarked by 5:00 p.m. on **October 26, 2026**. Written comments may also be sent to the enforcement coordinator by email to ENF-COMNT@tceq.texas.gov or by facsimile machine at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed contact information; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 8 Mile Park, L.P.; DOCKET NUMBER: 2026-0662-PWS-E; IDENTIFIER: RN101222925; LOCATION: West Columbia, Brazoria County; TYPE OF FACILITY: public water supply; PENALTY: \$138; ENFORCEMENT COORDINATOR: Obianuju Iyasele, (512) 239-5280; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(2) COMPANY: Aqua Texas, Inc.; DOCKET NUMBER: 2026-0390-MWD-E; IDENTIFIER: RN102344520; LOCATION: Granbury, Hood County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$9,750; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(3) COMPANY: Beechwood Water Supply Corporation; DOCKET NUMBER: 2026-0092-MWD-E; IDENTIFIER: RN101610129; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$119,235; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(4) COMPANY: Central Crushed Concrete, LLC; DOCKET NUMBER: 2026-0669-WQ-E; IDENTIFIER: RN111516365; LOCATION: Waco, McLennan County; TYPE OF FACILITY: aggregate extraction; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Alejandra Basave, (713) 767-3751; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(5) COMPANY: City of Alamo; DOCKET NUMBER: 2026-0366-MWD-E; IDENTIFIER: RN102075967; LOCATION: Alamo, Hidalgo County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$148,837; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$119,070; ENFORCEMENT COORDINATOR:

Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(6) COMPANY: City of Carthage; DOCKET NUMBER: 2025-1769-MWD-E; IDENTIFIER: RN102055258; LOCATION: Carthage, Panola County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$52,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$52,500; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(7) COMPANY: City of Clarendon; DOCKET NUMBER: 2026-0899-PWS-E; IDENTIFIER: RN101388940; LOCATION: Clarendon, Donley County; TYPE OF FACILITY: public water supply; PENALTY: \$2,675; ENFORCEMENT COORDINATOR: Katherine Argueta, (512) 239-4131; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(8) COMPANY: City of Groveton; DOCKET NUMBER: 2026-0746-PWS-E; IDENTIFIER: RN101384402; LOCATION: Groveton, Trinity County; TYPE OF FACILITY: public water supply; PENALTY: \$2,925; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2510; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, REGION 14 - CORPUS CHRISTI.

(9) COMPANY: City of Ingleside; DOCKET NUMBER: 2025-0623-MWD-E; IDENTIFIER: RN101920239; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$221,463; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$221,463; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, REGION 4 - DALLAS-FORT WORTH.

(10) COMPANY: City of Jarrell; DOCKET NUMBER: 2024-0242-MLM-E; IDENTIFIER: RN104515887; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$62,330; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$49,864; ENFORCEMENT COORDINATOR: Penny Wimberly, (512) 239-0538; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(11) COMPANY: City of Josephine; DOCKET NUMBER: 2025-1282-MWD-E; IDENTIFIER: RN109412700; LOCATION: Royse City, Hunt County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$61,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$61,875; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(12) COMPANY: City of Taylor; DOCKET NUMBER: 2023-1300-MLM-E; IDENTIFIER: RN102181583; LOCATION: Taylor, Williamson County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$192,223; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$153,779; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(13) COMPANY: City of Temple and City of Belton; DOCKET NUMBER: 2026-0368-MWD-E; IDENTIFIER: RN102097193; LOCATION: Belton, Bell County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$36,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$28,800; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL

OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(14) COMPANY: Crouch Sand & Gravel, LLC; DOCKET NUMBER: 2026-0848-WQ-E; IDENTIFIER: RN111562799; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: aggregate production operation; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Alejandra Basave, (713) 767-3751; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(15) COMPANY: Discover Church, Inc.; DOCKET NUMBER: 2026-0279-PWS-E; IDENTIFIER: RN107314759; LOCATION: Castroville, Bexar County; TYPE OF FACILITY: public water supply; PENALTY: \$1,120; ENFORCEMENT COORDINATOR: Anjali Talpallikar, (512) 239-2507; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(16) COMPANY: EZ LIVING, LLC; DOCKET NUMBER: 2026-0795-PWS-E; IDENTIFIER: RN101254266; LOCATION: Sandia, Live Oak County; TYPE OF FACILITY: public water supply; PENALTY: \$125; ENFORCEMENT COORDINATOR: Obianuju Iyasele, (512) 239-5280; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(17) COMPANY: Lake Travis Independent School District; DOCKET NUMBER: 2026-0505-MWD-E; IDENTIFIER: RN101524213; LOCATION: Austin, Travis County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$46,750; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(18) COMPANY: Midland Independent School District; DOCKET NUMBER: 2025-0385-PST-E; IDENTIFIER: RN100699453; LOCATION: Midland, Midland County; TYPE OF FACILITY: fleet refueling facility; PENALTY: \$15,750; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, REGION 4 - DALLAS-FORT WORTH.

(19) COMPANY: Natgasoline LLC; DOCKET NUMBER: 2025-1271-AIR-E; IDENTIFIER: RN106586795; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: \$579,125; ENFORCEMENT COORDINATOR: Nicholas Lohret-Froio, (512) 239-2545; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(20) COMPANY: Republic Waste Services of Texas, Ltd.; DOCKET NUMBER: 2026-0273-MSW-E; IDENTIFIER: RN103157947; LOCATION: Midland, Midland County; TYPE OF FACILITY: municipal solid waste transporter business; PENALTY: \$13,969; ENFORCEMENT COORDINATOR: Sujata Sinha, (512) 239-1963; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(21) COMPANY: Texas A & M University; DOCKET NUMBER: 2025-0074-IWD-E; IDENTIFIER: RN102080348; LOCATION: College Station, Brazos County; TYPE OF FACILITY: steam-electric generating thermal supply unit; PENALTY: \$32,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$32,625; ENFORCEMENT COORDINATOR: Kadrienn Woodard, (713) 767-3602; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(22) COMPANY: TotalEnergies Petrochemicals & Refining USA, Inc.; DOCKET NUMBER: 2022-0571-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: oil refinery; PENALTY: \$169,043; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: \$67,607; ENFORCE-

MENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(23) COMPANY: Town of Edgecliff Village; DOCKET NUMBER: 2026-0655-WQ-E; IDENTIFIER: RN105473425; LOCATION: Edgecliff Village, Tarrant County; TYPE OF FACILITY: municipal separate storm sewer system; PENALTY: \$6,500; ENFORCEMENT COORDINATOR: Monica Larina, (512) 239-2545; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, REGION 14 - CORPUS CHRISTI.

(24) COMPANY: UNIVERSAL FOREST PRODUCTS TEXAS LLC; DOCKET NUMBER: 2026-0652-MWD-E; IDENTIFIER: RN100214493; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: \$25,050; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(25) COMPANY: US NATIONAL PARK SERVICE; DOCKET NUMBER: 2026-0533-PWS-E; IDENTIFIER: RN102096856; LOCATION: Big Bend National Park, Brewster County; TYPE OF FACILITY: public water supply; PENALTY: \$1,055; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

TRD-202603960

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 11, 2026



Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 26, 2026**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A physical copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Additionally, copies of the proposed AO can be found online by using either the Chief Clerk's eFiling System at <https://www.tceq.texas.gov/goto/efilings> or the TCEQ Commissioners' Integrated Database at <https://www.tceq.texas.gov/goto/cid>, and searching either of those databases with the proposed AO's identifying

information, such as its docket number. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 26, 2026**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: East Texas Commercial Properties, LLC; DOCKET NUMBER: 2023-1207-PST-E; TCEQ ID NUMBER: RN110934957; LOCATION: 10175 US Highway 259, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: an underground storage tank system and a convenience store with retail sales of gasoline; PENALTY: \$5,000; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202603985

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 15, 2026



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 26, 2026**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Additionally, copies of the DO can be found online by using either the Chief Clerk's eFiling System at <https://www.tceq.texas.gov/goto/efilings> or the TCEQ Commissioners' Integrated Database at <https://www.tceq.texas.gov/goto/cid>, and searching either of those databases with the proposed DO's identifying information, such as its docket number. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 26, 2026**. The commission's attorneys are available to discuss the DOs

and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: A & B BUSINESS LLC; DOCKET NUMBER: 2024-0049-PST-E; TCEQ ID NUMBER: RN102269131; LOCATION: 4030 Vance Jackson Road, San Antonio, Bexar County; TYPE OF FACILITY: an underground storage tank system and a convenience store with retail sales of gasoline; PENALTY: \$5,369; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: JACKSON-FAIRWAY HOLDINGS, L.L.C.; DOCKET NUMBER: 2024-0006-PST-E; TCEQ ID NUMBER: RN101432813; LOCATION: 5605 Calder Avenue, Beaumont, Jefferson County; TYPE OF FACILITY: a temporarily out-of-service underground storage tank system; PENALTY: \$6,324; STAFF ATTORNEY: Jun Zhang, Litigation, MC 175, (512) 239-6517; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Sandra P. Burciaga Tarango; DOCKET NUMBER: 2023-0712-OSS-E; TCEQ ID NUMBER: RN111576559; LOCATION: 3325 United States Highway 385, Hereford, Deaf Smith County; TYPE OF FACILITY: an unauthorized on-site sewage facility; PENALTY: \$750; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-202603986

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 15, 2026



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 3, 2026 to September 11, 2026. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, September 18, 2026. The public comment period for this project will close at 5:00 p.m. on Sunday, October 18, 2026.

Federal License and Permit Activities:

Applicant: Texas Parks and Wildlife Department

Location: The project site is located in the Gulf Intracoastal Waterway (GIWW) along the shoreline of the JD Murphree Wildlife Management Area (WMA), approximately 4.17 miles west of Sabine Pass, in Jefferson County, Texas.

Latitude and Longitude: 29.7799208, -94.0279518

Project Description: The applicant proposes to discharge approximately 36,715 cubic yards of fill into 9.0 acres of the Gulf Intracoastal Waterway (GIWW) along the JD Murphree Wildlife Management Area (WMA) shoreline to construct a 17,870-linear-foot (3.5-mile) rock breakwater in 4 segments. The breakwaters will be constructed of graded riprap (R-300 gradation) to a crest elevation of +3.0 feet, which is an average of 4.5 feet above existing grade at the centerline, with a 3-foot top width and 2:1 side slopes, which equates to a base of 21 feet. Each of the breakwaters are designed with 30-foot-wide fish passes at 500-foot intervals to facilitate the movement of water, sediment, and aquatic species. Fish passes would be lined with rock (approximately 18 inches) to a 0.0 elevation to prevent excess scour at these locations. The riprap will be placed within open water in the breakwater footprints using barge-based equipment and other types of marine equipment, including but not limited to low ground pressure, amphibious equipment (i.e., marsh excavators, Morooka trucks, rolligon trucks, etc.) in shallow, open water areas. Barge size is not expected to exceed 180 feet by 60 feet by 12 feet in size. Barges will travel up and down the alignment between the navigational channel and the GIWW side toe of the breakwater to accomplish construction. Geotextile fabric will be placed in the footprint of the breakwaters prior to placement of riprap using either a long-reach excavator operating from a barge or small John boats. Once the geotextile fabric is in place, riprap will be moved from the barge and placed onto the breakwater locations. This process will continue until construction of the breakwaters is complete. All work will be conducted in open water. There will be no equipment use/access or staging areas on land or in wetlands, and there would be no impact to wetland areas.

The overall purpose of the proposed project is to slow erosion of the JD Murphree WMA shoreline due to wave action and other natural processes, and to protect/conservate valuable wetland habitat and other assets/resources of importance to the management of the WMA.

The applicant has stated that they have avoided and minimized environmental impacts to waters of the United States associated with the proposed activity by conducting all work within and from the water. There will be no equipment use/access or staging areas on land or in wetlands, or impact to wetland areas. The applicant has not proposed any compensatory mitigation because there would be no discharge of fill into or loss of special aquatic sites. Upon completion of the project, the proposed breakwaters will provide beneficial effects including protection of the shoreline and approximately 1,000 acres of wetlands within the JD Murphree WMA. The USACE will determine the type and amount of compensatory mitigation necessary to offset losses of waters of the United States which may result from the proposed activity in accordance with 33 CFR §332.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2026-00244. This application will be reviewed pursuant Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by The Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 26-1212-F1

Applicant: Texas City Terminal Railway Company

Location: The project site is located in Galveston Bay, north of the Texas City Channel Turning Basin, approximately 0.52-mile east of southeast of the intersection of Bay Street South and 2nd Avenue South, in Texas City, Galveston County, Texas.

Latitude and Longitude: 29.3810312, -94.8848401

Project Description: The applicant proposes to dredge 311,204 cubic yards of material from a 25.27-acre fleeting area to a depth of -15-foot mean lower low water to ensure safe navigation. The 25.27-acre fleeting area was previously authorized under Department of the Army Permit Number SWG-2024-00831. Dredged material will be placed in existing authorized dredge material placement areas (DMPAs) located on the Shoal Point properties. Snake Island Placement Area Cell A will serve as the primary placement area and any subsequent material placed into Snake Island Placement Area Cell C and/or Federal DMPA No. 5 and No. 6. No compensatory mitigation is proposed.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2024-00831. This application will be reviewed pursuant Section 10 of the Rivers and Harbors Act of 1899. The U.S. Army Corps of Engineers Galveston District has found that this permit request meets the terms of Executive Order 14156 and is therefore subject to special emergency permitting procedures and an expedited review process.

CMP Project No: 26-1214-F1c

Applicant: Enterprise Products Operating LLC

Location: The project site is located in the Houston Ship Channel at the Enterprise Houston Terminal, 15602 Jacintoport Boulevard, in Houston, Harris County, Texas.

Latitude and Longitude: 29.7385969, -95.1221351

Project Description: The applicant proposes to modify Department of the Army Permit SWG-2008-00073 to dredge approximately 120,085 cubic yards of new work material from an approximately 15.4-acre area of the Houston Ship Channel to deepen the existing Dock 9 to a maximum depth of -48.5 feet mean lower low water. The dredged material would be placed in one of the following upland confined placement areas, with associated return water effluent: Glendale, House Tract, Clinton, Laughlin-Thyssen, Rosa Allen, East/West Jones, Greens Bayou, Beltway 8 Tract, Texas Deepwater (Pinto Lion), Lost Lake, Adloy, Avera, Goat Island, Peggy Lake, Bertron, Alexander Island, and Spilman Island.

The applicant has stated that they have avoided and minimized environmental impacts to waters of the United States associated with the proposed activity by designing the project to avoid permanent impacts to jurisdictional waters of the US to the maximum extent practicable by maintaining the previously authorized dredge footprint. Only temporary impacts to waters of the US are expected as a result of the proposed Project. Best Management Practices will be used, where possible, to minimize temporary impacts to the maximum extent practicable. The applicant has not proposed any compensatory mitigation because there will be no loss of waters of the US or impacts to special aquatic sites. The USACE will determine the type and amount of compensatory mitigation necessary to offset losses of waters of the United States which may result from the proposed activity in accordance with 33 CFR §332.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2008-00073. This application will be reviewed pursuant Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by The Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 26-1218-F1

Applicant: Port of Houston Authority

Location: The project site is located in the Houston Ship Channel, Barbours Cut Channel, and Lower San Jacinto Bay (LSJB), in La Porte, Harris County, Texas.

Latitude and Longitude: 29.6907804, -95.0136029

Project Description: The applicant proposes to construct a new containerized marine cargo terminal to accommodate current and future generations of container vessels in the Greater Houston area. The proposed Barbour's Cut Northside Expansion Project, a marine container terminal expansion in La Porte, Harris County, Texas, is intended to increase container-handling capacity, modernize port infrastructure, and accommodate anticipated future container volumes. Port of Houston Authority's existing marine container terminals are expected to reach maximum throughput capacity by 2033. The proposed project would provide additional containerized marine cargo capacity to meet projected demand. Phased construction is anticipated to begin no later than 2032, with terminal capacity anticipated to be available by 2036.

The proposed project would consist of the following major components:

Dredging and/or excavation of up to 66.204 acres in Barbour's Cut, including expansion of the existing Barbour's Cut Turning Basin (BCTB) by approximately 35.898 acres, creation of approximately 30.306 acres of open water, and conversion of approximately 0.71 acre of waters.

Creation of two vessel berthing slips totaling approximately 15.6 acres and capable of supporting two Ultra Large Container Vessels, as well as creation of an approximately 1.5-acre non-berthing vessel maneuvering area.

Installation of approximately 3,200 linear feet of pile-supported concrete wharf along the landward edge of the new berthing slips.

Development of an approximately 318-acre marine container terminal on the southwestern end of the Spilman Island Placement Area.

Construction of a new approximately 135-acre Dredged Material Placement Facility in Lower San Jacinto Bay.

Modification of the existing Spilman Island Placement Area to create a smaller dredged material disposal facility on North Spilman Island, including installation of a new approximately 7,300-linear-foot east-west containment dike within the existing Spilman Island Placement Area.

Construction of two terminal access roads (North and South) across Lower San Jacinto Bay; upgrades to multiple off-terminal Texas Department of Transportation roads within the State Highway (SH) 225 and SH 146 interchange; and construction of two property access driveways.

Construction associated with drainage channels and outfall structures, as well as relocation or movement of existing pipelines.

The proposed project is anticipated to result in unavoidable impacts to waters of the United States including Waters of the United States under the Clean Water Act and Navigable Waters under Section 10 of the Rivers and Harbors Act. Preliminary estimates a total of approximately 16,665 linear feet of tidal shoreline that may be impacted by fill associated with the project construction. Other aquatic resource impacts include the dredging and filling of 136.88 acres of open water in LSJB, the excavation and dredging of 66.204 acres of open water in BCTB, the dredging and fill of 355 acres of low marsh and the excavation of 3.21 acres of high marsh, the fill of 0.65 acre of freshwater wetlands, and the fill of 2.48 acres of unconsolidated bottom. Impacts to linear resources include the dredging and filling 334.92 linear feet stream. These impacts are associated with construction of the terminal facilities, navigation improvements, roadway access infrastructure, and utility relocations and are limited to those areas necessary to meet project purpose and operational requirements.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2025-00640. This application will be reviewed pursuant Section 404 of the Clean Water Act and Sections 10 and 14 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by The Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 27-1002-F1

Applicant: Space Explorations Technologies Corp.

Location: The project site is located in South Bay beginning at Milky Ave and terminating at the Space Explorations Technologies Corp (SpaceX) Production Facility in Starbase, Cameron County, Texas.

Latitude and Longitude: 25.967335, -97.208238

Project Description: The applicant proposes to construct an approximately 2.7-mile heavy haul route to transport Starship and Super Heavy rocket components and associated launch infrastructure between the Massey Test Facility and SpaceX Production Facility. The heavy haul route would consist of an approximately 38-foot-wide travel surface with 1-foot-wide shoulders and a 3:1 max fill slope on the north side. Three existing cross culverts under State Highway (SH) 4 and five proposed equalizer culverts associated with an unrelated project to widen SH 4 would be extended below the proposed haul route to maintain or improve water flow. In addition, a wildlife crossing proposed as part of the SH 4 Widening Project would be extended below the haul route to facilitate safe passage for wildlife across the larger SH 4 roadway facility. The proposed project would result in the unavoidable discharge of fill material into approximately 2.676 acres of palustrine emergent wetlands, 0.278 acres of estuarine emergent wetlands, 0.210 acres of estuarine scrub-shrub wetlands, and 7.185 acres of wind-tidal flats. The proposed project would also temporarily impact 0.692 acres of palustrine emergent wetlands, 0.092 acres of estuarine emergent wetlands, 0.001 acres of estuarine scrub-shrub wetlands, and 1.454 acres of wind-tidal flats.

The applicant has stated that they have avoided and minimized environmental impacts to waters of the United States associated with the proposed activity by staying within the Texas Department of Transportation State SH 4 right-of-way, designed slopes to a 3:1 gradient, and using silt fences to reduce run-off into adjacent special aquatic sites. The applicant has proposed to purchase 7.033 functional unit credits from the Rockhounds Mitigation Bank to offset unavoidable impacts to waters of the US. The USACE will determine the type and amount of compensatory mitigation necessary to offset losses of waters of the United States which may result from the proposed activity in accordance with 33 CFR §332.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2026-00492. This application will be reviewed pursuant Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by The Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 27-1005-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202603979

Jennifer Jones
Chief Clerk & Deputy Land Commissioner
General Land Office
Filed: September 14, 2026

◆ ◆ ◆
Texas Health And Human Services Commission

**Public Notice - Texas State Plan for Medical Assistance
Amendment**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective October 1, 2026.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for Physicians and Other Practitioners.

The proposed amendments are estimated to result in a change to annual aggregate expenditure of (\$428) for federal fiscal year (FFY) 2027, consisting of (\$251) in federal funds and (\$177) in state general revenue. For FFY 2028, the estimated result is a change to annual aggregate expenditure of (\$474) consisting of (\$280) in federal funds and (\$194) in state general revenue. For FFY 2029, the estimated result is a change to annual aggregate expenditure of (\$480) consisting of (\$283) in federal funds and (\$197) in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website before the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

Rate Hearings.

A Rate Hearing will be conducted online to propose specific rate changes and accept public testimony. Information about the proposed rate changes and hearings will be published in a subsequent issue of the *Texas Register*. Additional information and the notice of hearings can be found at <https://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Jayasree Sankaran, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhs.state.tx.us. Once submitted to the Centers for Medicare and Medicaid Services for approval, copies of the proposed amendment will be available for review at the HHSC Access and Eligibility Services for local benefit offices.

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@hhs.texas.gov

Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202603983

Nycia Deal

Chief Counsel, Office of Chief Counsel

Texas Health and Human Services Commission

Filed: September 14, 2026

◆ ◆ ◆
**Public Notice - Texas State Plan for Medical Assistance
Amendment**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective October 1, 2026.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for Non-Emergency Medical Transportation (NEMT) Services.

The proposed amendments are estimated to result in a change to annual aggregate expenditure of \$500,000 for federal fiscal year (FFY) 2027, consisting of \$292,700 in federal funds and \$207,300 in state general revenue. For FFY 2028, the estimated result is a change to annual aggregate expenditure of \$506,694 consisting of \$298,949 in federal funds and \$207,745 in state general revenue. For FFY 2029, the estimated result is a change to annual aggregate expenditure of \$513,477 consisting of \$302,951 in federal funds and \$210,526 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website before the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

Rate Hearings.

A Rate Hearing will be conducted online to propose specific rate changes and accept public testimony. Information about the proposed rate changes and hearings will be published in a subsequent issue of the *Texas Register*. Additional information and the notice of hearings can be found at <https://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Jayasree Sankaran, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by

telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Once submitted to the Centers for Medicare and Medicaid Services for approval, copies of the proposed amendment will be available for review at the HHSC Access and Eligibility Services for local benefit offices.

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDacuteCare@hhs.texas.gov

Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202603984

Nycia Deal

Chief Counsel, Office of Chief Counsel

Texas Health and Human Services Commission

Filed: September 14, 2026



Public Notice: Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit two amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of the amendments is to establish a calculation to allow for any unused HARP payment room to be distributed to other eligible hospitals within the same class based on an allocation proportionate to the remaining Medicaid charges in excess of all Medicaid payments including supplemental payments and the portion of HARP payments for the inpatient FFS Medicare payment gap for non-state government-owned and operated hospitals and private hospitals. The proposed amendment is effective October 1, 2026.

The proposed amendment for non-state government-owned hospitals is estimated to result in an annual expenditure increase of \$442,068,263 for Federal Fiscal Year (FFY) 2027, consisting of \$258,786,761 in federal funds and \$183,281,502 in state funds. For FFY 2028, the estimated annual expenditure increase is \$456,656,516, consisting of \$269,427,344 in federal funds and \$187,229,171 in state funds. For FFY 2029, the estimated annual expenditure increase is \$471,726,181, consisting of \$278,318,447 in federal funds and \$193,407,734 in state funds.

The proposed amendment for private hospitals is estimated to have no fiscal impact.

Public Hearing. A public hearing was held on August 14, 2026, at 1:00 p.m. online. Information about the proposed rate change(s) and the hearing can be found in the August 7, 2026, issue of the *Texas Register* page 5040 at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment(s). To obtain copies of the proposed amendment, interested parties may contact Jayasree Sankaran, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-4331; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Once submitted to the Centers for Medicare and Medicaid Services for approval, copies of the proposed amendment will be available for review at the HHSC Access and Eligibility Services for local benefit offices.

Written Comments: Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

pfd_hospitals@hhs.texas.gov

TRD-202603982

Nycia Deal

Chief Counsel, Office of Chief Counsel

Texas Health and Human Services Commission

Filed: September 14, 2026



Texas Department of Insurance

Company Licensing

Application for Unified Life Insurance Company, a domestic life, accident and/or health company, to change its name to Alta Life and Annuity Insurance Company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Andrew Guerrero, 1601 Congress Ave., Suite 6.900, Austin, Texas 78701.

TRD-202604007

Justin Bain

Chief Clerk

Texas Department of Insurance

Filed: September 16, 2026



Texas Department of Licensing and Regulation

Electricians Penalties and Sanctions

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held February 18, 2026, the Commission adopted the that at their regularly scheduled meeting held July 28, 2026, the Commission adopted

the Texas Department of Licensing and Regulation's (Department) revised enforcement plan, which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Electricians program.

The penalty matrix for the Electricians program was last updated on February 20, 2018. Revisions to the matrix include (1) incorporating continuing education violations and (2) other cleanup to ensure correct rule and law citations and plain language.

The Electrical Safety and Licensing Advisory Board recommended approval of the penalty matrix at their meeting held May 12, 2026. The penalty matrix was presented to the Commission on July 28, 2026, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov.

Electricians Penalties and Sanctions

Texas Occupations Code, Chapter 1305

Texas Occupations Code, Chapter 1806

Texas Occupations Code, Chapter 51

16 Texas Administration Code, Chapter 60

16 Texas Administration Code, Chapter 73

Class A

Penalty Range: \$500 to \$2,000

Administrative Violations

Violation	Statute/Rule
Failed to notify the Department when a new licensee of record is assigned	73.51(a)(1), 73.52(a)(1), 73.54(a)(1)
Failed to notify the Department within 30 days that the licensee of record is no longer employed	73.51(a)(1), 73.52(a)(1), 73.54(a)(1)

Advertising Violations

Violation	Statute/Rule
Failed to include contractor name and license number in advertising	73.51(e), 73.52(e), 73.54(d), 73.70(g)

Public Notice Violations

Violation	Statute/Rule
Failed to permanently affix license number and business name in conspicuous place on both sides of each vehicle	1305.166(b)(2)
Failed to display business name and contractor license number on each vehicle used in the conduct of electrical work	1305.166(a), 73.51(d), 73.52(d), 73.54(c)
Failed to display license number and business name on each vehicle in characters at least two inches high and in color that contrasts with background	1305.166(b)(1), 73.51(d), 73.52(d), 73.54(c)
Failed to include name, address, phone number and license number of contractor on all proposals, invoices, and written contracts	73.51(f), 73.52(f), 73.54(e)
Failed to include Department information on all proposals, invoices and written contracts	73.51(f), 73.52(f), 73.54(e)

Violation	Statute/Rule
Failed to conspicuously state the name and license number of the electrical contractor who will perform the installation in an agreement for sale or lease of a residential solar energy system that includes installation	1806.155(a)(2)
Failed to include a provision that any required permits or approvals will be obtained in a residential solar energy system sale or lease agreement that includes installation	1806.155(a)(3)
Failed to include a Right to Cancel provision in an agreement for sale or lease of a residential solar energy system that involves a third-party lender	1806.155(c)

Class B

Penalty: \$1,000 to \$3,500 and/or up to 1-year full suspension

Records Violations

Violation	Statute/Rule
Failed to maintain employee records and records of all work performed for four years	73.51(a)(2), 73.52(a)(2), 73.54(a)(2)

Insurance Violations

Violation	Statute/Rule
Failed to maintain the minimum general liability insurance	73.40(a)
Failed to provide a certificate of insurance to the Department upon request	73.40(b)
Failed to provide name of insurance carrier, policy number, name, address, and telephone number of agent to a customer upon request	73.40(d)
Failed to obtain insurance from an appropriate company	73.40(e)

Unlicensed Violations

Violation	Statute/Rule
Performed or offered to perform electrical work with an expired license	73.22(b), 73.23(d)
Provided instruction in a career and technology education program in an institute of higher learning with an expired master electrician, journeyman electrician, or residential wireman license.	1305.1575(e)

Improper Use of a License Violations

Violation	Statute/Rule
Used a license number not assigned to the contractor by the Department	73.22(d), 73.51(h), 73.52(h), 73.54(g)
Used a license belonging to another person	73.22(h)
Licensee allowed another person to use his license	73.22(h)

Class C

Penalty: \$2,000 to \$5,000 and/or plus one-year probated suspension up to revocation

Administrative Violations

Violation	Statute/Rule
Altered a license	73.22(f)
Failed to provide to the Department documentation of on-the-job training for an applicant	73.26(b)

Quality of Work Violations

Violation	Statute/Rule
Within a municipality, performed electrical work that was not in compliance with all applicable local ordinances	1305.201(d), 73.53, 73.60(a)
In an unincorporated area of the state, performed non-exempt electrical work that was not in compliance with the National Electrical Code adopted by the Department	1305.201(e), 73.53, 73.60(a), 73.100
Performed electrical work and failed to provide safe and proper installation and service	73.51(b)(1), 73.52(b)(1), 73.54(b)(1)
Performed electrical work and failed to assure electro-mechanical integrity of the work	73.51(b)(1), 73.52(b)(1), 73.54(b)(1)
Failed to supervise all licensees to assure compliance with applicable statutes, rules, and standards of conduct	73.51(g), 73.52(g), 73.54(f)
Failed to exercise reasonable judgment and skill	73.60(a)
Performed or offered to perform services for which the licensee was not qualified by education or experience	73.70(c)

Standard of Conduct Violations

Violation	Statute/Rule
Misrepresented the need for services, services to be provided, or services that have been provided	73.51(b)(2), 73.52(b)(2), 73.54(b)(2)
Made a fraudulent promise or false statement to influence, persuade, or induce contracting of services	73.51(b)(3), 73.52(b)(3), 73.54(b)(3)
Engaged in acts or practices that constitute dishonesty, misrepresentation, or fraud	73.60(b), 73.60(d)(3)
Engaged in acts or practices that constitute threats, coercion, or extortion	73.60(b)
Engaged in acts intending to evade the Act, rules, or standards adopted by the Commission	73.60(d)(1)
Furnished inaccurate, deceitful, or misleading information to the Department, a consumer, or other person	73.60(d)(2)
Failed to accurately and truthfully represent to client or employer the licensee's qualifications to perform the services to be rendered	73.70(b)
Evaded responsibility to a client or employer	73.70(d)
Agreed to perform services when significant financial or other interests were in conflict with obligation to render faithful discharge of services	73.70(e)(1)
Agreed to perform services when significant financial or other interests would impair independent judgment in rendering services	73.70(e)(2)
Failed to withdraw from employment when it became apparent that it was impossible to faithfully discharge duty and services owed the client or employer	73.70(f)
Failed to give reasonable notice of necessity of withdrawing from employment or services	73.70(f)
Engaged in advertising that was false, misleading, or deceptive	73.70(g)
Misrepresented the amount or extent of prior education or experience	73.70(h)
Held self out as being engaged in partnership or association with a person when the partnership or association did not exist	73.70(i)
Failed to cancel an agreement for the sale or lease of a residential solar energy system without penalty or further obligation as required by statute	1806.156

Unlicensed Violations

Violation	Statute/Rule
Performed or offered to perform electrical work without the appropriate license	1305.151, 1305.1575(d)
Provided instruction in a career and technology education program in an institute of higher learning without a master electrician, journeyman electrician, or residential wireman license.	1305.1575(e)
Designed an electrical system without the appropriate license	73.51(c), 73.52(c)
Subcontracted the design of an electrical system to an unlicensed person	73.51(c), 73.52(c)
Failed to ensure all electrical work was performed by licensed individuals	73.51(b)(4), 73.52(b)(4), 73.54(b)(4)
Failed to provide all electrical work through a licensed contractor	73.70(a)

Class D

Penalty: \$5,000 and/or revocation

Violation	Statute/Rule
Failed to comply with previous order of Commission or Executive Director	1305.251(2), 51.353(a), 60.23(a)(5)
Violated examination security requirements	60.54(a), 73.22(c)
Obtained or attempted to obtain a license by fraud or false representations	60.23(a)(1), 73.22(c)
Failed to pay the Department for a dishonored payment	60.82
Falsified any document submitted to the Department or Commission	60.23(a)(2), 73.22(c)
Permitted the use or display of a license by a person not authorized by law to use that license	60.23(a)(3)
Failed to cooperate with investigation of complaint	60.203(a)
Failed to make available to the Department all records, notices, or other documents requested	60.203(b), 73.51(a)(2), 73.52(a)(2), 73.54(a)(2)
Interfered with an investigation or threatened or intimidated a Department employee in connection with an investigation	60.203(c)
Failed to cooperate with an inspection	60.222
Restricted License holder failed to abide by conditions imposed on licensee	51.357(d), 73.71(a)

Violation	Statute/Rule
Restricted license supervisor failed to use reasonable care to ensure that the restricted license holder complies with conditions imposed on licensee	51.357(d), 73.71(b)

TRD-202603943
Courtney Arbour
Executive Director
Texas Department of Licensing and Regulation
Filed: September 9, 2026



Proposed Criminal Conviction Guidelines - Residential Solar Retailers and Solar Salespersons

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held July 28, 2026, the Commission adopted to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines for Residential Solar Retailers pursuant to Texas Occupations Code §53.025(a).

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction

renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

The Texas Legislature enacted Senate Bill 1036, 89th Legislature, Regular Session (2025), which gave regulatory authority of Residential Solar Retailers to the Commission and Department.

The Residential Solar Retailers Workgroup assisted in the creation of the Criminal Conviction Guidelines on April 27, 2026. The Criminal Conviction Guidelines was presented to the Commission on July 28, 2026, and was adopted as recommended

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov.

Proposed Criminal Conviction Guidelines

RESIDENTIAL SOLAR RETAILERS AND SOLAR SALESPERSONS

Crimes involving deceit, fraud, misrepresentation, deceptive trade practices, deceptive business practices, tampering with records, or failure to comply with regulatory filing requirements.

Reasons:

1. Licensees have the means and the opportunity to practice deceit, fraud, and misrepresentation related to residential solar energy systems.
2. Licensees interact and work with adults, including the elderly, who may be particularly at risk for financial exploitation or abuse and unable to report or protect themselves from exploitation and abuse.
3. Licensees may advertise or otherwise make false representations about services, products, benefits, costs, and other matters related to residential solar energy systems.
4. A person with a predisposition and experience in committing false, misleading, or deceptive acts would pose a risk to the property of their customers and would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

Reasons:

1. Licensees have direct access to private residences and deal directly with the general public.
2. A person with a predisposition and experience committing these types of offenses would pose a risk to the public and provide an opportunity to engage in further similar conduct.

Crimes involving children, the elderly, or the disabled as victims.

Reasons:

1. Licensees deal directly with the general public, including the elderly, disabled, and children.
2. Licensees may interact directly with children, the elderly, or the disabled, who may be particularly at risk for exploitation or abuse.
3. A person with a predisposition and experience in committing these types of offenses would pose a risk to the public and provide an opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

Reasons:

1. Licensees have access to private residences where they may come into direct contact with unattended property.
2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes involving racketeering, organized crime, money laundering, tax evasion, or criminal influence.

Reasons:

1. Persons with the predisposition and experience in committing crimes depriving others of money or property through a criminal enterprise would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping, and assault.

Reasons:

1. Licensees have direct contact with persons at residences in situations that have potential for confrontational behavior.
2. A person with a predisposition for a violent response would pose a risk to the public and would provide an opportunity to engage in further similar conduct.

TRD-202603944
Courtney Arbour
Executive Director
Texas Department of Licensing and Regulation
Filed: September 9, 2026



Residential Solar Retailers Penalties and Sanctions

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held February 18, 2026, the Commission adopted the that at their regularly scheduled meeting held July 28, 2026, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan, which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged

violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Residential Solar Retailers program.

The Texas Legislature enacted Senate Bill 1036, 89th Legislature, Regular Session (2025), which gave regulatory authority of Residential Solar Retailers to the Commission and Department.

The Residential Solar Retailers Workgroup assisted in the creation of the penalty matrix on January 21, 2026. The penalty matrix was presented to the Commission on July 28, 2026, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov.

RESIDENTIAL SOLAR RETAILERS Penalties and Sanctions

Solar Retailer Penalties and Sanctions Solar Salesperson Penalties and Sanctions

Texas Occupations Code, Chapter 1806
16 Texas Administration Code, Chapter 71

Solar Retailer Assessment Penalties and Sanctions

Class A

Penalty Range: Warning letter to \$1,000

Registration and Notification Violations

Violation	Statute/Rule
Failed to obtain a solar retailer registration before employing or contracting for services of an individual to engage in residential solar retail for the solar retailer.	1806.102; 71.21(a)
Failed to renew annual solar retailer registration.	71.23
Failed promptly to notify the Department of authorized solar salesperson or changes thereof.	1806.151(2)
Failed to notify the Department within 30 days of a change in registrant's name, address, phone number, or e-mail address.	71.26(a)
Failed to notify the Department of a change in controlling ownership of solar retailer.	71.25(a)

Prohibited Act Violations

Violation	Statute/Rule
Failed to maintain a copy of any solar contract, signed disclosure form, and any related records for the duration of the term of the contract plus five years thereafter.	1806.051(1); 71.50(d)

Violation	Statute/Rule
Solicited a residence with no solicitation signage posted (retailer and salesperson)	1806.152(b); 71.50(a), 71.52(b)(3)

Class B

Penalty: \$1,000 to \$3,500 and/or up to 1-year full suspension

Code of Conduct Violations

Violation	Statute/Rule
Failed to cooperate and furnish requested documentation to the Department during an investigation or upon request.	71.50(f)
Failed to supervise solar salesperson acting on retailer's behalf.	71.50(b)
Failed adequately to train solar salespersons.	71.50(b)(2)
Failed to take reasonable steps to remedy any effects on a consumer when a violation of the Act by a salesperson becomes known to the solar retailer.	71.50(b)(4)
Failed promptly to respond to reasonable consumer inquiries concerning solar contracts.	71.50(e)(1)
Failed to furnish the consumer or the consumer's designated representative a copy of the solar contract, upon request.	71.50(e)(3)
Failed to provide educational brochure to consumer at least 24 hours before the consumer signs a solar contract.	1806.051(b)(2); 71.43(b)
Failed to furnish consumer with the solar salesperson's name, department-issued registration number, and supervising solar retailer's name and department-issued registration number, upon request.	71.50(e)(2) 71.51(c)

Insurance Violations

Violation	Statute/Rule
Failed to maintain the minimum general or professional liability insurance.	1806.051(b)(4); 71.22(a)
Failed to obtain general or professional liability insurance from an acceptable insurer.	1806.051(b)(4); 71.22 (b)(1)
Failed to maintain general or professional liability insurance that named the Department as an interested party or covered liability to consumers arising from the acts of the solar retailer or solar salesperson who was acting on the solar retailer's behalf.	1806.051(b)(4); 71.22 (b)(2), (3)

Violation	Statute/Rule
Failed to notify the Department in writing of any lapse or change in insurance coverage.	1806.051(b)(4); 71.22(c)

Unregistered Activity Violations

Violation	Statute/Rule
Employed or contracted with an individual to engage in solar retail on its behalf that was not registered as a solar salesperson.	71.50(b)(3)

Contract Requirements Violations

Violation	Statute/Rule
Failed to provide a solar contract or provided a solar contract not in compliance with one or more of the following: -written in English - printed in clear, understandable, easy-to-read language -stated the name, address, and registration number of the solar retailer and solar salesperson -stated the name and license number of the installer, or a list of names and license numbers of electrical contractors from which the installer will be selected.	71.40(a)(1)-(3),(5); 71.50(b)(1)(A)
At the time the contract agreement is signed, the solar retailer or licensed electrical contractor failed to provide the consumer a printed or electronic copy of the completed solar agreement.	71.40(b)
Failed to mail a printed copy of the solar agreement to the consumer the next business day after the solar agreement was signed and an electronic copy of the agreement was provided to the consumer.	71.40(b)(2)

Class C

Penalty: \$2,000 to \$5,000 plus 1-year probated suspension up to revocation

Code of Conduct Violations

Violation	Statute/Rule
Failure to process timely a consumer request to cancel including arranging the removal of any installed equipment and refunding any monies advanced by the consumer.	71.50(c)
Failed promptly to respond to consumer inquiries concerning a solar contract.	71.50(e)(1)

Violation	Statute/Rule
Failed materially to comply with the terms of the solar contract.	71.52(e)
Failed to conduct business with honesty, integrity and fair dealing.	71.51(c)

Unregistered Violations

Violation	Statute/Rule
Caused the installation of a residential solar energy system to be performed by a person who is not a licensed electrical contractor.	1806.201(5); 71.52(c)(1)

Contract Violations

Violation	Statute/Rule
Failed to allow a consumer to cancel the contract without penalty or further obligation when notice was provided before the 5 th business day after the date of the solar contract	1806.156(b); 71.42(a)
Failed to provide consumer with a complete disclosure form signed by both the consumer and solar salesperson.	71.41(a)
Failed to include in the contract a consumer notice in 14 pt., bold and capitalized font of the right to cancel within five business days and the mailing or email address that the notice may be sent.	1806.156; 71.40(a)(7), 71.42(b),
Failed to provide a solar contract that included one or more of the following: -provide that the installer will be a Texas-licensed electrical contractor -provide that any permit required by a government entity for installation will be obtained by the solar retailer or installer -if applicable, approval by the electric utility, electric cooperative, or municipally owned utility serving the consumer's personal residence of the interconnection of the residential solar energy system -if applicable, a provision requiring the third-party lender to cancel the lending agreement if the consumer exercises their right to cancel	71.40(a)(4),(6),(8)

Prohibited Acts Violations

Violation	Statute/Rule
Failed to take reasonable steps to correct a consumer's misunderstanding of a matter related to the solar contract.	71.52(a)
Made false statements or misrepresentations, either orally, electronically or in writing, regarding a term of the solar contract or transaction.	71.52(a)
Falsely represented that the solar retailer or salesperson is a representative of a utility, electric cooperative, or municipally owned utility.	71.52(b)(1)
Stated that the consumer will be eligible for tax incentives without simultaneously advising the consumer to seek tax advice from a qualified independent professional.	71.52(b)(2)
Violated, attempted to violate or conspired to violate the Residential Solar Retailer Act, (Occupations Code, Chapter 1806), 16 TAC, Chapter 71, the Texas Deceptive Trade Practices Act (Business & Commerce Code, Chapter 17), Sale and Leasing of Distributed Renewable Generation Resources (Business & Commerce Code, Chapter 115), the Truth in Lending Act (15 U.S.C. § 1601, <i>et. seq.</i>)	71.52(c)(3)

Class D

Penalty: \$5,000 and/or revocation

Violations

Violation	Statute/Rule
Obtains or attempts to obtain a license by fraud or false representation	60.23(a)(1)
Failed to comply with previous order of Commission or Executive Director	51.353(a); 60.23(a)(5); 71.50(a). 71.51(a)
Falsified a document or made a material misrepresentation in an application or other document submitted to the Department or Commission	60.23(a)(2); 71.52(c)(2)
Permits the use or display of a license by a person not authorized to use that license	60.23(a)(3)
Failed to cooperate with the Department regarding an inspection or investigation.	60.203(c); 71.50(f)
Failed to pay the Department for a dishonored payment or processing fee	60.82

Violation	Statute/Rule
Interfered with an investigation; threatened or intimidated a Department employee in connection with an investigation	60.203(c)

Solar Salesperson Penalties and Sanctions

Class A

Penalty Range: Warning letter to \$1,000

Registration and Notification Violations

Violation	Statute/Rule
Failed to obtain a solar salesperson registration before engaging in residential solar retail transactions.	1806.101; 71.24(a)
Failed to renew annual solar salesperson registration.	71.25(a)
Failed to notify the Department within 30 days of a change in registrant's name, address, phone number, or e-mail address.	71.26(a)

Unregistered Activity Violations

Violation	Statute/Rule
Failed to operate under the supervision of a registered solar retailer when engaging in residential solar retail.	1806.101(1); 71.52(d)

Prohibited Acts Violations

Violation	Statute/Rule
Solicited a residence with no solicitation signage posted (retailer and salesperson)	1806.152(b); 71.50(a), 71.52(b)(3)

Class B

Penalty: \$1,000 to \$3,500 and/or up to 1-year full suspension

Code of Conduct Violations

Violation	Statute/Rule
Failed to provide educational brochure to consumer at least 24 hours before the consumer signs a solar contract.	1806.051(b)(2); 71.43(b)
Failed to furnish consumer with the solar salesperson's name, department-issued registration number, and supervising solar retailer's name and department-issued registration number, upon request.	71.50(e)(2) 71.51(c)

Unregistered Activity Violations

Violation	Statute/Rule
Employed or contracted with an individual to engage in solar retail on its behalf that was not registered as a solar salesperson.	71.50(b)(3)

Class C

Penalty: \$2,000 to \$5,000 plus 1-year probated suspension up to revocation

Code of Conduct Violations

Violation	Statute/Rule
Failed to conduct business with honesty, integrity and fair dealing.	71.51(c)

Unregistered Violations

Violation	Statute/Rule
Caused the installation of a residential solar energy system to be performed by a person who is not a licensed electrical contractor.	1806.201(5); 71.52(c)(1)

Prohibited Acts Violations

Violation	Statute/Rule
Failed to take reasonable steps to correct a consumer's misunderstanding of a matter related to the solar contract.	71.52(a)
Made false statements or misrepresentations, either orally, electronically or in writing, regarding a term of the solar contract or transaction.	71.52(a)

Violation	Statute/Rule
Falsely represented that the solar retailer or salesperson is a representative of a utility, electric cooperative, or municipally owned utility.	71.52(b)(1)
Stated that the consumer will be eligible for tax incentives without simultaneously advising the consumer to seek tax advice from a qualified independent professional.	71.52(b)(2)
Violated, attempted to violate or conspired to violate the Residential Solar Retailer Act, (Occupations Code, Chapter 1806), 16 TAC, Chapter 71, the Texas Deceptive Trade Practices Act (Business & Commerce Code, Chapter 17), Sale and Leasing of Distributed Renewable Generation Resources (Business & Commerce Code, Chapter 115), the Truth in Lending Act (15 U.S.C. § 1601, <i>et. seq.</i>)	71.52(c)(3)

Class D

Penalty: \$5,000 and/or revocation

Violations

Violation	Statute/Rule
Obtains or attempts to obtain a license by fraud or false representation	60.23(a)(1)
Failed to comply with previous order of Commission or Executive Director	51.353(a); 60.23(a)(5); 71.50(a). 71.51(a)
Falsified a document or made a material misrepresentation in an application or other document submitted to the Department or Commission	60.23(a)(2); 71.52(c)(2)
Permits the use or display of a license by a person not authorized to use that license	60.23(a)(3)
Failed to cooperate with the Department regarding an inspection or investigation.	60.203(c); 71.50(f)
Failed to pay the Department for a dishonored payment or processing fee	60.82
Interfered with an investigation; threatened or intimidated a Department employee in connection with an investigation	60.203(c)

TRD-202603945
Courtney Arbour
Executive Director
Texas Department of Licensing and Regulation
Filed: September 9, 2026

◆ ◆ ◆

Scratch Ticket Game Number 2788 "LADY LUCK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2788 is "LADY LUCK".
The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2788 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2788.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,

43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, CHERRY SYMBOL, MOON SYMBOL, LEMON SYMBOL, COIN SYMBOL, CLUB SYMBOL, WATERMELON SYMBOL, HEART SYMBOL, DIAMOND SYMBOL, ELEPHANT SYMBOL, BANANA SYMBOL, RAINBOW SYMBOL, SUN SYMBOL, HORSESHOE SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, \$20.00, \$50.00, \$100, \$200, \$500, \$2,000, \$5,000, \$20,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2788 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFO
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
CHERRY SYMBOL	CHERRY
MOON SYMBOL	MOON
LEMON SYMBOL	LEMON
COIN SYMBOL	COIN

CLUB SYMBOL	CLUB
WATERMELON SYMBOL	MELON
HEART SYMBOL	HEART
DIAMOND SYMBOL	DIAMND
ELEPHANT SYMBOL	ELPHT
BANANA SYMBOL	BANANA
RAINBOW SYMBOL	RAINBW
SUN SYMBOL	SUN
HORSESHOE SYMBOL	WIN\$
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$2,000	TOTH
\$5,000	FVTH
\$20,000	20TH
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2788), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2788-0000001-001.

H. Pack - A Pack of the "LADY LUCK" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages

of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LADY LUCK" Scratch Ticket Game No. 2788.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set

forth in Texas Lottery Rule 140.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LADY LUCK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-five (75) Play Symbols. BONUS: If the player reveals 2 matching Play Symbols in the same BONUS play area, the player wins the prize for that BONUS play area. LADY LUCK: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "HORSESHOE" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-five (75) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-five (75) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-five (75) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-five (75) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director of the Texas Lottery ("Executive Director") may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-three (33) times.

D. GENERAL: The "2X" (DBL), "5X" (WINX5), "10X" (WINX10) and "HORSESHOE" (WIN\$) Play Symbols will never appear in any of the three (3) BONUS play areas.

E. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.

F. BONUS: Each BONUS play area will consist of two (2) Play Symbols and one (1) Prize Symbol.

G. BONUS: A Ticket will not have matching, non-winning Play Symbols across the three (3) BONUS play areas.

H. BONUS: A winning Ticket will have two (2) matching Play Symbols in the same BONUS play area.

I. BONUS: Non-winning Play Symbols in a BONUS play area will not be the same as winning Play Symbols from another BONUS play area.

J. BONUS: A non-winning BONUS play area will have two (2) different Play Symbols.

K. BONUS: Non-winning Prize Symbols will never appear more than one (1) time across the BONUS play areas.

L. BONUS: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s) from another BONUS play area.

M. LADY LUCK: A Ticket can win up to thirty (30) times in the main play area.

N. LADY LUCK: All non-winning YOUR NUMBERS Play Symbols will be different.

O. LADY LUCK: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

P. LADY LUCK: All WINNING NUMBERS Play Symbols will be different.

Q. LADY LUCK: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

R. LADY LUCK: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

S. LADY LUCK: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

T. LADY LUCK: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and \$20 and 50 and \$50).

U. LADY LUCK: On winning and Non-Winning Tickets, the top cash prizes of \$2,000, \$5,000, \$20,000 and \$1,000,000 will each appear at least one (1) time, except on Tickets winning thirty-three (33) times and with respect to other parameters, play action or prize structure.

V. LADY LUCK: The "HORSESHOE" (WIN\$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

W. LADY LUCK: The "HORSESHOE" (WIN\$) Play Symbol will win the prize for that Play Symbol.

X. LADY LUCK: The "HORSESHOE" (WIN\$) Play Symbol will never appear more than one (1) time on a Ticket.

Y. LADY LUCK: The "HORSESHOE" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

Z. LADY LUCK: The "HORSESHOE" (WIN\$) Play Symbol will never appear on the same Ticket as the "2X" (DBL), "5X" (WINX5) or "10X" (WINX10) Play Symbols.

AA. LADY LUCK: On Tickets winning with the "HORSESHOE" (WIN\$) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

BB. LADY LUCK: The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

CC. LADY LUCK: The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

DD. LADY LUCK: The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

EE. LADY LUCK: The "2X" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

FF. LADY LUCK: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

GG. LADY LUCK: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

HH. LADY LUCK: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

II. LADY LUCK: The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

JJ. LADY LUCK: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

KK. LADY LUCK: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

LL. LADY LUCK: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

MM. LADY LUCK: The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "LADY LUCK" Scratch Ticket Game prize of \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied, and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LADY LUCK" Scratch Ticket Game prize of \$2,000, \$5,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied, and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LADY LUCK" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Taxpayer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied, and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LADY LUCK" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LADY LUCK" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game

or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2788. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2788 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20.00	576,000	10.42
\$50.00	528,000	11.36
\$100	336,000	17.86
\$200	59,000	101.69
\$500	3,750	1,600.00
\$2,000	100	60,000.00
\$5,000	40	150,000.00
\$20,000	20	300,000.00
\$1,000,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2788 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §140.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2788, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140, and all final decisions of the Executive Director.

TRD-202603973
Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
Filed: September 14, 2026



Scratch Ticket Game Number 2789 "CA\$H EXPLOSION®"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2789 is "CA\$H EXPLOSION®". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2789 shall be \$50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2789.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$50.00, \$100, \$200, \$300, \$500, \$1,000, \$5,000, \$1,000,000, CHERRY SYMBOL, MOON SYMBOL, LEMON SYMBOL, COIN SYMBOL, CLUB SYMBOL, WATERMELON SYMBOL, HEART SYMBOL, DIAMOND SYMBOL, ELEPHANT SYMBOL, BANANA SYMBOL, RAINBOW SYMBOL, SUN SYMBOL, HORSESHOE SYMBOL, ANCHOR SYMBOL, SAILBOAT SYMBOL, LIGHTNING BOLT SYMBOL, HAT SYMBOL, BOOT SYMBOL, BIRD SYMBOL, UMBRELLA SYMBOL, MONEY BAG SYMBOL, 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,

41, 42, 43, 44, 45, 46, 47, 48, 49, TREASURE CHEST SYMBOL, 2X SYMBOL, 5X SYMBOL and 10X SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2789 - 1.2D

PLAY SYMBOL	CAPTION
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$300	THHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$1,000,000	TPPZ
CHERRY SYMBOL	CHERRY
MOON SYMBOL	MOON
LEMON SYMBOL	LEMON
COIN SYMBOL	COIN
CLUB SYMBOL	CLUB
WATERMELON SYMBOL	MELON
HEART SYMBOL	HEART
DIAMOND SYMBOL	DIAMND
ELEPHANT SYMBOL	ELPHT
BANANA SYMBOL	BANANA
RAINBOW SYMBOL	RAINBW
SUN SYMBOL	SUN
HORSESHOE SYMBOL	HRSHOE
ANCHOR SYMBOL	ANCHOR
SAILBOAT SYMBOL	BOAT
LIGHTNING BOLT SYMBOL	BOLT
HAT SYMBOL	HAT
BOOT SYMBOL	BOOT
BIRD SYMBOL	BIRD

UMBRELLA SYMBOL	UMBRLA
MONEY BAG SYMBOL	WIN\$
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
TREASURE CHEST SYMBOL	WIN\$
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2789), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2789-0000001-001.

H. Pack - A Pack of the "CASH EXPLOSION®" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASH EXPLOSION®" Scratch Ticket Game No. 2789.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 140.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "CASH EXPLOSION®" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-two (82) Play Symbols. BONUS PLAY INSTRUCTIONS: If the player reveals 2 matching Play Symbols in the same BONUS play area, the player wins the prize for that BONUS. GAME 1 PLAY INSTRUCTIONS: If the player reveals a "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly! GAME 2 PLAY INSTRUCTIONS: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "TREASURE CHEST" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-two (82) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-two (82) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-two (82) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-two (82) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director of the Texas Lottery ("Executive Director") may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-seven (37) times.

D. GENERAL: The "TREASURE CHEST" (WIN\$), "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in any of the three (3) BONUS play areas, or in the GAME 1 play area.

E. GENERAL: The "MONEY BAG" (WIN\$) Play Symbol will never appear in any of the three (3) BONUS play areas, or in the GAME 2 play area.

F. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.

G. BONUS: Each BONUS play area will consist of two (2) Play Symbols and one (1) Prize Symbol.

H. BONUS: A Ticket will not have matching, non-winning Play Symbols or Prize Symbols across the three (3) BONUS play areas.

I. BONUS: A winning Ticket will have two (2) matching Play Symbols in the same BONUS play area.

J. BONUS: Non-winning Play Symbols in a BONUS play area will not be the same as winning Play Symbols from another BONUS play area.

K. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

L. BONUS: A non-winning BONUS play area will have two (2) different Play Symbols.

M. GAME 1: A Ticket can win up to four (4) times in the GAME 1 play area.

N. GAME 1: All non-winning Play Symbols will be different.

O. GAME 1: On all Tickets, a Prize Symbol will not appear more than one (1) time, except as required by the prize structure to create multiple wins.

P. GAME 1: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

Q. GAME 1: The "MONEY BAG" (WIN\$) Play Symbol will win the prize for that symbol.

R. GAME 1: The "MONEY BAG" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

S. GAME 2: A Ticket can win up to thirty (30) times in the GAME 2 play area.

T. GAME 2: All non-winning YOUR NUMBERS Play Symbols will be different.

U. GAME 2: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

V. GAME 2: All WINNING NUMBERS Play Symbols will be different.

W. GAME 2: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

X. GAME 2: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

Y. GAME 2: On Non-Winning Tickets, a YOUR NUMBERS Play Symbol will never match a WINNING NUMBERS Play Symbol.

Z. GAME 2: On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$5,000 and \$1,000,000 will each appear at least one (1) time, except on Tickets winning thirty-seven (37) times and with respect to other parameters, play action or prize structure.

AA. GAME 2: On Tickets winning with the "TREASURE CHEST" (WIN\$) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

BB. GAME 2: The "TREASURE CHEST" (WIN\$) Play Symbol will win the prize for that Play Symbol.

CC. GAME 2: The "TREASURE CHEST" (WIN\$) Play Symbol will never appear more than one (1) time on a Ticket.

DD. GAME 2: The "TREASURE CHEST" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

EE. GAME 2: The "TREASURE CHEST" (WIN\$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

FF. GAME 2: The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

GG. GAME 2: The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

HH. GAME 2: The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

II. GAME 2: The "2X" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

JJ. GAME 2: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

KK. GAME 2: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

LL. GAME 2: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

MM. GAME 2: The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

NN. GAME 2: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

OO. GAME 2: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

PP. GAME 2: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

QQ. GAME 2: The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

RR. GAME 2: The "TREASURE CHEST" (WIN\$), "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH EXPLOSION®" Scratch Ticket Game prize of \$50.00, \$100, \$200, \$300 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200, \$300 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied, and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH EXPLOSION®" Scratch Ticket Game prize of \$1,000, \$5,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income

reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied, and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH EXPLOSION®" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Taxpayer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied, and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "CASH

EXPLOSION®" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "CASH EXPLOSION®" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 2789. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2789 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$50.00	504,000	10.00
\$100	567,000	8.89
\$200	252,000	20.00
\$300	72,240	69.77
\$500	63,168	79.79
\$1,000	500	10,080.00
\$5,000	100	50,400.00
\$1,000,000	10	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.45. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2789 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §140.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2789, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140, and all final decisions of the Executive Director.

TRD-202603974
Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
Filed: September 14, 2026

◆ ◆ ◆
North Central Texas Council of Governments

Request for Proposals for 2026 Vehicle Procurement

The North Central Texas Council of Governments (NCTCOG) serves as the designated recipient of Federal Transit Administration (FTA)

Program funds for the Dallas-Fort Worth-Arlington and the Denton-Lewisville Urbanized Areas. NCTCOG has been awarded Section 5307 Urbanized Area Formula funds for Fiscal Years 2024 and 2025, and Section 5339 Bus and Bus Facilities Formula funds for Fiscal Years 2023, 2024, and 2025 for the support of transit operations. NCTCOG is requesting written proposals from qualified vendors(s) to design, manufacture, and deliver 25-36 Americans with Disabilities Act (ADA) accessible, Light-Duty Cutaway Transit Vehicles to support urban transportation services.

NCTCOG will be releasing the Request for Proposals (RFP) on **Friday, September 25, 2026**, in the Bidnet Direct System and will accept submissions through the Bidnet Direct System only. The Bidnet Direct submittal will count as the official submittal. Proposals must be submitted in Bidnet Direct no later than **5:00 p.m., Central Time, on Friday, October 23, 2026**. Proposals received after that time will not be accepted.

NCTCOG does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202603981
Monte Mercer
Deputy Executive Director
North Central Texas Council of Governments
Filed: September 14, 2026

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Request for Proposals for In-Plant Bus Inspection Service

The North Central Texas Council of Governments (NCTCOG) serves as the designated recipient of Federal Transit Administration (FTA) Program funds for the Dallas-Fort Worth-Arlington and the Denton-Lewisville Urbanized Areas. NCTCOG has been awarded Section 5307 Urbanized Area Formula funds for Fiscal Years 2024 and 2025, and Section 5339 Bus and Bus Facilities Formula funds for Fiscal Years 2023, 2024, and 2025 for the support of transit operations. NCTCOG is requesting written proposals from qualified vendors(s) to provide in-plant inspection service in Elkhart, Indiana for 25-36 Light-Duty Cutaway Transit Vehicles.

NCTCOG will be releasing the Request for Proposals (RFP) on **Friday, September 25, 2026**, in the Bidnet Direct System and will accept submissions through the Bidnet Direct System only. The Bidnet Direct submittal will count as the official submittal. Proposals must be submitted in Bidnet Direct no later than **5:00 p.m., Central Time, on Friday, October 23, 2026**. Proposals received after that time will not be accepted.

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TRD-202603980

Monte Mercer

Deputy Executive Director

North Central Texas Council of Governments

Filed: September 14, 2026



Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Magellan Pipeline, L.P. has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb approximately 165.52 cubic yards of sedimentary material within South Bear Creek in Parker

County. The purpose is stabilization and armoring of an existing active pipeline. The location is 0.57 miles upstream from Goforth Rd and 2.31 miles downstream from Highway 377, latitude/longitude 32.580708, -97.573829. This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on October 23, 2026 at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Sue Reilly at (512) 389-8622 or at sue.reilly@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: TPWD Sand and Gravel Program by mail: Attn: Sue Reilly, Texas Parks and Wildlife Department, Inland Fisheries Division, 4200 Smith School Road, Austin, Texas 78744; or via e-mail: sand.gravel@tpwd.texas.gov.

TRD-202603987

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: September 15, 2026



How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 51 (2026) is cited as follows: 51 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “51 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 51 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <https://www.sos.texas.gov>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §91.1: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §91.1 is the section number of the rule (91 indicates that the section is under Chapter 91 of Title 1; 1 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s TAC number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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