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Lizeth Rosas 8th Grade

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(512) 463-5561
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http://www.sos.state.tx.us
register@sos.state.tx.us

Secretary of State –
Nandita Berry

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
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Kris Hogan
Jill S. Ledbetter
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IN THIS ISSUE

ATTORNEY GENERAL

Requests for Opinions....3013

Opinions....3013

PROPOSED RULES

TEXAS DEPARTMENT OF LICENSING AND REGULATION

PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §60.10....3015

16 TAC §60.82....3016

TEXAS HIGHER EDUCATION COORDINATING BOARD

RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

19 TAC §4.81, §4.85....3016

19 TAC §4.155....3018

PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

19 TAC §9.1....3019

19 TAC §9.75....3020

19 TAC §9.93, §9.96....3020

19 TAC §§9.121, 9.123, 9.124, 9.126....3022

19 TAC §§9.141 - 9.143, 9.146....3023

19 TAC §9.147....3024

19 TAC §9.183, §9.184....3024

STUDENT SERVICES

19 TAC §§21.123 - 21.125, 21.128, 21.129....3026

19 TAC §21.135....3028

TEXAS PARKS AND WILDLIFE DEPARTMENT

FISHERIES

31 TAC §57.379....3029

31 TAC §57.1001....3030

WILDLIFE

31 TAC §65.103....3032

31 TAC §§65.132, 65.135, 65.136....3033

COMPTROLLER OF PUBLIC ACCOUNTS

JOBS AND EDUCATION FOR TEXANS (JET) GRANT PROGRAM

34 TAC §8.1....3035

34 TAC §8.12, §8.13....3036

34 TAC §8.21, §8.24....3037

34 TAC §8.31....3037

34 TAC §8.51....3038

DEPARTMENT OF AGING AND DISABILITY SERVICES

INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

40 TAC §§9.153 - 9.155, 9.158, 9.159, 9.161, 9.166, 9.168 - 9.171, 9.174, 9.177, 9.178, 9.180, 9.185, 9.187, 9.190, 9.192....3044

40 TAC §9.185, §9.193....3077

40 TAC §§9.551 - 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.580, 9.582 - 9.584....3085

40 TAC §§9.557, 9.559, 9.569, 9.577....3111

40 TAC §§9.701 - 9.712....3112

MEDICAID HOSPICE PROGRAM

40 TAC §30.4....3114

40 TAC §§30.30, 30.34, 30.36....3115

40 TAC §30.32....3116

40 TAC §30.60, §30.62....3117

40 TAC §30.70....3119

40 TAC §§30.80, 30.82, 30.84....3119

CONSUMER DIRECTED SERVICES OPTION

40 TAC §41.108....3121

40 TAC §41.201, §41.233....3122

40 TAC §§41.207, 41.217, 41.233, 41.238....3123

40 TAC §41.301, §41.339....3124

40 TAC §41.404....3126

SERVICE RESPONSIBILITY OPTION

40 TAC §43.4....3127

40 TAC §43.22....3128

40 TAC §43.41....3129

40 TAC §43.71....3129

CONSUMER MANAGED PERSONAL ATTENDANT SERVICES

40 TAC §44.302....3130

COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

40 TAC §45.501....3132

40 TAC §45.503....3132

40 TAC §45.609....3133

40 TAC §45.619....3133

40 TAC §§45.701, 45.703, 45.707....3134

40 TAC §45.801 3135
40 TAC §45.808 3135
40 TAC §45.901 3136
40 TAC §45.902 3136
CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES
40 TAC §§46.11, 46.19, 46.21, 46.23 3138
40 TAC §46.17, §46.25 3141
40 TAC §46.33 3141
CONTRACTING TO PROVIDE PRIMARY HOME CARE
40 TAC §47.11 3143
40 TAC §47.75 3143
40 TAC §47.87 3143
40 TAC §47.89 3144
COMMUNITY CARE FOR AGED AND DISABLED
40 TAC §§48.8901, 48.8906, 48.8907 3144
CONTRACTING FOR COMMUNITY CARE SERVICES
40 TAC §49.1 3152
40 TAC §§49.11 - 49.18, 49.20 3153
40 TAC §§49.31 - 49.33 3153
40 TAC §49.41, §49.42 3153
40 TAC §§49.51 - 49.54 3154
40 TAC §§49.61 - 49.63 3154
40 TAC §§49.71 - 49.73 3155
CONTRACTING FOR COMMUNITY SERVICES
40 TAC §49.101, §49.102 3155
40 TAC §§49.201 - 49.211 3158
40 TAC §§49.301 - 49.312 3163
40 TAC §49.401 3169
40 TAC §§49.411 - 49.414 3170
40 TAC §49.501 3172
40 TAC §49.511 3172
40 TAC §§49.521 - 49.523 3173
40 TAC §§49.531 - 49.534 3174
40 TAC §49.541 3177
40 TAC §49.551 3177
40 TAC §49.601 3178
40 TAC §49.701, §49.702 3178
MEDICALLY DEPENDENT CHILDREN PROGRAM
40 TAC §51.103 3183
40 TAC §51.203 3186
40 TAC §51.205 3187
40 TAC §51.219 3187
40 TAC §§51.231, 51.233, 51.235, 51.237, 51.241, 51.243, 51.245 3188
40 TAC §51.232 3191
40 TAC §51.251 3191
40 TAC §51.401 3192
40 TAC §§51.411, 51.413, 51.415, 51.417 - 51.419 3193
40 TAC §51.413 3195
40 TAC §51.421 3196
40 TAC §51.421, §51.423 3196
40 TAC §51.441 3197
40 TAC §51.441 3198
40 TAC §51.471, §51.475 3198
40 TAC §§51.481, 51.483, 51.485 3199
40 TAC §§51.501, 51.503, 51.507 3200
40 TAC §§51.505, 51.509, 51.511, 51.513, 51.515 3200
CONTRACTING TO PROVIDE EMERGENCY RESPONSE SERVICES
40 TAC §52.201 3204
40 TAC §52.501, §52.503 3204
CONTRACTING TO PROVIDE HOME-DELIVERED MEALS
40 TAC §55.5, §55.39 3205
CONTRACTING TO PROVIDE SPECIAL SERVICES TO PERSONS WITH DISABILITIES
40 TAC §58.11 3207
40 TAC §58.131, §58.137 3208
CONTRACTING TO PROVIDE TRANSITION ASSISTANCE SERVICES
40 TAC §62.11 3209
40 TAC §62.41 3209
40 TAC §62.43 3210
CONTRACT ADMINISTRATION
40 TAC §§69.1 - 69.4 3213
40 TAC §§69.11 - 69.19 3213
40 TAC §§69.31 - 69.40 3213
40 TAC §§69.51 - 69.55 3214
40 TAC §§69.71 - 69.73 3214
40 TAC §69.81 3215

40 TAC §§69.91 - 69.93 3215
40 TAC §§69.101 - 69.103 3216
40 TAC §§69.111 - 69.118 3216
40 TAC §§69.131 - 69.139 3216
40 TAC §§69.151 - 69.160 3217
40 TAC §§69.171 - 69.186 3217

ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

40 TAC §§98.202, 98.210, 98.212 3218

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

REIMBURSEMENT RATES

1 TAC §355.8066 3221

TEXAS EDUCATION AGENCY

STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.1001 3227

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

LICENSES AND RENEWALS

22 TAC §73.7 3228

PROFESSIONAL CONDUCT

22 TAC §80.5 3228

TEXAS BOARD OF NURSING

PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS TO PROFESSIONAL NURSING EDUCATION

22 TAC §§227.1 - 227.6 3229

PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS TO VOCATIONAL AND PROFESSIONAL NURSING EDUCATION

22 TAC §§227.1 - 227.4 3230

TEXAS DEPARTMENT OF INSURANCE

CAPTIVE INSURANCE

28 TAC §6.1, §6.2 3242
28 TAC §§6.101 - 6.105 3245
28 TAC §§6.201 - 6.203 3247
28 TAC §§6.301 - 6.307 3250
28 TAC §§6.401 - 6.410 3251
28 TAC §6.501 3254
28 TAC §6.601 3255
28 TAC §6.701 3257

TITLE INSURANCE

28 TAC §§9.11, 9.21, 9.30, 9.31, 9.40 3258
28 TAC §9.501 3259

TEXAS JUVENILE JUSTICE DEPARTMENT

RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

37 TAC §380.9337 3259
37 TAC §380.9337 3259

RULE REVIEW

Agency Rule Review Plan

Texas Department of Motor Vehicles 3261

Proposed Rule Reviews

Credit Union Department 3261

IN ADDITION

Texas Department of Agriculture

Request for Applications: Young Farmer Grant Program 3263

Comptroller of Public Accounts

Notice of Request for Proposals 3263

Office of Consumer Credit Commissioner

Notice of Rate Ceilings 3264

Texas Commission on Environmental Quality

Agreed Orders 3264
Enforcement Orders 3267
Notice of District Petition 3271
Notice of Water Quality Applications 3272
Notice of Water Rights Applications 3274

Texas Ethics Commission

List of Late Filers 3275

Texas Facilities Commission

Request for Proposals #303-6-20437 3276

Texas Health and Human Services Commission

Public Notice of Intent to Submit a State Plan Amendment for Hospital-Specific Limits 3276

Texas Department of Insurance

Company Licensing 3276
Public Notice 3276
Public Notice 3277

Texas Lottery Commission

Instant Game Number 1607 "Texas Gold" 3277

Instant Game Number 1642 "50X the Cash" 3281

Texas Department of Motor Vehicles

Major Consulting Services Contract Award - Commercial Vehicle Information Systems and Networks Consulting and Services 3286

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction 3287

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority 3287

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority 3287

Notice of Application for a Service Provider Certificate of Operating Authority 3287

Notice of Application for Amendment to Certificated Service Area Boundary 3288

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 3288

Texas State Soil and Water Conservation Board

USDA-Natural Resources Conservation Service State Technical Advisory Committee Meeting 3288

Texas Department of Transportation

Public Hearing Notice - Unified Transportation Program 3289

Texas State University System

Notice of Award - Natural Gas and Electric Energy Consultant 3289

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. 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: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1193-GA

Requestor:

Mr. Jeff May

Collin County Auditor

2300 Bloomdale Road, Suite 3100

McKinney, Texas 75071

Re: Authority of a local behavioral health authority under section 533.035, Health & Safety Code, to participate in the Department of State Health Service's vendor selection process to provide services within the authority's local service area (RQ-1193-GA)

Briefs requested by April 28, 2014

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201401642
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 9, 2014

Opinions

Opinion No. GA-1048

The Honorable Rod Ponton

83rd District Attorney

400 South Nelson Street

Fort Stockton, Texas 79735

Re: Whether the Science Advisory Workgroup of the State Fire Marshal's Office has authority to review prior arson investigations (RQ-1154-GA)

S U M M A R Y

Neither article 38.01 of the Code of Criminal Procedure nor Attorney General Opinion GA-0866 limit any investigative authority that may be vested in the Science Advisory Workgroup or the State Fire Marshal's Office.

Neither chapter 417 of the Government Code nor Opinion GA-0866 prohibits the State Fire Marshal's Office from investigating and making findings on closed arson cases.

Opinion No. GA-1049

The Honorable Craig Estes

Chair, Committee on Agriculture

Rural Affairs & Homeland Security

Texas Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the Red River Authority must obtain county approval for any purchase of groundwater in a county without a groundwater conservation district (RQ-1155-GA)

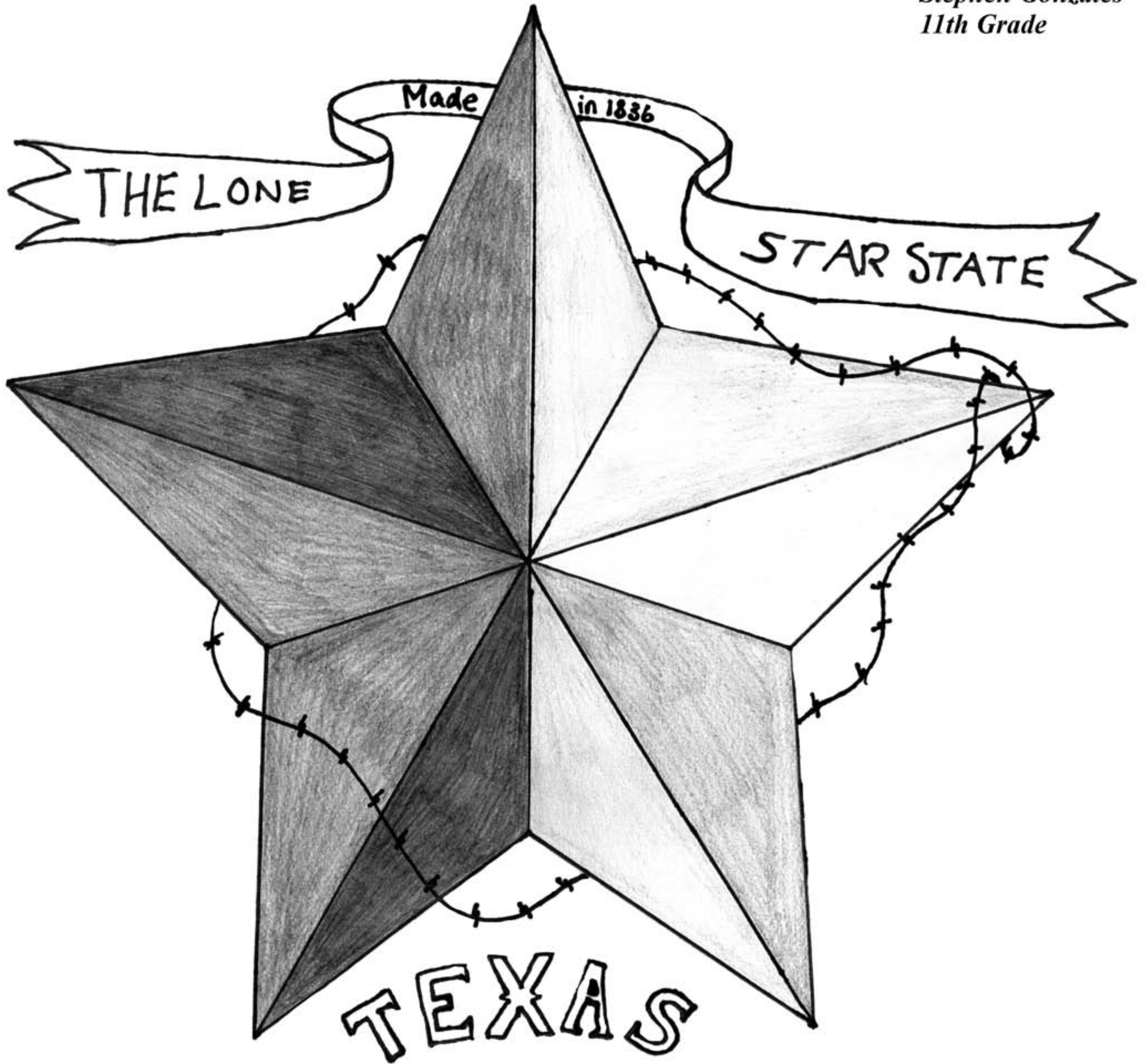
S U M M A R Y

Whether a contract for the purchase of groundwater that does not entitle the Red River Authority to drill for and produce groundwater nevertheless conveys a "groundwater right" such that it must be approved by the commissioners court in a county without a groundwater conservation district is a question that can only be answered by reference to the particular contract at issue. Such questions are not the appropriate subject of an attorney general opinion.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201401631
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 8, 2014

Stephen Gonzales
11th Grade



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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code Chapter 60, §60.10 and §60.82, regarding the Procedural Rules of the Commission and the Department.

The proposed amendments are necessary to update the processing fee provision giving the Department authority to impose a processing fee for charge backs of dishonored electronic payments, including credit card payments.

The proposed amendment to §60.10 adds a new definition for payment device and renumbers the remainder definitions in that section.

The proposed amendments to §60.82 deletes all references to checks and replaces the term with payment device. The amendment clarifies the obligor of the payment device is entitled to notice of the dishonored payment device. The amendment also clarifies the person or licensee for whom the dishonored payment device was submitted is subject to enforcement proceedings if after notification of the dishonored payment device and the dishonored payment device remains unpaid.

Editorial changes are also made to "Commission", "Department", and "Executive Director" to lower case to be consistent with other rule chapters.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments.

Mr. Kuntz has also determined that for each year of the first five-year period the amendments are in effect, the public will benefit because the costs of processing dishonored payments will be paid by the cost causers and not passed on to other licensees.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the amendments as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §60.10

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§60.10. Definitions.

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

(1) - (20) (No change.)

(21) Payment Device--Any check, item, paper or electronic payment, or other payment method used as a medium for payment.

(22) [~~(21)~~] Penalty or Administrative Penalty--A monetary fine imposed by the commission [~~Commission~~] or the executive director [~~Executive Director~~] on a licensee or other person who has violated this chapter or a statute or rule governing a program regulated by the department [~~Department~~].

(23) [~~(22)~~] Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(24) [~~(23)~~] Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(25) [~~(24)~~] Presiding Officer--The Commission member designated by the Governor to serve as the lead Commission official as defined under Texas Occupations Code, §51.056.

(26) [~~(25)~~] Respondent--Any person, regardless of whether the person is licensed or unlicensed, who is charged with violating a law establishing a regulatory program administered by the department [~~Department~~] or a rule adopted by or an order issued by the commission [~~Commission~~] or the executive director [~~Executive Director~~].

(27) [~~(26)~~] Rule--Any Commission statement of general applicability that implements, interprets, or prescribes law or policy,

or describes the procedure or practice requirements of the department [~~Department~~] or commission [~~Commission~~].

(28) [~~(27)~~] Sanction--An action by the commission [~~Commission~~] or executive director [~~Executive Director~~] against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, the placement of a license holder on probation, or refusal to renew.

(29) [~~(28)~~] SOAH--State Office of Administrative Hearings.

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 April 7, 2014.

TRD-201401618
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 463-8179

SUBCHAPTER F. FEES

16 TAC §60.82

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§60.82. Dishonored Payment Device [~~Check Fee~~].

If a payment device issued [~~check, drawn~~] to the department [~~Texas Department of Licensing and Regulation~~] is dishonored by a payor, the department [~~Department~~] shall charge a fee of $50 to the issuer [~~drawer~~] or endorser for processing the dishonored payment device [~~check~~]. The department [~~Department~~] shall notify the obligor, issuer [~~drawer~~] or endorser of the fee by sending a request for payment of the dishonored payment device [~~check~~] and the processing fee by certified mail to the last known [~~business~~] address of the person or licensee as shown in the records of the department [~~Department~~]. If the department [~~Department~~] has sent a request for payment in accordance with the provisions of this section, the failure of the obligor, issuer [~~drawer~~] or endorser to pay the processing fee within 15 days after the department [~~Department~~] has mailed the request is a violation of this chapter [~~these rules~~] and subjects the licensee and the person [~~subject~~] to administrative enforcement proceedings including license revocation.

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 April 8, 2014.

TRD-201401624
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 463-8179

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.81, §4.85

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.81 and §4.85, concerning Rules Applying to All Public Institutions of Higher Education in Texas, Dual Credit Partnerships between Secondary Schools and Texas Public Colleges. The intent of the amendments is to update existing rules to align with current statute and rule references regarding assessment requirements for dual credit eligibility. Language has been added in §4.85 that revises state assessment and course requirements that must be met to satisfy academic and workforce dual credit eligibility requirements. The amended rules will affect students enrolling in dual credit courses and early college high schools during the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of assessment and course completion requirements that determine eligibility to enroll in dual credit academic and workforce courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 28, §28.009(b), and Chapter 130, §130.001(b)(3) - (4), which provide the Coordinating Board with the authority to adopt rules to administer the sections.

The amendments affect the implementation of Texas Education Code, Chapter 28.

§4.81. Purpose.

This subchapter provides rules and regulations for public two-year associate degree-granting institutions and [for] public universities to engage in dual credit partnerships with secondary schools. (See Chapter 9, Subchapter H of this title (relating to Partnerships Between Secondary Schools and Public Two-Year Associate Degree-Granting Institutions) for high school credit only partnerships, Tech-Prep partnerships, and remedial or developmental instruction for high school graduation partnerships.)

§4.85. Dual Credit Requirements.

(a) (No change.)

(b) Student Eligibility.

(1) (No change.)

(2) An eleventh grade high school student is also eligible to enroll in dual credit courses that are TSI liable in reading, writing, and/or mathematics under the following conditions:

(A) Courses that require reading/writing TSI complete:

(i) if the student achieves a Level 2 final recommended score, as defined by the Texas Education Agency (TEA), on the English II State of Texas Assessment of Academic Readiness End of Course (STAAR EOC); or

(ii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the reading test; or

(iii) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in English or an equivalent score on the ACT-Aspire as determined by ACT.

(B) Courses that require mathematics TSI complete:

(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra I STAAR EOC and passing grade in the Algebra II course; or

(ii) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra II STAAR EOC; or

(iii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the mathematics test; or

(iv) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in mathematics or an equivalent score on the ACT-Aspire as determined by ACT.

(C) An eligible high school student who enrolls in a dual credit course requiring TSI completion in reading, writing, or mathematics during their junior year under the STAAR EOC provisions shall not be required to demonstrate further evidence of eligibility to enroll in dual credit courses in the twelfth grade.

(D) An eligible high school student who enrolls in a dual credit course requiring TSI completion in reading, writing, or mathematics during their junior year under the PSAT/NMSQT, PLAN, or Aspire provisions and earns a grade of C or better has demonstrated eligibility to enroll in dual credit courses in the twelfth grade.

(E) An eligible high school student who enrolls in a dual credit course requiring TSI completion in reading, writing, or mathematics during their junior year under the PSAT/NMSQT, PLAN, or Aspire provisions and does not earn a grade of C or better must demonstrate eligibility to enroll in dual credit courses in the twelfth grade.

[(A) a student achieves a minimum designated Level 2 final phase-in score on the Algebra II end-of-course assessment and/or the English II reading or English II writing end-of-course assessments, relevant to the courses to be attempted. An eligible high school student who has enrolled in dual credit courses in the eleventh grade under this provision shall not be required to demonstrate further evidence of eligibility to enroll in dual credit courses in the twelfth grade; or]

[(B) the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the critical reading and/or mathematics test relevant to the courses to be attempted. An eligible high school student who has enrolled in dual credit under this provision must demonstrate eligibility to enroll in dual credit courses in twelfth grade; or]

[(C) the student achieves a composite score of 23 on the PLAN with a 19 or higher in mathematics and English. An eligible high school student who has enrolled in dual credit under this provision must demonstrate eligibility to enroll in dual credit courses in twelfth grade.]

(3) A high school student is eligible to enroll in workforce education dual credit courses contained in a Level 1 certificate program, or a program leading to a credential of less than a Level 1 certificate, at a public junior college or public technical institute in the eleventh and/or twelfth grade and shall not be required to provide any additional demonstration of college readiness. [if the student demonstrates that he or she has achieved the designated minimum final phase-in score on the Algebra I end-of-course assessment and/or the English II reading or English II writing end-of-course assessments relevant to the courses to be attempted.]

[(A) A student may enroll only in those workforce education dual credit courses for which the student has demonstrated eligibility.]

[(B) A student who is exempt from taking TAKS or STAAR end-of-course assessments may be otherwise evaluated by an institution to determine eligibility for enrolling in workforce education dual credit courses.]

(4) A high school student is eligible to enroll in workforce education dual credit courses contained in a Level 2 certificate or applied associate degree program in the eleventh and/or twelfth grade under the following conditions:

(A) Courses that require reading/writing TSI complete:

(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the English II STAAR EOC; or

(ii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the reading test; or

(iii) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in English or an equivalent score on the ACT-Aspire as determined by ACT.

(B) Courses that require mathematics TSI complete:

(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra I STAAR EOC and passing grade in the Algebra II course; or

(ii) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra II STAAR EOC; or

(iii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the mathematics test; or

(iv) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in mathematics or an equivalent score on the ACT-Aspire as determined by ACT.

(C) An eligible high school student who enrolls in workforce education dual credit courses contained in a Level 2 certificate or applied associate degree program during their junior year under the STAAR EOC provisions shall not be required to demonstrate further evidence of eligibility to enroll in dual credit courses in the twelfth grade.

(D) An eligible high school student who enrolls in workforce education dual credit courses contained in a Level 2 certificate or applied associate degree program during their junior year under the PSAT/NMSQT, PLAN, or Aspire provisions and earns a grade of C or better has demonstrated eligibility to enroll in dual credit courses in the twelfth grade.

(E) An eligible high school student who enrolls in workforce education dual credit courses contained in a Level 2 certificate or applied associate degree program during their junior year under the PSAT/NMSQT, PLAN, or Aspire provisions and does not earn a grade of C or better must demonstrate eligibility to enroll in dual credit courses in the twelfth grade.

(F) A student who is exempt from taking TAKS or STAAR EOC assessments may be otherwise evaluated by an institution to determine eligibility for enrolling in workforce education dual credit courses.

(5) [(4)] Students who are enrolled in private or non-accredited secondary schools or who are home-schooled must satisfy paragraphs (1) - (4) [(3)] of this subsection.

(6) [(5)] To be eligible for enrollment in a dual credit course offered by a public college, students must meet all the college's regular prerequisite requirements designated for that course (e.g., minimum score on a specified placement test, minimum grade in a specified previous course, etc.).

(7) [(6)] To be eligible for enrollment in a dual credit course offered by a public college, students must have at least junior year high school standing. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability (as evidenced by achieving [or exceeding the minimum] TSI college readiness standards on [PSAT/NMSQT, PLAN,] SAT, ACT, or TSI Assessment) may be approved by the principal of the high school and the chief academic officer of the college. Students with less than junior year high school standing must demonstrate eligibility as outlined under paragraph (1) of this subsection.

(8) [(7)] High school students shall not be enrolled in more than two dual credit courses per semester. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability (as evidenced by grade-point average, ACT or SAT scores, or other assessment indicators) may be approved by the principal of the high school and the chief academic officer of the college to a maximum of 15 semester credit hours.

(A) Institutions of higher education must have established, written policies in place prior to approving a student to enroll in more than two dual credit courses per semester.

(B) A student enrolling in more than two dual credit courses in a semester must pass all courses during that semester with a grade of C or better to continue to enroll in more than two dual credit courses in following semesters.

(C) This provision does not apply to students enrolled in approved early college high school programs.

(9) [(8)] An institution may impose additional requirements for enrollment in courses for dual credit that do not conflict with this section.

(10) [(9)] An institution is not required, under the provisions of this section, to offer dual credit courses for high school students.

(c) - (i) (No 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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Bill Franz
General Counsel
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SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS

19 TAC §4.155

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.155 concerning Early College High School student eligibility requirements. The intent of the amendments is to update the existing rule to align with current statute and rule references regarding Texas Success Initiative assessment requirements for early college high school student eligibility. Language has been added in §4.155 that updates references to titles of sections of Texas Success Initiative rules. The amended rule will affect students enrolling in dual credit courses and early college high schools during the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the section.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of Texas Success Initiative assessment requirements that may be utilized to determine eligibility for early college high school students. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 29, Subchapter Z, §29.908, which states that the board may adopt rules as necessary to exercise its powers and duties under §29.908.

The amendments do not affect the Texas Education Code.

§4.155. Student Eligibility.

(a) - (b) (No change.)

(c) For this assessment, an ECHS may use any instrument otherwise approved by the Board for Texas Success Initiative purposes in accordance with §4.54 (relating to Exemptions, Exceptions, and Waivers) [Exemptions/Exceptions)], §4.56 (relating to Assessment Instrument), and §4.57 (relating to College Ready and Adult Basic Education (ABE) Standards) [Minimum Passing Standards)] of this title.

(d) (No 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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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §9.1, concerning Program Development in Two-Year Public Colleges, Definitions. The intent of the amendments is to clarify acronyms that are used in the rule text throughout Chapter 9. Language has been added to define the acronym for the Southern Association of Colleges and Schools Commission on Colleges. The amended rule will affect public institutions of higher education on or after the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the section.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of acronyms used in the text of Chapter 9 rules. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The amendments do not affect the Texas Education Code.

§9.1. Definitions.

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

(1) - (3) (No change.)

(4) Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts (AA), associate of science (AS), associate of applied arts (AAA), associate of applied science (AAS), and the associate of occupational studies (AOS) degrees. The term "applied" in an associate degree name indicates a program designed to qualify students for immediate employment.

(5) - (11) (No change.)

(12) Contract instruction--Postsecondary workforce education and training in which specific instruction is provided by a public two-year college or a non-Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) [SACS/COC]-accredited organization to a contracting entity. This arrangement is utilized when conventional methodology or instructional systems are difficult or impossible to obtain.

(13) Contractual agreements--Agreements or contracts between public two-year colleges and one of the following:

(A) a non-SACSCOC [SACS/COC]-accredited organization, for postsecondary instructional services that could not be offered otherwise;

(B) a public secondary school, for instructional services that could not be offered otherwise; or

(C) another SACSCOC [SACS/COC]-accredited institution of higher education, whether public or independent.

(14) - (19) (No change.)

(20) Independent institution of higher education--A private or independent college or university that is:

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

(C) accredited by the SACSCOC [Southern Association of Colleges and Schools Commission on Colleges].

(21) - (26) (No change.)

[(27) SACS/COC--The Southern Association of Colleges and Schools Commission on Colleges.]

(27) [(28)] Voluntary statewide transfer compact--A set of courses, up to the level of an academic associate degree, that will satisfy the lower-division requirements of a baccalaureate degree in a specific discipline. A voluntary statewide transfer compact must:

(A) have the same rigor and content as the equivalent course work in the baccalaureate program offered at a general academic teaching institution;

(B) minimize the time and course work required to complete a baccalaureate degree;

(C) be consistent with the common course numbering system approved by the Board and the recommendations and rules of the Board; and

(D) include only course work directly applicable to the requirements of the baccalaureate degree program(s) with which it is associated.

(28) [~~(29)~~] Technical courses or programs--Workforce education courses or programs for which semester/quarter credit hours are awarded.

(29) [~~(30)~~] Tech-Prep consortium--A collaboration of educational entities and, at local option, employer and labor organizations, and universities defined in the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended, and the Texas Education Code, Chapter 61, Subchapter T, Tech-Prep Education, which work together to implement a tech-prep program.

(30) [~~(31)~~] Unique need academic course--An academic course created by a two-year college to meet a specific lower-division requirement of a baccalaureate degree program that cannot be met by an existing course in the Lower Division Academic Course Guide Manual.

(31) [~~(32)~~] Workforce continuing education course--A course offered for continuing education units (CEUs) with an occupationally specific objective and supported by state funding. A career technical/workforce continuing education course differs from a community service course offered for recreational or a vocational purposes and is not supported by state funding.

(32) [~~(33)~~] Workforce education--Career technical/workforce courses and programs for which semester/quarter credit hours and/or continuing education units are awarded. Career technical/workforce education courses and programs prepare students for immediate employment or job upgrade within specific occupational categories.

(33) [~~(34)~~] Workforce Education Course Manual (WECM)--An online database composed of the Coordinating Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

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 D. TRANSFERABLE ACADEMIC COURSES

19 TAC §9.75

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §9.75, concerning Program Development in Two-Year Public Colleges, Transferable Academic Courses. The intent of the amendments is to remove reference to the Workforce Education Course Manual as a document that lists developmental/remedial courses approved for two-year college instruction and eligible for state funding. The amended rule will affect public two-year colleges on or after the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the section.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of which document lists developmental/remedial courses approved for two-year college instruction and eligible for state funding. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The amendments do not affect the Texas Education Code.

§9.75. Compensatory (Including Developmental and Remedial) Education Courses.

Developmental/remedial courses approved for two-year college instruction and eligible for state funding are listed in the Lower-Division Academic Course Guide Manual [~~and the Workforce Education Course Manual~~]. Such courses should be used to support both academic and workforce education programs as appropriate.

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

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SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §9.93, §9.96

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) proposes amendments to §9.93 and §9.96, concerning Program Development in Two-Year Public Colleges, regarding institutional procedures that must be followed for the approval of certificate and associate degree programs in the state of Texas. The intent of amending §9.93 is to clarify the process by which Texas public two-year colleges of higher education propose a program for approval with the THECB. Language has been added that describes the process by which THECB staff will handle the initial evaluation of program proposals submitted by public two-year colleges. Language has also been added that defines the process by which public two-year colleges must notify other public institutions of higher education of a proposed program 30 days prior to submitting a proposal to the THECB. The amended rule will affect institutions

of higher education on or after the 2014 fall semester. THECB staff also made a non-substantive change to §9.96 that corrects the division name.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of the program approval process for Texas public two-year colleges. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The amendments do not affect the Texas Education Code.

§9.93. Presentation of Requests and Steps for Implementation of New Degree and Certificate Programs in Career Technical/Workforce Education.

(a) Requests for new associate degree and certificate programs shall be made in accordance with the procedures stipulated in subsection (b)[(1)(A) - (O)] of this section.

(1) Public two-year colleges shall request new associate degree and certificate programs using the appropriate degree program request form.

(2) Public two-year colleges must submit documentation sufficient to establish that the new program meets all of the criteria listed in subsection (b) of this section. Board staff will review all requests for new programs within five business days of receipt. If Board staff determines that the request is incomplete and additional information or documentation is needed, the institution must respond with all of the requested information or documentation within ten working days or the request will be returned to the institution. An institution may resubmit a request that was incomplete as soon as it has obtained the requested information or documentation.

(b) New associate degree and certificate programs shall be approved if all of the following conditions are met, provided that the number of semester credit hours required to complete a proposed associate degree program does not exceed 60 semester credit hours (SCH).

(1) The institution shall certify that:

(A) - (G) (No change.)

(H) The program is designed to be consistent with the standards of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) [Commission on Colleges of the Southern Association of Colleges and Schools], and with the standards of other applicable accrediting agencies, and is in compliance with appropriate licensing authority requirements;

(I) - (M) (No change.)

(N) The appropriate Higher Education Regional Council has been notified in writing of the proposal for a new program, and no unresolved objections to the program have been reported; and

(O) (No change.)

(2) If a proposed two-year career technical/workforce education program or a certificate program meets the conditions stipulated in [paragraph (1)(A) - (O) of] this subsection, the institution shall submit a request to the Assistant Commissioner for Workforce, Academic Affairs and Research to add the program. If a proposed program does not meet the conditions stipulated in [paragraph (1)(A) - (O) of] this subsection, the institution must submit a proposal using the standard electronic new program application process [degree request form].

(3) If the [minimum] number of SCH [semester hours] required to complete a proposed associate's program exceeds 60, the institution must provide detailed written documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 60-hour limit. The Coordinating Board will review the documentation provided and make a determination to approve or deny a request to exceed the 60-hour limit. Institutions of higher education must be in compliance with this paragraph on or before the 2015 fall semester.

(4) The institution proposing the program shall notify all public institutions within 50 miles of the teaching site of their intention to offer the program at least 30 days prior to submitting their request to the Coordinating Board. If no objections are received, the Coordinating Board staff shall update the institution's program inventory accordingly. If objections occur, the proposed program shall not be implemented until all objections are resolved. If the proposing institution cannot resolve the objection(s), the proposing institution may request the assistance of the Assistant Commissioner of Workforce, Academic Affairs and Research to mediate the objections and determine whether the proposing institution may implement the proposed program.

[(4) The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections are received, the Coordinating Board staff shall update the institution's program inventory accordingly.]

(5) If objections to the proposed program are received by the Coordinating Board staff, the proposed program shall not be implemented until all objections are resolved. [The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the criteria contained in paragraph (1)(A) - (O) of this subsection.]

(c) New Program Approval. The Board delegates to the Commissioner final approval authority for all certificate programs, and for applied associate degree programs that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education. The Commissioner may delegate this final authority to the Assistant Commissioner for Workforce, Academic Affairs and Research.

(d) Each quarter, the Commissioner shall prepare [send] a list of the approvals and disapprovals under this section for [to] Board members. The [A] list of the approvals and disapprovals shall also be attached to the minutes of the next appropriate quarterly meeting.

(e) (No change.)

(f) Revision of an existing associate degree or certificate program shall be approved if all of the requirements in subsection (b)[~~(1)(A) - (O)~~] of this section are met.

(g) To request a change of CIP code for an existing degree or certificate program, the institution shall notify the Coordinating Board staff and certify that the revised program meets the requirements in subsection (b)[~~(1)(A) - (O)~~] of this section.

(h) If the revision of an existing degree or certificate program meets the conditions stipulated in subsection (b)[~~(1)(A) - (O)~~] of this section the institution shall submit a request to the Assistant Commissioner for Workforce, Academic Affairs and Research to revise the program. The Coordinating Board staff shall update the institution's program inventory accordingly.

(i) If a program revision does not meet the conditions stipulated in subsection (b)[~~(1)(A) - (O)~~] of this section, the institution shall submit a revision request using the standard electronic program revision request process [~~form~~].

[~~(j) The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the requirements in subsection (b)(1)(A) - (O) of this section.~~]

(j) [~~(k)~~] Administrative Officers. All programs must be under the direction of an administrator having appropriate authority to ensure that quality is maintained and that programs are conducted in compliance with all applicable laws and rules. Administrative officers must possess credentials, work experience, and/or demonstrated competence appropriate to their areas of responsibility as specified by the SACSCOC [~~Southern Association of Colleges and Schools Commission on Colleges~~].

(k) [~~(l)~~] Faculty and Staff. Faculty and staff must be approved by the postsecondary institution. [~~Each individual must meet the minimum qualifications established by the Board.~~]

(l) [~~(m)~~] Each public two-year college may classify career technical/workforce continuing education and other courses as earning SCH [~~semester credit hours~~] or continuing education units (CEUs). Contact hours reported for career technical/workforce education courses which result in either SCH [~~credit hours~~] or CEUs shall be eligible for state appropriations. A course or program that meets or exceeds 360 hours in length must be approved as a career technical/workforce certificate program except by special justification and approval by Board staff. A course or program that meets or exceeds 780 hours in length must result in the award of appropriate semester credit hours and be applicable to a certificate and an applied associate degree program.

(m) The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the requirements in this subchapter.

§9.96. Disapproval of Programs; Noncompliance.

No funds appropriated to any public two-year college or other institution providing certificate or associate degree programs shall be expended for any program which has not been approved by the Commissioner or the Assistant Commissioner for Workforce, Academic Affairs and Research or, when applicable, by the Board.

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 G. CONTRACTUAL AGREEMENTS

19 TAC §§9.121, 9.123, 9.124, 9.126

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§9.121, 9.123, 9.124, and 9.126, concerning Program Development in Two-Year Public Colleges, regarding contracts established between public institutions of higher education and other institutions of higher education or non-Southern Association of Colleges and Schools Commission on Colleges-accredited organizations. The intent of the amendments is to clarify acronyms that are used in the rule text throughout Chapter 9. Language has been added to define the acronym for the Southern Association of Colleges and Schools Commission on Colleges. The amended rules will affect public two-year colleges on or after the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of acronyms used in referring to the Southern Association of Colleges and Schools Commission on Colleges in the text of Chapter 9 rules. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The amendments do not affect the Texas Education Code.

§9.121. Purpose.

This subchapter shall provide rules and regulations to enable public two-year colleges to enter into contractual agreements with other institutions of higher education or non-Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) [~~SACS/COC~~]-accredited organizations (which include but are not limited to public secondary schools and business and industry) to improve the articulation, quality, and efficiency of educational programs and services.

§9.123. General Provisions.

(a) (No change.)

(b) Courses earning CEUs shall be subject to the guidelines published by the SACSCOC [~~Southern Association of Colleges and Schools Commission on Colleges~~] as a condition of eligibility for state appropriations.

(c) - (d) (No change.)

§9.124. Contractual Agreements for Instruction with Non-SACSCOC [~~SACS/COC~~]-Accredited Organizations Other than Public Secondary Schools.

(a) General Policy Guidelines.

(1) Contractual agreements for instruction by public two-year colleges with non-SACSCOC- [~~SACS/COC~~] accredited organizations must comply with all current guidelines of the SACSCOC [~~Southern Association of Colleges and Schools Commission on Colleges~~].

(2) - (3) (No change.)

(b) (No change.)

§9.126. Contractual Agreements for Instruction with Other SACSCOC [~~SACS/COC~~]-Accredited Institutions of Higher Education.

(a) (No change.)

(b) Public two-year colleges may enter into cooperative undertakings or contractual agreements with other Texas public institutions of higher education as part of a multi-institution teaching center as outlined under Chapter 5, Subchapter D, §5.78 of this title (relating to Supply/Demand Pathway) or other partnership agreements on a shared-cost basis as permitted by state law.

(c) Public two-year colleges may enter into cooperative undertakings or contractual agreements with SACSCOC [~~SACS/COC~~]-accredited independent institutions of higher education as part of a multi-institution teaching center as outlined under Chapter 5, Subchapter D, §5.78 of this title (relating to Supply/Demand Pathway) or other partnership agreements on a shared-cost basis as permitted by state law.

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

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SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

19 TAC §§9.141 - 9.143, 9.146

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§9.141 - 9.143 and 9.146, concerning Program Development in Two-Year Public Colleges, regarding partnerships between secondary schools and public two-year colleges. The intent of the amendments is to clarify the process by which public two-year colleges may enter into partnerships with secondary schools to develop College Preparatory Courses for high school students. Language has been added that revises the description of Partnerships for Remedial or Developmental Instruction for High School Graduates and Partnerships to Develop and Provide College Preparatory Courses for High School Students.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of the process by which public two-year colleges of higher education enter into partnerships with secondary schools to develop College Preparatory Courses for high school students. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The amendments do not affect the Texas Education Code.

§9.141. Purpose.

(a) (No change.)

(b) The purpose of this subchapter shall be to provide rules and regulations for partnership initiatives with secondary schools that are unique to public two-year colleges. Rules for partnerships that concern dual credit may be found in Chapter 4, Subchapter D of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges).

§9.142. Authority.

Texas Education Code (TEC), §§29.182, 29.184, 61.076(a), 61.851 through 61.855, 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d), authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public two-year colleges to enter into agreements with secondary schools to offer courses which grant credit toward the student's high school academic requirements and/or college-level credit. In addition, the Carl D. Perkins Career and Technical Education Improvement Act of 2006 (hereinafter known as "the Act"), as amended, authorizes the State Board of Education in its capacity as the State Board for Career and Technology Education to designate the Coordinating Board as the administering agency of the Tech-Prep Education Act, or that section, part, or title of the Act referring to Tech-Prep Education.

§9.143. Types of Partnerships.

(a) - (c) (No change.)

(d) Partnerships for Remedial or Developmental Instruction for High School Graduates. Partnerships between public school districts and public two-year colleges to provide instruction by the latter to high school students for either remedial course work to prepare

students to pass the required State of Texas Assessments of Academic Readiness End of Course (STAAR EOC) assessments [~~exit-level Texas Assessment of Knowledge and Skills (TAKS) test~~] or developmental course work to prepare the students to pass an assessment instrument approved by the Board under §4.56 of this title (relating to Assessment Instruments).

(e) Partnerships to Develop and Provide College Preparatory Courses for High School Students. Partnerships between public school districts and public two-year colleges to develop and provide courses in college preparatory mathematics and English language arts, as outlined in TEC, §28.014, to prepare students for success in entry-level college coursework.

§9.146. Remedial and Developmental Instruction for High School Students.

(a) As outlined under Chapter 9, Subchapter G, §9.125 of this title (relating to Contractual Agreements for Instruction with Public Secondary Schools), two-year colleges may contract with public secondary school districts to provide remedial courses for students enrolled in public secondary schools in preparation for graduation from high school. Such courses are not eligible for state appropriations.

(b) High school students who have passed all of the STAAR EOC assessments [~~sections of the exit-level TAKS test~~] with the high school graduation standard may be permitted to enroll in state-funded developmental courses offered by a college at the college's discretion if a need for such course work is indicated by student performance on an assessment instrument approved by the Board under §4.56 of this title (relating to Assessment Instruments [~~Instruments~~]).

(c) - (d) (No 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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §9.147

The Texas Higher Education Coordinating Board (THECB or board) proposes new §9.147, concerning Program Development in Two-Year Public Colleges, regarding partnerships between secondary schools and public two-year colleges. The intent of the new section is to clarify the process by which public two-year colleges may enter into partnerships with secondary schools to develop College Preparatory Courses for high school students. This new section has been added to describe the THECB rules governing partnerships to develop College Preparatory Courses. The new section will affect public two-year colleges on or after the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adopting the new section.

Dr. Peebles has also determined that for the first five years the new section is in effect, the public benefits anticipated as a result of administering the section will be the clarification of the process by which public two-year colleges of higher education enter into partnerships with secondary schools to develop College Preparatory Courses for high school students. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new section may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The new section does not affect the Texas Education Code.

§9.147. College Preparatory Courses for High School Students.

(a) College Preparatory Courses, as outlined in TEC, §28.014, are not developmental education courses contained in the Lower Division Academic Course Guide Manual (ACGM).

(b) College Preparatory Courses are locally developed through a memorandum of understanding created between school districts and public two-year colleges.

(c) College Preparatory Courses are not eligible for state appropriations through two-year college formula funding.

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 J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §9.183, §9.184

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §9.183 and §9.184, concerning Program Development in Two-Year Public Colleges, Academic Associate Degree and Certificate Programs. The intent of the amendments is to correct the terminology used in the subchapter when referring to the Southern Association of Colleges and Schools Commission on Colleges. The amended rules will affect public two-year colleges on or after the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the consistency in use of the term Southern Association of Colleges and Schools Commission on Colleges. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The amendments do not affect the Texas Education Code.

§9.183. Degree Titles, Program Length, and Program Content.

(a) An academic associate degree may be called an associate of arts (AA), an associate of science (AS), or an associate of arts in teaching (AAT) degree.

(1) The AA [~~associate of arts (AA)~~] is the default title for an academic associate degree program if the college offers only one type of academic degree program.

(2) If a college offers both AA and AS [~~associate of arts (AA) and associate of science (AS)~~] degrees, the degree programs may be differentiated in one of two ways, including:

(A) (No change.)

(B) The AA program may serve as a foundation for the Bachelor of Arts (BA) [~~BA~~] degree and the AS program for the Bachelor of Science (BS) [~~BS~~] degree.

(C) (No change.)

(3) The AAT [~~associate of arts in teaching (AAT)~~] is a specialized academic associate degree program designed to transfer in its entirety to a baccalaureate program that leads to initial Texas teacher certification. This title should only be used for an associate degree program that consists of a Board-approved AAT curriculum.

(b) Academic associate degree programs must consist of 60 semester credit hours (SCH) [~~SCH~~].

(c) If the [~~minimum~~] number of SCH [~~semester hours~~] required to complete a proposed academic associate's degree exceeds 60, the institution must provide detailed written documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 60-hour limit. The Coordinating Board will review the documentation provided and make a determination to approve or deny a request to exceed the 60-hour limit. Institutions of higher education must be in compliance with this subsection on or before the 2015 fall semester.

(d) Except as provided in paragraphs (1), (2), and (3) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 SCH [~~Semester Credit Hours~~]).

(1) - (3) (No change.)

§9.184. Criteria for New Academic Associate Degree Programs and Steps for Implementation.

(a) New academic associate degree programs shall be approved if all of the following conditions are met.

(1) The institution shall certify that the following criteria have been met:

(A) The program has institution and governing board approval.

(B) There is recent evidence of both short-term and long-term student demand for the program.

(C) Enrollment projections reflect student demand estimates to ensure the financial self-sufficiency of the program.

(D) The institution has an enrollment management plan for the program.

(E) If the program does not follow a Board-approved field of study curriculum or a Board-approved statewide articulation transfer curriculum, the institution has or will initiate a process to establish transfer of credit articulation agreements for the program with senior-level institutions.

(F) The program is designed to be consistent with the standards of the Southern Association of Colleges Commission on Colleges [~~Commission on Colleges of the Southern Association of Colleges and Schools~~], other applicable accrediting agencies, and is in compliance with applicable licensing authority requirements.

(G) Adequate funding is available to cover all new costs to the institution over the first five years after the implementation of the program.

(H) The program complies with all applicable provisions contained in divisions of this subchapter and, adheres to the Standards for Academic Associate Degree Programs approved by the Board.

(2) The institution proposing the program shall notify all public institutions within 50 miles of the teaching site of their intention to offer the program at least 30 days prior to submitting their request to the Coordinating Board. If no objections are received, the Coordinating Board staff shall update the institution's program inventory accordingly. If objections occur, the proposed program shall not be implemented until all objections are resolved. If the proposing institution cannot resolve the objection(s), the proposing institution may request the assistance of the Assistant Commissioner of Workforce, Academic Affairs and Research to mediate the objections and determine whether the proposing institution may implement the proposed program. [~~The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the criteria contained in paragraph (1)(A) - (H) of this section.~~]

(3) New Program Approval. The Board delegates to the Commissioner final approval authority for all certificate programs, applied associate degree programs, and academic associate degrees that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education and this subchapter. The Commissioner may delegate this final authority.

(b) The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the requirements in this subchapter.

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

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CHAPTER 21. STUDENT SERVICES

SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§21.123 - 21.125, 21.128, 21.129

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.123 - 21.125, 21.128, and 21.129, concerning the Texas B-On-Time (BOT) Loan Program. Specifically, the amendments to §21.123 state that beginning fall 2014 only four-year institutions offering baccalaureate degrees will be eligible to participate in the Texas B-On-Time program. As of fall 2014 Lamar State College-Orange, Lamar State College-Port Arthur, public junior colleges, medical and dental units and private or independent institutions that do not offer baccalaureate degrees are eligible to make continuation awards only.

The amendments to §21.124 make technical changes so language is consistent with current statute.

The amendments to §21.125 clarify that students attending two-year institutions will continue to be eligible for BOT loans and forgiveness based on the statute in place prior to the passage of S.B. 215 during the 83rd Legislative Session. In addition, the amendments delete language referring to certificate or associates' degree programs.

Section 21.128 states the annual loan amount shall be the average amount of tuition and required fees for a full-time course load for resident undergraduate students enrolled in baccalaureate degree programs at general academic teaching institutions. If funds are not sufficient to provide to all qualified students, then funds will be allocated to eligible public institutions in proportion to the amount of tuition set-asides collected by each institution for the preceding academic year. Each institution will determine the amount of each award, not to exceed the amount determined in this section. Private or independent institutions will receive an allocation from general revenue appropriations. All previous descriptions of the annual loan amounts have been stricken from statute and Board rule.

The amendments to §21.129 add language stating a BOT loan will be forgiven when a student is awarded a baccalaureate degree instead of an undergraduate degree or certificate. Language describing forgiveness after completion of a two-year program has been deleted from statute and Board rule.

Dr. Arturo Alonzo, Deputy Commissioner, Finance and Administration, has determined that for each year of the first five years the amended sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Alonzo has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved student participation in Texas B-On-Time and the improved rate of student forgiveness.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Arturo Alonzo, Deputy Commissioner, Finance and Administration, P.O. Box 12788, Austin, Texas 78711, (512) 427-6135, Arturo.Alonzo@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments to these sections are proposed under Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The amendments affect Texas Education Code, Section 56.451 - 56.462.

§21.123. Institutions.
Eligible Institutions.

(1) Institutions whose students are eligible for Texas B-On-Time loans as of fall 2014 and later are general academic teaching institutions other than public state colleges [~~institutions of higher education~~] as defined in Texas Education Code, §61.003(3), medical and dental units as defined in Texas Education Code, §61.003(5) that offer baccalaureate degrees [~~§61.003(8)~~], and private or independent institutions of higher education as defined in Texas Education Code, §61.003(15) that offer baccalaureate degrees.

(2) As of fall 2014 and later, Lamar State College-Orange, Lamar State College-Port Arthur, public junior colleges as defined in Texas Education Code, §61.003(2), public technical institutes as defined in Texas Education Code, §61.003(7), medical and dental units as defined in Texas Education Code, §61.003(5) that do not offer baccalaureate degrees, and private or independent institutions of higher education as defined in Texas Education Code, §61.003(15) that do not offer baccalaureate degrees, are eligible to make continuation awards only.

§21.124. Initial Eligibility for Loans.

(a) The Commissioner may authorize initial awards through the Texas B-On-Time Loan Program [~~Loans~~] to students at any eligible institution which certifies that the student:

(1) is a resident of Texas as defined in this subchapter or beginning with the 2005-2006 academic year, or be entitled, as a child of a member of the armed forces of the United States, to pay tuition at the rate provided for residents of this state under Texas Education Code, §54.241 [~~§54.058~~]; and

(2) meets one of the following academic requirements:

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

(C) received an associate degree from an [~~eligible~~] institution of higher education or private or independent institution of higher education not earlier than May 1, 2005;

(3) (No change.)

(4) is enrolled for a full-time course load, as determined by the institution, in a baccalaureate degree [~~an undergraduate degree or certificate~~] program at an eligible institution;

(5) (No change.)

(b) (No change.)

[~~(c) If program funds are not sufficient to provide Texas B-On-Time Loans to all qualified students, priority must be given to students with demonstrated financial need.~~]

§21.125. Continued Eligibility for Loans.

(a) A student who first receives an initial Texas B-On-Time loan for a semester or other academic term before the 2014 fall semester may continue to receive Texas B-On-Time loans under Texas Education Code, Chapter 56, Subchapter Q, as that subchapter existed immediately before the effective date of S.B. 215 of the 83rd Legislative Session, as long as the student remains eligible for a Texas B-On-Time loan under the former law, and is entitled to obtain forgiveness of the loans as permitted by Texas Education Code, §56.462, as that section existed immediately before the May 2013 effective date of S.B. 215 of the 83rd legislative Session.

(b) [~~(a)~~] After initially qualifying for a Texas B-On-Time loan, a student may continue to receive a Texas B-On-Time loan for each semester or term at an eligible institution if he or she continues to meet all initial eligibility requirements in §21.124 of this title (relating to Initial Eligibility for Loans) and additionally:

(1) as of the end of the person's first academic year he or she meets the satisfactory academic progress requirements as indicated by the financial aid office of his or her institution.

(A) If a student ends his/her first year in the program without meeting the academic progress requirements of his/her institution, he/she may not get back into the program until the institution has determined that the student has met its academic performance requirements.

(B) A loan recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions), must calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the current institution's academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

(2) As of the end of the second and subsequent years, the student must complete at least 75 percent of the hours attempted in his/her most recent academic year, and maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at public or private or independent institutions of higher education.

(A) The completion rate calculations may be made in keeping with institutional policies.

(B) Grade point average calculations may be made in keeping with institutional policies except that if a loan recipient's grade point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student's overall grade point average now meets or exceeds program requirements.

(C) A loan recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions), must calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the program's academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

[~~(3) enrolls in a program leading to a bachelor's degree within 12 months after the month in which the student received an undergraduate certificate or associate's degree.~~]

(c) [~~(b)~~] A student may not receive a Texas B-On-Time loan for more than 150 semester credit hours or the equivalent. If, in any given academic period, a student drops courses so that he or she is no longer taking a full-time course load as determined by the institution, and the Board does not receive a refund of the Texas B-On-Time loan for that period, the dropped courses will be counted toward the calculation of the 150-hour limit.

(d) [~~(c)~~] If a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) [~~Subsection (a)~~] of this section after completion of any year, the person may not receive a Texas B-On-Time Loan until he or she completes courses while not receiving a Texas B-On-Time Loan and meets all the requirements of subsection (b)(2) [~~Subsection (a)(2)~~] of this section as of the end of that period of enrollment.

§21.128. Loan Amount.

(a) For students at public and private or independent four-year institutions, the maximum amount of loan for a semester or term shall be the amount determined by the Board as the average [~~statewide~~] amount of tuition and required fees for a full-time course load for resident undergraduate students enrolled in baccalaureate degree programs at general academic teaching institutions.

(b) If program funds in the Texas B-On-Time student loan account, other than money appropriated to the account exclusively for loans at eligible institutions that are private or independent institutions of higher education are not sufficient to provide Texas B-On-Time Loans to all qualified students attending eligible public institutions of higher education, the Board shall allocate those funds to eligible public institutions in proportion to the amount of tuition set-aside collected by each of those institutions under Texas Education Code, §56.465 for the preceding academic year, and each of those institutions shall determine the amount of each loan awarded at that institution, not to exceed the amount determined for qualified students at eligible public institutions.

(c) In a manner prescribed by the Board for purposes of this subchapter, each eligible institution that is a private or independent institution of higher education is entitled to receive an allocation only from the general revenue appropriations made for that academic year to eligible private or independent institutions of higher education for the purposes of this subchapter.

[~~(b) For students at public technical institutes, the maximum amount of loan for a semester or term shall be the amount determined by the Board as the average statewide amount of tuition and required fees for a full-time course load for resident students in an associate degree or certificate programs at public technical institutes.~~]

[~~(c) For students at public community/junior colleges and private or independent junior colleges, the maximum amount of loan for~~

a semester or term shall be the amount determined by the Board as the average statewide amount of tuition and required fees for a full-time course load at a public junior college for students who are residents of junior college districts.]

(d) In January of each year, the program's annual loan limit [limits] for the following academic year shall be posted on the Board's web site.

§21.129. Forgiveness of Loans.

A Texas B-On-Time loan shall be forgiven if the student is awarded a baccalaureate degree [an undergraduate degree or certificate] from an eligible institution, and the student either:

(1) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, and received:

(A) (No change.)

(B) a baccalaureate degree within five calendar years after the date the student initially enrolled in an eligible institution if the institution has reported or will report that the student graduated with a degree in architecture, engineering, or any other program that the institution certifies to the Board is a program that requires more than four years to complete; or

[(C) a degree or certificate from a two-year program within two calendar years after the date the student initially enrolled in an eligible institution;]

[(D) a certificate from a one-year program within one calendar year after the date the student initially enrolled in an eligible institution; or]

(2) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, with a total number of course credit hours earned, including transfer credit hours and excluding hours earned exclusively by examination, dual credit course hours, and hours earned for developmental coursework that an institution required the student to take under Texas Education Code, §51.3062 (relating to Success Initiative), or under the former provisions of Texas Education Code, §51.306 (relating to Texas Academic Skills Program), that is not more than[:]

[(A)] six hours more than the number of credit hours required to complete a [two-year certificate or a] baccalaureate degree.[; or]

[(B) three hours more than the number of credit hours required to complete a one-year certificate.]

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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19 TAC §21.135

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §21.135 concerning the Texas B-On-Time Loan Program. This new section describes measures the Board and eligible institutions should take to improve student participation in Texas B-On-Time and improve the rate of student forgiveness. The Board in collaboration with institutions, nonprofit and college access organizations shall educate students about forgiveness, the need to repay loans not forgiven, understanding default prevention strategies, and provide in-person or online loan counseling. Institutions with a default rate that exceeds the statewide average default rate for such loans and institutions with a forgiveness rate that is less than 50 percent of the statewide average forgiveness rate for such loans shall provide the loan repayment and default prevention counseling described therein. The Board, in consultation with all eligible institutions, shall prepare materials to inform prospective students, their parents, and high school counselors about the program and eligibility for Texas B-On-Time.

Dr. Arturo Alonzo, Deputy Commissioner, Finance and Administration, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section.

Dr. Alonzo has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the improved student participation in Texas B-On-Time and the improved rate of student forgiveness. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Arturo Alonzo, Deputy Commissioner, Finance and Administration, P.O. Box 12788, Austin, Texas 78711, (512) 427-6135, Arturo.Alonzo@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The new section affects Texas Education Code, §§56.451 - 56.462.

§21.135. Program Support Activities.

(a) The Board, in collaboration with eligible institutions and other appropriate entities, shall adopt and implement measures to:

(1) improve student participation in the Texas B-On-Time loan program, including strategies to better inform students and prospective students about the program; and

(2) improve the rate of student success in qualifying for Texas B-On-Time loan forgiveness.

(b) The Board, in collaboration with eligible institutions and appropriate nonprofit or college access organizations, shall:

(1) educate students regarding the eligibility requirements for forgiveness of Texas B-On-Time loans;

(2) ensure that students applying for or receiving a Texas B-On-Time loan understand their responsibility to repay any portion of the loan that is not forgiven;

(3) ensure that students who are required to repay Texas B-On-Time loans receive and understand information regarding loan default prevention strategies; and

(4) through an in-person or online loan counseling module, provide loan repayment and default prevention counseling to students receiving Texas B-On-Time loans.

(c) Notwithstanding subsection (b)(4) of this section, the following eligible institutions shall provide the loan repayment and default prevention counseling described by that subsection to all Texas B-On-Time loan recipients enrolled at those institutions:

(1) each institution with a Texas B-On-Time loan default rate that exceeds the statewide average default rate for such loans; and

(2) each institution with a Texas B-On-Time loan forgiveness rate that is less than 50 percent of the statewide average forgiveness rate for such loans.

(d) The Board, in consultation with all eligible institutions, shall prepare materials designed to inform prospective students, their parents, and high school counselors about the program and eligibility for a Texas B-On-Time loan.

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER E. PERMITS TO SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §57.379

The Texas Parks and Wildlife Department proposes an amendment to §57.379, concerning Prohibited Acts.

Under the provisions of Parks and Wildlife Code, §47.001(16), an aquatic product is defined as "any live or dead, uncooked, fresh or frozen aquatic animal life." Under Parks and Wildlife Code, Chapter 67, any vertebrate or invertebrate wildlife not classified as game fish is a nongame species. Therefore, all nongame fishes are aquatic product under the provisions of Parks and Wildlife Code, Chapter 47, and the licensing requirements contained in Chapter 47 therefore also apply to nongame fish. Specifically, under Parks and Wildlife Code, §47.002, a commercial fisherman's license is required to engage in business as a commercial fisherman (defined by §47.001(1) as "a person who for the purpose of sale, barter, or exchange or any other commercial purpose catches aquatic products from the water of this state, except finfish"). Similarly, Parks and Wildlife Code, §47.014, provides that a bait dealer's license is required to engage in business as a bait dealer (defined by §47.001(5) as "a person who catches and sells, minnows, fish, shrimp, or other aquatic products for bait or a place of business where minnows, fish, shrimp, or other aquatic products are sold, offer for sale, handled, or transported for sale for bait"). Other licenses (wholesale dealer, retail dealer) allow the purchase and sale of aquatic products, but do not authorize the permittee to catch aquatic products.

Parks and Wildlife Code, Chapter 67 also authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species. In 1991, the department promulgated regulations, including §57.379, under the authority of Chapter 67 to protect 26 species of nongame fishes. The regulations, which are still in effect, require a person who wishes to sell a listed species of nongame fish taken from public fresh water to obtain a permit for that purpose from the department. Therefore, any person who wishes to harvest and sell a species of nongame fish listed in §57.378, concerning Applicability: Nongame Fishes, must have both a permit issued under Chapter 67 (authorizing the sale of the listed nongame species) and an appropriate license issued under Chapter 47 (authorizing the catch of aquatic products).

Confusion has arisen over the current wording of §57.379, which is being interpreted by some to mean that the species of nongame fish listed in §57.378 may not be sold by anyone unless the person possesses a permit under Chapter 57, Subchapter E. This interpretation is inconsistent; the holder of a wholesale or retail fish dealer's permit may lawfully purchase and sell lawfully harvested aquatic products from anyone without having acquired any additional permit or license. Therefore, the proposed amendment would clearly separate those licenses that authorize *harvest* and sale from those licenses that authorize *purchase* and sale and make clear that the requirement for a permit under Chapter 57, Subchapter E is in addition to the statutory requirement to possess either a commercial fisherman's license or a bait dealer's license.

Brandi Reeder, Fisheries Law Administrator, has determined that for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rule.

Ms. Reeder also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that facilitate compliance and enforcement.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a re-

quirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The proposed rules will not result in adverse economic effects on persons required to comply.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposal may be submitted to Brandi Reeder, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4853; email: brandi.reeder@tpwd.texas.gov.

The amendment is proposed under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed rule affects Parks and Wildlife Code, Chapter 67.

§57.379. Prohibited Acts.

Except as exempted by this subchapter [~~these rules~~] it is unlawful for any person to:

(1) sell or offer for sale a nongame fish of the species listed in §57.378 of this title (relating to Applicability: Nongame Fishes) taken from the public fresh water of the state, unless the person: [~~catch for sale, sell or offer for sale nongame fish taken from the public fresh water of the state without a valid permit issued by the department authorizing that activity;~~]

(A) holds a valid general commercial fisherman's license and/or individual bait dealer license (as applicable) and harvested the fish under a permit issued under this subchapter; or

(B) holds a valid license issued under the authority of Parks and Wildlife Code, Chapter 47, that authorizes the person to purchase and sell (but not catch) aquatic products;

(2) engage in activities authorized by the permit and fail to show on demand to a game warden or other authorized department employee a valid permit authorizing that activity;

(3) to retain or possess any game fish or nongame fish not listed in a valid permit while engaged in activities authorized by the permit;

(4) to fail to immediately return to the water any fish not listed in the permit caught while engaged in activities authorized by the permit; or

(5) violate any provision of the permit.

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 N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION
DIVISION 4. SPECIAL PROVISIONS TO PREVENT THE SPREAD OF EXOTIC AQUATIC SPECIES

31 TAC §57.1001

The Texas Parks and Wildlife Department proposes an amendment to §57.1001, concerning Draining of Water from Vessels Leaving or Approaching Public Fresh Water. The current rule requires persons approaching or leaving public fresh water in 47 counties to drain all bilges, live wells, and other similar receptacles and systems holding or capable of holding water, with exceptions. The proposed amendment would extend the applicability of the current rule to all public fresh water in the state.

The current rule is intended to slow or prevent the spread of the zebra mussel *(Dreissena polymorpha),* an invasive exotic species that has become a major nuisance in North America. Invasive exotic species are non-indigenous species that have been accidentally or intentionally released into an ecosystem. In the worst cases, invasive species, because they are not checked by natural competition or predators, compete directly with, prey upon, or hybridize with native species, alter habitats and food webs, threaten rare species, and generally wreak ecological havoc. Besides the obvious negative impacts to aquatic ecosystems, invasive exotic species also threaten agriculture, ranching, forestry, and industry.

The zebra mussel is a small, non-native mussel originally found in Eurasia. It has spread throughout Europe, where it is considered to be a major environmental and industrial menace. The animal appeared in North America in the late 1980s, and within ten years, had colonized in all five Great Lakes and the Mississippi, Tennessee, Hudson, and Ohio river basins. Since then, they have spread to additional lakes and river systems. Once zebra mussels become established in a water body, they are impossible to eradicate with the technology available today.

Zebra mussels were first detected in Texas in 2009, when the department confirmed their presence in Lake Texoma. In 2012, the department utilized its authority to regulate the possession of exotic aquatic species and promulgated rules intended to prevent zebra mussels from spreading. The rule at that time affected only a section of the Red River including Lake Texoma and Lake Lavon. Later in 2012, parts of the Elm Fork of the Trinity River, including Lakes Ray Roberts and Lewisville, were added. In June 2013, zebra mussels were confirmed in Lake Bridgeport, a reservoir in Wise and Jack counties. The department responded by adding additional segments of the West Fork of the Trinity River, which added Lakes Eagle Mountain and Worth in addition to Bridgeport to the rule. In September 2013, the depart-

ment confirmed the presence of zebra mussels on Lake Belton in Bell and Coryell counties and added lakes Belton and Stillhouse Hollow (and the Leon and Lampasas rivers above those lakes) to the applicability of the rule.

Meanwhile, in 2013, the 83rd Texas Legislature (Regular Session) enacted House Bill (H.B.) 1241, which authorizes the Texas Parks and Wildlife Commission to adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water. In a rulemaking adopted in November 2013 and published in the December 9, 2013, issue of the *Texas Register* (38 TexReg 8915), the department replaced the previous rule that affected specific segments of river systems with a new approach that implemented water-draining requirements on all public water bodies within 17 counties (Collin, Cooke, Dallas, Denton, Fannin, Grayson, Hood, Jack, Kaufman, Montague, Palo Pinto, Parker, Rockwall, Stephens, Tarrant, Wise, and Young).

Following the confirmation of zebra mussels in Lake Belton, staff determined that a more proactive application of the regulation was necessary because the Interstate Highway 35 corridor, which traverses the basins of the Trinity, Brazos, Colorado, and Guadalupe rivers, facilitates relatively easy movement of vessels by large numbers of boaters and anglers and is therefore the most likely avenue by which zebra mussels would be spread from the basins where they are already known to exist. Therefore, in a rulemaking approved in January of 2014, the department added 30 more counties along the IH 35 corridor to the applicability of the current rule (Archer, Bastrop, Bell, Bosque, Burnet, Clay, Comal, Comanche, Coryell, Eastland, Ellis, Erath, Falls, Fayette, Freestone, Hamilton, Hays, Henderson (west of State Highway 19), Hill, Johnson, Leon, Limestone, Llano, McLennan, Navarro, Robertson, Somervell, Travis, Wichita, and Williamson).

At the January 27, 2014, meeting of the Parks and Wildlife Commission, the commission determined that given the rapid movement of zebra mussels from the Oklahoma border to central Texas within a three-year period, the current "detect-and-respond" strategy should be replaced with a statewide rule that requires vessels approaching or leaving public fresh water (and receptacles aboard those vessels) to be drained. Therefore, the proposed rule would extend the applicability of the rule to all public fresh water, while retaining the exceptions currently in effect. Under the provisions of Parks and Wildlife Code, §66.0073, the department cannot require the draining of water from vessels approaching or leaving salt water.

Ken Kurzawski, Inland Fisheries Division Program Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Kurzawski also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of public waters from the injurious environmental and economic effects of invasive exotic species.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rules affect only those persons who approach or depart from a body of public water and there is no cost of compliance (because the rule requires only that water receptacles be drained), the department has determined that the proposed amendments will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Ken Kurzawski, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4591; e-mail: ken.kurzawski@tpwd.texas.gov.

The amendment is proposed under the authority of Parks and Wildlife Code, §66.0073, which authorizes the commission to adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water.

The proposed rule affects Parks and Wildlife Code, Chapter 66.

§57.1001. Draining of Water from Vessels Leaving or Approaching Public Fresh Water.

For the purposes of this section, "vessel" has the meaning assigned by Parks and Wildlife Code, §31.003, and "boat ramp" means a boat ramp, launch area, or any other access point that can be used to access public water, and includes parking areas, parking overflow areas, and any other area in the immediate vicinity of the ramp, launch, or access point where a vehicle, trailer, or vessel may be parked while waiting to launch or retrieve a vessel.

(1) General Provisions. Except as provided in paragraph (2) of this section, no person may use any public roadway other than a boat ramp to transport a vessel to or from a public water body in this state [~~a county listed in paragraph (3) of this section~~] unless all bilges, live wells, and other similar receptacles and systems holding or capable of holding water on board the vessel as a result of immersion in or transfer from the public water body have been drained.

(2) Exceptions.

(A) The provisions of paragraph (1) of this section do not apply to:

(i) a person travelling on a public roadway via the most direct route to another access point located on the same body of water, provided the beginning and ending of the travel occur within a single 24-hour period;

(ii) water contained in marine sanitary systems;

(iii) a person in possession of a receptacle containing water and live bait purchased from a commercial bait dealer, provided:

(I) the person also possesses a dated receipt, bill of sale, or other written evidence that identifies the name and commercial location of the dealer; and

(II) the live bait, if it has come into contact with public water to which the provisions of paragraph (3) of this section apply, is used only on the water body from which the public water was obtained;

(iv) government employees or persons under contract to a governmental entity in the performance of official duties that involve the use of a vessel in an emergency response to a threat to human health or safety, or property; or

(v) a person who is a participant in a fishing tournament (as defined by Parks and Wildlife Code, §66.023), provided:

(I) the tournament fishing activities are restricted to a single public water body on any given day;

(II) the weigh-in site is not located on the body of water on which the tournament is held;

(III) all water other than water in a live well has been drained from the vessel as required by this section;

(IV) the live well is being transported by the most direct route to an official weigh-in location designated by the tournament;

(V) the water in the live well is drained or properly disposed of before the vessel leaves the weigh-in location; and

(VI) the person in possession of the water in the live well also possesses documentation provided by a fishing tournament representative that bears the participant's name, the date, water body name, tournament name, location and time of the weigh-in, and the name and phone number of a tournament representative.

(B) A government employee or persons under contract to a governmental entity may remove water from a public water body for purposes of testing or analysis [~~from a water body listed in paragraph (3) of this section~~]; however, the water must be in closed, portable container and all bilges, live wells, motors, and other similar receptacles and systems holding or capable of holding water on board the vessel as a result of immersion in or transfer from the public water body must be drained.

(3) This section applies to all public fresh water in Texas [~~Archer, Bastrop, Bell, Bosque, Burnet, Clay, Collin, Comal, Comanche, Cooke, Coryell, Dallas, Denton, Eastland, Ellis, Erath, Falls, Fannin, Fayette, Freestone, Grayson, Hamilton, Hays, Henderson (west of State Highway 19), Hill, Hood, Jack, Johnson, Kaufman, Leon, Limestone, Llano, McLennan, Montague, Navarro, Palo Pinto, Parker, Robertson, Rockwall, Somervell, Stephens, Tarrant, Travis, Wichita, Williamson, Wise, and Young counties~~].

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 65. WILDLIFE
SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.103

The Texas Parks and Wildlife Department (the department) proposes an amendment to §65.103, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (popularly known as "Triple T" permits). The proposed amendment would remove subsection (h), which prohibits the issuance of a Triple T permit to authorize the trapping of deer on a property if deer have been released on that property under a Deer Management Permit (DMP) in the same permit year. A DMP authorizes the permit holder to manage deer on acreage enclosed by a fence capable of retaining white-tailed deer in accordance with department regulations. Department regulations require deer held in a DMP pen to be released from the pen by a date specified by the department. Current department regulations do not permit the trapping of deer from a property pursuant to a Triple T permit if deer have been released onto that property from a DMP pen in the same permit year (September 1 - August 31). In reviewing the Triple T regulations, staff has determined that so long as a property from which deer will be trapped meets the criteria established in §65.103, concerning Trap, Transplant, and Transport Permit, it is immaterial that deer have been released there from a DMP pen. Although it is possible that a deer released from a DMP pen could have been introduced into the DMP pen from another property pursuant to Triple T permit or introduced to the DMP pen from a deer breeder facility, most deer released from DMP pens originate from the property from which deer are to be moved under the Triple T permit. As a result, there is no biological or enforcement reason to continue to disallow the trapping of deer from a property pursuant to a Triple T permit if deer have been released onto that property from a DMP pen in the same permit year. The proposed amendment will reduce administrative burdens on department staff and offer greater flexibility to landowners and land managers.

Alan Cain, White-tailed Deer Program Leader, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Cain also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the increased efficiency of programs authorizing the management of a public resource.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As

required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rule does not directly affect any small business or micro-business; therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2008, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Mr. Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§65.103. Trap, Transport, and Transplant Permit.

(a) - (g) (No change.)

~~[(h) No permit shall be issued for any trapping activity on a property or portion of a property if deer held under a Deer Management Permit have been released on the property or portion of the property in the same permit year.]~~

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 D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §§65.132, 65.135, 65.136

The Texas Parks and Wildlife Department proposes amendments to §§65.132, 65.135, and 65.136, concerning Deer Management Permit (DMP).

A DMP authorizes the permit holder to manage deer on acreage enclosed by a fence capable of retaining white-tailed deer in accordance with department regulations. Except for buck deer temporarily introduced to a DMP pen, department regulations require deer held in a DMP pen to be released from the pen by no later than a date specified by the department in the DMP.

The proposed amendment to §65.132, concerning Permit Application, would eliminate language that is no longer meaningful and clarify the period of validity of a DMP. Current subsection (a) stipulates that incomplete applications for a DMP will be returned to the applicant and will not be processed until complete. The department has migrated to a completely electronic permit application process that will not accept a DMP application that is incomplete, making the current rule text regarding incomplete applications inapplicable. Therefore the proposed amendment would remove the reference to the return of incomplete applications.

Current subsection 65.132(b) stipulates that a DMP is valid from the date of issuance through the last date on which deer are authorized to be released as specified in the permit. The department wishes to clarify that permit validity ceases when deer held under a DMP are released. The department wishes to prevent the provision from being misinterpreted to mean that if deer are released prior to the expiration date indicated on the permit, additional trapping and breeding activities are authorized. Therefore, the proposed amendment would clarify that a DMP is valid through the last release date authorized on the permit or the day that release occurs, whichever comes first.

The proposed amendment to §65.135, concerning Detention of Deer, would allow the replacement of buck deer that die within a DMP pen through January 31 of the permit year. The department has been contacted by a permit holder who inquired as to the legality of replacing buck deer that die within a DMP. The permit holder was concerned that if a buck were to die before being able to breed the does in a DMP pen, the expense and trouble of the permitted activities would be fruitless. The department reasons that since DMP activities are authorized for a specific place and time under a department-approved deer management plan, there are no biological or enforcement concerns associated with allowing the replacement of buck deer through January 31 in the event of mortality. Therefore, the proposed amendment would allow the replacement of a dead buck in a DMP pen, following notification of the department and so long as the replacement buck is obtained from one of the following sources: the acreage for which the DMP was issued; the holder of a permit to trap, transport, and transplant game animals and game birds (provided the DMP is an authorized release site under the permit); or the holder of a deer breeder permit (provided the DMP holder's deer management plan authorizes the introduction of deer from a deer breeder facility). The caveats regarding the sources of replacement deer are necessary to ensure that deer introduced to a DMP pen are not unlawfully obtained. The notification requirement is necessary to ensure that department records reflecting the number and disposition of deer held under a DMP are accurate and to ensure compliance with the requirement that no more than one buck deer be in a DMP pen at any time.

The proposed amendment to §65.136, concerning Release of Deer, would alter subsection (c) to reiterate that a DMP expires when deer are released, as discussed earlier in this preamble.

The proposed amendment would add new subsection (e) to require a DMP holder to notify the department within 24 hours after the release of deer from a DMP pen. Under current rule, DMP holders are not required to notify the department when deer are released. When a DMP is issued, the department specifies the last day that deer can be retained in the DMP pen, but this does not prohibit a DMP holder from releasing dear prior to that date. Because the period of validity of a DMP terminates when deer are released, the potential exists for the department to be unaware that permit activities have concluded prior to the expiration date on the permit, which could cause confusion and misunderstandings. Therefore, in order to ensure that department records are kept as current as possible for purposes of efficient administration and enforcement, the proposed amendment would specify that a DMP holder notify the department by no later than 24 hours following the release of deer from a DMP pen.

Alan Cain, White-tailed Deer Program Leader, has determined that for each of the first five years that the proposed rules are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rules.

Mr. Cain also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the increased efficiency of programs authorizing the management of a public resource.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules do not directly affect any small business or micro-business; therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2008, as a result of the proposed rules.

Comments on the proposed amendments may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: robert.macdonald@tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, §43.603, which authorizes the commission to establish conditions for the deer management permit.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§65.132. Permit Application.

(a) Applicants for a DMP shall complete and submit an application on a form supplied by the department. Applications for a DMP shall be accompanied by a deer management plan containing the information stipulated by the application form and the nonrefundable fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees). Incomplete applications [~~will be returned to the applicant and~~] will not be processed until complete. A DMP will not be issued unless the applicant's deer management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans.

(b) A permit under this subchapter is valid from the date of issuance through the last release date authorized under the permit or the date that release occurs, whichever comes first.

(c) - (g) (No change.)

§65.135. Detention of Deer.

(a) No trapping of deer under a DMP may take place between December 15 and August 31 of any year.

(b) The holder of valid DMP may replace a buck deer that dies in a DMP pen after being lawfully introduced, provided:

(1) such replacement takes place no later than January 31 of the current permit year; and

(2) the replacement buck deer to be introduced to a DMP pen under the provisions of this subsection is obtained from:

(A) the acreage for which the DMP was issued;

(B) the holder of a valid permit issued under the provisions of Subchapter C of this chapter (relating to Permits to Trap, Transport, and Transplant Game Animals and Game Birds) that authorizes the destination DMP pen as the release site; or

(C) the holder of a valid permit held under the provisions of Subchapter T of this chapter (relating to Deer Breeder Permits), if the DMP holder's deer management plan authorizes the introduction of deer from a deer breeder facility.

(c) The replacement of a buck deer under the provisions of subsection (b) of this section may not take place until after the department has been notified via the department's Internet-based notification system that:

(1) the death of a buck deer in a DMP pen has occurred; and

(2) the DMP holder intends to replace the dead buck deer.

§65.136. Release of Deer.

(a) - (b) (No change.)

(c) All deer within a DMP pen shall be released on or before the date specified for the facility by the department. The period of validity for a DMP terminates when any deer are released under the provisions of this section.

(d) (No change.)

(e) The holder of a DMP shall notify the department no later than 24 hours following the release of deer under this section. The notification shall be via the department's Internet-based notification 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.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 8. JOBS AND EDUCATION FOR TEXANS (JET) GRANT PROGRAM

SUBCHAPTER A. DEFINITIONS

34 TAC §8.1

The Comptroller of Public Accounts proposes amendments to §8.1, concerning definitions, to amend the definition of "Act" and to delete the definitions of "enrolled", "financial need", "low income student", "nonprofit organization", "persistence rates", and "prevailing wages. " These amendments are deemed necessary to implement provisions of House Bill 437, 83rd Legislature, 2013, which repealed the student scholarship and nonprofit organization grant programs administered as part of the Jobs and Education for Texans Grant Program. Subsequent paragraphs are re-lettered and additional changes are made for clarity and readability.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the JET Grant Program rules to current statutory requirements. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, at linda.fernandez@cpa.state.tx.us or at P.O. Box 13528, Austin, Texas 78711.

The proposal is authorized under Education Code, §134.008 which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The proposal implements Education Code, §134.002 which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.1. Definitions.

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

(1) Act--This term has the meaning given in ["Act" means] Education Code, Chapter 134, as adopted by House Bill 3, 81st Legislature, 2009, and House Bill 437, 83rd Legislature, 2013 [Government Code, Chapter 403, Subchapter O, as adopted by House Bill 1935, 81st Legislature, 2009].

(2) Advisory board--The ["Advisory board" means the] advisory board of education and workforce stakeholders created pursuant to the Act.

(3) Career and technical education--Organized ["Career and technical education" means organized] educational activities that offer a sequence of courses that:

(A) provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in high-demand occupations or emerging industries;

(B) includes competency-based applied learning that contributes to the academic knowledge, problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual; or

(C) provides a license, a certificate, or a postsecondary degree.

(4) Certificate or degree completion--Any ["Certificate or degree completion" means any] grouping of workforce or technical courses in sequential order that, when satisfactorily completed by a student, will entitle the student to a Texas Higher Education Coordinating Board (THECB) approved certificate or associate degree from a public technical institute or public junior college.

(5) Comptroller--The ["Comptroller" means the] Comptroller of Public Accounts.

(6) Developmental education--Structured ["Developmental education" means structured] courses, tutorials, laboratories, or other proven instructional efforts that successfully prepare students for college level (and therefore work-ready) courses as measured by passing the state-required college entrance exam (or meeting the Texas Success Initiative requirements).

(7) Emerging industry--A ["Emerging industry" means a] growing, evolving or developing industry based on new technological products or concepts.

[(8) "Enrolled" means registered for or in the process of registering for a post-secondary education or training program.]

[(9) "Financial need" may be determined by proof of one or more of the following:]

[(A) annual household adjusted income at or below 200% of the federal poverty income guidelines;]

[(B) eligibility for Temporary Assistance to Needy Families (TANF) or other public assistance programs (includes Women, Infants, and Children (WIC) program participants);]

[(C) eligibility for a Pell Grant or comparable state program of need-based financial assistance;]

[(D) eligibility for benefits under the Food Stamp Act of 1977 or the Health and Human Services (HHS) Poverty Guidelines; or]

[(E) eligibility as determined by the Free Application for Federal Student Aid (FAFSA).]

(8) [(10)] High-demand occupation--A ["High-demand occupation" means a] job, profession, skill, or trade for which employers within the State of Texas generally, or within particular regions or cities of the state, have or will have a substantial need. In determining whether there is or will be a substantial need for a particular job, profession, trade, or skill, the comptroller may consider:

(A) the Texas Workforce Commission's list of high-demand occupations and/or its labor market projections;

(B) whether the occupation has been targeted for Workforce Investment Act (WIA) training as a result of employer or community input; or

(C) research, projections, or workforce data that are compiled by the comptroller or derived from one of the following sources:

(i) the Texas Workforce Commission;

(ii) the United States Department of Labor; or

(iii) another source, such as a letter from employers, which provides evidence that a particular job, profession, skill, or trade will provide potential economic benefits to the state or a local or regional area within the state.

(9) [(11)] In-kind contribution--A ["In-kind contribution" means a] cash value placed on a non-monetary contribution or investment.

(10) [(12)] JET--The ["JET" means the] Jobs and Education for Texans Grant Program.

[(13) "Low income student" means a student who demonstrates financial need as determined under this section.]

[(14) "Nonprofit organization" means an organization that is exempt from federal income taxation under Internal Revenue Code of 1986, §501(a), and that is described by §501(c)(3) of that code.]

(11) [(15)] Notice of Availability or NOA--The ["Notice of Availability" or "NOA" means the] notice of availability that is published by the comptroller pursuant to §8.22 of this title (relating to Notice of Grant Availability and Application).

[(16) "Persistence rates" means the rate at which students persist in career and technology education courses, often measured by the percentage of students who continue to be enrolled from one year to the succeeding year.]

[(17) "Prevailing wage" means a wage determination as used by the Texas Workforce Commission for the Skills Development Fund or similar TWC programs or as determined by the comptroller using relevant federal, state and local labor wage data.]

(12) [(18)] Public junior college--Any ["Public junior college" means any] junior college certified by the Texas Higher Education Coordinating Board (THECB) in accordance with Education Code, §61.003.

(13) [(19)] Public technical institute--The ["Public technical institute" means the] Lamar Institute of Technology or the Texas State Technical College System in accordance with Education Code, §61.003.

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 April 7, 2014.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

34 TAC §8.12, §8.13

The Comptroller of Public Accounts proposes amendments to §8.12, concerning meetings required, and §8.13, concerning general advisory board responsibilities. The amendments remove the term "and eligible nonprofit organizations" as the entities that may be awarded grants under the Jobs and Education for Texans Grant Program and as the entities for which the advisory board may make recommendation to award grants. These amendments are deemed necessary to implement provisions of House Bill 437, 83rd Legislature, 2013, which repealed the student scholarship and nonprofit organization grant programs administered as part of the Jobs and Education for Texans Grant Program.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be by conforming the JET Grant Program rules to current statutory requirements. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, at linda.fernandez@cpa.state.tx.us or at P.O. Box 13528, Austin, Texas 78711.

These proposals are authorized under Education Code, §134.008 which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The proposals implements Education Code, §134.002 which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.12. Meetings Required.

(a) The advisory board is required to meet at least once each quarter to recommend awarding grants to public junior colleges and[,] public technical institutes[, and eligible nonprofit organizations].

(b) Meetings may be called at the request of the board's presiding officer.

(c) Meetings shall be subject to the requirements of the Open Meetings Act.

§8.13. General Advisory Board Responsibilities.

The advisory board shall provide advice and recommendations to the comptroller on:

(1) the manner in which public junior colleges and[,] public technical institutes[, and eligible nonprofit organizations] apply for Jobs and Education for Texans (JET) Grant Program grants; and

(2) the JET grants to be awarded by the comptroller.

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 C. GRANT PROGRAM

34 TAC §8.21, §8.24

The Comptroller of Public Accounts proposes amendments to §8.21, concerning general statement of purpose and §8.24, concerning reporting requirements to delete references to nonprofit organizations and scholarships for students in career and technical education programs. These amendments are deemed necessary to implement provisions of House Bill 437, 83rd Legislature, 2013, which repealed the student scholarship and nonprofit organization grant programs administered as part of the Jobs and Education for Texans Grant Program.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be by conforming the JET Grant Program rules to current statutory requirements. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, at linda.fernandez@cpa.state.tx.us or at P.O. Box 13528, Austin, Texas 78711.

The proposals are authorized under Education Code, §134.008 which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

These proposals implement Education Code, §134.002 which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.21. General Statement of Purpose.

In accordance with the Act, the comptroller establishes the Jobs and Education for Texans (JET) Grant Program which shall be administered pursuant to the Act and the rules in this chapter to award grants from the JET fund for [the following purposes:]

[(1) to develop, support, or expand programs of nonprofit organizations that meet the requirements of Education Code, §134.005 and Government Code, §403.355, and that prepare low-income students for careers in high-demand occupations;]

[(2)] [for] the development of new career and technical education programs at public junior colleges and public technical institutes that meet the requirements of Education Code, §134.006. [and Government Code, §403.356; and]

[(3) to provide scholarships for students in career and technical education programs who meet the requirements of Education Code, §134.007 and Government Code, §403.357.]

§8.24. Reporting Requirements.

A public junior college or[,] public technical institute[, nonprofit organization or any other entity] receiving a grant under this chapter must comply with all reporting requirements of the contract in a frequency and format determined by the comptroller in order to maintain eligibility for grant payments. Failure to comply with the reporting requirements may result in termination of the grant award and the entity being ineligible for future grants under this chapter.

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

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SUBCHAPTER D. GRANTS TO NONPROFIT ORGANIZATIONS FOR INNOVATIVE AND SUCCESSFUL PROGRAMS

34 TAC §8.31

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of §8.31, concerning grants to nonprofit organizations. This repeal is deemed necessary to implement provisions of House Bill 437, 83rd Legislature, 2013, which repealed the student scholarship and nonprofit organization grant programs administered as part of the Jobs and Education for Texans Grant Program.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be by conforming the JET Grant Program rules to current statutory requirements. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the repeal may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, at

linda.fernandez@cpa.state.tx.us or at P.O. Box 13528, Austin, Texas 78711.

The proposed repeal is authorized under Education Code, §134.008 which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The repeal implements Education Code, §134.002 which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.31. Grants to Nonprofit Organizations.

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

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SUBCHAPTER F. GRANTS FOR SCHOLARSHIPS

34 TAC §8.51

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of §8.51, concerning scholarship grants. This repeal is deemed necessary to implement provisions of House Bill 437, 83rd Legislature, 2013, which repealed the student scholarship and nonprofit organization grant programs administered as part of the Jobs and Education for Texans Grant Program.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be by conforming the JET Grant Program rules to current statutory requirements. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the repeal may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, at linda.fernandez@cpa.state.tx.us or at P.O. Box 13528, Austin, Texas 78711.

The proposed repeal is authorized under Education Code, §134.008 which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The repeal implements Education Code, §134.002 which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.51. Scholarship Grants.

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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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.153, concerning definitions; §9.154, concerning description of the home and community-based services (HCS) program; §9.155, concerning eligibility criteria and suspension of HCS program services; §9.158, concerning process for enrollment of applicants; §9.159, concerning individual plan of care (IPC); §9.161, concerning level of care (LOC) determination; §9.166, concerning renewal and revision of an IPC; §9.168, concerning consumer directed services (CDS); §9.169, concerning fair hearing; §9.170, concerning reimbursement; §9.171, concerning program provider certification review and residential visit; §9.174, concerning certification principles: service delivery; §9.177, concerning certification principles: staff member and service provider requirements; §9.178, concerning certification principles: quality assurance; §9.187, concerning other program provider responsibilities; §9.190, concerning local authority requirements for providing service coordination in the HCS program; §9.192, concerning service limits; new §9.180, concerning certification principles: prohibitions; §9.185, concerning program provider compliance and corrective action; and the repeals of §9.185, concerning certification processes; and §9.193, concerning exception to service limits, in Subchapter D, Home and Community-based Services (HCS) Program, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement a directive from the Centers for Medicare and Medicaid Services (CMS) to more effectively address the assurance set forth in the HCS waiver application about health and safety. Specifically, to

address this assurance, the proposed amendments add a requirement for the HCS program provider to develop a service backup plan for an HCS Program service identified by the service planning team on the person directed plan as critical to meeting the individual's health and safety and revise the plan if the program provider determines the service backup plan is ineffective.

The proposed amendments also add employment assistance, assistance to help an individual locate paid employment, as an additional service in the HCS Program to implement Texas Human Resources Code, §32.075 which requires DADS to provide employment assistance to individuals in the various Medicaid waiver programs, including the HCS Program. The proposed amendments also require that the service providers of employment assistance and supported employment have (1) a bachelor's degree in specified fields and six months of paid or unpaid work experience providing services to people with disabilities, (2) an associate's degree in specified fields and one year of paid or unpaid work experience providing services to people with disabilities, or (3) a high school diploma (or a state-recognized equivalent) and two years of paid or unpaid work experience providing services to people with disabilities. These required qualifications help ensure that service providers of employment assistance and supported employment have sufficient expertise to provide these services. The proposed amendments also include certain requirements the provider must comply with to receive payment for employment assistance and supported employment such as not using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training and not providing employment assistance or supported employment to an individual with the individual present at the same time that certain other services are provided.

In addition, the proposed amendments, new sections, and repeals change DADS review process of HCS providers. Specifically, the proposed amendments state that DADS does not certify a provider for a new certification period if (1) at a review other than an initial review, the provider is not providing HCS Program services to any individuals, and (2) from the beginning of the certification period through the 121st day before the end of the current period, the program provider didn't provide services for at least 60 consecutive days. This requirement is included to ensure that program providers who are not actively providing services and, therefore, not acquiring necessary expertise as a program provider, re-establish their qualifications through the contract application process if they want to be an HCS Program provider. The proposed amendments further state that if DADS imposes a vendor hold against a program provider with a provisional contract, DADS initiates termination of the contract. This process helps ensure a high quality provider base by terminating the contracts of program providers who are underperforming in the initial contract period, thereby requiring those providers to demonstrate their qualifications through the contract application process if they want to be an HCS Program provider. In addition, these amendments delete the description of the action DADS takes if a program provider is out of compliance with a specific percentage of certification principles and describe DADS action based on whether the program provider's failure to comply results in a condition of a serious or pervasive nature. This amendment was made because DADS concluded that a fairer and more effective way to determine the action or sanction imposed is to evaluate the seriousness or pervasiveness of the condition resulting from the non-compliance, not the number of principles out of compliance. In addition the proposed amendments require DADS to conduct a follow-up review of a provider (whose non-compliance has resulted in a condition of a serious or pervasive nature) in a more prompt manner than the current rules. This change was made to help ensure the health and safety of individuals receiving services from an underperforming provider. The proposed amendments also clarify definitions of "condition of a pervasive nature," "condition of a serious nature," and "hazard to health or safety" so providers will have a better understanding of how DADS determines when such conditions exist.

The proposed amendments also describe the process that allows a program provider to request that DADS conduct an informal review of findings in a preliminary review report with which a provider disagrees.

The proposed amendments also add additional eligibility criteria for an individual leaving or at risk of entering a nursing facility and who is a member of a reserved capacity group in the HCS waiver application to address the addition of this new reserved capacity group to the application approved by CMS.

The proposed amendments also add criteria that require each service on an individual's IPC be the most appropriate type and amount, cost effective, and necessary to enable community integration and maximize independence. These changes help ensure that HCS Program services legitimately meet an individual's needs in a cost effective manner and address changes made to the HCS waiver application approved by CMS. The proposed amendments also describe current criteria for an adaptive aid and minor home modification included on an individual's IPC.

The proposed amendments allow an individual to receive the additional services of supported employment, employment assistance, cognitive rehabilitation therapy, and nursing through the consumer directed services (CDS) option. This change allows the individual more choices about service provision.

The proposed amendments require the local authority to conduct a new level of care redetermination of an individual if an individual's level-of-need (LON) changes from a LON 5, LON 8, LON 6, or LON 9 to a LON 1. This requirement addresses a concern raised by CMS that individuals be appropriately assessed to ensure continued eligibility for the waiver program.

The proposed amendments also replace deleted requirements (including those for complaint processes, reporting and training related to abuse, neglect, and exploitation, background checks and wage requirements for some HCS service providers) with references to requirements addressed in Chapter 49, Contracting for Community Services, as proposed elsewhere in this issue of the Texas Register, because proposed new Chapter 49 applies to HCS program providers.

The proposed amendments require that a program provider enter the name and phone number of an alternate chief executive officer (CEO) into the DADS data system. The proposed amendment requires the alternate CEO to perform the duties of the CEO during the CEO's absence and to act as the contact person in a Department of Family and Protective Services (DFPS) investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual. This requirement helps ensure unbiased operation of the program provider's business and cooperation in the DFPS investigation of the CEO.

The proposed amendments also allow a person with three years unpaid work experience providing services similar to those in the HCS program and who has participated as a member of a microboard to be employed by a program provider to oversee the

provision of direct services. Currently, DADS allows only a person with three years paid work experience providing services similar to those in the HCS program to qualify for this position. The proposed amendments add a definition for a microboard based on the service industry's common understanding of a microboard. This amendment is proposed because DADS determined that a person with three years unpaid work experience providing services similar to those in the HCS program and who has participated on a microboard has obtained the necessary expertise to oversee the provision of direct services for a program provider. The proposed amendments also add licensed clinical social workers and licensed professional counselors to the list of qualified providers of behavioral support to increase the availability of qualified providers of this service.

The proposed amendments also replace the term "foster/companion care" with "host home/companion care" because foster care ordinarily refers to services only provided to children.

The proposed amendments remove the requirement that a program provider deliver at least one service component by a service provider employed by the program provider because CMS is no longer requiring this practice.

The proposed amendments also delete the definition of "unusual incident" because the elements contained within the definition of "unusual incident" were incorporated into the definition of "critical incident" in the HCS Provider User Guide.

The proposed amendments and repeals delete service limits that expired August 31, 2013, and the process created to obtain an exception to those service limits.

The proposed amendments allow individuals to receive respite in a camp accredited by the American Camp Association to expand the suitable settings in which an individual may choose to receive respite.

The proposed new sections emphasize DADS current policy that a program provider is not allowed to use seclusion for any reason.

The proposed amendments make rules consistent with DADS current policy that respite services are used if the caregiver is temporarily unavailable to provide supports for non-routine circumstances.

The proposed amendments also delete a description of applicants who may be offered an HCS program vacancy. Specifically, the description deleted is of those applicants for whom DADS has proposed to terminate or has terminated Texas Home Living (TxHmL) Program services because the applicant no longer has an approved TxHmL IPC or the applicant's TxHmL services do not ensure the applicant's health and welfare. This deletion is made because applicants meeting this description may be offered an HCS program vacancy as a target group in accordance with §9.158(a)(4).

The proposed amendments also add a definition for "related condition" to be consistent with how that term is defined in the rules governing the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program at Chapter 9, Subchapter E of this title.

The proposed amendments replace outdated terminology by replacing "MRA" with "local authority;" "ICF/MR" with "ICF/IID;" "MR/RC" with "ID/RC;" and "mental retardation" with "intellectual disability." The proposed amendments also replace "support methodologies" with "implementation plans;" "specialized therapies'" with "professional therapies;" "CDS" with "the CDS option;" "CDSA" with "FMSA;" and "program provider agreement" with "contract." The proposed amendments also add definitions for "provisional contract" and "standard contract" as used in proposed new Chapter 49.

The proposed amendments replace "CARE" with "DADS data systems," which will allow for any further data systems changes; update references to the Occupations Code for all licensed service providers who are qualified to deliver services approved in the HCS waiver program; correct cross-references in the chapter; and make minor editorial and reorganizational changes for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.153 makes minor changes, updates, or clarifies the definitions for "behavioral emergency," "business day," "CDS option--Consumer directed services option," "FMS--Financial management services," "LON (level of need)," "Permanency Planning Review Screen," "program provider," "service backup plan," and "support consultation." The proposed amendment also adds definitions for "calendar day," "condition of a pervasive nature," "condition of a serious nature," "contract," "hazard to health or safety," "microboard," "provisional contract," "related condition," "standard contract," and "vendor hold." In addition, the proposed amendment deletes the definition for "CDSA--Consumer directed service agency" and replaces it with a definition for "FMSA--Financial management services agency" and deletes the definitions of "CARE," "CDS service provider," "critical incident data," and "unusual incident."

The proposed amendment to §9.154 updates terminology used in the subchapter by replacing "licensed nurses" with "an RN or LVN," "foster care" with "host home," "CDS" with "the CDS option;" "financial management services" with "FMS," and "program provider agreement" with "contract." The proposed amendment also adds employment assistance to the list of services and deletes a condition for providing supported employment that is updated and relocated in the subchapter. The proposed amendment also adds that a program provider must comply with proposed new Chapter 49. In addition, the proposed amendment adds a reference to 40 TAC §41.108 proposed elsewhere in this issue of the *Texas Register.* Proposed new §41.108 will replace the need for DADS to list in §9.154 the HCS Program services available through the CDS option.

The proposed amendment to §9.155 adds to the current eligibility criteria for the HCS Program. Specifically, the proposed amendment allows a person to be eligible for the HCS Program if the person meets certain other requirements in the rule and (1) qualifies for an ICF/IID LOC I or LOC VIII as defined in §9.239 of this chapter, (2) resides in a nursing facility immediately prior to enrolling in the HCS Program or is at imminent risk of entering a nursing facility as determined by DADS, and (3) is offered an HCS Program vacancy designated for a member of the reserve capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in the HCS Program waiver application. The proposed amendment also replaces "ICF/MR" with "ICF/IID" and "mental retardation" with "intellectual disability."

The proposed amendment to §9.158 replaces "CARE" and "automated enrollment and billing system" with "the DADS data system," "foster care" with "host home," and "CDSA" with "FMSA." The proposed amendment also deletes a description of applicants who may be offered an HCS Program vacancy. The proposed amendment requires a service coordinator to, if an appli-

cant or LAR chooses a program provider to provide a service, ensure that the proposed IPC includes a sufficient number of RN nursing units for a program provider nurse to perform an initial nursing assessment. In addition, the proposed amendment deletes service limits that expired on August 31, 2013.

The proposed amendment to §9.159 updates terminology used in the subchapter by replacing "MRA" with "local authority." The proposed amendment also specifies that each service on an IPC must be necessary to protect the individual's health and welfare in the community; must not be available to the individual through any other source; must be the most appropriate type and amount to meet the individual's needs; must be cost effective; and must be necessary to enable community integration and maximize independence. The proposed amendment also makes the rule consistent with the *HCS Program Billing Guidelines* that an adaptive aid or minor home modification on an IPC must be included on DADS approved list in the *HCS Program Billing Guidelines* and within the service limits for these services; that an adaptive aid on an IPC costing $500 or more, or a minor home modification on an IPC costing $1,000 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines;* and that dental services on an IPC must be within the service limits for this service. The proposed amendment also specifies that a program provider is not responsible for HCS Program services on an IPC that are provided through the CDS option.

The proposed amendment to §9.161 updates terminology used in the subchapter by replacing "MRA" with "local authority," "MR/RC" with "ID/RC," and "CARE" with "the DADS data system." The proposed amendment also requires the local authority to conduct a new level of care redetermination after receiving notice from DADS that an individual receiving services changes from a LON 5, LON 8, LON 6, or LON 9 to a LON 1.

The proposed amendment to §9.166 updates terminology used in the subchapter by changing "CDS" to "CDS option" and "CARE" to "the DADS data system." The proposed amendment also deletes service limits that expired on August 31, 2013.

The proposed amendment to §9.168 retitles the section, updates the list of services available through the CDS option, and changes references to "CDS" to "the CDS option." The proposed amendment also updates terminology by replacing "financial management services" with "FMS;" "MRA's" with "local authority's;" "CDSA" with "FMSA;" and "service back-up plan" to "service backup plan."

The proposed amendment to §9.169 specifies that an applicant or an individual "receives notice of the right to request" a fair hearing to replace "is entitled to request" a fair hearing.

The proposed amendment to §9.170 updates terminology used in the subchapter by replacing "specialized therapies" with "professional therapies" and "foster care" with "host home." The proposed amendment also deletes a rule on recordkeeping and several rules related to payment and claim submission that will be replaced by the contracting rules in proposed new Chapter 49. In addition, the proposed amendment specifies that if an individual's services are suspended or terminated, the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, but may submit a claim for the first day of the individual's suspension or termination for day habilitation, supported home living, respite, employment assistance, supported employment, professional therapies and nursing. The proposed amendment also specifies that DADS does not pay the program provider for a service component, or recoups any payments made for a service component if the claim does not meet the requirements in the contracting rules in new 40 TAC §49.311, if the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.) before including employment assistance on an individual's IPC, or if the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act before including supported employment on an individual's IPC. The proposed amendment also deletes the FMSA reimbursement rules because these rules are included in 40 TAC Chapter 41. The proposed amendment also updates rule cross-references.

The proposed amendment to §9.171 retitles the section and updates rule cross-references and section titles. The proposed amendment also deletes subsection (c) and replaces it with a new provision that specifies DADS conducts on-site certification reviews at least annually and describes the process for DADS to conduct an initial on-site certification review of a program provider with a provisional contract. The proposed amendment also deletes a reference to §9.185 and specifies that if DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than 365 calendar days. The proposed amendment also deletes unnecessary language about the types of DADS reviews and adds that at the exit conference DADS gives the program provider a written preliminary review report. The proposed amendment also establishes a process for DADS to conduct an informal review if a program provider disagrees with any of the findings in a preliminary review report and specifies that if a program provider does not submit a timely request for an informal review, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference. The proposed amendment also clarifies that residential visits are in addition to the on-site certification reviews and that, based on a residential visit, DADS may require the program provider to complete corrective action before the residential visit ends and may require the program provider to submit evidence of corrective action within 14 calendar days after the date of the residential visit. The proposed amendment also replaces "foster/companion care" with "host home/companion care" and updates a rules cross-reference.

The proposed amendment to §9.174 replaces "CARE" with "DADS data system," "foster/companion care" with "host home/companion care," and "licensed nurse" with "RN or LVN." The proposed amendment also clarifies that respite includes support for eligible individuals who are in need of emergency or planned short-term care when the caregiver is temporarily unavailable to provide supports due to non-routine circumstances, adds a camp as a location where respite may be provided, and requires a program provider to ensure a camp used to provide respite is accredited by the American Camp Association. The proposed amendment also provides an ICF/IID, skilled nursing facility, and hospital as examples of institutions in which a program provider must not provide respite. In addition, the proposed amendment adds the requirements for providing employment assistance and updates the requirements for providing supported employment. The proposed amendment requires a

program provider to develop a written service backup plan for a HCS Program service identified on the PDP as critical to an individual's health and safety. The proposed amendment requires (1) a service backup plan to contain the name of the service, specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety, and in the event of a service interruption resulting in an adverse effect, describe the actions the program provider will take to ensure the individual's health and safety; (2) a program provider to ensure that if the action in the service backup plan identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety, and a person identified in the service backup plan, if paid to provide the service, meets the required qualifications; and (3) if a service backup plan is implemented, a program provider must discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective, document whether or not the plan was effective, and revise the plan if the program provider determines the plan was ineffective. The proposed amendment also updates rule cross-references.

The proposed amendment to §9.177 replaces deleted language with a reference to proposed new §49.310(3)(A) to require a program provider to conduct initial and periodic training that ensures staff members, service providers, and volunteers are knowledgeable of acts that constitute abuse, neglect, or exploitation of an individual; the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts to the appropriate investigative authority; how to report allegations of abuse, neglect, or exploitation to the appropriate investigative authority; and methods to prevent the occurrence of abuse, neglect, and exploitation. The proposed amendment also changes the requirements for the person who oversees the provision of HCS program services to an individual. The proposed amendment specifies that the person must have at least three years paid work experience in planning and providing HCS Program services as verified by written statements from the person's employer; or, have at least three years of experience planning and providing services similar to HCS Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person and participated as a member of a microboard as verified, in writing, by the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State, the bylaws of the non-profit corporation, and a statement by the board of directors of the non-profit corporation that the person is a member of the microboard. The proposed amendment also clarifies the requirements for a service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite services, and deletes the duplicative requirement that tasks delegated to one of these service providers by an RN are performed in accordance with state law. The proposed amendment also updates the regulatory references in the qualifications for a service provider certified by DADS, and expands the list of qualified providers to include a licensed clinical social worker and a licensed professional counselor. The proposed amendment also updates and clarifies the requirements for a service provider who provides transportation to an individual. The proposed amendment also replaces deleted language with a reference to proposed new §49.304, which will address verification of employability by conducting the required background checks. The proposed amendment also deletes the requirement for a program provider to provide at least one service component using only employees. The proposed amendment also replaces deleted language with a reference to proposed new §49.312(a) that will add a service provider of supported home living in the HCS Program to the wage requirements for a personal attendant. The proposed amendment also updates the cross-reference to the minimum wage requirements if the service provider of supported home living is employed by or contracts with a contractor of a program provider. In addition, the proposed amendment adds the qualifications for a service provider of employment assistance and updates the qualifications for a service provider of supported employment. The proposed amendment also requires a program provider to maintain specified evidence that a service provider of employment assistance and a service provider of supported employment meet the experience requirement.

The proposed amendment to §9.178 deletes a list of information the consumer/advocate advisory committee must review and instead, cross-references to a subsection describing the information a program provider must provide to the committee. The proposed amendment also replaces deleted requirements on complaints with a reference to proposed new §49.309 and replaces deleted requirements on abuse, neglect, and exploitation with references to proposed new §49.310(3)(B) and proposed new §49.310(4). The proposed amendment also makes requirements relating to abuse, neglect, and exploitation applicable to volunteers, in addition to staff members and service providers. The proposed amendment also replaces "alleged victim" used to reference an individual the program provider suspects has been or is being abused, neglected, or exploited with the term "individual." The proposed amendment also updates the title of Chapter 711, Subchapter M, by replacing "Advocacy, Incorporated" with "Disability Rights Texas." The proposed amendment also requires a program provider to review at least annually, all critical incident data (in addition to other information currently described in this section) to identify program process improvements and improve service delivery. Further, the proposed amendment requires the program provider to provide the critical incident data reviewed to the consumer/advocate advisory committee. In addition, the proposed amendment deletes the requirement to review "unusual incidents." The proposed amendment also clarifies that a program provider must enter critical incident data in accordance with the HCS Provider User Guide. In addition, the proposed amendment requires a program provider to enter the name and phone number of an alternate to the Chief Executive Officer (CEO) in the DADS data system and to ensure that the alternate to the CEO performs the duties of the CEO during the CEO's absence and acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual. The proposed amendment also updates terminology used in the subchapter by replacing "foster/companion care" with "host home/companion care," "Waiver Program Provider Agreement" with "contract," and "CARE" with "the DADS data system."

Proposed new §9.180 prohibits the use of seclusion by a program provider.

The proposed repeal of §9.185 deletes the description of DADS current process for certification of a program provider to replace it with the proposed new §9.185.

Proposed new §9.185 describes the corrective action DADS takes as a result of DADS review of a program provider's compliance. The proposed new rule specifies that if DADS determines

after a certification review that a program provider is in compliance with all certification principles, DADS certifies the program provider and requires no action by the program provider. The proposed new rule also specifies that at the time of a certification review, except for the initial review, DADS does not certify a program provider for a new certification period if DADS determines during the certification review that the program provider is not providing HCS Program services to any individuals and for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide HCS Program services for at least 60 consecutive calendar days. In addition, the proposed new rule specifies that, with some exceptions, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious or pervasive nature and that the corrective action plan must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference. The proposed new rule also specifies that DADS notifies the program provider of whether the corrective action plan is approved or not approved within 14 calendar days after the date DADS receives the corrective action plan and that if DADS approves the plan, DADS certifies the program provider and the program provider must complete corrective action in accordance with the corrective action plan. The proposed new rule also specifies that if the program provider does not submit a corrective action plan, or DADS does not approve the plan, DADS imposes a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS or until DADS denies or terminates certification of the program provider. The proposed new rule also specifies that DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan during DADS first review of the program provider after the corrective action completion date. In addition, the proposed new rule also specifies that if DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious or pervasive nature, DADS requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference and conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action. The proposed new rule also specifies that if DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review and if the program provider does not remove the hazard by the end of the review, DADS denies or terminates certification of the program provider and coordinates with the local authorities the immediate provision of alternative services for the individuals. The proposed new rule also specifies that if DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with the subchapter, DADS imposes a vendor hold against the program provider or denies or terminates certification of the program provider. In addition, the proposed new rule specifies that if after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS requires the program provider, within 14 days after the review exit conference or within another time period determined by DADS, to submit evidence demonstrating its compliance with the certification principle, imposes or continues a vendor hold against the program provider, or denies or terminates certification of the program provider. The proposed new rule also specifies that if DADS imposes a vendor hold for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with proposed new §49.534. The proposed new rule also specifies that if DADS imposes a vendor hold for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold, and if the program provider completed the corrective action, DADS releases the vendor hold, or if the program provider has not completed the corrective action, DADS takes one of the same actions DADS takes when a program provider remains out of compliance with a certification principle found out of compliance in the previous review. In addition, the proposed new rule updates the references to §9.177 based on the proposed amendment to the wage requirements in §9.177 for a service provider of supported home living.

The proposed amendment to §9.187 updates the regulatory reference for program provider requirements about an advance directive and corrects the spelling of "advance directive."

The proposed amendment to §9.190 requires a service coordinator to ensure the person directed plan for an applicant or individual states, for each HCS program service, whether the service is critical to the individual's health and safety, as determined by the service planning team. The proposed amendment also changes the information a service coordinator must provide to an individual by adding employment assistance to the list of services an individual may not receive if the individual or LAR refuses a nursing assessment and the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service. The proposed amendment also updates terminology used in the chapter by replacing "CARE" with "the DADS data system," "foster companion care" with "host home/companion care," and "CDSA" with "FMSA."

The proposed amendment to §9.192 deletes service limits that expired on August 31, 2013 that were subject to an exception granted by DADS. In addition, the proposed amendment deletes the limit of 150 hours during an IPC year for supported employment.

The proposed repeal of §9.193 deletes the process for requesting an exception to the service limits that expired on August 31, 2013.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeals are in effect, enforcing or administering the amendments, new sections, and repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeals will not have an adverse economic effect on small businesses or micro-businesses because compliance with new requirements imposed by the rules do not require a program provider to incur a cost.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments, new sections, and repeals are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeals is the rules will be clear and consistent with the HCS waiver renewal process.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeals. The amendments, new sections, and repeals will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Curtis Walters at (512) 438-3501 in DADS Waiver and State Plan Services division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R04, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R04" in the subject line.

40 TAC §§9.153 - 9.155, 9.158, 9.159, 9.161, 9.166, 9.168 - 9.171, 9.174, 9.177, 9.178, 9.180, 9.185, 9.187, 9.190, 9.192

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§9.153. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an [~~the~~] applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(2) Applicant--A Texas resident seeking services in the HCS Program.

(3) Behavioral emergency--A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior [~~exhibited by an individual~~]:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(4) Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b). [~~A day when a program provider's administrative offices are open.~~]

(5) Calendar day--Any day, including weekends and holidays.

[~~(5) CARE--DADS Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.~~]

(6) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

[~~(7) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title, that provides financial management services and, at the request of an individual or LAR, support consultation to the individual participating in CDS.~~]

[~~(8) CDS service provider--An employee or contractor of a CDS employer.~~]

(7) [~~(9)~~] Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(8) Condition of a pervasive nature--A condition in which a program provider is out of compliance with a certification principle as evidenced by one of the following:

(A) the following two conditions are met:

(i) at least 50 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance; and

(ii) at least one item from an additional sample, at least the same size as the initial sample, shows non-compliance; or

(B) if DADS is not able to obtain an additional sample as described in subparagraph (A)(ii) of this paragraph, at least 51 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance.

(9) Condition of a serious nature--Except as provided in paragraph (22) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(10) Contract--A provisional contract or a standard contract.

(11) [(10)] CRCG [(Community Resource Coordination Group)]--Community resource coordination group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at www.hhsc.state.tx.us.

(12) [(11)] Critical incident--An event listed in the HCS Provider User Guide found at http://www2.mhmr.state.tx.us/655/cis/training/WaiverGuide.html [http://www2.mhmr.state.tx.us/655/cis/training/WAIVER.html].

[(12) Critical incident data--Information a program provider enters in CARE as defined in the CARE User Guide.]

(13) DADS--The Department of Aging and Disability Services.

(14) DARS--The Department of Assistive and Rehabilitative Services.

(15) DFPS--The Department of Family and Protective Services.

(16) Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(17) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(18) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(19) FMS--Financial management services.[--] A service, as defined in §41.103 of this title, that is provided to an individual participating in the [who chooses to participate in] CDS option.

(20) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(21) [(20)] Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(22) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(23) [(21)] HCS Program--The Home and Community-based Services Program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(24) [(22)] HHSC--The Texas Health and Human Services Commission.

(25) [(23)] ICAP--Inventory for Client and Agency Planning.

(26) [(24)] ICF/IID--A facility in which ICF/IID Program services are provided.

(27) [(25)] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(28) [(26)] ICF/MR--ICF/IID.

(29) [(27)] ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(30) [(28)] Implementation Plan--A written document developed by the program provider for an individual that, for each HCS Program service on the individual's IPC not provided through the CDS option, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of HCS Program units of service needed to complete each objective;

(E) the frequency and duration of HCS Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(31) [~~(29)~~] Individual--A person enrolled in the HCS Program.

(32) [~~(30)~~] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(33) [~~(31)~~] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period; referred to in some sections as mental retardation.

(34) [~~(32)~~] IPC (individual plan of care)--A written plan that:

(A) states:

(i) the type and amount of each HCS Program service to be provided to the individual during an IPC year; and

(ii) the services and supports to be provided to the individual through non-HCS Program resources, including natural supports, medical services, and educational services; and

(B) is authorized by DADS.

(35) [~~(33)~~] IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(36) [~~(34)~~] IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(37) [~~(35)~~] Large ICF/IID--A non-state operated ICF/IID with a Medicaid certified capacity of 14 or more.

(38) [~~(36)~~] LAR (legally authorized representative)--A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(39) [~~(37)~~] LOC (level of care)--A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(40) [~~(38)~~] Local authority--An entity to which the Health and Human Services Commission's authority and responsibility, as described in Texas Health and Safety Code, §531.002(11), has been delegated.

(41) [~~(39)~~] LON (level of need)--An assignment given by DADS to an individual upon which reimbursement for host home/companion [~~foster/companion~~] care, supervised living, residential support, and day habilitation is based.

(42) [~~(40)~~] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(43) Microboard--A program provider:

(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(44) [~~(41)~~] MRA--Local authority.

(45) [~~(42)~~] MR/RC Assessment--An ID/RC Assessment.

(46) [~~(43)~~] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(47) [~~(44)~~] PDP (person-directed plan)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HCS Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(48) [~~(45)~~] Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(49) [~~(46)~~] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(50) [~~(47)~~] Permanency Planning Review Screen--A screen in the DADS data system [~~CARE~~], completed by a local authority, that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(51) [~~(48)~~] Primary correspondent--A person who may request that a local authority place an applicant's name on the HCS Program interest list.

(52) [~~(49)~~] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract

with DADS to provide HCS program services, excluding an FMSA. [~~An entity that provides HCS Program services under a waiver program provider agreement with DADS as defined in Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers).~~]

(53) Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(54) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(55) [~~(50)~~] Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(56) [~~(51)~~] Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(57) [~~(52)~~] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(58) [~~(53)~~] Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter or §9.168(h) of this subchapter (relating to CDS Option) to add a new HCS Program service or change the amount of an existing service.

(59) [~~(54)~~] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(60) [~~(55)~~] Service backup [~~back-up~~] plan--A plan[~~, as defined in §41.103 of this title,~~] that ensures continuity of critical program services if service delivery is interrupted.

(61) [~~(56)~~] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(62) [~~(57)~~] Service coordinator--An employee of a local authority who provides service coordination to an individual.

(63) [~~(58)~~] Service planning team--A planning team consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant or individual or LAR on behalf of the applicant or individual (for example, a program provider representative, family member, friend, or teacher).

(64) [~~(59)~~] Service provider--A person, who may be a staff member, who directly provides an HCS Program service to an individual.

(65) [~~(60)~~] SSI--Supplemental Security Income.

(66) [~~(61)~~] Staff member--An employee or contractor of an HCS Program provider.

(67) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(68) [~~(62)~~] State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(69) [~~(63)~~] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(70) [~~(64)~~] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating [~~by a support advisor employed by, or contracted through, a CDSA or retained as a contractor by an employer~~] in the CDS option at the request of the individual or LAR.

(71) [~~(65)~~] TANF--Temporary Assistance for Needy Families.

(72) [~~(66)~~] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(73) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

[(67) Unusual incident--An event, other than a critical incident, that presents a potential risk to an individual's health, safety, or welfare including:]

[(A) the individual's arrest by law enforcement;]

[(B) the individual's location being unknown; and]

[(C) the individual's exhibiting unexpected erratic behavior.]

§9.154. Description of the HCS Program.

(a) The HCS Program is a Medicaid waiver program approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals as an alternative to the ICF/IID Program. The HCS Program is operated by DADS under the authority of HHSC.

(b) Enrollment in the HCS Program is limited to the number of individuals in specified target groups and to the geographic areas approved by CMS.

(c) HCS Program service components listed in this subsection are selected for inclusion in an individual's IPC to ensure the individual's health, safety, and welfare in the community, supplement rather than replace that individual's natural supports and other community services for which the individual may be eligible, and prevent the individual's admission to institutional services. The following service components are defined in Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us. Service components available under the HCS Program are:

(1) professional therapies provided by appropriately licensed or certified professionals, including:

(A) physical therapy;

(B) occupational therapy;

(C) speech and language pathology;

(D) audiology;

(E) social work;

(F) behavioral support;

(G) dietary services; and

(H) cognitive rehabilitation therapy;

(2) nursing provided by an RN or LVN [licensed nurses];

(3) residential assistance, excluding room and board, provided in one of the following three ways:

(A) host home/companion [foster/companion] care;

(B) supervised living; or

(C) residential support;

(4) supported home living, which is not a reimbursable service for individuals receiving host home/companion [foster/companion] care, supervised living, or residential support;

(5) respite, which includes room and board when provided in a setting other than the individual's home, but is not a reimbursable service for individuals receiving host home/companion [foster/companion] care, supervised living, or residential support;

(6) day habilitation, provided exclusive of any other separately funded service, including public school services, rehabilitative services for persons with mental illness, other programs funded by DADS, or programs funded by DARS;

(7) employment assistance;

(8) [(7)] supported employment[, which may be provided if the service has been denied or is otherwise unavailable to an individual through a program operated by a state rehabilitation agency or the public school system];

(9) [(8)] adaptive aids;

(10) [(9)] minor home modifications;

(11) [(10)] dental treatment; and

(12) [(11)] [financial management services,] if the individual is participating in the CDS option:[; and]

(A) FMS; and

(B) support consultation.

[(12) support consultation, if the individual is participating in CDS.]

(d) DADS has grouped the counties of the state of Texas into geographical areas, referred to as "local service areas," each of which is served by a local authority. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is found at www.dads.state.tx.us.

(1) A program provider may provide HCS Program services only to persons residing in the counties specified for the program provider in DADS automated enrollment and billing system.

(2) A program provider must have a separate contract [program provider agreement] for each waiver contract area served by the program provider.

(3) A program provider may have a contract [program provider agreement] to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the program provider agreement.

(4) A program provider may not have more than one contract [program provider agreement] per waiver contract area.

(e) A program provider must comply with:

(1) all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services); and

(2) DADS Information Letters regarding the HCS Program found at www.dads.state.tx.us.

(f) The CDS option is a service delivery option, described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR [employs and retains CDS service providers and] directs the services that may be provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option) [delivery of supported home living, respite, or both].

§9.155. Eligibility Criteria and Suspension of HCS Program Services.

(a) An applicant or individual is eligible for HCS Program services if he or she:

(1) meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with Texas Health and Safety Code, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter (relating to LOC Determination), qualifies for an ICF/IID [the ICF/MR] LOC I as defined in §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria);[, as determined by DADS according to §9.161 of this subchapter (relating to LOC Determination); and]

[(i) has had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A); or]

[(ii) has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions) before enrollment in the HCS Program; or]

(B) as determined by DADS in accordance with §9.161 of this subchapter, qualifies for an ICF/IID [the ICF/MR] LOC I as defined in §9.238 of this chapter or ICF/IID [ICF/MR] LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria), [as determined by DADS according to §9.161 of this subchapter,] and has been determined by DADS:

(i) to have an intellectual disability [mental retardation] or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of Chapter 17 [§19.2500] of this title (relating to Preadmission Screening and Resident Review PASRR))[(PASARR)];

(C) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with Texas Health and Safety Code, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter;

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the HCS Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered an HCS Program vacancy designated for a member of the reserve capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) has an authorized IPC for which the IPC cost does not exceed 200% of the annual ICF/IID [ICF/MR] reimbursement rate paid to a small ICF/IID [ICF/MR], as defined in 1 TAC §355.456 (relating to Reimbursement Methodology) for the individual's level of need as it would be assigned under §9.240 of this chapter (relating to Level of Need) or 200% of the estimated annualized per capita cost for ICF/IID [ICF/MR] services, whichever is greater;

(4) is not enrolled in another waiver program under §1915(b) or (c) of the Social Security Act; and

(5) does not reside in:

(A) an ICF/IID [ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS];

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a facility operated by DARS;

(G) a residential facility operated by the Texas Juvenile Justice Department [Texas Youth Commission], a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability [mental retardation]; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(b) An applicant or individual is financially eligible for the HCS Program if he or she:

(1) is categorically eligible for SSI benefits;

(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;

(3) is under 18 years of age and:

(A) resides with a parent or spouse;

(B) is eligible for Medicaid benefits only, if institutionalized;

(C) meets the SSI criteria for disability;

(D) meets the SSI criteria for institutional deeming; and

(E) has income and resources that meet the requirements of the SSI program;

(4) is under 20 years of age and:

(A) is financially the responsibility of DFPS in whole or in part; and

(B) is being cared for in a foster home or group home:

(i) that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child placing agency; and

(ii) in which a foster parent is the primary caregiver residing in the home;

(5) is a member of a family who receives full Medicaid benefits as a result of qualifying for TANF; or

(6) is eligible for SSI benefits in the community, except on the basis of income, and meets the special institutional income limit for Medicaid benefits in Texas without regard to spousal income.

(c) For applicants or individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act and as specified in the Medicaid State Plan.

(d) If an individual is temporarily admitted to one of the following settings, the individual's HCS Program services are suspended during that admission:

(1) a hospital;

(2) an ICF/IID [~~ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS~~];

(3) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(4) a residential child-care operation licensed or subject to being licensed by DFPS;

(5) a facility licensed or subject to being licensed by the DSHS;

(6) a facility operated by DARS; or

(7) a residential facility operated by the Texas Juvenile Justice Department [~~Texas Youth Commission~~], a jail, or a prison.

§9.158. Process for Enrollment of Applicants.

(a) DADS notifies a local authority, in writing, of an HCS Program vacancy in the local authority's local service area and directs the local authority to offer the program vacancy to an applicant:

(1) whose registration date, assigned in accordance with §9.157(a)(1) of this subchapter (relating to Maintenance of HCS Program Interest List [~~list~~]), is earliest on the statewide interest list for the HCS Program as maintained by DADS;

(2) whose registration date, assigned in accordance with §9.157(a)(1) of this subchapter is earliest on the local service area interest list for the HCS Program as maintained by the local authority, in accordance with §9.157 of this subchapter; or

~~[(3) for whom DADS has proposed to terminate or has terminated TxHmL Program services because the applicant no longer meets the eligibility criteria described in §9.556(a)(5) and (8) of this chapter (relating to Eligibility Criteria); or]~~

(3) [~~(4)~~] who is a member of a target group identified in the approved HCS waiver application.

(b) Except as provided in subsection (c) of this section, the local authority must make the offer of program vacancy in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The local authority must make the offer of program vacancy to an applicant described in subsection (a)(3) [~~(a)(4)~~] of this section who is currently receiving services in a state supported living center or a state mental health facility as defined by §2.253 of this title (relating to Definitions) in accordance with DADS procedures.

(d) The local authority must include in a written offer that is made in accordance with subsection (a)(1), (2), or (3) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of the program vacancy within 30 calendar days after the local authority's written offer, the local authority withdraws the offer of the program vacancy, and:

(i) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter and places the applicant's name on the HCS Program interest list with a new registration date that is the date of the local authority's notification; or

(ii) for an applicant other than one described in clause (i) of this subparagraph, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter; and

(B) if the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant or LAR declines the offer of the program vacancy, the local authority terminates those services that are similar to services provided under the HCS program; and

(2) information relating to the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is found at www.dads.state.tx.us.

(e) If an applicant or LAR responds to an offer of program vacancy, the local authority must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports. The local authority must use the Explanation of Services and Supports document, which is found at www.dads.state.tx.us; and

(2) give the applicant or LAR the Verification of Freedom of Choice Form, Waiver Program which is found at www.dads.state.tx.us, to document the applicant's choice regarding the HCS Program and ICF/IID Program.

(f) The local authority must withdraw an offer of a program vacancy made to an applicant or LAR and remove the applicant's name from the HCS Program interest list if:

(1) within 30 calendar days after the local authority's offer made to the applicant or LAR in accordance with subsection (a)(1), (2), or (3) of this section, the applicant or LAR does not respond to the offer of the program vacancy;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form

from the local authority in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of HCS Program services over the ICF/IID Program using the Verification of Freedom of Choice, Waiver Program form; or

(3) within 30 calendar days after the applicant or LAR has received the contact information regarding all program providers in the local authority's local service area in accordance with subsection (l)(1) of this section, the applicant or LAR does not document the choice of a program provider using the Documentation of Provider Choice form.

(g) If the local authority withdraws an offer of a program vacancy made to an applicant and removes the applicant's name from the HCS Program interest list, the local authority must notify the applicant or LAR of such actions, in writing, by certified United States mail and:

(1) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, include a statement that the applicant's name will be placed on the HCS Program interest list with a new registration date that is the date of the local authority's notification; or

(2) for an applicant other than one described in paragraph (1) of this subsection, include a statement that the applicant or the applicant's primary correspondent may request, orally or in writing, to have the applicant's name placed on the HCS Program interest list with a new registration date that is the date the applicant or LAR makes the request.

(h) If the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant declines the offer of the program vacancy, the local authority must terminate those services that are similar to services provided under the HCS Program.

(i) If the local authority terminates an applicant's services in accordance with subsection (h) of this section, the local authority must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) If the local authority notifies an applicant under 22 years of age or the applicant's LAR in accordance with subsection (g)(1) of this section, the local authority must coordinate with DADS to ensure the applicant's name is placed on the HCS Program interest list with a new registration date that is the date of the local authority's notification.

(k) If the applicant or LAR, on the applicant's behalf, chooses to enroll in the HCS Program the local authority must compile and maintain information necessary to process the request for enrollment in the HCS Program.

(1) If the applicant's financial eligibility for the HCS Program must be established, the local authority must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The local authority must complete an ID/RC Assessment if an LOC determination is necessary in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The local authority must:

(i) perform or endorse a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The local authority must administer the ICAP and recommend an LON assignment to DADS in accordance with §9.163 and §9.164 of this subchapter (relating to DADS' Review of LON).

(C) The local authority must electronically transmit the completed ID/RC Assessment to DADS for approval in accordance with §9.161(a) and §9.163(a) of this subchapter and, if applicable, submit supporting documentation as required by §9.164(c) of this subchapter.

(3) The local authority must assign a service coordinator who, together with the applicant and LAR, must develop a PDP.

(4) The local authority must develop a proposed initial IPC with the applicant or LAR in accordance with §9.159(c) of this subchapter (relating to IPC).

(l) The service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding available program providers in the local authority's local service area (that is, program providers operating below their service capacity as identified in the DADS data system [~~CARE~~]);

(2) arrange for meetings and visits with potential program providers as requested by the applicant or LAR;

(3) review the proposed initial IPC with potential program providers as requested by the applicant or LAR;

(4) ensure that the applicant's or LAR's choice of a program provider is documented on the Documentation of Provider Choice Form and signed by the applicant or LAR;

(5) negotiate and finalize the proposed initial IPC and the date services will begin with the selected program provider, consulting with DADS if necessary to reach agreement with the selected program provider on the content of the proposed initial IPC and the date services will begin;

(6) if an applicant or LAR chooses a program provider to deliver a service, ensure that the initial proposed IPC includes a sufficient number of RN nursing units for a program provider nurse to perform an initial nursing assessment[~~,~~] unless, as described in §9.174(c) of this subchapter (relating to Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that an unlicensed service provider will not perform a nursing task [~~no nursing tasks will be performed by an unlicensed service provider~~] as documented on DADS form "Nursing Task Screening Tool"; or

(B) an unlicensed service provider will perform a nursing task [~~will be performed by an unlicensed service provider~~] and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(7) if an applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment as required by paragraph (6) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home [foster]/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation from the program provider, will result in the individual not receiving that service unless, as described in §9.174(d)(2) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service [as described in §9.174(c) of this subchapter (relating to Certification Principles: Service Delivery)]; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record;

(8) ensure that the applicant or LAR signs and dates the proposed initial IPC;

(9) ensure that the selected program provider signs and dates the proposed IPC, demonstrating agreement that the service components will be provided to the applicant;

(10) sign and date the proposed initial IPC, which indicates that the service coordinator agrees that the requirements described in §9.159(c) of this subchapter have been met; and

(11) inform the applicant or LAR, orally and in writing, of the following reasons HCS Program services may be terminated:

(A) the individual no longer meets the eligibility criteria described in §9.155 of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services); or

(B) the individual or LAR requests termination of HCS Program services.

(m) The local authority must:

(1) conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning); and

(2) discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).

(n) After the proposed initial IPC is finalized and signed in accordance with subsection (l) of this section, the local authority must:

(1) electronically transmit the proposed initial IPC to DADS and:

(A) keep the original proposed initial IPC in the individual's record; and

(B) ensure the electronically transmitted proposed initial IPC contains information identical to that on the original proposed initial IPC; and

[(2) if the IPC includes a service component that has a service limit described in §9.192(b) of this subchapter (relating to Service Limits) and the service limit is exceeded:]

[(A) submit to DADS a completed Request for an Exception to Service Limit form as required by §9.193(c) of this subchapter (relating to Exception to Service Limits); and]

[(B) keep a copy of the completed form in the applicant's record; and]

(2) [(3)] submit other required enrollment information to DADS.

(o) DADS notifies the applicant or LAR, the selected program provider, the FMSA [CDSA], if applicable, and the local authority of its approval or denial of the applicant's enrollment. When the enrollment is approved, DADS authorizes the applicant's enrollment in the HCS Program through the DADS data system [automated enrollment and billing system] and issues an enrollment letter that includes the effective date of the applicant's enrollment in the HCS Program.

(p) Prior to the applicant's service begin date, the local authority must provide to the selected program provider and FMSA [CDSA], if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed initial IPC, and the applicant's PDP.

(q) The selected program provider must not initiate services until notified of DADS approval of the applicant's enrollment.

(r) The selected program provider must develop an implementation plan for HCS Program services that is based on the individual's PDP and authorized IPC.

(s) The local authority must retain in the applicant's record:

(1) the Verification of Freedom of Choice, Waiver Program form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of a program provider, if applicable;

(3) the Deadline Notification form; and

(4) any other correspondence related to the offer of a program vacancy.

(t) Copies of the following forms and letters referenced in this section are available by contacting the Department of Aging and Disability Services, Provider Services Division, P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030:

(1) Verification of Freedom of Choice, Waiver Program;

(2) Documentation of Provider Choice form; and

(3) Deadline Notification form.

§9.159. IPC.

(a) A local authority [An MRA] must initiate development of a proposed initial IPC for an applicant as required by §9.158(k)(4) of this subchapter (relating to Process for Enrollment of Applicants).

(b) A program provider must initiate development of a proposed renewal and proposed revised IPC for an individual as required by §9.166 of this subchapter (relating to Renewal and Revision of an IPC).

(c) An IPC must be based on the PDP and specify the type and amount of each service component to be provided to an individual, as well as services and supports to be provided by other sources during the IPC year. Each HCS program service in the IPC:

(1) must be necessary to protect the individual's health and welfare in the community;

(2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(3) must be the most appropriate type and amount to meet the individual's needs;

(4) must be cost effective;

(5) must be necessary to enable community integration and maximize independence;

(6) if an adaptive aid or minor home modification, must:

(A) be included on DADS approved list in the *HCS Program Billing Guidelines;* and

(B) be within the service limit described in §9.192 of this subchapter (relating to Service Limits);

(7) if an adaptive aid costing $500 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines;*

(8) if a minor home modification costing $1,000 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines;* and

(9) if dental services, must be within the service limit described in §9.192 of this subchapter.

[(1) The type and amount of each service component in the IPC must be supported by:]

[(A) documentation that other sources for the service component are unavailable and the service component does not replace existing supports, including natural supports or other sources for the service;]

[(B) assessments of the individual that identify specific service components necessary for the individual to live in the community, to ensure the individual's health, safety, and welfare in the community, and to prevent the need for institutional services; and]

[(C) documentation of deliberations and conclusions of the service planning team that the service components are based on the desired outcomes in the PDP and are necessary for the individual to live in the community, to ensure the individual's health, safety, and welfare in the community, and to prevent the need for institutional services.]

[(2) If the IPC includes a service component that has a service limit described in §9.192(b) of this subchapter (relating to Service Limits) and the service limit is exceeded, the MRA or program provider, as appropriate, must request an exception to the service limit in accordance with §9.193(c) of this subchapter (relating to Exception to Service Limits).]

(d) With the exception of an HCS program service provided through the CDS option, a [A] program provider must: [provide HCS Program services in accordance with an individual's authorized IPC.]

(1) provide an HCS Program service in accordance with an individual's authorized IPC; and

(2) [(e)] [A program provider must] retain in an individual's record, results and recommendations of individualized assessments that support the individual's current need for each service component included in the IPC.

§9.161. LOC Determination.

(a) A local authority [An MRA] must request an LOC from DADS for an applicant at the time the applicant is enrolled into the HCS Program. The LOC is requested by electronically transmitting a completed ID/RC [MR/RC] Assessment to DADS, indicating the recommended LOC, signed and dated by the service coordinator. The electronically transmitted ID/RC [MR/RC] Assessment must contain information identical to the information on the signed and dated ID/RC [MR/RC] Assessment.

(b) A program provider must request an LOC for an individual from DADS in accordance with this subsection.

(1) Before the expiration of an ID/RC [MR/RC] Assessment, the program provider must electronically transmit to DADS a completed ID/RC [MR/RC] Assessment, indicating the recommended LOC, that is signed and dated by the program provider.

(2) The program provider must ensure the electronically transmitted ID/RC [MR/RC] Assessment contains information that is identical to the information on the signed and dated ID/RC [MR/RC] Assessment.

(3) The program provider must, within three calendar days after transmission, provide the service coordinator with a paper copy of the signed and dated ID/RC [MR/RC] Assessment.

(c) For an LOC requested in accordance with subsection (b) of this section, within seven calendar days after the ID/RC [MR/RC] Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC [MR/RC] Assessment in the DADS data system [CARE] and:

(1) enter the service coordinator's name and date in the DADS data system [CARE];

(2) enter in the DADS data system [CARE] whether the service coordinator agrees or disagrees with the ID/RC [MR/RC] Assessment; and

(3) if the service coordinator disagrees with the ID/RC [MR/RC] Assessment, notify the individual, LAR, DADS, and the program provider of the service coordinator's disagreement in accordance with DADS instructions.

(d) The service coordinator's agreement or disagreement will be considered in DADS [DADS'] review of an ID/RC [MR/RC] Assessment transmitted in accordance with subsection (b) of this section.

(e) For an LOC requested under subsection (a) or (b) of this section, DADS makes an LOC determination in accordance with §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria) and §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria) based on DADS' review of information reported on the applicant's or individual's ID/RC [MR/RC] Assessment.

(f) Information on the ID/RC [MR/RC] Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors. The signed and dated ID/RC [MR/RC] Assessment and documentation supporting the recommended LOC must be maintained in the individual's record.

(g) DADS approves the LOC or sends written notification:

(1) to the applicant or LAR that the applicant is not eligible for HCS Program services and provides the applicant or LAR with an opportunity to request a fair hearing in accordance with §9.169 of this subchapter (relating to Fair Hearing); and

(2) to the local authority [MRA] and program provider that the LOC has been denied.

(h) An LOC determination is valid for 364 calendar days after the LOC effective date determined by DADS.

(i) If the LON of an individual receiving HCS Program services changes from a LON 5, LON 8, LON 6, or LON 9 to a LON 1, DADS notifies the local authority of the change using DADS Form 1597, HCS Level of Care Redetermination Cover Sheet.

(1) The local authority must, within 30 business days after receiving the notification:

(A) assess the individual in-person and complete a new Determination of Intellectual Disability (DID) in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions);

(B) complete the local authority section of DADS Form 1597, HCS Level of Care Redetermination Cover Sheet, and return the form to DADS; and

(C) submit a copy of the results of the new DID and any other pertinent information regarding the reassessment of the individual to DADS.

(2) If the local authority is unable to complete the requirements described in paragraph (1) of this subsection within the 30 business day timeframe, the local authority must notify DADS of the reasons for the delay.

(3) DADS reviews the information submitted by the local authority regarding the redetermination and notifies the local authority and the HCS program provider of the review decision using DADS Form 1597, HCS Level of Care Redetermination Cover Sheet.

§9.166. Renewal and Revision of an IPC.

(a) Renewal of the IPC. At least annually and before the expiration of an individual's IPC, the individual's IPC must be renewed in accordance with this subsection and with DADS instructions.

(1) At least 60 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator must notify the service planning team that the individual's PDP must be reviewed and updated.

(2) Upon notification in accordance with paragraph (1) of this subsection, the service planning team must review and update the individual's PDP. The service coordinator must send a copy of the updated PDP to the program provider within 10 calendar days after the PDP is updated.

(3) The program provider must ensure that a meeting between the service planning team and the program provider occurs at least 30 but no more than 60 calendar days before the expiration of the individual's IPC to review the PDP and develop the proposed renewal IPC in accordance with §9.159(c) of this subchapter (relating to IPC), including completion of the CDS option portion of the proposed renewal IPC, if applicable, and the non-HCS Program services.

(4) The program provider must, before the effective date of the proposed renewal IPC, develop an implementation plan for HCS Program services that is based on the individual's PDP and proposed renewal IPC.

(5) Within seven calendar days after development of the proposed renewal IPC as required by paragraph (3) of this subsection, the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(6) Within seven calendar days after the program provider electronically transmits the proposed renewal IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(7) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and authorized renewal IPC.

(b) Revisions to the IPC. The service coordinator or the program provider may determine whether an individual's IPC needs to be revised to add a new HCS Program service or change the amount of an existing service.

(1) The service coordinator must notify the program provider if the service coordinator determines that the IPC needs to be revised.

(2) The program provider must notify the service coordinator if the program provider determines that the IPC needs to be revised.

(3) Within 14 calendar days after the notification required by paragraph (1) or (2) of this subsection:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate, and if the PDP is not revised, the service coordinator must document the reasons for the proposed IPC revision;

(C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(4) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(5) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(c) Revision of IPC before delivery of services. Except as provided by subsection (d) of this section, if an individual's service planning team and program provider determine that the IPC must be revised to add a new HCS Program service or change the amount of an existing service, the program provider must revise the IPC in accordance with subsection (b) of this section before the delivery of a new or increased service.

(d) Emergency provision of services and revision of the IPC.

(1) If an emergency necessitates the provision of an HCS Program service to ensure the individual's health and safety and the service is not on the IPC or exceeds the amount on the IPC, the program provider may provide the service before revising the IPC. The program provider must, within one business day after providing the service:

(A) document:

(i) the circumstances that necessitated providing the new HCS Program service or the increase in the amount of the existing HCS Program service; and

(ii) the type and amount of the service provided;

(B) notify the service coordinator of the emergency provision of the service and that the IPC must be revised; and

(C) upon request, provide a copy of the documentation required by subparagraph (A) of this paragraph to the service coordinator.

(2) Within seven calendar days after providing the service:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate;

(C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(3) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(4) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(e) Submitting a proposed renewal and revised IPC to DADS. A proposed renewal or revised IPC must be submitted to DADS for authorization in accordance with this subsection.

(1) The program provider must:

(A) sign and date the proposed renewal or revised IPC demonstrating agreement that the service components will be provided to the individual; and

(B) ensure that a proposed renewal or revised IPC is signed and dated by the individual or LAR.

(2) The program provider must:

(A) electronically transmit a proposed renewal or revised IPC to DADS;

(B) keep the original proposed renewal or revised IPC in the individual's record and, within three calendar days after electronic transmission, ensure the service coordinator receives a paper copy of the signed proposed renewal or revised IPC; and

(C) ensure the electronically transmitted proposed renewal or revised IPC contains information identical to that on the original proposed renewal or revised IPC.[~~; and~~]

~~[(D) if the IPC includes a service component that has a service limit described in §9.192(b) of this subchapter (relating to Service Limits) and the service limit is exceeded:]~~

~~[*(i)* submit to DADS a completed Request for an Exception to Service Limit as required by §9.193(c) of this subchapter (relating to Exception to Service Limits); and]~~

~~[*(ii)* keep a copy of the completed form in the individual's record.]~~

(3) The service coordinator must review the electronically transmitted proposed renewal or revised IPC and:

(A) enter the service coordinator's name and date in the DADS data system [~~CARE~~];

(B) enter in the DADS data system [~~CARE~~] whether the service coordinator agrees or disagrees that the requirements described in §9.159(c) of this subchapter [~~(relating to IPC)~~] have been met; and

(C) if the service coordinator disagrees that the requirements described in §9.159(c) of this subchapter have been met, notify the individual or LAR, the program provider, and DADS of the service coordinator's disagreement in accordance with DADS instructions.

§9.168. CDS Option.

(a) If [~~the~~] supported home living, [~~service component or the~~] respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy [~~service component~~] is included in an applicant's PDP, the local authority [~~MRA~~] must:

(1) inform the applicant or LAR of the applicant's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in the CDS Option);

(2) inform the applicant or LAR that the applicant or LAR may choose to have supported home living, [~~or~~] respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy [~~or both,~~] provided through the CDS option;

(3) provide the applicant or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including a description of FMS [~~financial management services~~] and support consultation;

(4) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms to the applicant or LAR; and

(5) provide the applicant or LAR the opportunity to choose to participate in the CDS option and document the applicant's or LAR's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(b) If an applicant or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding all FMSAs [~~CDSAs~~] providing services in the local authority's [~~MRA's~~] local service area;

(2) document the applicant's or LAR's choice of FMSA [~~CDSA~~] on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service component provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup [~~back-up~~] plan, if a backup [~~back-up~~] plan is required by Chapter 41 of this title (relating to Consumer Directed Services Option).

(c) For an individual who is receiving supported home living, [~~or~~] respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy, the service coordinator must, at least annually:

(1) inform the individual or LAR of the individual's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title [~~(relating to Suspension of Participation in CDS)~~];

(2) provide the individual or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including FMS [~~financial management services~~] and support consultation;

(3) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities and Employee Qualification Requirements forms to the individual or LAR; and

(4) provide the individual or LAR the opportunity to choose to participate in the CDS option and document the individual's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(d) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs [~~CDSAs~~] providing services in the local authority's [~~MRA~~'s] local service area;

(2) document the individual's or LAR's choice of FMSA [~~CDSA~~] on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service component provided through the CDS option;

(4) document, in the individual's PDP, a description of the individual's service backup [~~back-up~~] plan, if a backup [~~back-up~~] plan is required by Chapter 41 of this title; and

(5) notify the program provider of the individual's or LAR's decision to participate in the CDS option.

(e) The service coordinator must document in the individual's PDP that the information described in subsections (c) and (d)(1) of this section was provided to the individual or LAR.

(f) For an individual participating in the CDS option, the service coordinator must recommend that DADS terminate the individual's participation in the CDS option (that is, terminate FMS [~~financial management services~~] and support consultation) if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health or safety; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B[~~,~~] of this title (relating to Responsibilities of Employers and Designated Representatives).

(g) If the service coordinator makes a recommendation in accordance with subsection (f) of this section, the service coordinator must:

(1) document:

(A) a description of the service recommended for termination;

(B) the reasons why termination is recommended;

(C) a description of the attempts to resolve the issues before recommending termination;

(2) obtain other supporting documentation, as appropriate; and

(3) notify the program provider that the IPC needs to be revised.

(h) Within seven calendar days after notification in accordance with subsection (g)(3) of this section:

(1) the service coordinator and the program provider must comply with the requirements described in §9.166(d)(2)(A) - (D) of this subchapter (relating to Renewal and Revision of an IPC); and

(2) the service coordinator must send the documentation described in subsection (g)(1) of this section to DADS.

§9.169. Fair Hearing.

(a) An applicant whose request for eligibility for the HCS Program is denied or is not acted upon with reasonable promptness, or an individual whose services have been terminated, suspended, denied, or reduced by DADS receives notice of the right to request [~~is entitled to~~] a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) Only a service coordinator may request that DADS terminate an individual's HCS Program services.

§9.170. Reimbursement.

[~~(a)~~] Program provider reimbursement.

(1) DADS pays the program provider for service components as described in this section. [~~follows:~~]

(A) Supported home living, professional [~~specialized~~] therapies, nursing, respite, employment assistance, and supported employment are paid for in accordance with the reimbursement rate for the specific service component.

(B) Host home/companion [~~Foster/companion~~] care, residential support, supervised living, and day habilitation are paid for in accordance with the individual's LON and the reimbursement rate for the specific service component.

(C) Adaptive aids, minor home modifications, and dental treatment are paid for based on the actual cost of the item and, if requested, a requisition fee in accordance with the *HCS Program Billing Guidelines,* which are available at www.dads.state.tx.us.

[~~(2) The program provider must accept DADS payment for a service component as payment in full for the service component.~~]

[~~(3) If the program provider disagrees with the enrollment date of an individual as determined by DADS, the program provider must notify DADS in writing of its disagreement, including the reasons for the disagreement, within 180 calendar days after the end of the month in which the program provider receives the enrollment letter. DADS reviews the information submitted by the program provider and notifies the program provider of its determination regarding the individual's enrollment date.~~]

[~~(4) To be paid for the provision of a service component other than an adaptive aid, a minor home modification, or dental treatment, a program provider must submit a service claim for the service component that meets the requirements in the *HCS Program Billing Guidelines* to the state Medicaid claims administrator no later than 12 months after the last day of the month in which the service component was provided.~~]

[~~(5) To be paid for the provision of an adaptive aid, a minor home modification, or dental treatment, a program provider must submit a service claim for the service component that meets the requirements in the *HCS Program Billing Guidelines* to the state Medicaid claims administrator no later than 12 months after the last day of the month in which:~~]

[~~(A) the individual received the adaptive aid or dental treatment; or~~]

[~~(B) the minor home modification was completed.~~]

(2) [~~(6)~~] If an individual's HCS Program services are suspended or terminated the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

(A) day habilitation;

(B) supported home living;

(C) respite;

(D) employment assistance;

(E) supported employment;

(F) professional therapies; and

(G) nursing.

[~~(A) the program provider may submit a claim for day habilitation, supported home living, respite, supported employment, specialized therapies, and nursing for the day of the individual's suspension or termination; and~~]

[~~(B) the program provider must not submit a claim for foster/companion care, residential support, or supervised living for the day of the individual's suspension or termination.~~]

[~~(7) If the program provider submits a claim for an adaptive aid or dental treatment, the program provider must submit documentation that sources of payment other than the HCS Program for which the individual may be eligible, including Medicare, Medicaid (such as Texas Health Steps and Home Health), DARS, the public school system, and private insurance, denied the submitted claim. Such documentation includes evidence that a proper, complete, and timely request for payment was made to the other payment source and that payment was not made.~~]

(3) [~~(8)~~] If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines* and other documentation as required by the *HCS Program Billing Guidelines* [~~program provider must submit an individualized assessment conducted by a professional qualified to assess whether the aid or modification is necessary and appropriate to address the individual's specific needs~~].

(4) [~~(9)~~] DADS does not pay the program provider for a service component or recoups any payments made to the program provider for a service component if:

(A) the individual receiving the service component is, at the time the service component was provided, ineligible for the HCS program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) the service component is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(C) the service component is not included on the signed, dated, and authorized IPC of the individual in effect at the time the service component was provided, except as permitted by §9.166(d) of this subchapter (relating to Renewal and Revision of an IPC);

(D) the service component provided does not meet the service definition or is not provided in accordance with the *HCS Program Billing Guidelines;*

(E) the program provider provides the supervised living or residential support service component in a residence in which four individuals or other person receiving similar services live without DADS approval as required in §9.188 of this subchapter (relating to DADS Approval of Residences);

(F) the service component is not documented in accordance with the *HCS Program Billing Guidelines;*

(G) the claim for the service component does not meet the requirements in §49.311 of this title (relating to Claims Payment) or [~~is not prepared and submitted in accordance with~~] the *HCS Program Billing Guidelines;*

(H) the program provider does not have the documentation described in [~~an individualized assessment as required by~~] paragraph (3) [~~(8)~~] of this section [~~subsection~~] is not submitted by the program provider;

(I) DADS determines that the service component would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service component;

(J) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(K) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(L) [~~(J)~~] the service component is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(M) [~~(K)~~] the service component is provided during a period of time for which the individual did not have an LOC determination;

(N) [~~(L)~~] the service component is provided by a service provider who does not meet the qualifications to provide the service component as delineated in the *HCS Program Billing Guidelines;*

(O) [~~(M)~~] the service component is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c) [~~§9.159(c)(1)~~] of this subchapter (relating to IPC);

(P) [~~(N)~~] the service component is not provided in accordance with the individual's PDP or implementation plan;

(Q) [~~(O)~~] the service component of host home/companion [~~foster/companion~~] care, residential support, or supervised living is provided on the day of the individual's suspension or termination of HCS Program services;

(R) [~~(P)~~] the service component is provided before the individual's enrollment date into the HCS Program; or

(S) [~~(Q)~~] the service component was paid at an incorrect LON because the ID/RC Assessment electronically transmitted to DADS does not contain information identical to information on the signed and dated ID/RC Assessment.

[~~(10) The program provider must keep any records necessary to disclose the extent of the service components provided by the program provider and, on request, provide DADS any such records and any information regarding claims filed by the program provider.~~]

(5) [~~(11)~~] The program provider must refund to DADS any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(6) [~~(12)~~] DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *HCS Program Billing Guidelines.* DADS conducts such reviews in

accordance with the Billing and Payment Review Protocol set forth in the *HCS Program Billing Guidelines.* As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(7) [(13)] A corrective action plan required by DADS in accordance with paragraph (6)(B) [(12)(B)] of this section [subsection] must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(8) [(14)] Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(9) [(15)] If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (6)(B) [(12)(B)] of this section [subsection] and the program provider requests an administrative hearing for the recoupment in accordance with §9.186 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(10) [(16)] If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (7) [(13)] of this section [subsection], DADS may impose a vendor hold on payments due to the program provider under the contract [program provider agreement] until the program provider takes the corrective action.

(11) [(17)] If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (10) [(16)] of this section [subsection], DADS may terminate the contract [program provider agreement].

[(b) CDSA reimbursement. For an individual participating in CDS, DADS pays the CDSA for the following service components in accordance with the reimbursement rate established by HHSC:]

[(1) financial management services;]

[(2) support consultation, if requested by the individual or LAR;]

[(3) supported home living, if the individual or LAR chooses it to be provided through CDS; and]

[(4) respite, if the individual or LAR chooses it to be provided through CDS.]

§9.171. DADS Review of a Program Provider [Certification Review] and Residential Visit.

(a) The program provider must be in continuous compliance with the HCS Program certification principles contained in §§9.172 - 9.174 and §§9.177 - 9.180 [9.177 - 9.179] of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; [and] Certification Principles: Restraint; and Certification Principles: Prohibitions).

(b) DADS conducts on-site certification reviews of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on a review, DADS takes action as described in §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action [Certification Processes]).

(c) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive HCS Program services from the provider under the provisional contract. [Following the initial on-site certification review by DADS conducted in accordance with Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers), DADS conducts an on-site certification review at least annually.]

(d) If DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for [DADS certifies a program provider for a period of] no more than 365 calendar days [after completion of an initial or annual certification review conducted in accordance with §9.185 (relating to Certification Processes)].

(e) DADS may conduct [announced or unannounced] reviews of the program provider at any time.

(f) During any review, [including a follow-up review or a review in which corrective action from a previous review is being evaluated,] DADS may review the HCS Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the exit conference gives [to inform] the program provider a written preliminary review report [of DADS' findings, determination, any proposed actions, and any actions required of the program provider].

(h) If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary review report, the program provider must submit a completed DADS form 3610 "Informal Review Request" to DADS, as instructed on the form.

(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(3) If DADS receives a timely request for an informal review, DADS:

(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and

(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(j) [~~(h)~~] In addition to the on-site certification reviews described in subsection (b) of this section, DADS conducts, at least annually, unannounced visits of each residence in which host home/companion [~~foster/companion~~] care, residential support, or supervised living is provided to verify that the residence provides an environment that complies with DADS *Waiver Survey and Certification Residential Checklist,* which is found at www.dads.state.tx.us.

(k) [~~(i)~~] Based on the information obtained from a visit described in subsection (j) [~~(h)~~] of this section, DADS may:

(1) require the program provider to complete corrective action before the residential visit ends;

(2) [~~(1)~~] require the program provider to submit evidence of corrective action within 14 calendar days after the date of the residential visit; or

(3) [~~(2)~~] conduct a review of the program provider in accordance with this section.

§9.174. Certification Principles: Service Delivery.

(a) The program provider must:

(1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system [~~CARE~~];

(2) serve an eligible applicant without regard to age, sex, race, or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services;

(4) ensure that each applicant or individual, or LAR on behalf of the applicant or individual, has chosen where the individual or applicant is to reside from available options consistent with the individual's needs;

(5) encourage involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request from and encourage the parent or LAR of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(7) inform the parent or LAR that if the information described in paragraph (6) of this subsection is not provided or is not accurate and the service coordinator and DADS are unable to locate the parent or LAR as described in §9.190(e)(35) of this subchapter (relating to Local Authority Requirements for Providing Service Coordination in the HCS Program) and §9.189 of this subchapter (relating to Referral to DFPS), DADS refers the case to DFPS;

(8) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

(B) take the following actions to assist a local authority in conducting permanency planning:

(i) cooperate with the local authority responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's local authority, activities, supports, and services that can be provided by the family, LAR, program provider, or the local authority to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that the IPC for each individual is renewed, revised, and authorized by DADS in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC) and §9.160 of this subchapter (relating to DADS' Review of a Proposed IPC);

(13) ensure that HCS Program services identified in the individual's implementation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than which services are available;

(14) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

(17) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

(A) accurate recordings of individual production or performance;

(B) valid and current time studies or monitoring as appropriate; and

(C) prevailing wage rates;

(18) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) ensure that, for an individual receiving host home/companion [~~foster/companion~~] care, residential support, or supervised living:

(A) the individual lives in a home that is a typical residence within the community;

(B) the residence, neighborhood, and community meet the needs and choices of the individual and provide an environment that ensures the health, safety, comfort, and welfare of the individual;

(C) unless contraindications are documented with justification by the service planning team, the individual lives near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(D) the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

(E) unless contraindications are documented with justification by the service planning team, the individual has a door lock on the inside of the individual's bedroom door, if requested by the individual or LAR; and

(F) the door lock installed in accordance with subparagraph (E) of this paragraph:

(i) is a single-action lock;

(ii) can be unlocked with a key from the outside of the door by the program provider; and

(iii) is not purchased and installed at the individual's or LAR's expense;

(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

(25) together with an individual's service coordinator, ensure the coordination and compatibility of HCS Program services with non-HCS Program services;

(26) ensure that an individual has a current implementation plan;

(27) ensure that:

(A) the following professional therapy services are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us:

(i) audiology services;

(ii) speech/language pathology services;

(iii) occupational therapy services;

(iv) physical therapy services;

(v) dietary services;

(vi) social work services;

(vii) behavioral support; and

(viii) cognitive rehabilitation therapy; and

(B) if the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider:

(i) in coordination with the service coordinator, assists the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and

(ii) has a qualified professional as described in §9.177(q) [~~§9.177(s)~~] of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements) provide and monitor the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care described in clause (i) of this subparagraph [~~subparagraph (B)(i) of this paragraph~~];

(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any professional therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities that promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; [~~and~~]

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations or additions, including repair and maintenance;

(31) ensure that nursing is provided in accordance with the individual's PDP; IPC; implementation plan; Texas Occupations Code, Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and consists of performing health care activities and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN [~~a licensed nurse~~]; and

(G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual:

(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through the CDS option, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider; and

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:
(-a-) an oral medication;
(-b-) a topical medication; or
(-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:
(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition;[~~.~~]

(32) ensure that supported home living is available to an individual living in his or her own home or the home of his or her natural or adoptive family members, or to an individual receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(34) ensure that HCS host home/companion [~~foster/companion~~] care is provided:

(A) by a host home/companion [~~foster/companion~~] care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(35) ensure that host home/companion [~~foster/companion~~] care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(36) ensure that supervised living is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) or a three-person residence;

(B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

(C) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(37) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(38) ensure that residential support is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter or a three-person residence;

(B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;

(C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and

(D) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(39) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(40) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

(A) the individual's medical condition;

(B) a behavior displayed by the individual that poses a danger to the individual or to others; or

(C) the individual's need for assistance with activities of daily living during normal sleeping hours;

(41) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

(42) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and includes:

(A) training in self-help and independent living skills;

(B) provision of room and board when respite is provided in a setting other than the individual's normal residence;

(C) support for individuals who are eligible for respite and who are in need of emergency or planned short-term care when the caregiver is temporarily unavailable to provide supports due to non-routine circumstances;

(D) assistance with ongoing provision of needed waiver services, excluding supported home living; and

(E) assistance with securing and providing transportation;

(43) provide respite in the residence of an individual or in other locations, including residences in which host home/companion [~~foster/companion~~] care, supervised living, or residential support is provided or in a respite facility or camp, that meet HCS Program requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual.

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.

(B) If respite is provided in the residence of another individual, the program provider must ensure that:

(i) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which host home/companion [~~foster/companion~~] care is provided;

(ii) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the program provider must:

(i) ensure that the facility is not a residence;

(ii) ensure that no more than six individuals receive services in the facility at any one time; and

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time.

(D) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(E) [~~(D)~~] The program provider must not provide respite in an institution such as an ICF/IID, skilled nursing facility, or hospital;

(44) ensure that employment assistance:

(A) is assistance provided to an individual to help the individual locate paid employment in the community;

(B) consists of a service provider performing the following activities:

(i) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(iii) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(iv) transporting an individual to help the individual locate paid employment in the community; and

(v) participating in service planning team meetings;

(C) is provided in accordance with an individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(D) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or supported employment is provided; and

(E) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) for supervision, training, support and adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying an individual:

(I) as an incentive to participate in employment assistance activities; or

(II) for expenses associated with the start-up costs or operating expenses of the individual's business;

(45) [~~(44)~~] ensure that supported employment [~~(employment in an integrated work setting--generally a setting where no more than one employee or 3% of the work force members have disabilities) is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us that is not the individual's residence and includes~~]:

(A) is assistance provided to an individual:

(i) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;

(ii) in order for the individual to sustain paid employment; and

(iii) in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(B) consists of a service provider performing the following activities:

(i) employment adaptations, supervision, and training related to an individual's disability;

(ii) transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(iii) participating in service planning team meetings;

(C) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or employment assistance is provided; and

(D) does not include:

(i) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(ii) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

(I) paying an employer:

(-a-) to encourage the employer to hire an individual; or

(-b-) for supervision, training, support and adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(II) paying an individual:

(-a-) as an incentive to participate in supported employment activities; or

(-b-) for expenses associated with the start-up costs or operating expenses of the individual's business;

[~~(A) ongoing individualized support services needed to sustain paid work by the individual, including supervision and training;~~]

[~~(B) compensation by the employer to the individual in accordance with the Fair Labor Standards Act; and~~]

[~~(C) provision of services not available or funded through the state education agency or a state rehabilitation agency;~~]

(46) [~~(45)~~] inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(47) [~~(46)~~] maintain a system of delivering HCS Program services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(48) [~~(47)~~] ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(49) [~~(48)~~] maintain current information in the DADS data system [~~CARE~~] about the individual and the individual's LAR, including:

(A) the individual's full name, address, location code, and phone number; and

(B) the LAR's full name, address, and phone number;

(50) [~~(49)~~] maintain a single record related to HCS Program services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP;

(C) the implementation plan;

(D) a behavior support plan, if one has been developed;

(E) documentation that describes the individual's progress or lack of progress on the implementation plan;

(F) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(G) the ID/RC Assessment;

(H) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(I) results and recommendations from individualized assessments;

(J) documentation concerning any use of restraint as described in §9.179(c)(2) and (3) of this subchapter (relating to Certification Principles: Restraint);

(K) documentation related to the individual's suspension from HCS Program services; and

(L) for an individual under 22 years of age, a copy of the permanency plan;

(51) [~~(50)~~] upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (50) [~~(49)~~] of this subsection; and

(B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

(52) [~~(51)~~] provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC Assessment;

(53) [~~(52)~~] notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or an individual or LAR has requested termination of all HCS Program services; [~~and~~]

(54) [~~(53)~~] if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual; and[~~.~~]

(55) for an HCS Program service identified on the PDP as critical to meeting the individual's health and safety:

(A) develop a service backup plan that:

(i) contains the name of the critical service;

(ii) specifies the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and

(iii) in the event of a service interruption resulting in an adverse effect as described in clause (ii) of this subparagraph, describes the actions the program provider will take to ensure the individual's health and safety;

(B) ensure that:

(i) if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(ii) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

(C) if the service backup plan required by subparagraph (A) of this paragraph is implemented:

(i) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(ii) document whether or not the plan was effective; and

(iii) revise the plan if the program provider determines the plan was ineffective.

(b) A program provider may suspend HCS Program services because an individual is temporarily admitted to a setting described in §9.155(d) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(1) If a program provider suspends HCS Program services, the program provider must:

(A) notify DADS of the suspension by entering data in the DADS data system [~~CARE~~] in accordance with DADS instructions; and

(B) notify the service coordinator of the suspension within one business day after services are suspended.

(2) A program provider may not suspend HCS Program services for more than 270 calendar days without approval from DADS as described in §9.190(e)(20)(C) of this subchapter.

(c) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(d) If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide host home/companion [~~foster/companion~~] care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(e) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (c) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(A) [§9.190(e)(21)(C)] of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

§9.177. Certification Principles: Staff Member and Service Provider Requirements.

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, the program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) provides the service at or below the direct services portion of the applicable HCS Program rate; and

(C) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter.

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) The requirement in paragraph (1)(B) of this subsection does not prohibit the program provider and the person or entity from agreeing to payment for the service in an amount that is more than the direct services portion of the applicable HCS Program rate.

(c) The program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(d) The program provider must conduct [implement and maintain a plan for] initial and periodic training [of staff members and service providers] that ensures [staff members and service providers]:

(1) staff members and service providers are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and

(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

[(2) are knowledgeable of:]

[(A) acts that constitute abuse, neglect, or exploitation of an individual, as defined in Chapter 711, Subchapter A, of this title (relating to Introduction);]

[(B) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts, to DFPS in accordance with §9.178(j) of this subchapter (relating to Certification Principles: Quality Assurance); and]

[(C) methods to prevent the occurrence of abuse, neglect, and exploitation.]

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including:

(A) unauthorized disclosure of information related to an individual's finances; and

(B) the purchase of goods that an individual cannot use with the individual's funds;

(3) abuse, neglect, or exploitation of an individual;

(4) damage to or prevention of an individual's access to the individual's possessions; and

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(g) The program provider must employ or contract with a person who oversees the provision of HCS program services to an individual. The person must: [has a minimum of three years work experience in planning and providing direct services to people with an intellectual disability or another developmental disability as verified by written professional references to oversee the provision of direct services to individuals.]

(1) have at least three years paid work experience in planning and providing HCS Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to HCS Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard as verified, in writing, by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The [In evaluating the qualifications of a service provider for positions requiring the equivalent of a high school education, the] program provider must ensure that a [the] service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite services [involved] is at least 18 years of age and [either possesses a certificate recognized by a state as the equivalent of a high school diploma or successfully completes a proficiency evaluation of experience and competence to perform the job tasks. The evaluation of experience and competency must include]:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) [(1)] a written competency-based assessment of the [applicant's] ability to document service delivery and observations of the individuals to be served; and

(B) [(2)] at least three personal references from persons not related by blood that indicate the [applicant's] ability to provide a safe, healthy environment for the individuals being served.

(i) The program provider must ensure that each service provider of professional therapies is currently qualified by being licensed by the State of Texas or certified in the specific area for which services are delivered or be providing services in accordance with state law.

(j) The program provider must ensure that a service provider of behavioral support services:

(1) is licensed as a psychologist in accordance with [Chapter 501 of the] Texas Occupations Code, Chapter 501;

(2) is licensed as a psychological associate in accordance with [Chapter 501 of the] Texas Occupations Code, Chapter 501;

(3) has been issued a provisional license to practice psychology in accordance with [Chapter 501 of the] Texas Occupations Code, Chapter 501;

(4) is certified by DADS as described in §5.161 of this title (relating to TDMHMR-Certified Psychologist); [or]

(5) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

(6) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

(7) [(5)] is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.

(k) [(j)] The program provider must ensure that a service provider who provides transportation: [of day habilitation or supported employment is currently qualified by having a high school diploma or its equivalent as described in subsection (h) of this section, that transportation is provided in accordance with applicable state laws, and that tasks delegated to a service provider by an RN are performed in accordance with state law.]

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) [(k)] The program provider must ensure that dental treatment is provided by a dentist currently qualified by being licensed in the State of Texas by the Texas State Board of Dental Examiners in accordance with Texas Occupations Code, Chapter 256.

(m) [(l)] The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

[(m) The program provider must ensure that a service provider of supported home living, foster/companion care, supervised living, residential support, and respite services is currently qualified by having a high school diploma or its equivalent as described in subsection (h) of this section, that transportation is provided in accordance with applicable state laws, and that tasks delegated to a service provider by an RN are performed in accordance with state law.]

(n) The program provider must comply with §49.304 of this title (relating to Background Checks). [ensure that a service provider:]

[(1) is employable in accordance with Texas Health and Safety Code, §250.006; and]

[(2) is not listed as "unemployable" in the Employee Misconduct Registry or the Nurse Aide Registry maintained by DADS by searching or ensuring a search of such registries is conducted, before hire and annually thereafter, in accordance with Texas Health and Safety Code, §250.003.]

[(o) The program provider must:]

[(1) ensure that at least one of the following service components is provided using only employees, not contractors, of the program provider:]

[(A) supported home living;]

[(B) day habilitation;]

[(C) supported employment;]

[(D) respite;]

[(E) supervised living; or]

[(F) residential support; and]

[(2) notify DADS in accordance with DADS instructions:]

[(A) which service component listed in paragraph (1) of this subsection is provided using only employees of the program provider; and]

[(B) before changing the service component provided using only employees of the program provider.]

(o) [(p)] A program provider must comply with §49.312(a) of this title (relating to Personal Attendants). [pay a service provider of supported home living who is employed by or contracting with the program provider a base wage of at least $7.50 per hour. Effective September 1, 2014, a program provider must pay a service provider of supported home living who is employed by or contracting with the program provider a base wage of at least $7.86 per hour.]

[(q) A program provider required to pay the wages described in subsection (p) of this section must:]

[(1) no later than January 15, 2014, notify a service provider of supported home living who is employed by or contracting with the program provider on January 1, 2014, that the program provider is required to pay the wages described in subsection (p) of this section; and]

[(2) notify a service provider of supported home living who becomes employed by or enters into a contract with the program provider after January 1, 2014, no later than three days after the person accepts the offer of employment or enters into the contract, that the program provider is required to pay the wages described in subsection (p) of this section.]

(p) [~~(r)~~] If the service provider of supported home living is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (o) [~~subsections (p) and (q)~~] of this section as if the contractor were the program provider.

(q) [~~(s)~~] The program provider must ensure that a service provider of cognitive rehabilitation therapy is:

(1) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(3) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(r) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment is at least 18 years of age, is not the individual's LAR, and has:

(1) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(2) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(s) A program provider must ensure that the experience required by subsection (r) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

§9.178. Certification Principles: Quality Assurance.

(a) In the provision of HCS Program services to an individual, the program provider must promote the active and maximum cooperation with generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons.

(b) The program provider must ensure personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability.

(c) Before providing services to an individual in a residence in which host home/companion [~~foster/companion~~] care, supervised living, or residential support is provided, and annually thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate, and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives;

(2) ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection;

(3) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided to ensure that the residence meets the needs of the individual; and

(4) ensure completion of any action identified in the on-site inspection for a residence in which host home/companion [~~foster/companion~~] care will be provided to ensure that the residence meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained in each residence in which host home/companion [~~foster/companion~~] care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location, and the individuals living in the residence;

(3) the individuals and service providers follow the plans during drills and actual emergencies; and

(4) documentation of drills and responses to actual emergencies are maintained in each residence.

(e) A program provider must comply with the requirements in this subsection regarding a four-person residence.

(1) Before providing residential support in a four-person residence, the program provider must:

(A) ensure that the four-person residence meets one of the following:

(i) is certified by:

(I) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the National Fire Protection Association 101: Life Safety Code (Life Safety Code) as determined by the local fire safety authority;

(II) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the International Fire Code (IFC) as determined by the local fire safety authority; or

(III) the Texas State Fire Marshal's Office as being in compliance with the applicable portions of the Life Safety Code as determined by the Texas State Fire Marshal's Office; or

(ii) as described in paragraph (2) of this subsection, is certified by DADS as being in compliance with the portions of the Life Safety Code applicable to small residential board and care facilities and most recently adopted by the Texas State Fire Marshal's Office; and

(B) obtain DADS approval of the residence in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences).

(2) DADS inspects for certification as described in paragraph (1)(A)(ii) of this subsection only if the program provider submits to DADS Architectural Unit:

(A) one of the following:

(i) if the four-person residence is located in a jurisdiction with a local fire safety authority:

(I) a completed DADS Form 5606 available at [~~http://~~]www.dads.state.tx.us documenting that the local fire safety authority having jurisdiction refused to inspect for certification using the code (i.e. the Life Safety Code or IFC) for that jurisdiction; and

(II) written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; or

(ii) if the four-person residence is located in a jurisdiction without a local fire safety authority, written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; and

(B) a completed DADS form "Request for Life Safety Inspection-HCS Four-Person Home" available at [http://]www.dads.state.tx.us.

(3) The program provider must:

(A) obtain the certification required by paragraph (1)(A) of this subsection annually; and

(B) ensure that a four-person residence:

(i) contains a copy of the most recent inspection of the residence by the local fire safety authority, Texas State Fire Marshal's Office, or DADS; and

(ii) is in continuous compliance with all applicable local building codes and ordinances and state and federal laws, rules, and regulations.

(f) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that meets at least quarterly. The committee [, at least annually]:

(1) at least annually, reviews the information provided to the committee by the program provider in accordance with subsection (p)(6) of this section; and

[(1) reviews information provided by the program provider regarding satisfaction of individuals and LARs with the program provider's services as described in subsection (p)(1) of this section;]

[(2) reviews information provided by the program provider regarding complaints about the operations of the program provider as described in subsection (p)(2) of this section;]

[(3) reviews information provided by the program provider regarding incidents of confirmed abuse, neglect, and exploitation and unusual incidents as described in subsection (p)(3) of this section;]

[(4) reviews information provided by the program provider regarding termination of HCS Program services as described in subsection (p)(4) of this section;]

(2) [(5)] based on the information reviewed [as required by this subsection], makes recommendations to the program provider for improvements to the processes and operations of the program provider.[; and]

[(6) reviews information provided by the program provider regarding the data about restraints described in subsection (p)(5) of this section.]

(g) The program provider must make available all records, reports, and other information related to the delivery of HCS Program services as requested by DADS, other authorized agencies, or the Centers for Medicare and Medicaid Services and deliver such items, as requested, to a specified location.

(h) The program provider must conduct, at least annually, a satisfaction survey of individuals and LARs and take action regarding any areas of dissatisfaction.

(i) The program provider must comply with §49.309 of this title (relating to Complaint Process). [publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:]

[(1) individuals, their families, and LARs;]

[(2) staff members, service providers, and CDS service providers;]

[(3) the general public; and]

[(4) the local authority.]

(j) The program provider must [ensure that]:

(1) ensure that the individual and LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; [and]

(2) comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(3) [(2)] ensure that all staff members, [and] service providers, and volunteers:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; [and]

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(C) comply with §49.310(3)(B) of this title.

[(3) all staff members and service providers report suspected abuse, neglect, or exploitation as instructed.]

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, the program provider must take necessary actions to secure the safety of the individual [alleged victim], including:

(1) obtaining immediate and ongoing medical or psychological services for the individual [alleged victim] as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the individual [alleged victim] or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the individual [alleged victim], the individual's [alleged victim's] LAR, and the service coordinator of the allegation report and the actions that have been or will be taken.

(l) Staff members, [and] service providers, and volunteers must cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

[~~(m) In all respite facilities and all residences in which~~ a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:]

[~~(1) the name, address, and telephone number of the program provider;~~]

[~~(2) the effective date of the Waiver Program Provider Agreement; and~~]

[~~(3) the name of the legal entity named on the Waiver Program Provider Agreement.~~]

(m) [~~(n)~~] The program provider must:

(1) promptly, but not later than five calendar days after the program provider's receipt of a DFPS investigation report:

(A) notify the individual, the [~~alleged victim or~~] LAR if applicable, and the service coordinator of:

(i) the investigation finding; and

(ii) the corrective action taken by the program provider in response to the DFPS investigation; and

(B) notify the individual [~~alleged victim~~] or LAR of:

(i) the process to appeal the investigation finding as described in Chapter 711, Subchapter M[~~,~~] of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Disability Rights Texas [~~Advocacy, Incorporated~~]); and

(ii) the process for requesting a copy of the investigative report from the program provider;

(2) report to DADS in accordance with DADS instructions the program provider's response to the DFPS investigation that involves a staff member or service provider within 14 calendar days after the program provider's receipt of the investigation report; and

(3) upon request of the individual [~~alleged victim~~] or LAR, provide to the individual [~~alleged victim~~] or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(n) [~~(o)~~] If abuse, neglect, or exploitation is confirmed by the DFPS investigation, the program provider must take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against or termination of the employment of a staff member confirmed by the DFPS investigation to have committed abuse, neglect, and exploitation.

(o) In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract; and

(3) the name of the legal entity named on the contract.

(p) At least annually, the program provider must:

(1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

(2) review [~~records of~~] complaints, as described in §49.309 [~~subsection (i)~~] of this title, [~~section about the operations of the program provider~~] and identify program process improvements to reduce the filing of complaints;

(3) review incidents of [~~confirmed~~] abuse, neglect, or exploitation[~~; complaints; and unusual incidents;~~] and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery;

(4) review the reasons for terminating HCS Program services to individuals and identify any related need for program process improvements;

(5) evaluate critical incident data described in subsection (y) of this section and compare its use of restraint to [~~and, at a minimum, compare~~] aggregate data provided by DADS at www.dads.state.tx.us [~~with critical incident data concerning use of restraint~~] and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery;

(6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (f) of this section;

(7) implement any program process improvements identified by the program provider in accordance with this subsection; and

(8) review recommendations made by the consumer/advocate advisory committee as described in subsection (f)(2) [~~(f)(5)~~] of this section and implement the recommendations approved by the program provider.

(q) The program provider must ensure that all personal information concerning an individual, such as lists of names, addresses, and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider must comply with this subsection regarding charges against an individual's personal funds.

(1) The program provider must, in accordance with this paragraph, collect a monthly amount for room from an individual who lives in a three-person or four-person residence. The cost for room must consist only of:

(A) an amount equal to:

(i) rent of a comparable dwelling in the same geographical area that is unfurnished; or

(ii) the program provider's ownership expenses, limited to the interest portion of a mortgage payment, depreciation expense, property taxes, neighborhood association fees, and property insurance; and

(B) the cost of:

(i) shared appliances, electronics, and housewares;

(ii) shared furniture;

(iii) monitoring for a security system;

(iv) monitoring for a fire alarm system;

(v) property maintenance, including personnel costs, supplies, lawn maintenance, pest control services, carpet cleaning, septic tank services, and painting;

(vi) utilities, limited to electricity, gas, water, garbage collection, and a landline telephone; and

(vii) shared television and Internet service used by the individuals who live in the residence.

(2) Except as provided in subparagraphs (B) and (C) of this paragraph, a program provider must collect a monthly amount for board from an individual who lives in a three-person or four-person residence.

(A) The cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products.

(B) A program provider is not required to collect a monthly amount for board from an individual if collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC.

(C) A program provider must not collect a monthly amount for board from an individual if the individual chooses to purchase the individual's own food, as documented in the individual's implementation plan.

(3) To determine the maximum room and board charge for each individual, a program provider must:

(A) divide the room cost described in paragraph (1) of this subsection by the number of residents receiving HCS Program services or similar services that the residence has been developed to support plus the number of service providers and other persons who live in the residence;

(B) divide the board cost described in paragraph (2) of this subsection by the number of persons consuming the food; and

(C) add the amounts calculated in accordance with subparagraphs (A) and (B) of this paragraph.

(4) A program provider must not increase the charge for room and board because a resident moves from the residence.

(5) A program provider:

(A) must not charge an individual a room and board amount that exceeds an amount determined in accordance with paragraphs (1) - (3) of this subsection; and

(B) must maintain documentation demonstrating that the room and board charge was determined in accordance with paragraphs (1) - (3) of this subsection.

(6) Before an individual or LAR selects a residence, a program provider must provide the room and board charge, in writing, to the individual or LAR.

(7) Except as provided in paragraph (8) of this subsection, a program provider may not charge or collect payment from any person for room and board provided to an individual receiving host home/companion [~~foster/companion~~] care.

(8) If a program provider makes a payment to an individual's host home/companion [~~foster/companion~~] care provider while waiting for the individual's federal or state benefits to be approved, the program provider may seek reimbursement from the individual for such payments.

(9) A program provider who manages personal funds of an individual who receives host home/companion [~~foster/companion~~] care:

(A) may pay a room and board charge for the individual that is less than the foster/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion [~~foster/companion~~] care provider's home;

(B) must pay the host home/companion [~~foster/companion~~] care provider directly from the individual's account; and

(C) must not pay a host home/companion [~~foster/companion~~] care provider a room and board charge that exceeds the host home/companion [~~foster/companion~~] care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion [~~foster/companion~~] care provider's home.

(10) For an item or service other than room and board, the program provider must apply a consistent method in assessing a charge against the individual's personal funds that ensures that the charge for the item or service is reasonable and comparable to the cost of a similar item or service generally available in the community.

(s) The program provider must ensure that the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed.

(t) The program provider must not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.

(u) At the written request of an individual or LAR, the program provider must manage the individual's personal funds entrusted to the program provider, without charge to the individual or LAR in accordance with this subsection.

(1) The program provider must not commingle the individual's personal funds with the program provider's funds.

(2) The program provider must maintain a separate, detailed record of:

(A) all deposits into the individual's account; and

(B) all expenditures from the individual's account that includes:

(i) the amount of the expenditure;

(ii) the date of the expenditure;

(iii) the person to whom the expenditure was made;

(iv) except as described in clause (vi) of this subparagraph, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for;

(v) if the statement described in clause (iv) of this subparagraph documents an expenditure for more than one individual, the amount allocated to each individual identified on the statement; and

(vi) if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received.

(3) The program provider may accrue an expense for necessary items and services for which the individual's personal funds are not available for payment, such as room and board, medical and dental services, legal fees or fines, and essential clothing.

(4) If an expense is accrued as described in paragraph (3) of this subsection, the program provider must enter into a written payment plan with the individual or LAR for reimbursement of the funds.

(v) If the program provider determines that an individual's behavior may require the implementation of behavior management techniques involving intrusive interventions or restriction of the individual's rights, the program provider must comply with this subsection.

(1) The program provider must:

(A) obtain an assessment of the individual's needs and current level and severity of the behavior; and

(B) ensure that a service provider of behavioral support services:

(i) develops, with input from the individual, LAR, program provider, and actively involved persons, a behavior support plan that includes the use of techniques appropriate to the level and severity of the behavior; and

(ii) considers the effects of the techniques on the individual's physical and psychological well-being in developing the plan.

(2) The behavior support plan must:

(A) describe how the behavioral data concerning the behavior is collected and monitored;

(B) allow for the decrease in the use of the techniques based on the behavioral data; and

(C) allow for revision of the plan when desired behavior is not displayed or the techniques are not effective.

(3) Before implementation of the behavior support plan, the program provider must:

(A) obtain written consent from the individual or LAR to implement the plan;

(B) provide written notification to the individual or LAR of the right to discontinue implementation of the plan at any time; and

(C) notify the individual's service coordinator of the plan.

(4) The program provider must, at least annually:

(A) review the effectiveness of the techniques and determine whether the behavior support plan needs to be continued; and

(B) notify the service coordinator if the plan needs to be continued.

(w) The program provider must report the death of an individual to DADS and the service coordinator by the end of the next business day following the death or the program provider's learning of the death and, if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(x) A program provider must not discharge or otherwise retaliate against:

(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual; or

(2) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual.

(y) A program provider must enter critical incident data in the DADS data system [~~CARE~~] no later than 30 calendar days after the last day of the month being reported in accordance with the HCS Provider User Guide.

(z) The program provider must ensure that:

(1) the name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (k) - (n) of this section.

§9.180. Certification Principles: Prohibitions.

A program provider must not use seclusion.

§9.185. Program Provider Compliance and Corrective Action.

(a) DADS takes action against a program provider as a result of a review as described in this section.

(b) If DADS determines after a certification review described in §9.171(b) of this subchapter (relating to DADS Review of a Program Provider and Residential Visit), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.171(d) of this subchapter and no action by the program provider is required.

(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.171(c) of this subchapter, that:

(1) at the time of the certification review, the program provider is not providing HCS Program services to any individuals; and

(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide HCS Program services for at least 60 consecutive calendar days.

(d) Except as provided in subsections (j) - (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious or pervasive nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be com-

pleted and such date must be no later than 90 calendar days after the date of the review exit conference.

(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:

(1) DADS certifies the program provider; and

(2) the program provider must complete corrective action in accordance with the corrective action plan.

(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS does not approve the plan, DADS:

(1) imposes a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or

(2) denies or terminates certification of the program provider.

(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.

(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious or pervasive nature, DADS:

(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and

(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the local authorities the immediate provision of alternative services for the individuals.

(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS:

(1) imposes a vendor hold against the program provider; or

(2) denies or terminates certification of the program provider.

(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:

(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;

(2) imposes or continues a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(m) If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.

(n) If DADS determines that a program provider is out of compliance with §9.177(o) or (p) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of supported home living who was not paid the wages required by §9.177(o) of this subchapter, the difference between the amount required and the amount paid to the service provider.

§9.187. Other Program Provider Responsibilities.

A program provider must comply with [~~requirements of the Omnibus Budget Reconciliation Act of 1990,~~ 42] United States Code, Title 42, §1396a(w) [~~§139a(w)(1)~~], regarding requirements about advance [~~advanced~~] directives [~~under state plans for medical assistance~~].

§9.190. Local Authority Requirements for Providing Service Coordination in the HCS Program.

(a) In addition to the requirements described in Chapter 2, Subchapter L[~~,~~] of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a local authority must, in the provision of service coordination in the HCS Program, ensure compliance with the requirements in this subchapter.

(b) The local authority must employ service coordinators who:

(1) meet the minimum qualifications and local authority staff training requirements specified in Chapter 2, Subchapter L of this title; and

(2) have received training about the HCS Program, including the requirements of this subchapter and the HCS Program service components as specified in §9.154 of this subchapter (relating to Description of the HCS [~~Home and Community-based Services (HCS)~~] Program).

(c) A local authority must have a process for receiving and resolving complaints from a program provider related to the local authority's provision of service coordination or the local authority's process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the local authority must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The local authority may refer an unresolved concern to DADS Consumer Rights and Services.

(e) A service coordinator must:

(1) assist an individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) provide an applicant or individual, LAR, or family member with a written copy of the rights of the individual as described in §9.173(b) of this subchapter (relating to Certification Principles: Rights of Individuals) and the booklet titled *Your Rights In a Home and Community-Based Services Program* (which is found at www.dads.state.tx.us.) and an oral explanation of such rights:

(A) upon enrollment in the HCS program;

(B) upon revision of the booklet;

(C) upon request; and

(D) upon change in an individual's legal status (that is when the individual turns 18 years of age, is appointed a guardian, or loses a guardian);

(3) document the provision of the rights described in §9.173(b) of this subchapter and the booklet and oral explanation required by paragraph (2) of this subsection and ensure that the documentation is signed by:

(A) the individual or LAR; and

(B) the service coordinator;

(4) ensure that, at the time an applicant is enrolled, the applicant or LAR is informed orally and in writing of the following processes for filing complaints:

(A) processes for filing complaints with the local authority about the provision of service coordination; and

(B) processes for filing complaints about the provision of HCS Program services including:

(i) the telephone number of the local authority to file a complaint;

(ii) the toll-free telephone number of DADS to file a complaint; and

(iii) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP;

(C) a copy of the ID/RC Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate person-directed planning;

(7) develop for an individual a full range of services and resources using generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons to meet the needs of the individual as those needs are identified;

(8) ensure that the PDP for an applicant or individual [~~is developed, reviewed, and updated in accordance with~~]:

(A) is developed, reviewed, and updated in accordance with:

(i) [~~(A)~~] §9.158(k)(3) of this subchapter (relating to Process for Enrollment of Applicants);

(ii) [~~(B)~~] §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(iii) [~~(C)~~] §2.556 of this title (relating to MRA's Responsibilities);

(B) states, for each HCS program service, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) participate in the development, renewal, and revision of an individual's IPC in accordance with §9.158 [~~of this subchapter~~] and §9.166 of this subchapter;

(10) ensure that the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §9.166 of this subchapter and ensure that the service planning team completes other responsibilities and activities as described in this subchapter;

(11) notify the service planning team of the information conveyed to the service coordinator pursuant to §9.178(v)(3)(C) and (4)(B) of this subchapter (relating to Certification Principle: Quality Assurance);

(12) if a change to an individual's PDP is needed, other than as required by §9.166 of this subchapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons; and

(B) revise the PDP as necessary;

(13) provide an individual's program provider a copy of the individual's current PDP;

(14) monitor the delivery of HCS Program and non-HCS Program services to an individual;

(15) document whether an individual progresses toward desired outcomes identified on the individual's PDP;

(16) together with the program provider, ensure the coordination and compatibility of HCS Program services with non-HCS Program services;

(17) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(18) for an individual who has not had a guardian appointed, make a referral of guardianship to a court, if appropriate;

(19) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(20) if informed by the program provider that an individual's HCS Program services have been suspended:

(A) request the program provider enter necessary information in the DADS data system [~~CARE~~] to inform DADS of the suspension;

(B) review the individual's status and document in the individual's record the reasons for continuing the suspension, at least every 90 calendar days after the effective date of the suspension; and

(C) to continue suspension of the services for more than 270 calendar days, submit to DADS written documentation of each review made in accordance with subparagraph (B) of this paragraph and a request for approval by DADS to continue the suspension;

(21) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.174(e) of this title (relating to Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) host home/companion [~~foster companion~~] care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation, if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(22) notify the program provider if the service coordinator becomes aware that an individual has been admitted to a setting described in §9.155(d) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services);

(23) if the service coordinator determines that HCS Program services provided to an individual should be terminated, including for a reason described in §9.158(l)(11) of this subchapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated;

(ii) the attempts by the service coordinator to resolve the situation; and

(B) send a written request to terminate the individual's HCS Program services to DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written request and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services, the service coordinator must, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services; and

(iii) possible service resources upon termination; and

(B) submit documentation to DADS that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) manage the process to transfer an individual's HCS Program services from one program provider to another or one FMSA [~~CDSA~~] to another in accordance with DADS instructions, including:

(A) informing the individual or LAR who requests a transfer to another program provider or CDSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose to receive HCS Program services from any available program provider (that is, a program provider whose enrollment has not reached its service capacity in the DADS data system [~~CARE~~]) or FMSA [~~CDSA~~]; and

(C) if the individual or LAR has not selected another program provider or FMSA [~~CDSA~~], provide the individual or LAR a list of available HCS Program providers and FMSAs [~~CDSAs~~] and contact information in the geographic locations preferred by the individual or LAR;

(26) be objective in assisting an individual or LAR in selecting a program provider or FMSA [~~CDSA~~];

(27) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(28) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(29) unless contraindications are documented with justification by the service planning team, ensure that an adult individual under retirement age is participating in a day activity of the individual's choice that promotes achievement of PDP outcomes for at least six hours per day, five days per week;

(30) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(31) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(32) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(33) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(34) for an individual receiving host home/companion [~~foster/companion~~] care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(35) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR in

accordance with §9.174(a)(8)(D) of this subchapter (relating to Certification Principles: Service Delivery) or the local authority notifies the service coordinator that the local authority is unable to locate the parent or LAR in accordance with §9.167(b)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(A) - (B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(36) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (37)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(37) request from and encourage the parent or LAR of an individual under the age of 22 years requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(38) within three business days after initiating supervised living or residential support to an individual under 22 years of age:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see www.hhsc.state.tx.us for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the three- or four-person residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the residence is located, if the individual is less than three years of age (see http://www.dars.state.tx.us/ecis/searchprogram.asp to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's gender;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information; and

(39) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar

days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is 18-22 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record.

§9.192. Service Limits.

[(a) The service limits listed in subsection (b) of this section are in effect through August 31, 2013.]

[(b) Subject to an exception granted by DADS in accordance with §9.193 of this subchapter (relating to Exception to Service Limits), the following limits apply to an individual's services:]

[(1) An individual may receive, during an IPC year, adaptive aids having a maximum cost of $1,057. The program provider may request, in accordance with the *HCS Program Billing Guidelines,* authorization of a requisition fee that is in addition to the $1,057 service limit.]

[(2) The maximum number of hours of a specialized therapy that an individual may receive during an IPC year is as follows:]

[(A) for audiology, three hours;]

[(B) for dietary services, three hours;]

[(C) for occupational therapy services, eight hours;]

[(D) for physical therapy, 30 hours;]

[(E) for social work, ten hours; and]

[(F) for speech and language pathology, 49 hours.]

[(3) An individual may receive a maximum of 126 hours of supported employment during an IPC year.]

[(4) The maximum number of hours of supported home living that an individual may receive during an IPC year is as follows:]

[(A) for an individual with an LON 1: 923 hours;]

[(B) for an individual with an LON 5: 1,337 hours;]

[(C) for an individual with an LON 8: 1,868 hours;]

[(D) for an individual with an LON 6: 2,098 hours; and]

[(E) for an individual with an LON 9: 3,546 hours.]

[(c) The following limits apply to an individual's services and are not subject to an exception granted by DADS in accordance with §9.193 of this subchapter.]

[(1) An individual may receive dental treatment having a maximum cost of $1,000 during an IPC year. The program provider may request, in accordance with the *HCS Program Billing Guidelines,* authorization of a requisition fee that is in addition to the $1,000 service limit.]

[(2) During the time an individual is enrolled in the HCS Program, an individual may receive minor home modifications that have a maximum cost of $7,500, which may be paid in one or more IPC years.]

[(A) The program provider may request, in accordance with the *HCS Program Billing Guidelines,* authorization of a requisition fee that is in addition to the service limit.]

[(B) After reaching the maximum cost of $7,500, an individual may receive, during an IPC year, a maximum of $300 for repair and maintenance.]

[(3) An individual may receive a maximum of 300 hours of respite during an IPC year.]

(a) [(d)] The [Effective September 1, 2013, the] following [service] limits apply to an individual's HCS Program services [the individual]:

(1) for adaptive aids, $10,000 during an IPC year;

(2) for dental treatment, $1,000 during an IPC year;

(3) for minor home modifications: [, $7,500 during the time period the individual is enrolled in the HCS Program, which may be paid in one or more IPC years;]

(A) $7,500 during the time the individual is enrolled in the HCS Program, which may be paid in one or more IPC years; and

(B) after reaching the $7,500 limit described in subparagraph (A) of this paragraph, a maximum of $300 for repair and maintenance during the IPC year; and

(4) for respite, 300 hours during an IPC year.[; and]

[(5) for supported employment, 150 hours during an IPC year.]

(b) A program provider may request, in accordance with the *HCS Program Billing Guidelines,* authorization of a requisition fee:

(1) for dental treatment that is in addition to the $1,000 service limit described in subsection (a)(2) of this section; or

(2) for a minor home modification that is in addition to the $7,500 service limit described in subsection (a)(3)(A) of this section.

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 April 2, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-4162

40 TAC §9.185, §9.193

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or

regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§9.185. Certification Processes.

§9.193. Exception to Service Limits.

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 April 2, 2014.

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SUBCHAPTER N. TEXAS HOME LIVING (TxHmL) PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.551, concerning purpose; §9.552, concerning application; §9.553, concerning definitions; §9.554, concerning description of the Texas Home Living (TxHmL) Program; §9.555, concerning definitions of TxHmL Program service components; §9.556, concerning eligibility criteria; §9.558, concerning individual plan of care (IPC); §9.560, concerning level of care (LOC) determination; §9.561, concerning lapsed LOC; §9.562, concerning level of need (LON) assignment; §9.563, concerning DADS review of LON; §9.566, concerning notification of applicants; §9.567, concerning process for enrollment; §9.568, concerning revisions and renewals of IPCs, LOCs, and LONs for enrolled individuals; §9.570, concerning permanent discharge from TxHmL Program and suspension of TxHmL Program services; §9.571, concerning fair hearings; §9.572, concerning other program provider requirements; §9.573, concerning reimbursement; §9.574, concerning record retention; §9.575, concerning program provider's right to administrative hearing; §9.576, concerning program provider certification and review; §9.578, concerning program provider certification principles: service delivery; §9.579, concerning certification principles: qualified personnel; §9.580, concerning certification principles: quality assurance; §9.582, concerning compliance with TxHmL program principles for mental retardation authorities; §9.583, concerning TxHmL program principles for local authorities; new §9.577, concerning program provider compliance and corrective action; §9.584, concerning certification principles: prohibitions; and the repeal of §9.557, concerning calculation of co-payment; §9.559, concerning request to increase service category limits; §9.569, concerning coordination of transfers; and §9.577, concerning program provider compliance and corrective action, in Subchapter D, Texas Home Living (TxHmL) Program, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement a directive from the Centers for Medicare and Medicaid Services (CMS) to more effectively address the assurance set forth in the TxHmL waiver application about health and safety. Specifically, to address this assurance, the proposed amendments add a requirement for a TxHmL program provider to develop a service backup plan for a TxHmL Program service identified by the service planning team on the person directed plan as critical to meeting the individual's health and safety and revise the plan if the program provider determines the service backup plan is ineffective.

In addition, the proposed amendments, new sections, and repeal change DADS review process of TxHmL providers. Specifically, the proposed amendments state that DADS does not certify a provider for a new certification period if (1) at a review other than an initial review, the provider is not providing TxHmL Program services to any individuals, and (2) from the beginning of the certification period through the 121st day before the end of the current period, the program provider did not provide services for at least 60 consecutive days. This requirement is included to ensure that program providers who are not actively providing services and, therefore, not acquiring necessary expertise as a program provider, re-establish their qualifications through the contract application process if they want to be a TxHmL Program provider. The proposed amendments further state that if DADS imposes a vendor hold against a program provider with a provisional contract, DADS initiates termination of the contract. This process helps ensure a high quality provider base by terminating the contracts of program providers who are underperforming in the initial contract period, thereby requiring those providers to demonstrate their qualifications through the contract application process if they want to be a TxHmL Program provider. In addition, these amendments delete the description of the action DADS takes if a program provider is out of compliance with a specific percentage of certification principles and describe DADS action based on whether the program provider's failure to comply results in a condition of a serious or pervasive nature. This amendment was made because DADS concluded that a fairer and more effective way to determine the action or sanction imposed is to evaluate the seriousness or pervasiveness of the condition resulting from the non-compliance, not the number of principles out of compliance. In addition, the proposed amendments require DADS to conduct a follow-up review of a provider (whose non-compliance has resulted in a condition of a seriousness or pervasive nature) in a more prompt manner than the current rules. This change was made to help ensure the health and safety of individuals receiving services from an underperforming provider. The proposed amendments also clarify definitions of "condition of a pervasive nature," "condition of a serious nature," and "hazard to health or safety" so providers will have a better understanding of how DADS determines when such conditions exist.

The proposed amendments also describe DADS process that allows a program provider to request that DADS conduct an informal review of findings in a preliminary review report with which a provider disagrees.

The proposed amendments also change the qualifications for service providers of employment assistance and supported employment to require that the service providers have (1) a bachelor's degree and six months of work experience providing services to people with disabilities, (2) an associate's degree and one year of work experience providing services to people with disabilities, or (3) a high school diploma (or a state-recognized equivalent) and two years of work experience providing services to people with disabilities. This change was made to help ensure that service providers of employment assistance and supported employment have sufficient expertise to provide these services. The proposed amendments also include certain requirements the provider must comply with to receive payment for employment assistance and supported employment, such as not using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training and not providing employment assistance or supported employment to an individual with the individual present at the same time that certain other services are provided.

The proposed amendments also change the definition of supported employment to allow an individual to receive this service and be self-employed or work from home. This change provides a standardized policy across waiver programs and enhances an individual's opportunities to have a desired job or career. The proposed amendments also, for an individual receiving supported employment, remove the prohibition of a program provider being an individual's employer and related language about obtaining a variance to this prohibition to expand an individual's employment opportunities.

The proposed amendments also eliminate the two TxHmL service categories of Community Living and Technical and Professional Supports and the related service limits for those categories because the categories are not necessary for the operation of the program.

The proposed amendments also remove the requirement that an individual receiving community support and respite must receive both services through the consumer directed service (CDS) option if the individual chooses to have one of the services provided through the CDS option. This change is made to comply with CMS requirements.

The proposed amendments also add additional eligibility criteria for an individual leaving or at risk of entering a nursing facility and who is a member of a reserved capacity group in the TxHmL waiver application. This change addresses the addition of this new reserved capacity group to the application approved by CMS.

The proposed amendments also establish a new limit for adaptive aids of $10,000 per individual per individual plan of care year to make it consistent with the Home and Community-based Services (HCS) Program.

The proposed amendments also remove the term "support methodologies," replace it with "implementation plan," and include a definition of "implementation plan." The definition of implementation plan bolsters DADS expectations that a program provider will address the outcomes of TxHmL services and makes it consistent with the HCS Program.

The proposed amendments also replace deleted requirements (including those for complaint processes, reporting and training related to abuse, neglect, and exploitation, background checks and wage requirements for some TxHmL service providers) with references to requirements addressed in new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the Texas Register, because proposed new 40 TAC Chapter 49 applies to TxHmL program providers.

The proposed amendments also require that a program provider enter the name and phone number of an alternate chief executive officer (CEO) into the DADS data system. The proposed amendment requires the alternate CEO to perform the duties of the CEO during the CEO's absence and to act as the contact person in a Department of Family and Protective Services (DFPS) investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual. This requirement helps ensure unbiased operation of the program provider's business and cooperation in the DFPS investigation of the CEO.

The proposed amendments also allow a person with three years unpaid work experience providing services similar to those in the TxHmL program and who has participated as a member of a microboard to be employed by a program provider to oversee the provision of direct services. Currently, DADS allows only a person with three years paid work experience providing services similar to those in the TxHmL program to qualify for this position. The proposed amendments add a definition for a microboard based on the service industry's common understanding of a microboard. This amendment is proposed because DADS determined that a person with three years unpaid work experience providing services similar to those in the TxHmL program and who has participated on a microboard has obtained the necessary expertise to oversee the provision of direct services for a program provider. To increase the availability of qualified providers of behavioral support, the proposed amendments allow a person with a provisional license to practice psychology, a licensed clinical social worker, and a licensed professional counselor to provide this service.

The proposed amendments also remove the requirement that a program provider must provide at least one service component through a service provider employed by the program provider because CMS is no longer requiring this practice.

The proposed amendments also remove the description of how, for an individual required to share the cost of waiver services, the individual's co-payment is calculated. This change is made because the description in the rule is no longer accurate and the calculation method is contained in policies promulgated by the Health and Human Services Commission.

The proposed amendments also delete the definition of "unusual incident" because the elements contained within the definition of "unusual incident" were incorporated into the definition of "critical incident" in the TxHmL Provider User Guide.

The proposed amendments also allow individuals to receive respite in a camp accredited by the American Camp Association to expand the suitable settings in which an individual may choose to receive respite.

The proposed new sections also emphasize DADS current policy that a program provider is not allowed to use seclusion for any reason.

The proposed amendments also delete the explanation of billable units for community support, day habilitation, nursing, behavioral support, respite, and professional therapies because this topic is addressed in the TxHmL Billing Guidelines.

The proposed amendments also delete the statement that day habilitation does not include services funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals

with Disabilities Education Act. This change is made because this condition is not relevant to day habilitation services.

The proposed amendments also delete requirements for the local authority that are addressed in Chapter 41 of this title regarding the CDS option.

The proposed amendments also delete requirements for the local authority regarding an individual's enrollment that are addressed in the Performance Contract between DADS and a local authority.

The proposed amendments repeal and move the description of a service coordinator's responsibilities when an individual transfers and make the service coordinator's responsibilities consistent with the HCS Program.

The proposed amendments also make rules consistent with DADS current policy that respite services are used if the caregiver is temporarily unavailable to provide supports for non-routine circumstances.

The proposed amendments also add a definition for "related condition" to be consistent with how that term is defined in the rules governing the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program at Chapter 9, Subchapter E of this title.

The proposed amendments also replace outdated terminology by replacing "MRA" with "local authority;" "ICF/MR" with "ICF/IID;" "MR/RC" with "ID/RC;" and "mental retardation" with "intellectual disability." The proposed amendments also replace "support methodologies" with "implementation plans;" "specialized therapies'" with "professional therapies;" "CDS" with "CDS option;" "CDSA" with "FMSA;" "financial management services" with "FMS;" and "program provider agreement" with "contract." The proposed amendments also add definitions for "provisional contract" and "standard contract" as used in proposed new Chapter 49.

In addition, the proposed amendments replace "CARE" with "DADS data system," which will allow for any further data system changes; update references to the Occupations Code for all licensed service providers who are qualified to deliver services approved in the TxHmL waiver program; correct cross-references in the subchapter; and make minor editorial and reorganizational changes for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.551 updates terminology by replacing "Texas Home Living (TxHmL) Program" with "TxHmL Program" and "mental retardation authorities (MRAs)" with "local authorities."

The proposed amendment to §9.552 replaces "MRAs" with "local authorities" and "legally authorized representatives (LARs)" with "LARs."

The proposed amendment to §9.553 adds definitions for "business day," "calendar day," "condition of a pervasive nature," "condition of a serious nature," "hazard to health or safety," "ICAP," "implementation plan," "microboard," "provisional contract," "related condition," "seclusion," "standard contract," "state supported living center," and "vendor hold." The proposed amendment also updates the definitions for "CDS option," "critical incident data," "FMS," "intellectual disability," "LOC," "program provider," and "service backup plan." In addition, the proposed amendment deletes definitions no longer used in the subchapter for "CARE," "MRA," and "MR/RC Assessment." The proposed amendment also replaces "CDSA" with "FMSA" and "program provider agreement" with "contract."

The proposed amendment to §9.554 replaces "MRA" with "local authority" and "program provider agreement" with "contract." The proposed amendment deletes outdated CMS requirements that limited enrollment in the TxHmL Program to the number of individuals in specified target groups approved by CMS and required a program provider to provide one service entirely by employees. The proposed amendment also deletes the statement that service coordination is reimbursed in accordance with 1 TAC §355.746. The proposed amendment also deletes the statement that the TxHmL Program service components are divided into two service categories, Community Living Services and Technical and Professional Supports Services, and deletes the service limits for the two categories. The proposed amendment also deletes the requirement that an individual must choose to have all services provided by either the CDS option or by a program provider. The proposed amendment also requires a program provider to comply with all applicable state and federal laws, rules, and regulations, including proposed new Chapter 49.

The proposed amendment to §9.555, after the name of each service, deletes "service component." The proposed amendment also updates the list of services that may not be provided to an individual at the same time the individual receives community support and day habilitation. The proposed amendment deletes the statement that day habilitation does not include services that are funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act. The proposed amendment also corrects subsection (c) regarding requirements for nursing services to make it consistent with subsection (c)(1)(F). The proposed amendment also deletes the explanation of billable units for community support, day habilitation, nursing, behavioral support, respite, and professional therapies. For employment assistance and supported employment, the proposed amendment updates the description of the services; specifies what the services consist of; specifies the services that cannot be provided to an individual with the individual present at the same time that these services are provided; specifies that Medicaid funds paid by DADS to the program provider for employment assistance and supported employment cannot be used for incentive payments, subsidies, or unrelated vocational training expenses paid to the employer or to an individual; specifies that supported employment does not include sheltered work or other similar types of vocational services furnished in specialized facilities; and specifies that employment assistance and supported employment, as determined by an assessment conducted by an RN, provide assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician. The proposed amendment also makes minor editorial changes to the description of adaptive aids, deletes a process for DADS to approve an exception to the limit for an adaptive aid costing more than $2,000 but no more than $6,000, and establishes a limit for adaptive aids up to a maximum of $10,000 per individual per IPC year. The proposed amendment also deletes a process for DADS to approve an exception to a minor home modification costing more than $2,000 but no more than $7,500 in an IPC year. The proposed amendment also updates the description for respite by adding that it is provided when the caregiver is temporarily unavailable to provide supports due to non-routine circumstances and deletes a requirement for providing respite which was added in §9.578 for all ser-

vices. The proposed amendment also replaces a list of the professionals that provide professional therapies with a reference to their qualifications in §9.579 and lists the professional therapies. The proposed amendment also replaces "specialized therapies" with "professional therapies," "licensed nurse" with "RN or LVN," "support methodologies" with "implementation plan," "financial management services" with "FMS," and "CDS" with "CDS option" and updates a cross-reference to §9.578 for respite.

The proposed amendment to §9.556 adds to the current eligibility criteria for the TxHmL Program. Specifically, the proposed amendment allows a person to be eligible for the TxHmL Program if the person meets certain other requirements in the rule and (1) qualifies for an ICF/IID LOC I or LOC VIII as defined in §9.239 of this chapter, (2) resides in a nursing facility immediately prior to enrolling in the TxHmL Program or is at imminent risk of entering a nursing facility as determined by DADS, and (3) is offered an TxHmL Program vacancy designated for a member of the reserve capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in the TxHmL Program waiver application. The proposed amendment also replaces "ICF/MR" with "ICF/IID," "mental retardation" with "intellectual disability," and "ICF/MR Program" with "ICF/IID Program."

The proposed repeal of §9.557 deletes the calculation of co-payments applied to the cost of home and community-based services funded through the TxHmL Program.

The proposed amendment to §9.558 adds clarification by replacing the terms "submitted" and "submission" with "transmitted" and "transmission" when referencing the electronic transmission of an IPC. The proposed amendment also makes a minor editorial change to and adds a cross-reference to subsection (c) in the requirement that an electronically transmitted IPC must contain information identical to the information contained on the signed copy of the IPC.

The proposed repeal of §9.559 deletes the requirement for an individual's service coordinator to request from DADS an increase in a service category limit.

The proposed amendment to §9.560 updates terminology by replacing "MRA" with "local authority," "ICF/MR" with "ICF/IID," and "MR/RC Assessment" with "ID/RC Assessment." The proposed amendment also replaces "submitting" with "transmitting" when referencing the electronic transmission of an ID/RC Assessment.

The proposed amendment to §9.561 updates terminology by replacing "MRA" with "local authority" and "MR/RC Assessment" with "ID/RC Assessment." The proposed amendment also replaces "submitted" with "electronically transmitted" in the requirement that a local authority maintain in the individual's record an ID/RC Assessment identical to the one electronically transmitted to DADS for each period of time for which there was a lapsed LOC.

The proposed amendment to §9.562 updates terminology by replacing "MRA" with "local authority," and "MR/RC Assessment" with "ID/RC Assessment." The proposed amendment also requires a local authority to submit documentation supporting a recommended LON to DADS in accordance with DADS instructions found on DADS website.

The proposed amendment to §9.563 makes a minor editorial correction and updates terminology by replacing "MRA" with "local authority."

The proposed amendment to §9.566 updates terminology by replacing "MRA" with "local authority," "CARE" with "DADS data system," "mental retardation facilities" with "state supported living centers," and "ICF/MR Program" with "ICF/IID Program." The proposed amendment also deletes the requirement for a local authority to code an applicant's name in the DADS data system as having "declined" the offer of TxHmL Program enrollment and replaces it with the requirement to notify the applicant or LAR of such actions, in writing, by certified United States mail. In addition, the proposed amendment specifies that after DADS confirms delivery of the certified letter, DADS codes the applicant's name in the DADS data system as having "declined" the offer of enrollment. The proposed amendment also updates a link to DADS website.

The proposed amendment to §9.567 requires the PDP, developed by a service coordinator in conjunction with the service planning team, to include documentation for each TxHmL program service regarding whether the service is critical to the individual's health and safety, as determined by the service planning team and requires a service backup plan. The proposed amendment also replaces deleted requirements with a reference to Chapter 41, Subchapter D, in the requirements for a service coordinator to inform the applicant or LAR of the applicant's right to participate in the CDS option, that the applicant or LAR may choose to have one or more service components provided through the CDS option, and of the applicant's right to discontinue participation in the CDS option at any time. The proposed amendment also deletes the requirement that if an applicant is receiving community support and respite and chooses to have one of these service components provided through the CDS option, the other service component must also be provided through the CDS option. In addition, the proposed amendment requires a service coordinator, if an applicant or LAR chooses a program provider to provide a service, to ensure that the proposed IPC includes a sufficient number of RN nursing units for a program provider nurse to perform an initial nursing assessment. The proposed amendment deletes steps that a local authority must take if an applicant or LAR chooses to participate in the CDS option because those steps are addressed elsewhere in §9.567 and in §9.582(q). The proposed amendment deletes the statement that the information the local authority must transmit to DADS may include a request for an increase in a service limit. The proposed amendment also makes minor editorial changes and replaces "CDS" with "CDS option," "service back-up plan" with "service backup plan," and "CDSA" with "FMSA."

The proposed amendment to §9.568 updates terminology by replacing "MRA" with "local authority" and "MR/RC" with "ID/RC." The proposed amendment also replaces "submit" with "electronically transmit" when referencing the electronic transmission by a service coordinator of annual renewals and revisions of the IPC, annual evaluations of LOC or revisions of LOC, or an ID/RC Assessment. The proposed amendment also deletes information regarding a request for an increase in a service limit.

The proposed repeal of §9.569 deletes requirements for a service coordinator to coordinate the transfer of an individual because the requirements are updated and included in the proposed amendment to §9.583.

The proposed amendment to §9.570 changes the title of the section to "Termination and Suspension of TxHmL Program Services" rather than "Permanent Discharge from the TxHmL Program and Suspension of TxHmL Program Services." The proposed amendment also clarifies the reasons DADS may terminate an individual's TxHmL Program services. The proposed amendment also changes "discharge," "permanent discharge"

and "permanently discharged" from the TxHmL Program to "terminate," "terminated" or "termination" of TxHmL Program services. In addition, the proposed amendment clarifies that a service coordinator's written request that DADS terminate an individual's TxHmL Program services include a plan documenting, as appropriate, that the individual or LAR was informed of the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future, and of the potential service resources to use following the termination. The proposed amendment also adds and updates cross-references and makes minor editorial changes to improve the readability of the rule. The proposed amendment also changes "MRA" to "local authority" and "ICF/MR" to "ICF/IID."

The proposed amendment to §9.571 specifies that an applicant or an individual "receives notice of the right to request" a fair hearing to replace "is entitled to a fair hearing." The proposed amendment also provides a reference to 1 TAC Chapter 357, Subchapter A, relating to Uniform Fair Hearing Rules.

The proposed amendment to §9.572 updates the regulatory reference for program provider requirements about an advance directive and corrects the spelling of "advance directive."

The proposed amendment to §9.573 deletes provisions regarding program provider service claim submission and replaces them with a reference to proposed new §49.311 and the TxHmL Program Billing Guidelines. The proposed amendment also clarifies that a program provider is prohibited from submitting a claim for services provided during the period of an individual's suspension or after the termination of an individual's TxHmL Program services, except for a service component provided on the first calendar day of the suspension or termination. The proposed amendment also clarifies that the claim for an adaptive aid that costs $500 or more or a minor home modification that costs $1,000 or more must be supported by a written assessment from a licensed professional specified by DADS in the TxHmL Program Billing Guidelines. The proposed amendment also specifies the documentation that must be maintained in an individual's record before including employment assistance or supported employment on an individual's IPC for DADS to pay the program provider for the service component or not recoup any payments made for the service. The proposed amendment also specifies that DADS does not pay the program provider for a service component or recoups any payments made to the program provider for a service component that was not provided in accordance with the PDP and the implementation plan. The proposed amendment also changes "specialized therapies" to "professional therapies," "intermediate care facility for persons with mental retardation" to "ICF/IID," "TxHmL Service Definitions and Billing Guidelines" to "TxHmL Program Billing Guidelines," "MRA" to "local authority," "submit" to "electronically transmit," "CDSA" to "FMSA," "CDS" to "CDS option," and "program provider agreement" to "contract."

The proposed amendment to §9.574 deletes provisions regarding record retention by a program provider and replaces them with a reference to proposed new §49.307, which addresses the subject. The proposed amendment also replaces "MRA" with "local authority."

The proposed amendment to §9.575 replaces a reference to Chapter 9, Subchapter B, with references to Chapter 91, and 1 TAC Chapter 357, Subchapter I, regarding the requirements a program provider must comply with to request an administrative hearing.

The proposed amendment to §9.576 changes the title of the section to "DADS Review of a Program Provider" rather than "Program Provider Certification and Review." The proposed amendment also lists the certification principles contained in §§9.578 - 9.580 and §9.584 with which a program provider must be in continuous compliance. The proposed amendment also specifies that DADS conducts an on-site certification review of a program provider at least annually and updates the title of §9.577 referenced in the rule. The proposed amendment also specifies that DADS conducts an initial on-site certification review after a program provider obtains a provisional contract. The proposed amendment also deletes a reference to Chapter 9, Subchapter Q, regarding initial on-site certification reviews conducted by DADS because that subchapter is proposed for repeal. The proposed amendment also specifies that if DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than 365 calendar days. The proposed amendment also deletes unnecessary information about the types of DADS reviews and adds that at the exit conference DADS gives the program provider a written preliminary review report. The proposed amendment also establishes a process for DADS to conduct an informal review if a program provider disagrees with any of the findings in a preliminary review report and specifies that if a program provider does not submit a timely request for an informal review, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

The proposed repeal of §9.577 deletes current rules regarding corrective action and program provider sanctions that are replaced by proposed new §9.577.

Proposed new §9.577 describes the corrective action DADS takes as a result of DADS review of a program provider's compliance with certification principles. The proposed new rule specifies that if DADS determines after a certification review that a program provider is in compliance with all certification principles, DADS certifies the program provider and requires no action by the program provider. The proposed new rule also specifies that at the time of a certification review, except for the initial review, DADS does not certify a program provider for a new certification period if DADS determines during the certification review that the program provider is not providing HCS Program services to any individuals and for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide HCS Program services for at least 60 consecutive calendar days. In addition, the proposed new rule specifies that, with some exceptions, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious or pervasive nature and that the corrective action plan must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference. The proposed new rule also specifies that DADS notifies the program provider of whether the corrective action plan is approved or not approved within 14 calendar days after the date DADS receives the corrective action plan and that if DADS approves the plan, DADS certifies the program provider and the program provider must complete corrective action in accordance with the corrective action plan. The proposed new rule also specifies that if the program provider does not submit

a corrective action plan, or DADS does not approve the plan, DADS imposes a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS or until DADS denies or terminates certification of the program provider. The proposed new rule also specifies that DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan during DADS first review of the program provider after the corrective action completion date. In addition, the proposed new rule also specifies that if DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious or pervasive nature, DADS requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference and conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action. The proposed new rule also specifies that if DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review and if the program provider does not remove the hazard by the end of the review, DADS denies or terminates certification of the program provider and coordinates with the local authorities the immediate provision of alternative services for the individuals. The proposed new rule also specifies that if DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with the subchapter, DADS imposes a vendor hold against the program provider or denies or terminates certification of the program provider. In addition, the proposed new rule specifies that if after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS requires the program provider, within 14 days after the review exit conference or within another time period determined by DADS, to submit evidence demonstrating its compliance with the certification principle, imposes or continues a vendor hold against the program provider, or denies or terminates certification of the program provider. The proposed new rule also specifies that if DADS imposes a vendor hold for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with proposed new §49.534. The proposed new rule also specifies that if DADS imposes a vendor hold for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold, and if the program provider completed the corrective action, DADS releases the vendor hold, or if the program provider has not completed the corrective action, DADS takes one of the same actions DADS takes when a program provider remains out of compliance with a certification principle found out of compliance in the previous review. In addition, the proposed new rule updates the references to §9.579 based on the proposed amendment to the wage requirements in §9.579 for a service provider of community support.

The proposed amendment to §9.578 replaces "Client Assignment and Registration System (CARE)" with "DADS data system" and "support methodology" with "implementation plan." The proposed amendment also deletes the requirement for a program provider to submit support methodologies to the service coordinator at least 14 calendar days before the implementation date of the IPC. The proposed amendment also requires a program provider to provide all TxHmL Program services in accordance with an individual's PDP, the implementation plan, and Appendix C of the TxHmL Program waiver application approved by CMS. The proposed amendment requires a program provider to develop a written service backup plan for a TxHmL Program service identified on the PDP as critical to an individual's health and safety. The proposed amendment requires (1) a service backup plan to contain the name of the service, specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety, and in the event of a service interruption resulting in an adverse effect, describe the actions the program provider will take to ensure the individual's health and safety; (2) a program provider to ensure that if the action in the service backup plan identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety, and a person identified in the service backup plan, if paid to provide the service, meets the required qualifications; and (3) if a service backup plan is implemented, a program provider must discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective, document whether or not the plan was effective, and revise the plan if the program provider determines the plan was ineffective. The proposed amendment also specifies that if respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association. The proposed amendment also specifies that services must be provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the TxHmL Program waiver application approved by CMS.

The proposed amendment to §9.579 deletes provisions regarding abuse, neglect, and exploitation and replaces them with a reference to proposed new §49.310(3)(A) to require a program provider to conduct initial and periodic training that ensures staff members, service providers, and volunteers are knowledgeable of acts that constitute abuse, neglect, or exploitation of an individual; the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts to the appropriate investigative authority; how to report allegations of abuse, neglect, or exploitation to the appropriate investigative authority; and methods to prevent the occurrence of abuse, neglect, and exploitation. The proposed amendment also changes the requirements for the person who oversees the provision of HCS program services. The proposed amendment specifies that the person must have at least three years paid work experience in planning and providing HCS Program services as verified by written statements from the person's employer; or, have at least three years of experience planning and providing services similar to HCS Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person and participated as a member of a microboard as verified, in writing, by the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State, the bylaws of the non-profit corporation, and a statement by the board of directors of the non-profit corporation that the person is a member of the microboard. The proposed amendment also establishes new qualifications for a service provider of employment assistance and a service provider of supported employment. The proposed amendment also requires a program provider to maintain certain evidence that a service provider of employment assistance and a service provider of supported employment are qualified. The proposed amendment also updates and clarifies the requirements for a service provider who provides transportation to an individual. The proposed amendment also deletes the re-

quirement for a program provider to provide at least one service component using only employees. The proposed amendment adds references to the Occupations Code in the qualifications for certain of the professionals who provide services, changes "nurse" to "an RN or an LVN," updates the regulatory references in the qualifications for a service provider of behavioral support certified by DADS, and expands the list of qualified providers of behavioral support to include a person issued a provisional license to practice psychology, a licensed clinical social worker and a licensed professional counselor. The proposed amendment also deletes provisions related to verification of employability by conducting background checks and replaces them with a reference to proposed new §49.304. The proposed amendment also deletes provisions regarding wages for personal attendants and replaces them with a reference to proposed new §49.312(a), which adds a service provider of community support in the TxHmL Program to the wage requirements for a personal attendant. The proposed amendment also updates the cross-reference to the minimum wage requirements if the service provider of community support is employed by or contracts with a contractor of a program provider.

The proposed amendment to §9.580 requires a program provider to ensure that an individual is free from seclusion. The proposed amendment also deletes provisions regarding complaints and replaces them with a reference to proposed new §49.309, which requires a program provider to develop and implement written procedures for investigating and resolving a complaint. In addition, the proposed amendment references §49.310(3)(B) to require a program provider to ensure that staff members, service providers, and volunteers report suspected abuse, neglect, or exploitation as instructed by the program provider. The proposed amendment also adds a reference to proposed new §49.310(4) to require a program provider to ensure that individuals and LARs are informed, orally and in writing, of how to report allegations of abuse, neglect, or exploitation. The proposed amendment also replaces "alleged victim," used to reference an individual the program provider suspects has been or is being abused, neglected, or exploited, with the term "individual." The proposed amendment also replaces "personnel" with "staff members, service providers, and volunteers" to clarify the requirement for a program provider to ensure cooperation with a DFPS investigation of an allegation of abuse, neglect, or exploitation. The proposed amendment also updates the title of Chapter 711, Subchapter M, by replacing "Advocacy, Incorporated" with "Disability Rights Texas." The proposed amendment also updates and corrects terminology in the requirement for a program provider to review, at least quarterly, incidents of confirmed and unconfirmed abuse, neglect, or exploitation, complaints, temporary suspensions, terminations, transfers, and critical incidents to assess trends and identify program operation modifications that will prevent the recurrence of such incidents and improve service delivery. The proposed amendment also requires a program provider to enter critical incident data in the DADS data system no later than 30 calendar days after the last calendar day of the month being reported in accordance with the TxHmL Provider User Guide. In addition, the proposed amendment requires a program provider to enter the name and phone number of an alternate to the Chief Executive Officer (CEO) in the DADS data system and to ensure that the alternate to the CEO performs the duties of the CEO during the CEO's absence and acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual. The proposed amendment also updates cross-references and replaces "MRA" with "local authority," "CDS" with "CDS option," "program provider agreement" with "contract," and "CARE" with "the DADS data system."

The proposed amendment to §9.582 updates terminology used in the subchapter by changing the title of the section to "Compliance with TxHmL Program Principles for Local Authorities" rather than "Compliance with TxHmL Program Principles for Mental Retardation Authorities (MRAs)." The proposed amendment also updates the title of §9.583 and replaces "MRA" with "local authority."

The proposed amendment to §9.583 removes the 45-day time frame for a local authority to complete an initial IPC and all required assessments and the 10-day requirement for submission of all enrollment documentation to DADS following the individual's selection of a program provider. The proposed amendment also requires a local authority to ensure that a service coordinator includes documentation on the PDP regarding whether, for each TxHmL Program service identified on the PDP, the service is critical to the individual's health and safety as determined by the service planning team. In addition, the proposed amendment clarifies that a local authority must ensure that a service coordinator develops the plan required by the proposed amendment to §9.570(c)(2) that addresses assistance for the individual after termination of an individual's TxHmL Program services and, if needed, that the individual or LAR participates in developing the plan. The proposed amendment also replaces the proposed repeal of §9.569 and deleted provisions regarding assistance with transfers, with the requirement for a service coordinator to manage the process to transfer an individual's TxHmL Program services from one program provider to another or one FMSA to another in accordance with DADS instructions, including (1) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process; (2) informing the individual or LAR that the individual or LAR may choose to receive TxHmL Program services from any program provider or FMSA; and (3) if the individual or LAR has not selected another program provider or FMSA, provide the individual or LAR a list of and contact information for available TxHmL Program providers and FMSAs in the geographic locations preferred by the individual or LAR. The proposed amendment also clarifies that a service coordinator, if an individual receives a TxHmL Program service from a program provider must submit an updated PDP to the program provider for the program provider to complete an implementation plan to accomplish the outcomes identified in the updated PDP. The proposed amendment also changes "temporary discharge" to "suspension" in the requirement for a service coordinator to review the status of an individual whose services have been suspended. The proposed amendment also requires a service coordinator to comply with Chapter 41, Subchapter D and document compliance in the individual's record to replace deleted annual requirements for a service coordinator regarding the CDS option and to replace the deleted requirement that the service coordinator must document in the individual's PDP that information regarding the CDS option was provided to the individual or LAR. The proposed amendment also requires a local authority that makes a recommendation to DADS that FMS and support consultation, if applicable, be terminated for a specified reason, (1) to electronically transmit the individual's IPC to DADS, and (2) in accordance with Chapter 41, Subchapter D of this title, to submit written documentation required by DADS. The proposed amendment deletes the description of the written information a local authority must submit to DADS with the rec-

ommendation. The proposed amendment also corrects and updates rule cross-references and replaces "CDS" with "CDS option," "CDSA" with "FMSA," "service back-up plan" with "service backup plan," and "financial management services" with "FMS."

Proposed new §9.584 prohibits the use of seclusion by a program provider.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeals are in effect, enforcing or administering the amendments, new sections, and repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeals will not have an adverse economic effect on small businesses or micro-businesses because compliance with Chapter 49 contracting rules and minor changes in service planning will not have a fiscal impact on program providers.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments, new sections, and repeals are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeals is implementation of a directive from CMS, a fairer and more effective way to determine sanctions imposed against TxHmL providers, improved expertise and quality of the TxHmL provider base, and expanded opportunities for individuals to have a desired job or career.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeals. The amendments, new sections, and repeals will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Chancellor at (512) 438-3228 in DADS Waiver and State Plan Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R08, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R08" in the subject line.

40 TAC §§9.551 - 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.580, 9.582 - 9.584

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§9.551. Purpose.

The purpose of this subchapter is to describe:

(1) the eligibility criteria and process for enrollment in the [~~Texas Home Living~~ ~~(~~]TxHmL[~~)~~] Program;

(2) the requirements for TxHmL Program provider certification and process for certifying and sanctioning program providers in the TxHmL Program;

(3) the requirements for reimbursement of program providers; and

(4) the requirements for local [~~mental retardation~~] authorities [~~(MRAs)~~] and the process for correcting practices found to be out of compliance with the TxHmL Program principles for local [~~mental retardation~~] authorities.

§9.552. Application.

This subchapter applies to local authorities [~~MRAs~~], program providers, and persons applying for or receiving TxHmL Program services and their [~~legally authorized representatives~~ ~~(~~]LARs[~~)~~].

§9.553. Definitions.

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

(1) Applicant--A Texas resident seeking services in the TxHmL Program.

(2) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(3) Calendar day--Any day, including weekends and holidays.

[~~(2) CARE--Client Assignment and Registration System. A DADS database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.~~]

(4) [~~(3)~~] CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

[(4) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title, that provides financial management services and, at the request of an individual or LAR, support consultation to an individual participating in CDS.]

(5) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers Medicaid programs.

(6) Condition of a pervasive nature--A condition in which a program provider is out of compliance with a certification principle as evidenced by one of the following:

(A) the following two conditions are met:

(i) at least 50 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance; and

(ii) at least one item from an additional sample, at least the same size as the initial sample, shows non-compliance; or

(B) if DADS is not able to obtain an additional sample as described in subparagraph (A)(ii) of this paragraph, at least 51 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance.

(7) Condition of a serious nature--Except as provided in paragraph (14) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(8) Contract--A provisional contract or a standard contract.

(9) [(6)] Critical incident--An event listed [data--Information a program provider provides to DADS as defined] in the TxHmL Provider User Guide found at http://www2.mhmr.state.tx.us/655/cis/training/txhmlGuide.html [http://www2.mhmr.state.tx.us/655/cis/training/WAIVER.html].

(10) [(7)] DADS--The Department of Aging and Disability Services.

(11) [(8)] DFPS--The Department of Family and Protective Services.

(12) [(9)] FMS--Financial management services.[--]A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(13) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(14) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(15) [(10)] HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(16) [(11)] HHSC--The Texas Health and Human Services Commission.

(17) ICAP--Inventory for Client and Agency Planning.

(18) [(12)] ICF/IID--A facility in which ICF/IID Program services are provided.

(19) [(13)] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(20) [(14)] ICF/MR Program--ICF/IID Program.

(21) [(15)] ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(22) Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service on the individual's IPC not provided through the CDS option, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of TxHmL Program units of service needed to complete each objective;

(E) the frequency and duration of TxHmL Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(23) [(16)] Individual--A person enrolled in the TxHmL Program.

(24) [(17)] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period[; referred to in some sections as mental retardation].

(25) [(18)] IPC--Individual plan of care. A document that describes the type and amount of each TxHmL Program service component to be provided to an individual and medical and other services and supports to be provided through non-TxHmL Program resources.

(26) [(19)] IPC cost--Estimated annual cost of program services included on an IPC.

(27) [(20)] IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(28) [(21)] LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(29) [(22)] LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted [submitted] on the ID/RC Assessment.

(30) [(23)] Local authority--An entity described in Texas Health and Safety Code, §531.002(11) to which the executive commissioner of HHSC has delegated authority and responsibility in accordance with Texas Health and Safety Code, §533.035(a).

(31) [(24)] LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(32) [(25)] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(33) Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

[(26) MRA--Local authority.]

[(27) MR/RC Assessment--ID/RC Assessment.]

(34) [(28)] Own home or family home--A residence that is not:

(A) an ICF/IID licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department [Texas Youth Commission], a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(35) [(29)] Performance contract--A written agreement between DADS and a local authority for the provision of one or more functions as described in THSC, §533.035(b).

(36) [(30)] PDP--Person-directed plan. A plan developed for an applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or LAR on behalf of the applicant.

(37) [(31)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an FMSA. [An entity that provides TxHmL Program services under a program provider agreement with DADS in accordance with Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers).]

(38) Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(39) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

[(32) Program provider agreement--A written agreement between DADS and a program provider that obligates the program provider to deliver TxHmL Program service components, except for financial management services and support consultation.]

(40) [(33)] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(41) [(34)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(42) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(43) [(35)] Service backup [back-up] plan--A plan[, as defined in §41.103 of this title,] that ensures continuity of a service that

is critical to an individual's health and safety [service components] if service delivery is interrupted.

(44) [(36)] Service coordinator--An employee of a local authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services.

(45) [(37)] Service planning team--A planning team constituted by a local authority consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant, individual, or LAR.

(46) [(38)] Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service to an individual.

(47) [(39)] Staff member--An employee or contractor of a TxHmL Program provider.

(48) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(49) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(50) [(40)] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(51) [(41)] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(52) [(42)] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(53) [(43)] TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(54) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

§9.554. Description of the TxHmL Program.

(a) The TxHmL Program is a Medicaid waiver program approved by the CMS pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals who live in their own homes or in their family homes. The TxHmL Program is operated by DADS under the authority of HHSC.

[(b) Enrollment in the TxHmL Program is limited to the number of individuals in specified target groups approved by CMS.]

(b) [(c)] DADS has grouped the counties of the state of Texas into geographical areas, referred to as "local service areas," each of which is served by a local authority [an MRA]. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is available at [http://]www.dads.state.tx.us.

(1) A program provider may provide TxHmL Program services only to persons residing in the counties specified in its contract [program provider agreement].

(2) A program provider must have a separate contract [program provider agreement] for each waiver contract area served by the program provider.

(3) A program provider may have a contract [program provider agreement] to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the contract [program provider agreement].

(4) A program provider may not have more than one contract [program provider agreement] per waiver contract area.

[(d) A program provider's program provider agreement must:]

[(1) specify which of the following service components will be provided by a person who is employed, not contracted with, the program provider:]

[(A) community support;]

[(B) day habilitation;]

[(C) supported employment; or]

[(D) respite; and]

[(2) be amended before changing the service component specified in accordance with paragraph (1) of this subsection.]

(c) [(e)] The local authority [MRA] must provide service coordination to an individual who is enrolled in the TxHmL Program in accordance with this subchapter. [Service coordination is reimbursed in accordance with 1 TAC §355.746 (relating to Reimbursement Methodology for Mental Retardation (MR) Service Coordination).]

(d) [(f)] TxHmL Program service components, as defined in §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components), are selected by the service planning team for inclusion in an applicant's or individual's IPC to:

(1) ensure the applicant's or individual's health and welfare in the community;

(2) supplement rather than replace the applicant's or individual's natural supports and other non-TxHmL Program sources for which the applicant or individual may be eligible; and

(3) prevent the applicant's or individual's admission to institutional services.

[(g) TxHmL Program service components, as defined in §9.555 of this subchapter, are divided into two service categories, the Community Living Service Category and the Technical and Professional Supports Service Category. Each category has an annual cost limit referred to as the service category limit. The combined cost of the two service categories must not exceed the combined cost limit per individual per IPC year specified in Appendix C of the TxHmL Program waiver application approved by CMS, which is available at http://www.dads.state.tx.us.]

[(1) The service category limit for the Community Living Service Category per individual per IPC year is specified in Appendix C of the TxHmL Program waiver application approved by CMS, unless an exception is approved in accordance with §9.559 of this subchapter (relating to Request to Increase Service Category Limits). This service category includes the following service components:]

[(A) community support;]

[(B) day habilitation;]

[(C) employment assistance;]

[(D) supported employment;]

[(E) respite;]

[(F) financial management services, if the individual is participating in CDS; and]

[(G) support consultation, if the individual is participating in CDS.]

[(2) The service category limit for the Professional and Technical Supports Service Category per individual per IPC year is specified in Appendix C of the TxHmL Program waiver application approved by CMS, unless an exception is made in accordance with §9.559 of this subchapter. This service category includes the following service components:]

[(A) nursing;]

[(B) behavioral support;]

[(C) adaptive aids;]

[(D) minor home modifications;]

[(E) specialized therapies; and]

[(F) dental treatment.]

(e) [(h)] The CDS option is a service delivery option, as described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR employs and retains service providers and directs the delivery of one or more service components. [If an individual is receiving community support and respite and chooses to have one of these service components provided through CDS, the other service component must also be provided through CDS.]

(f) A program provider must comply with all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services).

§9.555. Definitions of TxHmL Program Service Components.

(a) Community [The community] support [service component] provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) Community [The community] support [service component] provides habilitative or support activities that:

(A) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(B) assist an individual to develop competencies in maintaining the individual's home life;

(C) foster improvement of or facilitate an individual's ability and opportunity to:

(i) participate in typical community activities including activities that lead to successful employment;

(ii) access and use of services and resources available to all citizens in the individual's community;

(iii) interact with members of the community;

(iv) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(v) establish or maintain relationships with people who are not paid service providers that expand or sustain the individual's natural support network.

(2) Community [The community] support [service component], as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(3) Community [The community] support [service component] does not include payment for room or board.

(4) Community [The community] support [service component] may not be provided to the individual at the same time that any of the following services is provided: [respite, day habilitation, or supported employment service component is provided.]

(A) respite;

(B) day habilitation;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

[(5) The community support service component is reimbursed on an hourly basis.]

(b) Day [The day] habilitation [service component] assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life [and does not include services that are funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act].

(1) Day [The day] habilitation [service component] provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver service components, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) Day [The day] habilitation [component] may not be provided at the same time that any of the following services is provided: [supported employment is provided to an individual who has obtained employment.]

(A) respite;

(B) community support;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

[(3) The day habilitation component is reimbursed on a daily or one-half day unit basis.]

(c) Nursing [The nursing service component] provides treatment and monitoring of health care procedures ordered or [as] prescribed by a [physician or medical] practitioner and [or] as required by standards of professional practice or state law to be performed by an RN or LVN [a licensed nurse]. Nursing includes:

[(1) The nursing service component includes:]

(1) [(A)] administering medication;

(2) [(B)] monitoring an individual's use of medications;

(3) [(C)] monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;

(4) [(D)] assisting an individual or LAR to secure emergency medical services for the individual;

(5) [(E)] making referrals for appropriate medical services;

(6) [(F)] performing health care procedures as ordered or prescribed by a [physician or medical] practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(7) [(G)] delegating nursing tasks assigned to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(8) [(H)] teaching an unlicensed service provider about the specific health needs of an individual;

(9) [(I)] performing an assessment of an individual's health condition;

(10) [(J)] an RN doing the following:

(A) [(i)] performing a nursing assessment for each individual:

(i) [(I)] before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(ii) [(II)] as determined necessary by an RN, including if the individual's health needs change;

(B) [(ii)] documenting information from performance of a nursing assessment;

(C) [(iii)] if an individual is receiving a service through CDS, providing a copy of the documentation described in subparagraph (B) of this paragraph [clause (ii) of this subparagraph] to the individual's service coordinator;

(D) [(iv)] developing the nursing service portion of an individual's implementation plan [support methodologies] required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(E) [(v)] making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(11) [(K)] in accordance with Texas Human Resources Code, Chapter 161:

(A) [(i)] allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(i) [(I)] an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(ii) [(II)] the medication is:

(I) [(-a-)] an oral medication;

(II) [(-b-)] a topical medication; or

(III) [(-c-)] a metered dose inhaler;

(iii) [(III)] the medication is administered to the individual for a predictable or stable condition; and

(iv) [(IV)] the unlicensed service provider has been:

(I) [(-a-)] trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(II) [(-b-)] determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(B) [(ii)] ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

[(2) The nursing service component is reimbursed on an hourly unit basis.]

(d) Employment assistance:

(1) is assistance provided to an individual to help the individual locate paid employment in the community;

(2) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate paid employment in the community; and

(E) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or supported employment is provided;

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support and adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(e) Supported employment:

(1) is assistance provided to an individual:

(A) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed; and

(B) in order for the individual to sustain paid employment;

(2) consists of a service provider performing the following activities:

(A) employment adaptations, supervision, and training related to an individual's disability;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or employment assistance is provided;

(4) does not include sheltered work or other similar types of vocational services furnished in specialized facilities, or using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support and adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in supported employment activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

[(d) The employment assistance service component assists an individual to locate paid employment in the community.]

[(1) The employment assistance component assists an individual with the participation of the LAR to identify:]

[(A) the individual's employment preferences;]

[(B) the individual's job skills;]

[(C) the individual's requirements for the work setting and work conditions; and]

[(D) prospective employers that may offer employment opportunities compatible with the individual's identified preferences, skills, and requirements.]

[(2) The employment assistance provider facilitates the individual's employment by contacting prospective employers and negotiating the individual's employment.]

[(3) Employment assistance is reimbursed on an hourly unit basis.]

[(4) The employment assistance service component must be re-authorized by the individual's service planning team every 180 calendar days after the initiation of the service component.]

[(5) The employment assistance service component, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.]

[(e) The supported employment service component provides ongoing individualized supports needed by an individual to sustain paid work in an integrated work setting.]

[(1) An individual receiving supported employment is:]

[(A) compensated directly by the individual's employer in accordance with the Fair Labor Standards Act; and]

[(B) employed in an integrated work setting by an employer that has no more than one employee or 3.0% of its employees with disabilities unless the individual's PDP indicates otherwise or the employer subsequently hires an additional employee with disabilities who is receiving services from a provider other than the individual's program provider or who is not receiving services.]

[(2) Supported employment may only be provided when the service has been denied or is otherwise unavailable to an individual through a program operated by a state rehabilitation agency or the public school system.]

[(3) Supported employment is provided away from the individual's place of residence.]

[(4) Supported employment does not include payment for the supervisory activities rendered as a normal part of the business setting.]

[(5) Supported employment does not include services provided to an individual who does not require such services to continue employment.]

[(6) An individual's program provider may not be the employer of an individual receiving supported employment unless a variance is approved by DADS in accordance with paragraph (7) or (8) of this subsection. DADS may approve a variance for a period of time not to exceed one year.]

[(7) DADS may approve a variance of the requirement in paragraph (6) of this subsection if, at the time the applicant or LAR chooses enrollment in the TxHmL Program, the applicant is receiving DADS general revenue funded supported employment from a program provider, the program provider is the applicant's employer, the applicant or LAR requests the program provider to continue providing supported employment to the applicant after enrollment, and the program provider submits a written request for the variance to DADS before the effective date of the applicant's enrollment.]

[(8) If a variance approved in accordance with paragraph (7) of this subsection expires, DADS may approve a subsequent variance if:]

[(A) changes to the individual's job duties require individualized supports and training beyond that expected as a normal part of the business setting in order for the individual to sustain current employment; and]

[(B) the program provider submits a written request for a variance to DADS.]

[(9) Supported employment is reimbursed on an hourly unit basis.]

[(10) The supported employment service component, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.]

(f) Behavioral [The behavioral] support [service component] provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. Behavioral support [The component is reimbursed on an hourly unit basis and] includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) Adaptive [The adaptive] aids [service component provides devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the waiver application approved by CMS that] enable an individual to increase mobility, the ability to perform activities of daily living, or the ability to perceive, control, or communicate with the environment in which the individual lives. Adaptive aids include devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the *TxHmL Program Billing Guidelines*.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

(A) lifts;

(B) mobility aids;

(C) positioning devices;

(D) control switches/pneumatic switches and devices;

(E) environmental control units;

(F) medically necessary supplies;

(G) communication aids;

(H) adapted/modified equipment for activities of daily living; and

(I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of $10,000 per individual per IPC year. [Adaptive aids costing more than $2,000 but not more than $6,000 in an IPC year may be provided for an individual if DADS has approved an exception to the service category limit of the Professional and Technical Support Service Category in accordance with §9.559 of this subchapter (relating to Request to Increase Service Category Limits).]

(3) Adaptive [The adaptive] aids do [service component does] not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) Minor [The minor] home modifications are [service component provides] physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications [as specified in the waiver application approved by CMS] may be provided up to a lifetime limit of $7,500 per individual. [Minor home modifications costing more than $2,000 but not more than $7,500 in an IPC year may be provided if DADS has approved an exception to the service category limit of the Professional and Technical Support Service Category in accordance with §9.559 of this subchapter.] After the $7,500 lifetime limit has been reached, an individual is eligible for an additional $300 per IPC year for additional modifications or maintenance of home modifications.

(2) Minor [The minor] home modifications do [service component does] not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

(A) purchase and repair of mobility/wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations.

(i) Dental [The dental] treatment [service component] may be provided up to a maximum of $1,000 per individual per IPC year for the following treatments:

(1) emergency dental treatment;

(2) preventive dental treatment;

(3) therapeutic dental treatment; and

(4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) Respite [~~The respite service component~~] is provided for the planned or emergency short-term relief of the unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports due to non-routine circumstances.

(1) Respite includes [~~The respite service component provides an individual with~~]:

(A) assistance with activities of daily living and functional living tasks;

(B) assistance with planning and preparing meals;

(C) transportation or assistance in securing transportation;

(D) assistance with ambulation and mobility;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

[~~(3) Respite is provided on an hourly or daily unit basis.~~]

(3) [~~(4)~~] Respite may be provided in the individual's residence or, if certification principles stated in §9.578(p) [~~§9.578(o)~~] of this subchapter are met, in other locations.

(k) Professional [~~The specialized~~] therapies provide [~~service component provides~~] assessment and treatment by a licensed professional who meets the qualifications specified in §9.579 of this subchapter (relating to Certification Principles: Qualified Personnel) [~~occupational therapists, physical therapists, speech and language pathologists, audiologists, and dietitians~~] and include training and consultation with an individual's LAR, family members or other support providers. Professional therapies available under the TxHmL Program are: [~~Specialized therapies are reimbursed on an hourly unit basis.~~]

(1) audiology services;

(2) speech/language pathology services;

(3) occupational therapy services;

(4) physical therapy services;

(5) dietary services;

(6) social work services; and

(7) behavioral support.

(l) FMS [~~Financial management services~~] are provided if the individual participates in the CDS option.

(m) Support consultation is provided at the request of the individual or LAR if the individual participates in the CDS option.

§9.556. Eligibility Criteria.

(a) An applicant or individual is eligible for the TxHmL Program if:

(1) the applicant or individual meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) the applicant or individual meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with Texas Health and Safety Code, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria); or

(B) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with Texas Health and Safety Code, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria);

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the TxHmL Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered an TxHmL Program vacancy designated for a member of the reserve capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us;

[~~(2) the applicant or individual meets the eligibility criteria for the ICF/MR LOC I as defined in §9.238 of this chapter (relating to Level of Care I Criteria) as determined by DADS according to §9.560 of this subchapter (relating to Level of Care (LOC) Determination);~~]

[~~(3) the applicant or individual has had a determination of mental retardation performed in accordance with state law (THSC, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A) or has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions) before enrollment in the TxHmL Program;~~]

(3) [~~(4)~~] the applicant or individual has been assigned an LON 1, 5, 8, or 6 in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment);

(4) [~~(5)~~] the applicant or individual has an IPC approved in accordance with §9.558 of this subchapter (relating to Individual Plan of Care (IPC));

(5) [~~(6)~~] the applicant or individual is not enrolled in another waiver program under §1915(c) of the Social Security Act;

(6) [~~(7)~~] the applicant or individual has chosen, or the applicant's or individual's LAR has chosen, participation in the TxHmL Program over participation in the ICF/IID [~~ICF/MR~~] Program;

(7) [~~(8)~~] the applicant's or individual's service planning team concurs that the TxHmL Program services and, if applicable, non-TxHmL Program services for which the applicant or individual may be eligible are sufficient to ensure the applicant's or individual's health and welfare in the community; and

(8) [~~(9)~~] the applicant or individual lives in the applicant's or individual's own home or family home.

(b) An applicant or individual is financially eligible for the TxHmL Program if the applicant or individual:

(1) is categorically eligible for Supplemental Security Income (SSI) benefits;

(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;

(3) is under 20 years of age and:

(A) is financially the responsibility of DFPS in whole or in part; and

(B) is being cared for in a foster home or group home:

(i) that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child placing agency; and

(ii) in which a foster parent is the primary caregiver residing in the home;

(4) is currently receiving Medicaid for Youth Transitioning Out of Foster Care (Transitional Medicaid) because the applicant or individual formerly received foster care through DFPS and was under the financial responsibility of DFPS; or

(5) is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Assistance for Needy Families.

§9.558. Individual Plan of Care (IPC).

(a) An initial IPC must be developed for each applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) and reviewed and revised for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §9.568 of this subchapter (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals).

(b) The IPC must specify the type and amount of each service component to be provided to the individual, as well as services and supports to be provided by other non-TxHmL Program sources during the IPC year. The type and amount of each service component must be supported by:

(1) documentation that non-TxHmL Program sources for the service component are unavailable and the service component supplements rather than replaces natural supports or non-TxHmL Program services;

(2) assessments of the individual that identify specific service components necessary for the individual to continue living in the community, to ensure the individual's health and welfare in the community, and to prevent the individual's admission to institutional services; and

(3) documentation of the deliberations and conclusions of the service planning team that the TxHmL Program service components are necessary for the individual to live in the community; are necessary to prevent the individual's admission to institutional services, and are sufficient, when combined with services or supports available from non-TxHmL Program sources (if applicable), to ensure the individual's health and welfare in the community.

(c) Before electronic transmission [~~submission~~] to DADS, an individual's IPC must be signed and dated by the required service planning team members indicating concurrence that the services recommended in the IPC meet the requirements of subsection (b) of this section.

(d) DADS reviews an electronically transmitted [~~a submitted~~] initial, revised, or renewal IPC and approves, modifies, or does not approve the IPC. DADS does not approve an IPC having a total cost that exceeds the combined cost limit specified in Appendix C of the TxHmL Program waiver application approved by CMS.

(e) An electronically transmitted [~~If the IPC is submitted for approval electronically, the submitted~~] IPC must contain information identical to the information contained [~~that~~] on the signed copy of the IPC described in subsection (c) of this section.

(f) DADS may review an IPC at any time to determine if the type and amount of each service component specified in the IPC are appropriate. The service coordinator must submit documentation supporting the IPC to DADS in accordance with a request from DADS for documentation.

§9.560. Level of Care (LOC) Determination.

(a) A local authority [~~An MRA~~] must request an LOC determination for an applicant or individual by electronically transmitting [~~submitting~~] a completed ID/RC [~~MR/RC~~] Assessment to DADS, indicating the recommended LOC. The electronically transmitted ID/RC [~~MR/RC~~] Assessment must contain information identical to that on the signed ID/RC [~~MR/RC~~] Assessment.

(b) DADS makes an LOC determination in accordance with §9.237(c) of this chapter (relating to Level of Care).

(c) Information on the ID/RC [~~MR/RC~~] Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors.

(d) The local authority [~~MRA~~] must maintain the signed ID/RC [~~MR/RC~~] Assessment and documentation supporting the recommended LOC in the applicant's or individual's record.

(e) DADS approves and enters the appropriate LOC into the automated billing and enrollment system or sends written notification to the service coordinator that an LOC has been denied.

(f) An LOC determination is valid for 364 calendar days after the LOC effective date determined by DADS.

§9.561. Lapsed Level of Care (LOC).

(a) To reinstate authorization for payment for days when services were delivered to an individual without a current LOC determination, a local authority [~~an MRA~~] must electronically transmit [~~submit~~] to DADS an ID/RC [~~MR/RC~~] Assessment for each period of time for which there was a lapsed LOC according to DADS procedures.

(b) The local authority [~~MRA~~] must maintain in the individual's record:

(1) a copy of the individual's most recent ID/RC [~~MR/RC~~] Assessment approved by DADS; and

(2) an ID/RC [~~MR/RC~~] Assessment identical to that electronically transmitted [~~submitted~~] in accordance with subsection (a) of this section for each period of time for which there was a lapsed LOC.

(c) DADS does not grant a request for reinstatement of an LOC determination:

(1) to establish program eligibility;

(2) to renew an LOC determination;

(3) to obtain an LOC determination for a period of time for which an LOC has been denied;

(4) to revise an LON; or

(5) for a period of time for which an individual's IPC is or was not current.

§9.562. Level of Need (LON) Assignment.

(a) A local authority [An MRA] must request DADS to assign an LON for an applicant or individual by electronically transmitting a completed ID/RC [MR/RC] Assessment to DADS, indicating the recommended LON and, as appropriate, submitting supporting documentation in accordance with §9.563(b) and (c) of this subchapter (relating to DADS [DADS'] Review of Level of Need (LON)).

(b) The local authority [MRA] must maintain the applicant's or individual's Inventory for Client and Agency Planning (ICAP) Assessment Booklet supporting the recommended LON in the applicant's or individual's record and other documentation supporting the requested LON, including:

(1) the individual's PDP, including the deliberations and conclusions of the applicant's or individual's service planning team;

(2) assessments and interventions by qualified professionals; and

(3) behavioral intervention plans.

(c) If an LON 9 is recommended, the local authority [MRA] must maintain documentation that proves:

(1) the applicant or individual exhibits extremely dangerous behavior that could be life threatening to the applicant or individual or to others;

(2) a written behavior intervention plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the extremely dangerous behavior occurs;

(3) management of the applicant's or individual's behavior requires a person to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the person supervising the individual has no other duties or activities during the period of supervision; and

(5) the individual's ID/RC [MR/RC] Assessment is [if] correctly scored with a "2" in the Behavior section.

(d) DADS assigns an LON for an individual based on the individual's ICAP service level score, information reported on the individual's ID/RC [MR/RC] Assessment, and required supporting documentation. [Documentation supporting a recommended LON must be submitted to DADS in accordance with DADS guidelines.]

(e) A local authority must submit documentation supporting a recommended LON to DADS in accordance with DADS instructions regarding LON packet submission found at www.dads.state.tx.us.

(f) [(e)] DADS assigns one of five LONs in accordance with §9.161 of this chapter (relating to Level of Need Assignment).

§9.563. DADS [DADS'] Review of Level of Need (LON).

(a) DADS may review a recommended or assigned LON at any time to determine if it is appropriate. If DADS reviews an LON, documentation supporting the LON must be submitted by the local authority [MRA] to DADS in accordance with DADS [DADS'] request. Based on its review, DADS may modify an LON.

(b) If an LON 9 is requested, DADS may review documentation supporting the requested LON.

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted by the local authority [MRA] to DADS in accordance with this subchapter and received by DADS within seven calendar days after the local authority [MRA] has electronically transmitted the recommended LON.

(d) Within 21 calendar days after receiving the supporting documentation, DADS:

(1) requests additional documentation;

(2) electronically approves the recommended LON and establishes the effective date; or

(3) sends written notification that the recommended LON has been denied.

(e) DADS reviews any additional documentation submitted in accordance with DADS [DADS'] request and electronically approves the recommended LON or sends written notification to the local authority [MRA] that the recommended LON has been denied.

§9.566. Notification of Applicants.

(a) DADS notifies a local authority [an MRA], in writing, of a TxHmL Program vacancy in the MRA's local service area and directs the local authority [MRA] to offer the program vacancy to the applicant:

(1) whose name is not coded in the DADS data system [Client Assignment and Registration System (CARE)] as having previously declined an offer to enroll in the TxHmL Program or as having been determined ineligible for the TxHmL Program and [is]:

(A) whose registration date, assigned in accordance with §9.157(a)(1) [§9.165(1)] of this chapter (relating to Maintenance of HCS Program Interest [Waiting] List), is earliest on the statewide waiting list for the HCS Program as maintained by DADS; or

(B) whose registration date, assigned in accordance with §9.157(a)(1) [§9.165(1)] of this chapter, is earliest on the local service area waiting list for the HCS Program as maintained by the local authority [MRA] in accordance with §9.157 [§9.165] of this chapter; or

(2) whose name is not coded in the DADS data system [CARE] as having been determined ineligible for the TxHmL Program and who is receiving services from the local authority [MRA] that are funded by general revenue in an amount that would allow DADS to fund the services through the TxHmL Program.

(b) The local authority [MRA] must make the offer of program vacancy in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The local authority [MRA] must include in a written offer that is made in accordance with subsection (a) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of the program vacancy within 30 calendar days after the local authority's [MRA's] written offer:

(i) the local authority [MRA] withdraws the offer of the program vacancy; and

(ii) the local authority [MRA] codes the applicant's name in the DADS data system [CARE] as having "declined" the offer of TxHmL Program enrollment; and

(B) if the applicant is currently receiving services from the local authority [MRA] that are funded by general revenue and the applicant or LAR declines the offer of the program vacancy, the local authority [MRA] terminates those services that are similar to services provided under the TxHmL Program;

(2) information relating to the time frame requirements described in subsection (e)(2) - (3) of this section using the Deadline Notification form, which is available at [http://]www.dads.state.tx.us; and

(3) a statement that whether the applicant or LAR responds to the offer of program vacancy or chooses or declines participation in the TxHmL Program, the applicant's name remains on the HCS Program waiting list without change to the applicant's registration date.

(d) If an applicant or LAR responds to an offer of program vacancy, the local authority [MRA] must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID [ICF/MR] Program (both state supported living centers [mental retardation facilities] and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document which is available at www.dads.state.tx.us [http://www.dads.state.tx.us/business/mental_retardation/mrla/index.html]; and

(2) give the applicant or LAR the TxHmL Verification of Freedom of Choice form, which is available at www.dads.state.tx.us [http://www.dads.state.tx.us/business/mental_retardation/forms/index.html] to document the applicant's choice regarding the TxHmL Program and ICF/IID [ICF/MR] Program.

(e) The local authority [MRA] must withdraw an offer of a program vacancy made to an applicant or LAR [and code the applicant's name in CARE as having "declined" the offer of TxHmL Program enrollment in accordance with the Mental Retardation Services and Supports Interest List Policy and Procedures Manual] if:

(1) within 30 calendar days after the local authority's [MRA's] offer made to the applicant or LAR in accordance with subsection (a) of this section, the applicant or LAR does not respond to the offer of the program vacancy;

(2) within seven calendar days after the applicant or LAR receives the TxHmL Verification of Freedom of Choice form from the local authority [MRA] in accordance with subsection (d)(2) of this section, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID [ICF/MR] Program using the TxHmL Verification of Freedom of Choice form; or

(3) within 30 calendar days after the applicant or LAR has received the contact information regarding all available program providers in the local authority's [MRA's] local service area in accordance with §9.567(d)(1) of this subchapter (relating to Process for Enrollment), the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice form.

(f) If the local authority [MRA] withdraws an offer of a program vacancy made to an applicant [and codes the applicant's name in CARE as having "declined" the offer of TxHmL Program enrollment in accordance with subsection (e) of this section], the local authority [MRA] must notify the applicant or LAR of such actions, in writing, by certified United States mail. After DADS confirms delivery of the certified letter, DADS codes the applicant's name in the DADS data system as having "declined" the offer of TxHmL Program enrollment.

(g) If the applicant is currently receiving services from the local authority [MRA] that are funded by general revenue and the applicant declines the offer of the program vacancy, the local authority [MRA] must terminate those services that are similar to services provided under the TxHmL Program.

(h) If the local authority [MRA] terminates an applicant's services in accordance with subsection (g) of this section, the local authority [MRA] must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(i) The local authority [MRA] must retain in the applicant's record:

(1) the TxHmL Verification of Freedom of Choice form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider; and

(3) any correspondence related to the offer of a program vacancy.

§9.567. Process for Enrollment.

(a) If an applicant or LAR chooses participation in the TxHmL Program, the local authority must assign a service coordinator who develops, in conjunction with the service planning team, a PDP. At a minimum, the PDP must include the following:

(1) a description of the services and supports the applicant requires to continue living in the applicant's own home or family home;

(2) a description of the applicant's current existing natural supports and non-TxHmL Program services that will be available if the applicant is enrolled in the TxHmL Program;

(3) a description of individual outcomes to be achieved through TxHmL Program service components and justification for each service component to be included in the IPC;

(4) documentation that the type and amount of each service component included in the applicant's IPC do not replace existing natural supports or non-TxHmL Program sources for the service components for which the applicant may be eligible;

(5) documentation for each TxHmL program service of whether the service is critical to the individual's health and safety, as determined by the service planning team;

(6) [(5)] a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion;

(7) [(6)] a statement that the applicant was provided the information regarding the CDS option as required by subsection (b) of this section;

(8) [(7)] if the applicant chooses to participate in the CDS option, a description of the service components provided through the CDS option[, as required by subsection (e) of this section]; and

(9) [(8)] if the applicant chooses to participate in the CDS option, a description of the applicant's service backup [back-up] plan[, as required by subsection (e) of this section].

(b) The local authority must, in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(1) inform the applicant or LAR of the applicant's right to participate in the CDS option [and discontinue participation in CDS at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in CDS)];

(2) inform the applicant or LAR that the applicant or LAR may choose to have one or more service components provided through CDS; and[:]

[(A) except as provided in subparagraph (B) of this paragraph, the applicant or LAR may choose to have one or more service components provided through CDS; and]

[(B) if the applicant is receiving community support and respite and chooses to have one of these service components provided through CDS, the other service component must also be provided through CDS;]

(3) inform the applicant or LAR of the applicant's right to discontinue participation in the CDS option at any time.

[(3) provide the applicant or LAR a copy of Forms 1581, 1582, and 1583, which are available at www.dads.state.tx.us and which contain information about CDS, including a description of financial management services and support consultation;]

[(4) provide an oral explanation of the information contained in Forms 1581, 1582, and 1583 to the applicant or LAR; and]

[(5) provide the applicant or LAR the opportunity to choose to participate in CDS and document the applicant's or LAR's choice on Form 1584, which is available at www.dads.state.tx.us.]

(c) The local authority must compile and maintain information necessary to process the applicant's or LAR's request for enrollment in the TxHmL Program.

(1) The local authority must complete an ID/RC Assessment.

(A) The local authority must:

(i) determine or validate a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The local authority must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to DADS in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment).

(2) The local authority must develop a proposed IPC with the applicant or LAR based on the PDP and §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components).

(d) If an applicant or LAR chooses to receive a TxHmL Program service provided by a program provider, the service coordinator [The local authority] must:

(1) provide names and contact information to the applicant or LAR regarding all program providers in the local authority's local service area;

(2) review the proposed IPC with potential program providers selected by the applicant or the LAR;

(3) arrange for meetings or visits with potential program providers as desired by the applicant or the LAR;

(4) ensure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or LAR, and retained by the local authority in the applicant's record;

(5) negotiate and finalize the proposed IPC with the selected program provider;

(6) ensure that the proposed IPC includes a sufficient number of RN nursing units for the program provider's RN to perform an initial nursing assessment, unless, as described in §9.578(r) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(7) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the proposed IPC for the program provider's RN to perform an initial nursing assessment as required by paragraph (6) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, or respite from the program provider, will result in the applicant not receiving the service unless, as described in §9.578(s) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service [as described in §9.578(q) of this subchapter (relating to Program Provider Certification Principles: Service Delivery)]; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record.

[(e) If an applicant or LAR chooses to participate in CDS, the local authority must:]

[(1) provide names and contact information to the applicant or LAR regarding all CDSAs providing services in the local authority's local service area;]

[(2) document the applicant's or LAR's choice of CDSA on Form 1584;]

[(3) document, in the applicant's PDP, a description of the service component provided through CDS; and]

[(4) document, in the applicant's PDP, a description of the applicant's service back-up plan.]

(e) [(f)] After [When] the selected program provider agrees [and CDSA, if applicable have agreed] to provide the [deliver those] services listed [delineated] on the IPC, the local authority must submit [transmits to DADS] enrollment information, including the completed ID/RC Assessment and[,] the proposed IPC to DADS[, and, if applicable, a request for an increase in a service category limit as described in §9.559 of this subchapter (relating to Request to Increase Service Category Limits)]. DADS notifies the applicant or LAR, the selected program provider and FMSA [CDSA], if applicable, and the local authority of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §9.556 of this subchapter (relating to Eligibility Criteria).

(f) [(g)] If a selected program provider initiates services before DADS notification of enrollment approval, the program provider may not be reimbursed in accordance with §9.573(a)(5)(M) [§9.573(a)(11)(K)] of this subchapter (relating to Reimbursement).

§9.568. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and before the expiration of an individual's IPC, the service planning team and the program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, initiates revisions to the IPC in response to changes in the individual's needs and identified outcomes as documented in the current PDP.

(2) The service coordinator must electronically transmit [submit] annual renewals [reviews] and necessary revisions of the IPC[, including any request for an increase in a service category limit as described in §9.559 of this subchapter (relating to Request to Increase Service Category Limits),] to DADS for approval and retain documentation as described in §9.567 of this subchapter (relating to Process for Enrollment) and §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(b) The service coordinator must electronically transmit [submit] annual evaluations of LOC or revisions of LOC to DADS for approval in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination).

(c) The local authority [MRA] must re-administer the ICAP to an individual in accordance with paragraph (1) of this subsection and must electronically transmit [submit] an ID/RC [MR/RC] Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results indicate a change of the individual's LON assignment may be appropriate.

(1) The ICAP must be re-administered three years after an individual's enrollment and every third year thereafter unless, before that date:

(A) changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(B) the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to DADS in accordance with §9.563 of this subchapter (relating to DADS [DADS'] Review of Level of Need (LON)).

(3) The local authority [MRA] must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

§9.570. Termination [Permanent Discharge from the TxHmL Program] and Suspension of TxHmL Program Services.

(a) DADS may terminate an individual's TxHmL Program services [An individual may be permanently discharged from the TxHmL Program] if:

(1) the individual no longer meets the eligibility criteria specified in §9.556 of this subchapter (relating to Eligibility Criteria);

(2) the individual or LAR requests that TxHmL Program services be terminated [permanent discharge]; or

(3) the individual or LAR refuses to cooperate in the provision [delivery] or planning of services and:

(A) the [such] refusal is documented by the program provider and the service coordinator; and

(B) the service coordinator has explained to the individual or LAR, in writing, that the [such] refusal may result in termination of [discharge from the] TxHmL Program services.

(b) DADS proposed termination [may propose permanent discharge] of an individual's TxHmL Program services may be [individual at its own initiation or] based on a local authority's [an MRA's] request as described in subsection (c) of this section [for permanent discharge of an individual].

(c) To request that DADS terminate [permanent discharge of] an individual's TxHmL Program services [individual by DADS], the individual's service coordinator must, within 14 calendar days after [of] determining that one of the reasons [criteria] in subsection (a) of this section exists [is met], submit a written request containing the following information to DADS and provide a copy of the request to the individual or LAR:

(1) the reason termination [permanent discharge] is requested;

(2) a [discharge] plan documenting, as appropriate:

(A) that, before submission of the request for termination [permanent discharge], the individual or LAR was informed of the individual's option to transfer to another program provider and the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future [permanent discharge for receiving future TxHmL Program services]; and

(B) the individual or LAR was informed of the potential service resources to use [the service linkages that are in place] following termination of the individual's [discharge from the] TxHmL Program services; and

(3) if termination [permanent discharge] is recommended for the reason stated in subsection (a)(3) of this section:

(A) a description of the action by the individual or LAR demonstrating refusal to cooperate in the provision [delivery] or planning of services and the effect of such action on the planning or provision [delivery] of services;

(B) a description of the attempts [action] by the program provider and service coordinator, including face-to-face meetings between the service coordinator and individual or LAR, to resolve the circumstances causing the individual's or LAR's refusal to cooperate; and

(C) a copy of a [~~the~~] written explanation sent by the service coordinator to the individual or LAR explaining the consequences of the individual's or LAR's refusal to cooperate.

(d) If DADS proposes termination of an individual's TxHmL Program services [~~to permanently discharge an individual~~], DADS sends a written notice of the proposed termination and the right to request a fair hearing required by §9.571 of this subchapter (relating to Fair Hearings) [~~discharge notification~~] to the individual or LAR, the program provider, and the local authority [~~MRA indicating the effective date of the discharge and the individual's right to a fair hearing in accordance with §9.571 of this subchapter (relating to Fair Hearings)~~].

(e) If the reason for the proposed termination [~~permanent discharge~~] is that the individual no longer meets the eligibility criteria described in §9.556(a)(4) and (7) [~~§9.556(a)(5) and (8)~~] of this subchapter, [~~DADS instructs~~] the service coordinator must, at DADS request [~~to~~]:

(1) inform the individual or LAR that DADS, based on availability, offers the individual a program vacancy in the HCS Program in accordance with §9.158(a)(3) [~~§9.164(a)(3)~~] of this chapter (relating to Process for Enrollment of Applicants); and

(2) offer to assist the individual or LAR to apply for other services for which the individual may be eligible including other home and community-based service programs and ICF/IID [~~ICF/MR~~] Program services.

(f) If an individual is temporarily admitted to one of the following settings, DADS suspends TxHmL Program services during that admission:

(1) a hospital;

(2) an ICF/IID [~~ICF/MR~~] licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(3) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(4) a residential child-care operation licensed or subject to being licensed by DFPS;

(5) a facility licensed or subject to being licensed by the Department of State Health Services;

(6) a facility operated by the Department of Assistive and Rehabilitative Services; or

(7) a residential facility operated by the Texas Juvenile Justice Department [~~Texas Youth Commission~~], a jail, or a prison.

§9.571. Fair Hearings.

An applicant or individual whose request for eligibility for the TxHmL Program is denied or is not acted upon with reasonable promptness, or whose TxHmL Program services have been terminated, suspended, or reduced by DADS, or the applicant's or individual's LAR, receives notice of the right to request [~~is entitled to~~] a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules) [~~Subchapter G of this chapter (relating to Medicaid Fair Hearings)~~].

§9.572. Other Program Provider Requirements.

Program providers must comply with [~~requirements of the Omnibus Budget Reconciliation Act of 1990,~~ 42] United States Code, Title 42, §1396a(w) [~~§1396a(w)(1)~~], regarding requirements about advance [~~advanced~~] directives [~~under state plans for medical assistance~~].

§9.573. Reimbursement.

(a) Program provider reimbursement.

(1) DADS pays the program provider for service components as described in this paragraph [~~follows~~]:

(A) Community support, nursing, respite, day habilitation, employment assistance, supported employment, behavioral support, and professional [~~specialized~~] therapies are paid for in accordance with the reimbursement rate for the specific service component.

(B) Adaptive aids, minor home modifications, and dental treatment are paid for based on the actual cost of the item or service and an allowed requisition fee.

(2) To be paid for the provision of a service component, a program provider must submit a service claim that meets the requirements in §49.311 of this title (relating to Claims Payment) and the *TxHmL Program Billing Guidelines.*

[~~(2) The program provider must accept DADS' payment for a service component as payment in full for the service component.~~]

[~~(3) If the program provider disagrees with the enrollment date of an individual as determined by DADS, the program provider must notify DADS in writing of its disagreement, including the reasons for the disagreement, within 180 days after the end of the month in which the program provider receives the enrollment approval letter. DADS reviews the information submitted by the program provider and notifies the program provider, the MRA, and the individual or LAR of its determination regarding the individual's enrollment date.~~]

[~~(4) The program provider must prepare and submit claims for service components in accordance with this subchapter, the TxHmL Provider Agreement, and the TxHmL Service Definitions and Billing Guidelines.~~]

[~~(5) The program provider must submit an initial claim for a service component as follows:~~]

[~~(A) Community support, nursing, respite, day habilitation, employment assistance, supported employment, behavioral support, and specialized therapies must be electronically transmitted to DADS via the automated enrollment and billing system.~~]

[~~(B) Adaptive aids, minor home modifications, and dental treatment must be submitted in writing to DADS for entry into the automated enrollment and billing system.~~]

[~~(6) The program provider must submit a claim for a service component to DADS by the latest of the following dates:~~]

[~~(A) within 95 calendar days after the end of the month in which the service component was provided;~~]

[~~(B) within 45 calendar days after the date of the enrollment approval letter issued by DADS; or~~]

[~~(C) within 95 calendar days after the end of the month in which the program provider obtains from the MRA a dated response from a non-TxHmL Program source for which the individual may be eligible, refusing or denying a correctly submitted request for payment for or provision of the service component.~~]

(3) [~~(7)~~] If an individual's TxHmL Program services are suspended or terminated [~~individual is temporarily or permanently discharged from the TxHmL Program~~], the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination except the program provider may submit a claim for a service component provided on the first calendar day of the suspension or termination [~~individual's discharge~~].

[(8) If DADS rejects a claim for adaptive aids, minor home modifications, or dental treatment, the program provider may submit a corrected claim to DADS. The corrected claim must be received by DADS within 180 days after the end of the month in which the service component was provided or within 45 days after the date of the notification of the rejected claim, whichever is later.]

[(9) If the program provider submits a claim for an adaptive aid or dental treatment, the program provider must submit documentation obtained from the MRA demonstrating that sources of payment other than the TxHmL Program for which the individual may be eligible, including Medicare, Medicaid (such as Texas Health Steps and Home Health), a state rehabilitation agency, the public school system, and private insurance, denied a request for payment. Such documentation must include evidence that a proper, complete, and timely request for payment or provision of the service component was made to the other payment source and that payment or provision of the service was denied.]

(4) [(10)] If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *TxHmL Program Billing Guidelines* [program provider must submit an individualized assessment conducted by a professional qualified to assess whether the aid or modification is necessary and appropriate to address the individual's needs] and other documentation as required by the *TxHmL Program Billing Guidelines* [in accordance with DADS instructions].

(5) [(11)] DADS does not pay the program provider for a service component or recoups any payments made to the program provider for a service component if:

(A) the individual receiving the service component was, at the time the service component was provided, ineligible for the TxHmL Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID [intermediate care facility for persons with mental retardation];

(B) the service component was not included on the signed and dated IPC of the individual in effect at the time the service component was provided;

(C) the service component provided did not meet the service definition as described in §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components) or was not provided in accordance with the *TxHmL Program [Service Definitions and] Billing Guidelines;*

(D) the service component was not documented in accordance with the *TxHmL Program [Service Definitions and] Billing Guidelines;*

(E) the claim for the service component was not prepared and submitted in accordance with the *TxHmL Program [Service Definitions and] Billing Guidelines;*

(F) the program provider does not have the documentation described in [as required by] paragraph (4) of this subsection [(10) of this subsection was not submitted by the program provider];

(G) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(H) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(I) [(G)] DADS determines that the service component would have been paid for by a source other than the TxHmL Program;

(J) [(H)] the service component was provided by a service provider who did not meet the qualifications to provide the service component as described in the *TxHmL Program [Service Definitions and] Billing Guidelines;*

(K) [(I)] the service component was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §9.558 of this subchapter (relating to Individual Plan of Care (IPC));

(L) [(J)] the service component was not provided in accordance with the PDP and the implementation plan;

(M) [(K)] the service component was provided before the individual's enrollment date into the TxHmL Program; or

(N) [(L)] the service component was not provided.

(6) [(12)] The program provider must refund to DADS any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(7) [(13)] Payments by DADS to a program provider are not withheld in the event the local authority [MRA] erroneously fails to electronically transmit [submit] a renewal of an enrolled individual's LOC or IPC and the program provider continues to provide services in accordance with the most recent IPC as approved by DADS.

(b) FMSA [CDSA] reimbursement. For an individual participating in the CDS option, DADS pays the FMSA [CDSA] for the service components listed in §9.554(g) of this subchapter (relating to Description of the TxHmL Program) that are provided through the CDS option, in accordance with the reimbursement rate established by HHSC.

(c) Billing and payment reviews.

(1) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *TxHmL Program [Service Definitions and] Billing Guidelines.* DADS conducts such reviews in accordance with the *TxHmL Billing and Payment Review Protocol* set forth in the *TxHmL Program Billing Guidelines [Service Definitions and].* As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(2) A corrective action plan required by DADS in accordance with paragraph (1)(B) of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(3) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if the corrective action plan is approved or if changes to the plan are required.

(4) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (1)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §9.575 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(5) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (2) of this subsection, DADS may impose a vendor hold on payments due to the program provider under the contract [~~program provider agreement~~] until the program provider takes the corrective action.

(6) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (5) of this subsection, DADS may terminate the contract [~~program provider agreement~~].

§9.574. Record Retention.

(a) A program provider must comply with §49.307 of this title (relating to Record Retention and Disposition). [~~retain original records described in this subchapter necessary to disclose the extent of the service components provided by the program provider or required by the program provider agreement and, on request, provide DADS, at no cost to DADS, any such records and any information regarding claims filed by the program provider until the latest of the following occurs:~~]

[~~(1) six years elapse from the date the records were created;~~]

[~~(2) any audit exception or litigation involving the records is resolved; or~~]

[~~(3) the individual becomes 21 years of age.~~]

(b) A local authority [~~An MRA~~] must retain original records described in this subchapter necessary to disclose the extent of the services provided to the individual and, on request, provide DADS, at no cost to DADS, any such records until the latest of the following occurs:

(1) six years elapse from the date the records were created;

(2) any audit exception or litigation involving the records is resolved; or

(3) the individual becomes 21 years of age.

§9.575. Program Provider's Right to Administrative Hearing.

A program provider may request an administrative hearing in accordance with Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) and 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) [~~in accordance with Subchapter B of this chapter (relating to Adverse Actions),~~] if DADS takes or proposes to take the following action:

(1) vendor hold;

(2) contract termination;

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's request for payment.

§9.576. DADS Review of a Program Provider [~~Certification and Review~~].

(a) The program provider must be in continuous compliance with the certification principles contained in §§9.578 - 9.580 and §9.584 of this subchapter (relating to Program Provider Certification Principles: Service Delivery; Certification Principles: Qualified Personnel; Certification Principles: Quality Assurance; and Certification Principles: Prohibitions).

(b) DADS conducts an on-site certification review of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on its review, DADS takes action as described in §9.577 of this subchapter (relating to [~~Corrective Action and~~] Program Provider Compliance and Corrective Action [~~Sanctions~~]).

(c) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive TxHmL Program services from the provider under the provisional contract.

[~~(c) Following the initial on-site certification review by DADS, conducted in accordance with Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers), DADS conducts an on-site certification review at least annually.~~]

(d) If DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than [~~for a period of~~] 365 calendar days [~~after the date of an initial or annual certification review~~].

(e) DADS may conduct [~~announced or unannounced~~] reviews of the program provider at any time.

(f) During any review, [~~including a follow-up review or a review in which corrective action from a previous review is being evaluated,~~] DADS may review the TxHmL Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the conference gives [~~to inform~~] the program provider a written preliminary review report [~~of DADS' findings, determination, any proposed actions, and any actions required of the program provider~~].

(h) If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary review report, the program provider must submit a completed DADS form 3610 "Informal Review Request" to DADS, as instructed on the form.

(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(3) If DADS receives a timely request for an informal review, DADS:

(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and

(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

§9.577. Program Provider Compliance and Corrective Action.

(a) DADS takes action against a program provider as a result of a review as described in this section.

(b) If DADS determines after a certification review described in §9.576(b) of this subchapter (relating to DADS Review of a Program Provider), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.576(d) of this subchapter and no action by the program provider is required.

(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.576(c) of this subchapter, that:

(1) at the time of the certification review, the program provider is not providing TxHmL Program services to any individuals; and

(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide TxHmL Program services for at least 60 consecutive calendar days.

(d) Except as provided in subsections (j) - (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious or pervasive nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.

(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:

(1) DADS certifies the program provider; and

(2) the program provider must complete corrective action in accordance with the corrective action plan.

(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS does not approve the plan, DADS:

(1) imposes a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or

(2) denies or terminates certification of the program provider.

(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.

(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious or pervasive nature, DADS:

(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and

(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the local authorities the immediate provision of alternative services for the individuals.

(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS:

(1) imposes a vendor hold against the program provider; or

(2) denies or terminates certification of the program provider.

(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:

(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;

(2) imposes or continues a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(m) If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.

(n) If DADS determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification

Principles: Qualified Personnel), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of community support who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.

§9.578. Program Provider Certification Principles: Service Delivery.

(a) A program provider must serve an eligible applicant or individual who selects the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system [Client Assignment and Registration System (CARE)].

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP as provided by the local authority;

(2) a copy of the individual's current IPC as provided by the local authority; and

(3) a copy of the individual's current ID/RC Assessment as provided by the local authority.

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR; and

(2) develop, in conjunction with the individual, the individual's family or LAR a written implementation plan. [support methodologies that describe actions and methods to be used to accomplish outcomes identified in the PDP; and]

[(3) at least 14 calendar days before the implementation date of the IPC, submit such methodologies to the service coordinator.]

(d) The program provider must ensure that service provision is accomplished in accordance with the individual's PDP and the implementation plan [support methodologies] described in subsection (c)(2) of this section.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) The program provider must provide all TxHmL Program service components:

(1) authorized in an individual's IPC;

(2) in accordance with the applicable service component definition as specified in §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components); and

(3) in accordance with an individual's PDP, the implementation plan, and Appendix C of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us.

(o) A program provider must develop a written service backup plan for a TxHmL Program service identified on the PDP as critical to meeting an individual's health and safety.

(1) A service backup plan must:

(A) contain the name of the service;

(B) specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety; and

(C) in the event of a service interruption resulting in an adverse effect as described in subparagraph (B) of this paragraph, describe the actions the program provider will take to ensure the individual's health and safety.

(2) A program provider must ensure that:

(A) if the action in the service backup plan required by paragraph (1) of this subsection identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(B) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter.

(3) If a service backup plan is implemented, a program provider must:

(A) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(B) document whether or not the plan was effective; and

(C) revise the plan if the program provider determines the plan was ineffective.

(p) [~~(o)~~] If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §9.188 of this chapter (relating to DADS Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(4) [~~(3)~~] Respite must not be provided in an institution such as an ICF/IID, skilled nursing facility, or hospital.

(q) [~~(p)~~] The program provider must ensure that nursing is provided in accordance with:

[~~(1) the individual's PDP, IPC, and support methodologies required by subsection (c)(2) of this section;~~]

(1) [~~(2)~~] Texas Occupations Code, Chapter 301 (Nursing Practice Act);

(2) [~~(3)~~] 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);

(3) [~~(4)~~] 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(4) [~~(5)~~] 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).[~~; and~~]

[~~(6) Appendix C of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us.~~]

(r) [~~(q)~~] A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by the program provider's unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by the program provider's unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(s) [~~(r)~~] If an individual or LAR refuses a nursing assessment described in §9.555(c)(10)(A) [~~§9.555(c)(1)(J)(i)~~] of this subchapter (relating to Definitions of TxHmL Program Service Components), the program provider must not:

(1) provide nursing services to the individual; or

(2) provide community support, day habilitation, employment assistance, supported employment, or respite to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(t) [~~(s)~~] If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (s) [~~(r)~~] of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(u) [~~(t)~~] If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.583(k)(6) [~~§9.583(m)(6)~~] of this subchapter (relating to TxHmL Program Principles for Local Authorities), the program provider must immediately send the written notification described in subsection (t) [~~(s)~~] of this section to DADS.

(v) [~~(u)~~] The program provider must, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.

§9.579. Certification Principles: Qualified Personnel.

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the service components in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice if that service provider:

(1) is qualified to provide the service component;

(2) provides the service within the direct services portion of the applicable TxHmL Program rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must conduct [implement and maintain a plan for] initial and periodic training [of personnel] that ensures [assures personnel are]:

(1) staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and

(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

[(2) knowledgeable of:]

[(A) acts that constitute abuse, neglect, or exploitation of an individual, as defined in Chapter 711, Subchapter A of this title (relating to Introduction);]

[(B) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts, to DFPS in accordance with §9.580(e) of this subchapter (relating to Certification Principles: Quality Assurance); and]

[(C) methods to prevent the occurrence of abuse, neglect, and exploitation.]

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

(3) abuse, neglect, or exploitation of an individual; and

(4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who oversees [has a minimum of three years work experience in planning and providing direct services to people with an intellectual disability or other developmental disabilities, as verified by a written professional reference, to oversee] the provision of TxHmL Program [direct] services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service [the] provider of community support, day habilitation, [employment assistance, supported employment,] or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment is at least 18 years of age, is not the individual's legally responsible person, and has:

(1) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(2) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) [(i)] The program provider must ensure that a service [the] provider who [of community support, day habilitation, employment assistance, supported employment, or respite] provides transportation: [in accordance with applicable state laws.]

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

[(j) The program provider must ensure that at least one of the following service components is provided by a person who is employed by, not contracting with, the program provider:]

[(1) community support;]

[(2) day habilitation;]

[(3) supported employment; or]

[(4) respite.]

(l) [(k)] The program provider must ensure that dental treatment is provided by a dentist [currently] licensed in accordance with Texas Occupations Code, Chapter 256 [by the Texas State Board of Dental Examiners].

(m) [(l)] The program provider must ensure that nursing is provided by an RN or an LVN [a nurse who is currently licensed as a registered nurse or as a vocational nurse by the Board of Nursing].

(n) [(m)] The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) [(n)] The program provider must ensure that the provider of behavioral support is [currently]:

(1) licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501 [by the Texas State Board of Examiners of Psychologists];

(2) licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501 [by the Texas State Board of Examiners of Psychologists and working under the supervision of a licensed psychologist];

(3) certified by DADS as described in §5.161 of this title (relating to TDMHMR-Certified Psychologist);

[(3) licensed as a psychological associate by the Texas State Board of Examiners of Psychologists or certified as a DADS-certified psychologist in accordance with §5.161 of this title (relating to TDMHMR-Certified Psychologist) and working in a public agency; or]

(4) certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.;

(5) issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(6) licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505; or

(7) licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503.

(p) [(o)] The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) [(p)] The program provider must ensure that a provider of professional [specialized] therapies is licensed [by the appropriate State of Texas licensing authority] for the specific therapeutic service provided as follows: [by the provider.]

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453;

(5) for dietary services, a licensed dietitian licensed in accordance with Texas Occupations Code, Chapter 701; and

(6) for social work services, a social worker licensed in accordance with Texas Occupations Code, Chapter 505.

(r) [(q)] The program provider must comply with §49.304 of this title (relating to Background Checks). [THSC, Chapters 250 and 253, including taking the following action regarding certain applicants, employees, and contractors:]

[(1) obtain criminal history record information that relates to the applicant, employee, or contractor and refrain from employing or contracting with, or immediately discharge, a person who has been convicted of an offense that bars employment under THSC, §250.006, or an offense that the program provider determines is a contraindication to the person's employment or contract with the program provider;]

[(2) search the Nurse Aide Registry maintained by DADS in accordance with THSC, Chapter 250, and refrain from employing or contracting with, or immediately discharge, a person who is designated in the registry as having abused, neglected, or mistreated a consumer of a facility or has misappropriated a consumer's property; and]

[(3) search the Employee Misconduct Registry maintained by DADS in accordance with THSC, Chapter 253, and refrain from employing or contracting with, or immediately discharge, a person who is designated in the registry as having abused, neglected, or exploited a consumer or has misappropriated a consumer's property.]

(s) [(r)] A program provider must comply with §49.312(a) of this title (relating to Personal Attendants) [pay a service provider of community support who is employed by or contracting with the program provider a base wage of at least $7.50 per hour. Effective September 1, 2014, a program provider must pay a service provider of community support who is employed by or contracting with the program provider a base wage of at least $7.86 per hour].

[(s) A program provider required to pay the wages described in subsection (r) of this section must:]

[(1) no later than January 15, 2014, notify a service provider of community support who is employed by or contracting with the program provider on January 1, 2014, that the program provider is required to pay the wages described in subsection (r) of this section; and]

[(2) notify a service provider of community support who becomes employed by or enters into a contract with the program provider after January 1, 2014, no later than three days after the person accepts the offer of employment or enters into the contract, that the program provider is required to pay the wages described in subsection (r) of this section.]

(t) If the service provider of community support is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection [subsections (r) and] (s) of this section as if the contractor were the program provider.

§9.580. Certification Principles: Quality Assurance.

(a) The program provider must:

(1) assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) assist and cooperate with the individual's or LAR's request to transfer to another program provider;

(3) assist the individual to access public accommodations or services available to all citizens;

(4) assist the individual to manage the individual's financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) ensure that any restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) inform the individual or LAR about the individual's health, mental condition, and related progress;

(7) inform the individual or LAR of the name and qualifications of any person serving the individual and the option to choose among various available service providers;

(8) provide the individual or LAR access to TxHmL Program records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services by the program provider to the individual;

(9) assist the individual to communicate by phone or by mail during the provision of TxHmL Program services unless the service planning team has agreed to limit the individual's access to communicating by phone or by mail;

(10) assist the individual, as specified in the individual's PDP, to attend religious activities as chosen by the individual or LAR;

(11) ensure the individual is free from unnecessary restraints during the provision of TxHmL Program services;

(12) regularly inform the individual or LAR about the individual's or program provider's progress or lack of progress made in the implementation of the PDP;

(13) receive and act on complaints about the program services provided by the program provider;

(14) ensure that the individual is free from abuse, neglect, or exploitation by program provider personnel;

(15) provide active, individualized assistance to the individual or LAR in exercising the individual's rights and exercising self-advocacy, including:

(A) making complaints;

(B) registering to vote;

(C) obtaining citizenship information and education;

(D) obtaining advocacy services; and

(E) obtaining information regarding legal guardianship;

(16) provide the individual privacy during treatment and care of personal needs;

(17) include the individual's LAR in decisions involving the planning and provision of TxHmL Program services;

(18) inform the individual or LAR of the process for reporting a complaint to DADS or the local authority [~~MRA~~] when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, including the DADS Office of Consumer Rights and Services telephone number to initiate complaints (1-800-458-9858) or the local authority [~~MRA~~] telephone number to initiate complaints;

(19) ensure the individual is free from seclusion;

(20) [~~(19)~~] inform the individual or LAR, orally and in writing, of the requirements described in paragraphs (1) - (19) [~~(1)~~ - ~~(18)~~] of this subsection:

(A) when the individual is enrolled in the program provider's program;

(B) if the requirements described in paragraphs (1) - (19) [~~(1)~~ - ~~(18)~~] of this subsection are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes;

(21) [~~(20)~~] obtain an acknowledgement stating that the information described in paragraph (20) [~~(19)~~] of this subsection was provided to the individual or LAR and that is signed by:

(A) the individual or LAR;

(B) the program provider staff person providing such information; and

(C) a third-party witness; and

(22) [~~(21)~~] notify the individual's service coordinator of an individual's or LAR's expressed interest in the CDS option and document such notification.

(b) The program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services as requested by DADS, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

(d) The program provider must comply with §49.309 of this title (relating to Complaint Process). [~~publicize and make available a process for receiving complaints, and maintain a record of verifiable resolutions of complaints received from:~~]

[~~(1) individuals, their families, or LARs;~~]

[~~(2) the MRA;~~]

[~~(3) the program provider's personnel or service providers; and~~]

[~~(4) the general public.~~]

(e) The program provider must [~~ensure that~~]:

(1) ensure that the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; [~~and~~]

(2) comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(3) [~~(2)~~] ensure that all staff members, service providers, and volunteers [~~program provider personnel~~]:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(C) comply with §49.310(3)(B) of this title [~~report suspected abuse, neglect or exploitation as instructed~~].

(f) Upon suspicion that an individual has been or is being abused, neglected, or exploited or notification of an allegation of abuse, neglect or exploitation, the program provider must take necessary actions to secure the safety of the individual [~~alleged victim~~], including:

(1) obtaining immediate and on-going medical and other appropriate supports for the individual [~~alleged victim~~], as necessary;

(2) restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the individual [~~alleged victim~~] or other individuals pending investigation of the allegation, when an alleged perpetrator is an employee or contractor of the program provider; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the individual [~~alleged victim~~], the individual's [~~alleged victim's~~] LAR if applicable, and the local authority [~~MRA~~] of the allegation report and the actions that have been or will be taken.

(g) The program provider must ensure that staff members, service providers, and volunteers [~~personnel must~~] cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all TxHmL Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(h) The program provider must:

(1) report the program provider's response to the finding of a DFPS investigation of abuse, neglect, or exploitation to DADS in accordance with DADS procedures within 14 calendar days of the program provider's receipt of the investigation findings;

(2) promptly, but not later than five calendar days from the program provider's receipt of the DFPS investigation finding, notify the individual and [~~alleged victim or~~] LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if DFPS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in Chapter 711, Subchapter M of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Disability Rights Texas [~~Advocacy, Incorporated~~]); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the individual [~~alleged victim~~] or LAR, provide to the individual [~~alleged victim~~] or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the individual [~~alleged victim~~].

(i) If the DFPS investigation confirms that abuse, neglect, or exploitation by program provider personnel occurred, the program provider must take appropriate action to prevent the recurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the DFPS investigation to have committed abuse, neglect, or exploitation.

(j) In all respite facilities, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract [~~program provider agreement~~]; and

(3) the name of the legal entity named on the contract [~~program provider agreement~~].

(k) At least quarterly, the program provider must review incidents of [~~confirmed~~] abuse, neglect, or exploitation, complaints, temporary suspensions, terminations [~~and permanent discharges~~], transfers, and critical [~~unusual~~] incidents to assess trends and identify program operation modifications that will prevent the recurrence of such incidents and improve service delivery.

(l) A program provider must ensure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program, and is otherwise neither directly nor indirectly used or disclosed unless the written permission of the individual to whom the information applies or the individual's LAR is obtained before the use or disclosure.

(m) The program provider must ensure that:

(1) the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed; and

(2) charges for items or services are reasonable and comparable to the costs of similar items and services generally available in the community.

(n) The program provider must not charge an individual or LAR for costs for items or services reimbursed through the TxHmL Program.

(o) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(p) When a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, the program provider must ensure that the implementation of such techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior targeted by the plan;

(6) a written behavior support plan developed by a psychologist or behavior analyst with input from the individual, LAR, the individual's service planning team, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior;

(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

(q) The program provider must report the death of an individual to the local authority [~~MRA~~] and DADS by the end of the next business day following the death of the individual or the program provider's knowledge of the death and, if the program provider reasonably believes that the individual's LAR or family does not know of the individual's death, to the individual's LAR or family as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(r) A program provider must enter critical incident data in the DADS data system [~~CARE~~] no later than 30 calendar days after the last calendar day of the month being reported in accordance with the TxHmL Provider User Guide.

(s) The program provider must ensure that:

(1) the name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (f) - (i) of this section.

§9.582. Compliance with TxHmL Program Principles for Local Authorities [~~Mental Retardation Authorities (MRAs)~~].

(a) A local authority [~~An MRA~~] participating in the TxHmL Program must be in continuous compliance with the TxHmL Program Principles for Local Authorities [~~Mental Retardation Authorities~~] as described in §9.583 of this subchapter (relating to TxHmL Program Principles for Local [~~Mental Retardation~~] Authorities).

(b) DADS conducts a compliance review at least annually of each local authority [~~MRA~~] participating in the TxHmL Program.

(c) If any item of noncompliance remains uncorrected by the local authority [~~MRA~~] at the time of the review exit conference, the local authority [~~MRA~~] must, within 30 calendar days after the exit conference, submit to DADS a plan of correction with timelines to implement the plan after approval by DADS. DADS may take action as specified in the performance contract between the local authority [~~MRA~~] and DADS if the local authority [~~MRA~~] fails to submit or implement an approved plan of correction.

§9.583. TxHmL Program Principles for Local Authorities.

(a) A local authority must notify an applicant of a TxHmL Program vacancy in accordance with §9.566 of this subchapter (relating to Notification of Applicants).

(b) A local authority must process requests for enrollment in the TxHmL Program in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(c) A local authority must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all local authority staff who may assist an individual or LAR in such process.

[~~(d) A local authority must ensure the development and completion of the initial IPC and all necessary assessments within 45 working days of the individual or LAR documenting the choice of TxHmL Program services over ICF/IID Program services in accordance with §9.566(d)(2) of this subchapter.~~]

[~~(e) A local authority must submit to DADS necessary documentation for an applicant's enrollment within 10 working days after the applicant's or LAR's selection of a program provider.~~]

(d) [~~(f)~~] A local authority must ensure that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(e) [~~(g)~~] A local authority must ensure that an individual or LAR is informed orally and in writing of the following processes for filing complaints about service provision:

(1) processes for filing complaints with the local authority about the provision of service coordination; and

(2) processes for filing complaints about the provision of TxHmL Program services including:

(A) the telephone number of the local authority to file a complaint;

(B) the toll-free telephone number of DADS to file a complaint; and

(C) the toll-free telephone number of DFPS (1-800-647-7418) to file a complaint of abuse, neglect, or exploitation.

(f) [~~(h)~~] A local authority must maintain for each individual:

(1) a current IPC;

(2) a current PDP;

(3) a current ID/RC Assessment; and

(4) current service information.

(g) [~~(i)~~] For an individual receiving TxHmL Program services within the local authority's local service area, the local authority must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(h) [~~(j)~~] A local authority must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability); and

(2) have received training about the TxHmL Program, including the requirements of this subchapter and the TxHmL Program

service components as specified in §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components).

(i) [~~(k)~~] A local authority must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including documenting on the PDP whether, for each TxHmL Program service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

(3) submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible;

(4) coordinates and develops an individual's IPC based on the individual's PDP;

(5) coordinates and monitors the delivery of TxHmL Program and non-TxHmL Program services;

(6) integrates various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources;

(7) records each individual's progress;

(8) develops a plan required by §9.570(c)(2) of this subchapter (relating to Termination and Suspension of TxHmL Program Services) that addresses assistance for the individual after termination of the individual's TxHmL Program services [~~discharge and transfer plans, when necessary~~]; and

(9) keeps records as they pertain to the implementation of an individual's PDP.

(j) [~~(l)~~] A local authority must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(k) [~~(m)~~] A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) inform the individual or LAR orally and in writing of:

(A) the eligibility criteria for participation in the TxHmL Program;

(B) the services and supports provided by the TxHmL Program and the limits of those services and supports; and

(C) the reasons an individual's [~~individual may be discharged from the~~] TxHmL Program services may be terminated as described in §9.570(a) [~~§9.570~~] of this subchapter [~~(relating to Permanent Discharge from the TxHmL Program Services)~~];

(4) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(5) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.578(t) [~~§9.578(s)~~] of this subchapter (relating to Program Provider Certification Principles: Service Delivery), a service coordinator must:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, employment assistance, supported employment, or respite, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(8) ensure that, if needed, the individual or LAR participates in developing a [~~discharge~~] plan required by §9.570(c)(2) of this subchapter that addresses assistance for the individual after termination of the individual's TxHmL Program services [~~individual is discharged from the TxHmL Program~~]; and

(9) manage the process to transfer an individual's TxHmL Program services from one program provider to another or one FMSA to another in accordance with DADS instructions, including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose to receive TxHmL Program services from any program provider or FMSA; and

(C) if the individual or LAR has not selected another program provider or FMSA, provide the individual or LAR a list of and contact information for available TxHmL Program providers and FMSAs in the geographic locations preferred by the individual or LAR.

[~~(9) inform the individual or LAR that the service coordinator will assist the individual or LAR to transfer the individual's TxHmL Program services from one program provider to another program provider as chosen by the individual or LAR.~~]

(l) [~~(n)~~] When a change to an individual's PDP or IPC is indicated, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(m) [~~(o)~~] At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service from a program provider, submit the updated PDP [~~information~~] to the program provider for the program provider to complete an implementation plan [~~completion of necessary support methodologies~~] to

accomplish the outcomes identified [be incorporated] in the updated PDP.

(n) [(p)] A service coordinator must:

(1) review the status of an individual whose services have been suspended [who is temporarily discharged] at least every 90 calendar days following the effective date of the suspension [temporary discharge] and document in the individual's record the reasons for continuing the suspension [discharge]; and

(2) if the suspension [temporary discharge] continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the suspension [temporary discharge] status.

(o) [(q)] A service coordinator must:

(1) inform the individual or LAR orally and in writing, of the requirements described in subsection (k) [(m)] of this section:

(A) upon receipt of DADS approval of the enrollment of the individual;

(B) if the requirements described in subsection (k) [(m)] of this section are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes; and

(2) document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

(p) [(r)] A service coordinator must comply with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination) and document compliance in the individual's record.[, at least annually:]

[(1) inform the individual or LAR of the individual's right to participate in CDS and discontinue participation in CDS at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in the CDS Option);]

[(2) provide the individual or LAR a copy of Forms 1581, 1582, and 1583, which are available at www.dads.state.tx.us, and which contain information about CDS, including financial management services and support consultation;]

[(3) provide an oral explanation of the information contained in Forms 1581, 1582, and 1583 to the individual or LAR; and]

[(4) provide the individual or LAR the opportunity to choose to participate in CDS and document the individual's choice on Form 1584, which is available at www.dads.state.tx.us.]

(q) [(s)] If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs [CDSAs] providing services in the local authority's local service area;

(2) document the individual's or LAR's choice of FMSA [CDSA] on Form 1584;

(3) document, in the individual's PDP, a description of the service components provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup [back-up] plan.

[(t) The service coordinator must document in the individual's PDP that the information described in subsections (r) and (s)(1) of this section was provided to the individual or LAR.]

(r) [(u)] For an individual participating in the CDS option, the local authority must recommend to DADS that FMS [financial management services] and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety or welfare; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(s) [(v)] If a local authority makes a recommendation under subsection (r) [(u)] of this section, the local authority must:

(1) electronically transmit [submit] the individual's IPC to DADS [electronically]; and

(2) in accordance with Chapter 41, Subchapter D of this title, submit documentation required by DADS [the following,] in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-551, Austin, Texas 78714-9030.[:]

[(A) a description of the service recommended for termination;]

[(B) the reasons why termination is recommended;]

[(C) a description of the attempts to resolve the issues before recommending termination; and]

[(D) other supporting documentation, as appropriate.]

§9.584. Certification Principles: Prohibitions.

A program provider must not use seclusion.

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 April 2, 2014.

TRD-201401494
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-4162

40 TAC §§9.557, 9.559, 9.569, 9.577

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which

provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§9.557. Calculation of Co-payment.

§9.559. Request to Increase Service Category Limits.

§9.569. Coordination of Transfers.

§9.577. Corrective Action and Program Provider Sanctions.

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 April 2, 2014.

TRD-201401495
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-4162

SUBCHAPTER Q. ENROLLMENT OF MEDICAID WAIVER PROGRAM PROVIDERS

40 TAC §§9.701 - 9.712

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §§9.701 - 9.712, concerning purpose; applications; definitions; pre-application orientation; application process; provisional certification; waiver program provider agreement; provider certification; additional provider certification; waiver program provider agreement assignment; references; and distribution, in Subchapter Q, Enrollment of Medicaid Waiver Program Providers, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the repeal is to delete rules in Chapter 9, Subchapter Q in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including contractors in the Home and Community-Based Services Program and the Texas Home Living Program, which are currently governed by Chapter 9, Subchapter Q. Therefore, the repealed rules are addressed by the proposed new Chapter 49, as well as proposed amendments to Chapter 9, Subchapter D, Home and Community-Based Services (HCS) Program, and Subchapter N, Texas Home Living (TxHmL) Program.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Chapter 9, Subchapter Q, deletes §§9.701 - 9.712, regarding enrollment of Medicaid waiver providers, including provisions related to application for a program provider agreement, provider certification, and assignment of a program provider agreement, that are replaced by the contracting rules in the proposed new Chapter 49 and proposed amendments to Chapter 9, Subchapter D and Subchapter N.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses because the rules are being repealed, which imposes no new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the repeal is in effect, the public benefit expected as a result of enforcing the repeal is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§9.701. Purpose.

§9.702. Application.

§9.703. Definitions.

§9.704. Pre-application Orientation.

§9.705. Application Process.

§9.706. Provisional Certification.

§9.707. Waiver Program Provider Agreement.

§9.708. Provider Certification.

§9.709. Additional Provider Certification.

§9.710. Waiver Program Provider Agreement Assignment.

§9.711. References.

§9.712. Distribution.

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§30.4, 30.30, 30.34, 30.36, 30.60, and 30.62, concerning definitions; general contracting requirements, voluntary termination of hospice contract; submission of written information; Medicaid hospice payments and limitations; Medicaid hospice claims requirements; and the repeal of §§30.32, 30.70, 30.80, 30.82, and 30.84, concerning disclosure requirements; procedural requirements, enforcement generally, sanctions, and referral to the attorney general, in Chapter 30, Medicaid Hospice Program.

BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to update and delete rules in Chapter 30 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register*. Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including hospice services. Therefore, the rules are being amended and repealed to remove provisions addressed in the proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §30.4 deletes the definitions of "adverse action" and "vendor hold" because the terms are no longer used in Chapter 30. In addition, the term "ICF/IID" has been added to replace the term "ICF/MR" to use respectful, person-first terminology.

The proposed amendment to §30.30 rewords subsection (a) for clarity and adds Chapter 97, Licensing Standards for Home and Community Support Services Agencies, and proposed new Chapter 49, Contracting for Community Services, of Title 40 of the Texas Administrative Code to the examples of rules with which a hospice must comply. Subsections (b), (g) and (h) have been deleted because they contain provisions regarding contracting requirements, contract assignment, and access to individuals by certain government officials, all of which are included in the proposed new Chapter 49. Subsections (c) and (d) have been amended to reflect use of the defined term "ICF/IID" instead of "ICF/MR-RC." Subsection (e) has been amended and combined with subsection (f) to clarify the meaning of the two subsections, addressing reasons DADS does not pay a hospice for services provided. Specifically, DADS does not pay if the hospice did not have a contract with DADS on the date services were provided, services were provided before the effective date of the individual's election of the person's Medicaid hospice benefit, as described in §30.16(b)(4), or the services were provided in a nursing facility or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) on a date that the hospice did not have a contract with the nursing facility or ICF/IID.

The proposed repeal of §30.32 deletes the requirement of a hospice to disclose information in accordance with the Code of Federal Regulations, Part 455, Subpart B. This is addressed by §30.30 and proposed new Chapter 49, both of which require a hospice to comply with applicable federal regulations.

The proposed amendment to §30.34 deletes subsection (a), which addresses the procedure for a hospice to voluntarily terminate its contract with DADS, because voluntary termination of a contract is addressed in the proposed new Chapter 49. Subsection (b), which contains procedures specific to voluntary termination of a hospice contract, has been reworded for clarity and the reference to subsection (a) has been deleted.

The proposed amendment to §30.36 is amended to clarify that it addresses the ways in which a hospice may submit written information required under Chapter 30.

The proposed amendment to §30.60 deletes subsections (k) and (l), which address submission of claims by a hospice, because that subject is addressed in the proposed new Chapter 49. Subsection (m) is amended to delete the reference to subsection (k). The defined term "ICF/IID" is used instead of "ICF/ID" and "individual" is used instead of "recipient" for consistency within the chapter.

The proposed amendment to §30.62 deletes provisions related to payment of hospice claims that are addressed in §30.30 or in the proposed new Chapter 49.

The proposed repeal of §30.70 deletes provisions regarding contract monitoring because that subject is addressed in proposed new Chapter 49.

The proposed repeal of §30.80 deletes provisions regarding the imposition of sanctions by DADS because that subject is addressed in the proposed new Chapter 49.

The proposed repeal of §30.82 deletes provisions regarding sanctions and the appeal of sanctions because that subject is addressed in the proposed new Chapter 49.

The proposed repeal of §30.84 deletes a provision regarding referral of suspected Medicaid fraud because such referral is required by law and addressed in rules of the Health and Human Services Commission.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses because the amendments and repeal do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §30.4

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§30.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions which are specific to the subchapter.

[~~(1) Adverse action--As defined under §79.1601 of this title (relating to Definitions).~~]

(1) [~~(2)~~] Attending physician--A physician who:

(A) is a doctor of medicine or osteopathy; and

(B) is identified by the individual, at the time the individual elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

(2) [~~(3)~~] Bereavement counseling--Counseling services provided to the individual's family after the individual's death.

(3) [~~(4)~~] Cap period--The 12-month period ending October 31 used in the application of the cap on overall hospice reimbursement specified in §30.60 of this title (relating to Medicaid Hospice Payments and Limitations).

(4) [~~(5)~~] Curative care--Care designed to restore a person to health.

(5) [~~(6)~~] Employee--An employee (defined by the Social Security Act, Section 210(j)) of the hospice or, if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. "Employee" also refers to a volunteer under the jurisdiction of the hospice.

(6) [(7)] Hospice--A public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals.

(7) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions.

(8) ICF/MR-RC--ICF/IID.

(9) [(8)] Palliative care--Care designed to relieve or reduce intensity of uncomfortable symptoms but not to produce a cure.

(10) [(9)] Physician--As defined in 42 Code of Federal Regulations §410.20.

(11) [(10)] Representative--An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

(12) [(11)] Social worker--A person who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education.

(13) [(12)] Terminally ill--The individual has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

[(13) Vendor hold--Temporarily withholding a provider agency's payment.]

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

SUBCHAPTER C. CONTRACTING AND DISCLOSURE REQUIREMENTS

40 TAC §§30.30, 30.34, 30.36

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§30.30. General Contracting Requirements.

(a) A hospice participating in the Medicaid Hospice Program must comply with [the requirements in] this chapter and applicable [with all] federal regulations and state rules [regulations that govern the Medicaid Hospice Program], including [the federal regulations in 42] Code of Federal Regulations, Title 42, Part 418 (Hospice Care), Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies), and Chapter 49 of this title (relating to Contracting for Community Services).

[(b) To be approved by the Department of Aging and Disability Services (DADS) for participation in the Medicaid Hospice Program and be awarded a contract, a hospice must:]

[(1) meet the provisions described in Chapter 49 of this title (relating to Contracting for Community Care Services), except for:]

[(A) §49.13(b) and (f)(1) of this title (relating to General Contractual Requirements);]

[(B) §49.14 of this title (relating to Provisional Contracts);]

[(C) §49.15(d)(2)(B) of this title (relating to Contract Assignment);]

[(D) §49.31(e) of this title (relating to Record Requirements);]

[(E) §49.41(c)(1) and (12) of this title (relating to Billings and Claims Payment);]

[(F) §49.42 of this title (relating to Method of Payment);]

[(G) §49.43 of this title (relating to Expedited Payments System);]

[(H) §49.61(a)(4) and (11) of this title (relating to Sanctions); and]

[(I) §49.63(a), (c), and (d) of this title (relating to Recontracting);]

[(2) be licensed in Texas as a home and community support services agency to provide hospice services; and]

[(3) maintain Medicare certification to provide hospice services through the Centers for Medicare and Medicaid Services.]

(b) [(c)] A hospice participating in the Medicaid Hospice Program must not have restrictive policies or practices, including:

(1) requiring an individual to execute a will with the hospice named as legatee or devisee;

(2) assigning an individual's life insurance to the hospice;

(3) transferring an individual's property to the hospice;

(4) requiring an individual to pay a lump sum or make any other payment or concession to the hospice beyond the recognized Medicaid rate;

(5) controlling or restricting an individual or legal representative in using the individual's personal needs allowance while in a nursing facility or an ICF/IID [intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC)];

(6) restricting an individual from transferring or withdrawing from the Medicaid Hospice Program at will, except as provided by state law;

(7) denying appropriate hospice care to an individual on the basis of the individual's race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

(8) preventing or requiring the execution of written or unwritten directives to reject life-sustaining procedures by an adult individual.

(c) [~~(d)~~] If a hospice provides services to a resident of a nursing facility or an ICF/IID [~~ICF/MR-RC~~], the hospice must have a written contract for the provision of services with the nursing facility or ICF/IID [~~ICF/MR-RC~~].

(d) [~~(e)~~] DADS does not pay a hospice for hospice services provided to an individual if [~~before the date~~]:

(1) the hospice did not have [~~has~~] a Medicaid hospice contract with DADS on the date the services were provided;

(2) services were provided before the effective date of the individual's [~~the individual makes a valid~~] election of the Medicaid hospice benefit, as described in §30.16(b)(4) of this chapter (relating to Election of Hospice Care); or [~~provided under subsection (f) of this section; and~~]

(3) the services were provided in a nursing facility or an ICF/IID on a date that the hospice did not have [~~has~~] a contract with the [a] nursing facility or ICF/IID [~~an ICF/MR-RC if hospice services are provided in a nursing facility or an ICF/MR-RC~~].

[~~(f) For purposes of subsection (e)(2) of this section, a valid Medicaid hospice election must be dated on or after the requirements listed in subsection (e)(1) and (3) of this section have been met.~~]

[~~(g) If a hospice assigns its contract, it must be assigned in accordance with §49.15 of this title and the hospice to which the contract has been assigned must submit an updated Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice form for each individual receiving Medicaid hospice services from the hospice.~~]

[~~(h) A hospice must allow legal representatives of DADS, the Texas Attorney General's Medicaid Fraud Control Unit, and the Texas Health and Human Services Commission to enter the premises at any time to make inspections or privately interview the individuals receiving Medicaid hospice services.~~]

§30.34. Voluntary Termination of Hospice Contract.

[~~(a) If a hospice wishes to voluntarily terminate its contract with the Department of Aging and Disability Services (DADS), regardless of the reason, the hospice must notify DADS in writing at least 10 days before the contract is terminated. The written notification must be sent to the Department of Aging and Disability Services, Community Services, Attention: Contracts, P.O. Box 149030, Mail Code W-517, Austin, Texas 78714-9030. Notification sent by overnight mail must be sent to the Department of Aging and Disability Services, Community Services, Attention: Contracts, 701 West 51st Street, Mail Code W-517, Austin, Texas 78751.~~]

(a) [~~(b)~~] At least 10 days before a hospice terminates its contract with the Department of Aging and Disability Services (DADS) the hospice must: [~~as provided in subsection (a) of this section:~~]

(1) for each individual receiving Medicaid hospice services, [~~the hospice must~~] submit a Texas Medicaid Hospice Program Individual [~~Recipient~~] Election/Cancellation/Update [~~Discharge Notice~~] form to DADS [~~DADS'~~] claims processor indicating the individual has changed his designated hospice or revoked his election of hospice care; and

(2) for each individual receiving Medicaid hospice services who is changing his designated hospice, [~~the hospice must~~] ensure that a copy of the individual's active record is sent to the receiving hospice in order to ensure continuity of care and services to the individual.

(b) [~~(c)~~] Submission of the Texas Medicaid Hospice Program Individual [~~Recipient~~] Election/Cancellation/Update [~~Discharge Notice~~] form to DADS [~~DADS'~~] claims processor is governed by §30.20 of this chapter (relating to Change of the Designated Hospice) and §30.18 of this chapter (relating to Revoking the Election of Hospice Care).

§30.36. Submission of Written Information.

A hospice must submit [~~by mail, fax, or hand-delivery~~] any written information required by this chapter by mail, fax, or hand-delivery to DADS [~~that DADS requires of the hospice~~]. DADS does not accept e-mail submission of the information [~~delivery~~].

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 April 4, 2014.

TRD-201401530
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

♦ ♦ ♦

40 TAC §30.32

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§30.32. Disclosure Requirements.

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

Filed with the Office of the Secretary of State on April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

SUBCHAPTER F. REIMBURSEMENT

40 TAC §30.60, §30.62

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§30.60. Medicaid Hospice Payments and Limitations.

(a) Medicaid hospice per diem rates. For each day that an individual is under the care of a hospice, the hospice will be reimbursed an amount applicable to the type and intensity of the services furnished to the individual for that day. For continuous home care, the amount of payment is determined based on the number of hours of continuous care furnished to the beneficiary on that day.

(1) Routine home care. The hospice will be paid the routine home care rate for each day the individual [~~recipient~~] is at home, under the care of the hospice, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(2) Continuous home care. The hospice will be paid the continuous home care rate when continuous home care is provided. The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate. A minimum of 8 hours must be provided. For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to 24 hours a day. A maximum of five consecutive days are allowed for reimbursement. Additional days may be allowed with approval from the Department of Aging and Disability Services (DADS).

(3) Inpatient respite care. The hospice will be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(A) An individual [~~A hospice recipient~~] who receives hospice respite care in a nursing facility and returns home after the respite does not have to be in a Medicaid bed in the nursing facility.

(B) Respite care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (n) of this section.

(C) If the individual [~~hospice recipient~~] dies as an inpatient, DADS pays the inpatient rate for the day of death.

(4) General Inpatient Care. Payment is made at the general inpatient rate when general inpatient care is provided.

(A) The Inpatient Care rate is paid for the date of admission and all subsequent inpatient days except day of discharge.

(B) For the day of discharge, DADS pays the routine home care rate.

(C) If the individual [~~hospice recipient~~] dies as an inpatient, DADS pays the inpatient rate for the day of death.

(D) Inpatient care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (n) of this section.

(b) Medicaid payments for physician services.

(1) The Medicaid Hospice Program makes payments to the Medicaid hospice provider for hospice physician services according to the customary and reasonable Texas Medicaid physician charges.

(2) The Medicaid Hospice Program does not pay when hospice physician services are provided by physicians who are not on staff with the Medicaid hospice provider or for independent contractors, who are under contract with the hospice.

(3) Payments for non-hospice physician services to individuals [~~Medicaid hospice recipients~~] are made directly to physicians, physician assistants, or advanced practice nurses by Medicaid through DADS claims processor.

(4) The Medicaid hospice provider must include physician services in the hospice plan of care and clinical records and must inform physicians on how to bill for services to individuals [~~hospice recipients~~].

(c) Medicaid hospice-nursing facility per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-nursing facility rate that is no less than 95 percent of the Medicaid nursing facility rate for each individual [~~hospice recipient~~] in a nursing facility to take into account the room and board furnished by the facility. When the hospice-nursing facility rate is paid to the hospice provider, Medicaid vendor payment to the nursing facility is not paid. Room and board services include performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(d) Medicaid hospice-ICF/IID [~~hospice-intermediate care facilities for persons with intellectual disability (ICF/ID)~~] per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-ICF/IID [~~hospice-ICF/ID~~] rate that is no less than 95 percent of the ICF/IID [~~ICF/ID~~] rate for each individual [~~hospice recipient~~] in an ICF/IID [~~ICF/ID~~] to take into account the room and board furnished by the facility. When the hospice-ICF/IID [~~hospice-ICF/ID~~] rate is paid to the hospice provider, Medicaid vendor payment to the ICF/IID [~~ICF/ID~~] is not paid. Room and board services include performance of personal care services, including assistance in the activities

of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(e) Medicaid time limitations for DADS hospice payment.

(1) To receive payment of the hospice nursing facility rate, the hospice and nursing facility providers must have completed and submitted a Minimum Data Set (MDS) assessment for the individual [~~hospice recipient~~] or applicant.

(A) For an individual [~~a hospice recipient~~] or applicant currently residing in the facility with a current MDS assessment, no action is required until the next required MDS assessment.

(B) For an individual [~~a hospice recipient~~] or applicant newly admitted to the facility, the hospice and the nursing facility must complete and submit an MDS assessment as required by §19.801 of this title (relating to Resident Assessment).

(2) An MDS assessment received after the required date will have the stamp-in date as the effective date.

(f) Medicaid payments on Medicare coinsurance for drugs and biologicals. For Medicare-Medicaid individuals [~~recipients~~] only, the Medicaid Hospice Program pays the Medicaid hospice provider a five percent coinsurance on prescription drugs and biologicals, not to exceed $5 per prescription.

(g) Medicaid payments for Medicare respite coinsurance. For Medicare-Medicaid individuals [~~recipients~~] only, the Medicaid Hospice Program pays the hospice provider a five percent coinsurance for each day of respite care for up to five consecutive days of a hospice coinsurance period.

(h) For purposes of this section, third party means an individual, entity, or program other than DADS or the program provider that is or may be liable to pay all or part of the expenditures for hospice services, including:

(1) a commercial insurance company offering health or casualty insurance to individuals or groups (including both experience-rated insurance contracts and indemnity contracts);

(2) a profit or nonprofit prepaid plan offering either medical services or full or partial payment for services; and

(3) an organization administering health or casualty insurance plans for professional associations, unions, fraternal groups, employer-employee benefit plans, and any similar organization offering these payments or services, including self-insured and self-funded plans.

(i) If DADS has established the probable existence of a third-party liability for hospice program services provided by a program provider at the time the claim is filed, DADS rejects the claim and returns it to the program provider for a determination of the amount of liability. When the amount of liability is determined, DADS pays the claim to the extent that payment allowed under the HHSC rate payment schedule exceeds the amount of the third party's payment.

(j) If a claim is returned to a provider for a determination of third-party liability in accordance with subsection (i) of this section, the program provider must:

(1) submit the claim to the identified third-party for a determination of the amount of liability;

(2) keep all documentation of actions taken to determine the amount of third-party liability; and

(3) certify to DADS the actions the program provider has taken to determine the liability of the third-party in accordance with instructions from DADS.

[~~(k) To receive payment for hospice program services, a program provider must:~~]

[~~(1) prepare and submit a clean claim, as defined in 42 CFR §447.45(b), for such services in accordance with this subchapter and the information available from the state Medicaid claims administrator; and~~]

[~~(2) submit such a claim within 12 months after the date of service of the date the individual's eligibility is established, whichever is later.~~]

[~~(l) For the purposes of this section, "date of service" is defined as the last day of the month in which the service was provided.~~]

(k) [~~(m)~~] If a program provider submits a claim to a third-party, [~~the requirement to submit the claim to the state Medicaid claims administrator in accordance with subsection (k) of this section is not affected. In addition,~~] the program provider must allow 110 days to elapse after the date the claim was submitted to the third-party before submitting the claim to the state Medicaid claims administrator.

(l) [~~(n)~~] Medicaid payment limitations for inpatient care. During the 12-month period beginning November 1 of each calendar year and ending October 31 of the following calendar year (the cap year), the aggregate number of inpatient hospice care days must not exceed twenty percent of the aggregate total number of all hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. If it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate are not counted as inpatient days. The limitation is calculated as follows:

(1) The maximum allowable number of inpatient days is calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment is necessary.

(3) If the total number of days of inpatient care exceeds the maximum allowable number, the limitation is determined by:

(A) calculating a ratio of the maximum allowable days to the number of actual days of inpatient care and multiplying this ratio by the total reimbursement for inpatient care (general inpatient and inpatient respite reimbursement) that was made;

(B) multiplying excess inpatient care days by the routine home care rate;

(C) adding together the amounts calculated in subparagraphs (A) and (B) of this paragraph; and

(D) comparing the amount in subparagraph (C) of this paragraph with interim payments made to the hospice inpatient care during the "cap period."

(4) If the inpatient care maximum has been exceeded, DADS recoups excess payments from subsequent Medicaid hospice provider claims.

§30.62. Medicaid Hospice Claims Requirements.

[~~(a) Requirement for payment.~~]

[(1) To receive Medicaid hospice payments, a hospice must have a Medicaid hospice contract with the Department of Aging and Disability Services (DADS).]

[(2) To receive payment for providing Medicaid hospice services, a hospice must submit a complete and accurate claim for those services to DADS' claims processor. The claim must be received by DADS' claims processor within 12 months after the date of service. For purposes of this section, the date of service is the last day of the month in which the service was provided. If an individual's Medicaid eligibility for benefits is established after the provision of services, the 12-month period for submission of claims starts on the date the individual's Medicaid eligibility was established.]

(a) [(b)] Submittal and forms completion requirements. To receive Medicaid hospice payments, the hospice must submit the following documents to DADS' claims processor:

(1) Texas Medicaid Hospice Program Individual [Recipient] Election/Cancellation/Update [Discharge Notice] form[, which must not have an election date that is earlier than the effective date of the hospice's Medicaid contract];

(2) Medicaid/Medicare Hospice Program Physician Certification of Terminal Illness form;

(3) Minimum Data Set (MDS) assessment, if applicable; and

(4) level of need (LON) form, if available.

(b) [(c)] Denials. DADS denies the following claims submitted by a hospice:

[(1) claims for hospice services provided before the effective date of the Medicaid hospice contract;]

[(2) claims for room and board provided before the effective date of the Medicaid hospice contract;]

[(3) claims for hospice services provided before the election date on the Texas Medicaid Hospice Program Election/Cancellation/Discharge Notice form and the Medicaid/Medicare Physician Certification of Terminal Illness form;]

(1) [(4)] claims for services provided after the individual has revoked his election of the Medicaid Hospice Program; and

[(5) claims for individuals who have been denied Medicaid eligibility and who were not eligible for Medicaid services when hospice services were provided;]

(2) [(6)] claims for individuals who are dually eligible for Medicaid and Medicare and were covered by the Medicare hospice benefit when services were provided.[; and]

[(7) claims for hospice services provided by a hospice after its Medicaid hospice contract has been terminated.]

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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Lorri Haden

Acting General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

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SUBCHAPTER G. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §30.70

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§30.70. Procedural Requirements.

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

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Lorri Haden

Acting General Counsel

Department of Aging and Disability Services

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SUBCHAPTER H. ENFORCEMENT

40 TAC §§30.80, 30.82, 30.84

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive

commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§30.80. Enforcement Generally.

§30.82. Sanctions.

§30.84. Referral to the Attorney General.

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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Lorri Haden
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Department of Aging and Disability Services
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CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §41.108, concerning Services Available Through the CDS Option; §41.233, concerning Training and Management of Service Providers; §41.238, concerning Service Delivery Requirements; and §41.404, concerning Ensuring Development, Approval, and Review of Service Backup Plans; the repeal of §41.201, concerning Employer Responsibilities; and §41.233, concerning Management of Service Providers; and amendments to §41.207, concerning Initial Orientation of an Employer; §41.217, concerning Service Back-up Plan; §41.301, concerning Contracting as a Financial Management Services Agency; and §41.339, concerning Record Retention, in Chapter 41, Consumer Directed Services Option.

BACKGROUND AND PURPOSE

The purpose of the proposed new sections, repeals, and amendments is to, as directed by the Centers for Medicare and Medicaid Services, more effectively address assurances set forth in the §1915(c) waiver applications about health and safety and qualified providers as those assurances relate to the consumer directed services (CDS) option. Specifically, to address the assurance regarding health and safety, the proposed rules add a requirement for case managers or service coordinators to review service backup plans annually. The proposed rules also require CDS employers to revise a service backup plan if the case manager or service coordinator determines that the plan is ineffective. In addition, to address the assurance regarding qualified providers, an employer's responsibility to document training of employees is clarified. The employer is required to send the documentation to the financial management services agency (FMSA).

The requirements in Chapter 41 that are addressed in Chapter 49, Contracting for Community Services, as proposed elsewhere in this issue of the *Texas Register* are also being removed.

The purpose of the proposed rules is also to state DADS current service delivery expectations of a CDS employer. Specifically, an employer is required to: (1) ensure that services provided are included on the service plan and the budget and are provided only to the individual; and (2) obtain an acknowledgement of nursing requirements from a nurse hired by the employer.

The proposed rules require the CDS employer to enter into an agreement with the FMSA that contains all of the requirements specific to the individual's program regarding service delivery, documentation, and provider qualifications to help ensure that the employer understands and complies with program requirements.

The proposed rules also state that the case manager or service coordinator, instead of the service planning team, must approve a service backup plan. This change is made because the individual or legally authorized representative (LAR), as the employer, develops the plan and in some waiver programs the service planning team consists of only the individual or LAR and the service coordinator.

The proposed rules also list, for clarification, all of the programs and services in which the CDS option is available and the services in each waiver program that an individual may receive through the CDS option.

The proposed rules also update terminology and make minor editorial and organizational changes for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed new §41.108 lists all of the programs and services in which the CDS option is available and the services in each waiver program that an individual may receive through the CDS option.

The proposed repeal of §41.201 deletes rules relating to employer responsibilities because many of the requirements in that section are addressed in other sections of Chapter 41 and the remaining requirements have been moved to proposed new §41.238 regarding service delivery requirements.

The proposed amendment to §41.207 specifies that an employer or designated representative (DR) must complete an initial orientation conducted by an FMSA, complete various DADS forms, including one related to the employer or DR's agreement with the FMSA, send copies of the forms to the FMSA, and retain the completed DADS forms.

The proposed amendment to §41.217 specifies that an employer or DR must develop a service backup plan if requested by the case manager or service coordinator and adds a requirement for the CDS employer to revise the backup plan if the case manager or service coordinator determines that a backup plan is ineffective.

The proposed repeal of §41.233 deletes rules relating to the management of service providers.

The proposed new §41.233 requires an employer or DR to document training activities and on-going management activities. The proposed new section also requires an employer or DR to mail or fax a copy of DADS Form 1732 to the FMSA after hiring a

service provider and after each annual evaluation of the service provider.

The proposed new §41.238 specifies that an employer or DR must ensure that services provided through the CDS option are included on the individual's service plan and other plans as required by program rules, are budgeted in the employer budget, and are provided only to an eligible individual; specifies requirements of an employer or DR if nursing services or MDCP respite or flexible family support are included on the service plan; requires the employer or DR to provide a copy of a nursing assessment conducted by a program provider nurse to the CDS nurse and ensure the CDS nurse provides justification to the service planning team for possible revision of authorized nursing hours.

The proposed amendments to §41.301 and §41.339 remove provisions that are addressed in proposed new Chapter 49, Contracting for Community Services or elsewhere in Chapter 41.

The proposed new §41.404 specifies that a service planning team must determine if a service is critical to the individual's health and safety; describes when a case manager or service coordinator must request that an employer or DR develop a service backup plan; establishes that the case manager or service coordinator must approve a service backup plan before it can be implemented; requires the case manager or service coordinator to review each service backup plan during monitoring and at the annual service plan meeting to determine if the plan was implemented and effective; and specifies that, if the case manager or service coordinator determines that the backup plan is ineffective, the employer or DR must revise the plan in accordance with §41.217(d)(4)(D).

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections, repeals, and amendments are in effect, enforcing or administering the proposal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections, repeals, and amendments will not have an adverse economic effect on small businesses or micro-businesses because the rules do not add new responsibilities for financial management services agencies.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the new sections, repeals, and amendments are in effect, the public will benefit from the proposed rules by effectively addressing assurances set forth in the §1915(c) waiver applications about health and safety and qualified providers, and clarifying CDS employer responsibilities regarding service delivery.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the proposal.

The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Elizabeth Jones at (512) 438-4855 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R11, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R11" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §41.108

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§41.108. Services Available Through the CDS Option.

(a) The CDS option is available in the following programs and services:

(1) Medicaid waiver programs as follows:

(A) the Community Living Assistance and Support Services (CLASS) Program;

(B) the Deaf Blind with Multiple Disabilities (DBMD) Program;

(C) the Home and Community-Based Services (HCS) Program;

(D) the Medically Dependent Children Program (MDCP); and

(E) the Texas Home Living (TxHmL) Program;

(2) primary home care/community attendant services (Medicaid state plan services); and

(3) services under Title XX, Subtitle A of the Social Security Act as follows:

(A) family care; and

(B) consumer managed personal attendant services.

(b) For each waiver program listed in subsection (a)(1) of this section, an individual may choose to receive any of the following services through the CDS option:

(1) the CLASS Program:

(A) cognitive rehabilitation therapy;

(B) employment assistance;

(C) habilitation;

(D) in-home respite;

(E) nursing;

(F) occupational therapy;

(G) out-of-home respite;

(H) physical therapy;

(I) speech therapy;

(J) supported employment; and

(K) any other service provided through the CDS option as listed on DADS website;

(2) the DBMD Program:

(A) employment assistance;

(B) intervener;

(C) residential habilitation;

(D) respite;

(E) supported employment; and

(F) any other service provided through the CDS option as listed on DADS website;

(3) the HCS Program:

(A) cognitive rehabilitation therapy;

(B) employment assistance;

(C) nursing;

(D) supported employment;

(E) supported home living;

(F) respite; and

(G) any other service provided through the CDS option as listed on DADS website;

(4) the MDCP:

(A) employment assistance;

(B) flexible family support services;

(C) respite;

(D) supported employment; and

(E) any other service provided through the CDS option as listed on DADS website; and

(5) the TxHmL Program:

(A) adaptive aids;

(B) audiology services;

(C) behavioral support;

(D) community support;

(E) day habilitation;

(F) dental treatment;

(G) dietary services;

(H) employment assistance;

(I) nursing;

(J) minor home modifications;

(K) occupational therapy;

(L) physical therapy;

(M) respite;

(N) speech/language pathology services;

(O) supported employment; and

(P) any other service provided through the CDS option as listed on DADS website.

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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Lorri Haden
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SUBCHAPTER B. RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES

40 TAC §41.201, §41.233

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§41.201. Employer Responsibilities.

§41.233. Management of Service Providers.

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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40 TAC §§41.207, 41.217, 41.233, 41.238

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§41.207. Initial Orientation of an Employer.

An [~~Upon choosing to participate in the CDS option, an~~] employer[~~,~~] and the DR[~~, if applicable,~~] must:

(1) complete the initial orientation conducted [~~provided~~] by the FMSA [~~CDSA~~] in the residence of the individual in accordance with §41.307 of this chapter (relating to Initial Orientation of an Employer);

(2) complete:

(A) DADS [~~and maintain a copy of~~] Form 1736, Documentation of Employer Orientation, upon completion of the orientation; and

(B) if applicable, one of the following:

(i) DADS Form 1733, Employer and Employee Exemption from Nursing License for Certain Services; or

(ii) DADS Form 1585, Statement of Responsibilities for Consumer Directed Services;

(3) enter into an agreement with the FMSA by signing and dating:

(A) DADS Form 1735, Employer and Financial Management Services Agency (FMSA) Agreement; and

(B) the Service Provision Requirements Addendum to DADS Form 1735;

(4) complete DADS Form 1726, Relationship Definitions in Consumer Directed Services;

[~~(3) complete Form 1735, Employer and Consumer Directed Services Agency Service Agreement, with the following required attachments:~~]

[~~(A) Form 1726, Relationship Definitions in Consumer Directed Services;~~]

[~~(B) as required by the individual's program, Form 1733, Employer and Employee Exemption from Nursing License for Certain Services, or Form 1585, Statement of Responsibilities for Consumer Directed Services; and~~]

[~~(C) Form 1738, Rules Acknowledgement;~~]

(5) [~~(4)~~] send a copy of the completed forms described in paragraphs (2) - (4) [~~submit completed original forms specified in paragraph (3)~~] of this section to the FMSA [~~CDSA~~] within five calendar days after the date of the initial orientation; and

(6) [~~(5)~~] retain the completed forms described in paragraphs (2) - (4) of [~~copies of completed documentation required by~~] this section.

§41.217. Employer Responsibilities Regarding Service Backup [~~Back-up~~] Plan.

(a) An employer or DR must develop [~~and document~~] a service backup [~~back-up~~] plan, using DADS Form 1740, CDS Service Backup Plan, if requested by the case manager or service coordinator, in accordance with §41.404(b) of this chapter (relating to Ensuring Development, Approval, and Review of Service Backup Plans). [~~for each service to be delivered through the CDS option that the individual's service planning team has determined to be critical to the health and welfare of the individual.~~]

(b) The actions listed in a service backup plan may include the use of:

(1) paid service providers;

(2) unpaid service providers, such as family members, and friends;

(3) non-program services; or

(4) respite, if included in the authorized service plan.

(c) A service backup plan, including any revised plan, must be approved by the case manager or service coordinator in accordance with §41.404(c) of this chapter before implementation by the employer or DR.

[~~(b) An individual's service planning team must describe:~~]

[~~(1) which services are critical; and~~]

[~~(2) the length of time that constitutes a service interruption or an emergency for the individual.~~]

[~~(c) An employer or DR must develop a service back-up plan that:~~]

[~~(1) ensures the provision of services when the employer's regular service provider is not available to deliver the service or in an emergency; and~~]

[~~(2) may include the use of:~~]

[(A) paid service providers;]

[(B) unpaid service providers, such as family members, friends, or non-program services; or]

[(C) use of respite, if included in the authorized service plan.]

[(d) An individual's service planning team must approve each service back-up plan, as well as any revision, before implementation by the employer or DR.]

(d) [(e)] An employer or DR must:

(1) budget sufficient funds in the CDS option budget to implement a service backup [back-up] plan;

(2) comply with [complete requirements in] §41.511 of this chapter (relating to Budget Revisions and Approval);

(3) review a [and revise each] service backup [back-up] plan annually;

(4) revise a service backup [back-up] plan at any time, including after a review required by paragraph (3) of this subsection, if:

(A) the employer or DR determines the service backup plan was ineffective [experiences a problem in the implementation of a service back-up plan];

(B) a change occurs [there are changes] in the availability of service backup [back-up] plan resources; [and]

(C) the employer or DR redistributes funds that are not utilized in implementing [carrying out] a service backup [back-up] plan; or [and]

(D) the case manager or service coordinator notifies the employer or DR that the service backup plan was determined ineffective and that the plan must be revised as described in §41.404(e) of this chapter; and

(5) provide a copy of the initial and revised service backup plan [back-up plans and budgets] to the FMSA [CDSA] within five working days after the plan is approved [a plan's approval] by the case manager or service coordinator in accordance with §41.404(c) of this chapter [service planning team].

§41.233. Training and Management of Service Providers.

(a) An employer or DR must document the following on DADS Form 1732, Service Provider Training and Management:

(1) training activities required by the Service Provision Requirements Addendum to DADS Form 1735, Employer and Financial Management Services Agency (FMSA) Agreement; and

(2) on-going management activities required by DADS Form 1735.

(b) An employer or DR must mail or fax a copy of completed DADS Form 1732 to the FMSA within 30 calendar days after:

(1) hiring a service provider; or

(2) each annual evaluation of the service provider.

§41.238. Service Delivery Requirements.

(a) The employer or DR must ensure that services provided through the CDS option:

(1) are included on the individual's DADS authorized service plan and, if required by the program rules, included on any other plan such as the habilitation plan or implementation plan;

(2) are budgeted in the employer budget;

(3) are provided only to the individual;

(4) are not provided if the individual receiving services becomes ineligible for program services; and

(5) meet requirements for payment in accordance with program rules and §41.241 of this subchapter (relating to Payment of Services).

(b) If nursing services or MDCP respite or flexible family support are included on the service plan, the employer or DR must:

(1) if the employer or DR hires an RN to deliver the service, obtain a completed DADS Form 1747, Acknowledgment of Nursing Requirements, from the RN before the RN provides nursing services or MDCP respite or flexible family support to the individual;

(2) if the employer or DR hires a licensed vocational nurse (LVN) to deliver the service, obtain a completed DADS Form 1747-LVN, Licensed Vocational Nurse Supervision Certification, from the LVN before the LVN provides nursing services or MDCP respite or flexible family support to the individual;

(3) maintain completed DADS Forms 1747 and 1747-LVN in the individual's home and send a copy of the completed forms to the FMSA before delivery of nursing services or MDCP respite or flexible family support; and

(4) if program rules require that the individual's program provider's nurse complete the initial and annual nursing assessment:

(A) provide a copy of the program provider's nursing assessment, including the number of nursing hours authorized, to the CDS nurse; and

(B) if the CDS nurse disagrees with the number of authorized nursing hours, ensure that the CDS nurse provides justification to the service planning team for consideration and a possible service plan revision.

(c) If DADS determines that an employer or DR is not in compliance with this section, DADS may require the employer to develop and implement a corrective action plan in accordance with §41.221 of this subchapter (relating to Corrective Action Plans).

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 C. ENROLLMENT AND RESPONSIBILITIES OF FINANCIAL MANAGEMENT SERVICES AGENCIES (FMSAS)

40 TAC §41.301, §41.339

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§41.301. Contracting as a Financial Management Services Agency.

(a) An [DADS enters into a contract with an entity, including a sole proprietor, to be an] FMSA must:

(1) comply [in accordance] with Chapter 49 of this title (relating to Contracting for Community [Care] Services);[.]

(2) have at least one eligible employee or contractor to provide support consultation services as defined in Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities);

(3) [(b)] [An FMSA must] operate as a Vendor Fiscal/Employer Agent (VF/EA) in accordance with §3504 of the Internal Revenue Service (IRS) Code; and[.]

(4) participate in all mandatory training provided or authorized by DADS.

(b) [(c)] An FMSA must not:

(1) use a third party to file and report payroll taxes to the IRS on behalf of a CDS employer;[.]

(2) provide FMS to an individual who is receiving case management services or service coordination from the FMSA or a controlling person, as defined in §49.102 of this title (relating to Definitions) of the FMSA, to the same individual, except in the Client Managed Personal Attendant Services program.

(c) An FMSA or controlling person of the FMSA must not be an individual receiving FMS services from the FMSA or the individual's LAR or DR.

[(d) To contract as an FMSA, an entity must:]

[(1) have key operations staff, including the program manager and payroll staff employed by the FMSA complete pre-enrollment FMSA training provided or authorized by DADS and pass a test provided or authorized by DADS to demonstrate the knowledge and skills needed to provide FMS; and]

[(2) have at least one employee or contractor qualified as a support advisor and available to provide support consultation services as defined in Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities).]

[(e) An FMSA must not provide FMS and case management services to the same individual, except in the Client Managed Personal Attendant Services program. An FMSA must not be a related party for common ownership or control of the provider of case management. DADS evaluates common ownership and control in accordance with 1 TAC §355.102(i) (relating to General Principles of Allowable and Unallowable Costs).]

[(f) An FMSA must participate in all mandatory training provided or authorized by DADS.]

§41.339. Records [Record Retention].

[(a) A CDSA must create and retain records in accordance with:]

[(1) the contract between the CDSA and DADS;]

[(2) Chapter 49 of this title (relating to Contracting for Community Care Services);]

[(3) this chapter;]

[(4) requirements of the individual's program;]

[(5) applicable government agencies' requirements; and]

[(6) the CDSA's record keeping and record retention policy.]

(a) [(b)] An FMSA [A CDSA] must maintain financial records [that include the following information] to support claims submitted [billed] to DADS and payments received from DADS.[:]

[(1) the amount of payment;]

[(2) the voucher number;]

[(3) the warrant number; and]

[(4) the date the payment was received.]

(b) [(c)] An FMSA [A CDSA] must, in accordance with generally accepted accounting principles (GAAP) and DADS requirements, document and maintain financial records [in accordance with generally accepted accounting principles (GAAP) and DADS requirements], including:

(1) deposit slips, bank statements, cancelled checks, and receipts;

(2) purchase orders;

(3) invoices;

(4) journals and ledgers;

(5) time sheets, payroll, and tax records;

(6) records, forms, and reports required by the Internal Revenue Service, the Texas Workforce Commission, and other applicable government agencies;

(7) insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation) as a DADS contracted provider (the FMSA [CDSA]) and as applicable for individuals.[;]

(8) equipment inventory records;

(9) the FMSA's [CDSA's] internal accounting procedures; and

(10) chart of accounts.[; and]

[(11) the individual's program policies and procedures.]

[(d) A CDSA must keep records:]

[(1) for at least five years and, if any litigation or claim involving records is ongoing at the conclusion of five years, the CDSA must maintain the records until all litigation or claims are resolved; or]

[(2) for a longer period than five years if required by an applicable government agency.]

[(e) A CDSA must allow representatives of DADS or other appropriate government agencies, to examine and copy records during normal business days and hours and for reasonable periods.]

[(f) A CDSA must ensure confidentiality and security of all records.]

[(g) If records are discarded, a CDSA must ensure confidentiality and security of the information.]

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 D. ENROLLMENT, TRANSFER, SUSPENSION, AND TERMINATION

40 TAC §41.404

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§41.404. Ensuring Development, Approval, and Review of Service Backup Plans.

(a) A service planning team must determine if a service the individual is receiving through the CDS option is critical to the individual's health and safety.

(b) The case manager or service coordinator must request and ensure that the employer or DR develop a service backup plan, using DADS Form 1740, CDS Service Backup Plan, if:

(1) a service backup plan is required by the rules of the individual's program; or

(2) the service planning team determines that a service is critical to the health and safety of the individual in accordance with subsection (a) of this section.

(c) The case manager or service coordinator must approve a service backup plan, including a revised plan, before implementation by the employer or DR.

(d) The case manager or service coordinator must review each service backup plan during monitoring and at the annual service plan meeting to determine if the plan was implemented and effective.

(e) If, after a review required by subsection (d) of this section, the case manager or service coordinator determines the service backup plan was ineffective, the case manager or service coordinator must notify the employer or DR of the determination and that the employer must revise the service backup plan in accordance with §41.217(d)(4)(D) of this chapter (relating to Employer Responsibilities Regarding Service Backup Plan).

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 43. SERVICE RESPONSIBILITY OPTION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§43.4, 43.22, 43.41, and 43.71, concerning definitions; service responsibility option provider responsibilities; support consultation services; and oversight, in Chapter 43, Service Responsibility Option.

BACKGROUND AND PURPOSE

The purpose of the amendments is to update rules in Chapter 43 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, some of which use the service responsibility option (SRO). Therefore, the rules are being amended to reflect current terminology and reference proposed in new Chapter 49 instead of program rules in describing the background check an SRO provider must conduct on potential service providers.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §43.4 adds the term "FMSA," or financial management services agency, to the definitions. "FMSA" replaces the term "CDSA," or consumer directed services agency.

The proposed amendment to §43.22 replaces a general reference to program rules with a reference to proposed new Chapter 49, §49.304, relating to background checks, to describe the screening an SRO provider must conduct for a potential ser-

vice provider. This change is necessary because criminal history and registry checks are addressed in proposed new Chapter 49, rather than program rules.

The proposed amendments to §43.41 and §43.71 changes the term "CDSA" to "FMSA."

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is increased consistency in the rules governing community service and outdated terminology will be replaced.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §43.4

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§43.4. Definitions.

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

(1) Adult--A person who is 18 years of age or older.

(2) Applicant--Depending on the context, an applicant is:

(A) a person applying for employment with an SRO provider;

(B) a person or legal entity applying for a contract with an SRO provider to deliver services to an individual; or

(C) a person applying for services through a program.

(3) Case manager--A person who provides case management services to an individual. The case manager assists an individual who receives program services in gaining access to needed services, regardless of the funding source for the services, and assists with other duties as required by the individual's program.

[~~(4) CDSA--Consumer directed services agency. A provider contracting with DADS that provides financial management services~~].

(4) [~~(5)~~] CDS option--Consumer Directed Services option. A service delivery option in which an individual or LAR employs and retains service providers and directs the delivery of program services as described in Chapter 41 of this title (relating to Consumer Directed Services Option).

(5) [~~(6)~~] DADS--The Department of Aging and Disability Services.

(6) [~~(7)~~] Entity--An organization that has a legal identity such as a corporation, limited partnership, limited liability company, professional association, or cooperative.

(7) FMSA--Financial management services agency. An entity that contracts with DADS to provide financial management services, as defined in §41.103 of this title (relating to Definitions).

(8) Individual--A person enrolled in a program.

(9) LAR--Legally authorized representative. A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, managing conservator of a minor, or the guardian of an adult.

(10) Management agreement--A negotiated agreement between an individual and an SRO provider that establishes each party's responsibilities to create and sustain quality services. A management agreement also establishes a schedule for the individual or LAR and

the SRO provider to meet to assess the individual's well-being and the quality of services provided.

(11) Program--A community services program administered by DADS.

(12) Provider--An entity that has a contract with DADS to provide program services.

(13) Representative--A willing adult who volunteers to assist an individual or LAR with selection, training, and daily management of a service provider.

(14) Service back-up plan--A documented plan to ensure that critical program services delivered through the SRO are provided to an individual when normal service delivery is interrupted.

(15) Service coordinator--An employee of a mental retardation authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services, including program services. A service coordinator provides case management services to an individual.

(16) Service plan--A document developed in accordance with rules governing an individual's program to identify the program services to be provided to the individual, the number of units of each service to be provided, and the projected cost of each service.

(17) Service planning team--A group of people determined by the requirements of an individual's program that meet to discuss and make decisions or recommendations regarding an individual's program services. Some programs refer to the service planning team as an interdisciplinary team.

(18) Service provider--An employee, contractor, or vendor of the SRO provider.

(19) SRO--Service responsibility option. A service delivery option in which an individual or LAR selects, trains, and provides daily management of a service provider, while the fiscal, personnel, and service back-up plan responsibilities remain with an SRO provider.

(20) SRO orientation--A mandatory training provided by a support advisor to inform an individual or LAR about SRO responsibilities and tools to use for successful management of the SRO.

(21) SRO provider--A provider who volunteers to enroll as an SRO provider and amend its program services contract to allow an individual receiving one or more services from the provider to have a service delivered through SRO.

(22) Support advisor--A person who provides support consultation to an employer, representative, or individual receiving services through the SRO.

(23) Support consultation--A service provided by a support advisor that provides the required SRO orientation and additional support when needed by the individual to effectively carry out responsibilities under the SRO. Support consultation helps an individual or LAR meet the required daily management responsibilities of the SRO.

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 C. RESPONSIBILITIES OF AN SRO PROVIDER

40 TAC §43.22

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§43.22. SRO Provider Responsibilities.

(a) At the initial meeting with an individual, an SRO provider must:

(1) negotiate a management agreement with the individual;

(2) discuss and approve a service back-up plan with the individual;

(3) provide SRO provider time sheets to the individual and explain the submission process, including how frequently time sheets must be completed and submitted; and

(4) orient the individual to the SRO provider's evaluation process, including forms and the schedule for evaluating service providers.

(b) During service provider selection, the SRO provider must:

(1) screen a potential service provider, including conducting criminal history and registry checks in accordance with §49.304 of this title (relating to Background Checks) [~~required by an individual's program~~]; and

(2) send potential service providers, including those recommended by the individual, to the individual to interview.

(c) When the individual has selected a service provider, the SRO provider must:

(1) explain the SRO to the service provider, including that the SRO provider is the employer of record and that the individual is the daily manager of services;

(2) explain to the service provider that if the service provider has health or safety concerns about the individual and cannot resolve the issue after talking with the individual, the service provider must contact the SRO provider; and

(3) provide basic training and orientation to service providers regarding comprehensive [~~universal~~] precautions, SRO provider policies, complaint procedures, and emergency procedures.

(d) After services have begun, the SRO provider must:

(1) receive and process time sheets from the service provider;

(2) send a back-up service provider, within the time frame required by an individual's program, if requested by the individual or if the individual does not implement the service back-up plan; and

(3) send new potential service providers, within the time frame required by an individual's program, to interview at the individual's request.

(e) The SRO provider must:

(1) notify a case manager or service coordinator of issues or concerns related to an individual's participation in the SRO:

(A) immediately if possible, but at least within 24 hours after becoming aware of:

(i) allegations of abuse, neglect, exploitation, or fraud; or

(ii) concerns about the individual's health, safety, or welfare; and

(B) within seven days after becoming aware of:

(i) non-delivery of services or extended breaks in services;

(ii) noncompliance with SRO management responsibilities;

(iii) noncompliance with a service back-up plan; or

(iv) over- or under-utilization of services or funds allocated in the individual's service plan for delivery of services to the individual through the SRO and in accordance with the requirements of the individual's program; and

(2) document any issues or concerns related to an individual's participation in the SRO on DADS' Case Information form.

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

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SUBCHAPTER E. SUPPORT CONSULTATION

40 TAC §43.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§43.41. Support Consultation Services.

(a) Support consultation is provided by a person who meets the qualifications of a support advisor as described in Chapter 41 of this title (relating to Consumer Directed Services Option). A support advisor may be an employee or contractor of:

(1) An FMSA [a ~~CDSA~~]; or

(2) another entity.

(b) Support consultation must include:

(1) a level of training, assistance, and support that does not duplicate or replace case management services, or another available program or non-program service or resource; and

(2) practical skills training and assistance to successfully manage service providers for authorized program services delivered through the SRO.

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

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SUBCHAPTER H. OVERSIGHT

40 TAC §43.71

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§43.71. Oversight.

DADS oversees roles and responsibilities of the following:

(1) an individual or LAR who chooses to participate in the SRO;

(2) a representative;

(3) an FMSA [a ~~CDSA~~];

(4) a support advisor;

(5) an SRO provider;

(6) a case manager; and

(7) a service coordinator.

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 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES
SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS
40 TAC §44.302

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §44.302, concerning provider qualifications and responsibilities in all CMPAS service delivery options, in Chapter 44, Consumer Managed Personal Attendant Services.

BACKGROUND AND PURPOSE

The purpose of the amendment is to correct the reference to Chapter 49 to reflect the title of new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register,* and to clarify that a CMPAS provider must comply with the provisions of Chapter 49 as described in that chapter.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §44.302 changes the title of Chapter 49 to reflect the proposed new chapter's name and requires a CMPAS provider to comply with Chapter 49.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is increased consistency in the rules governing community services.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which

provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§44.302. Provider Qualifications and Responsibilities in All CMPAS Service Delivery Options.

To participate as a provider in the CMPAS Program, the provider must:

(1) maintain a license from DADS under Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies), in the personal assistance services category of licensure;

(2) comply with [~~meet the requirements described in~~] Chapter 49 of this title (relating to Contracting for Community [~~Care~~] Services);

(3) secure requisite training to function as an FMSA for those individuals who choose the consumer directed services option for CMPAS services;

(4) enter into a contract with DADS to provide CMPAS Program services and meet the requirements described in this chapter;

(5) have contract compliance monitored by a DADS contract manager;

(6) be able to provide services under all three service delivery options; and

(7) provide case management services, including:

(A) determining applicant eligibility and co-payment amount;

(B) preparing individual registration data entry forms;

(C) assessing and reassessing individual needs using DADS Form 2060, Assessment Questionnaire and Task/Hour Guide; and

(D) developing a service plan.

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 April 4, 2014.

TRD-201401539

Lorri Haden

Acting General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2014

For further information, please call: (512) 438-3734

CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§45.503, 45.609, 45.619, 45.701, 45.703, 45.707, 45.801, and 45.902, concerning contracting requirements; requirements of DSA following provision of adaptive aid; satisfaction of minor home modification; compliance with laws, rules, regulations, and requirement for e-mail subscription regarding case management agency (CMA); qualifications of CMA staff persons; CMA: quality management and complaint process; compliance with laws, rules, regulations, and requirement for e-mail subscription regarding direct service agency (DSA); and financial errors; and the repeal of §§45.501, 45.808, and 45.901, concerning purpose; DSA: complaint process; and administrative errors, in Chapter 45, Community Living Assistance and Support Services.

BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to update and delete rules in Chapter 45 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including services provided through the Community Living Assistance and Support Services (CLASS) Program. Therefore, the rules are being amended and repealed to remove provisions addressed in proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §45.501 deletes an unnecessary provision stating the purpose of Subchapter E, which relates to support family services.

The proposed amendment to §45.503 deletes the licensure requirements for a support family agency because that requirement is addressed in proposed new Chapter 49.

The proposed amendments to §45.609 and §45.619 replaces a reference to §45.808 with a reference to proposed new §49.309, which requires a contractor to have a complaint process. This change is necessary because §45.808 is proposed for repeal.

The proposed amendment to §45.701 deletes the requirement for a case management agency (CMA) to comply with state and federal laws and regulations and the rules of HHSC because that requirement is addressed in proposed new Chapter 49. The requirement to subscribe to e-mail notifications is also deleted because it is required by proposed new Chapter 49.

The proposed amendment to §45.703 deletes the requirement for a CMA to conduct certain background checks on staff persons because that requirement is addressed in proposed new Chapter 49.

The proposed amendment to §45.707 deletes the requirement for a CMA to have a complaint process because proposed new Chapter 49 requires a CMA, as a contractor, to have a complaint process.

The proposed amendment to §45.801 deletes the requirement for a direct service agency (DSA) to comply with state and federal laws and regulations and the rules of HHSC because that requirement is addressed in the proposed new Chapter 49. The requirement to subscribe to e-mail notifications is also deleted because it is required by proposed new Chapter 49.

The proposed repeal of §45.808 deletes the requirement for a DSA to have a complaint process because proposed new Chapter 49 requires a DSA, as a contractor, to have a complaint process.

The proposed repeal of §45.901 deletes provisions related to administrative errors because the process described in the rule

is out-of-date. Requirements related to claims for payments and the ability of DADS to recoup funds are addressed in proposed new Chapter 49.

The proposed amendment to §45.902 deletes provisions regarding financial errors that are addressed in proposed new Chapter 49. Several provisions regarding reimbursement that relate specifically to the CLASS Program have not been deleted.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses because the amendments and repeal do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is increased consistency in the rules governing community services, replacing outdated rules with current ones, and providing DADS with the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER E. SUPPORT FAMILY SERVICES

DIVISION 1. INTRODUCTION

40 TAC §45.501

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.501. Purpose.

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

40 TAC §45.503

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall

adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.503. Contracting Requirements.

[~~(a) The support family agency must contract with the Texas Department of Human Services (DHS) to provide support family services to eligible Community Living Assistance and Support Services clients.~~]

[~~(b) The support family agency must be licensed as:~~]

[~~(1) a child-placing agency through the Texas Department of Family and Protective Services; or~~]

[~~(2) a home and community support services agency licensed by DHS to provide home health services.~~]

[~~(c)~~] A [~~The~~] support family agency must meet all provisions described in this chapter and comply with Chapter 49 of this title (relating to Contracting for Community [~~Care~~] Services).

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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SUBCHAPTER F. ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS

DIVISION 1. ADAPTIVE AIDS

40 TAC §45.609

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.609. Requirements of DSA Following Provision of Adaptive Aid.

(a) Within 10 business days after an individual has received an adaptive aid, a DSA must ensure that:

(1) the adaptive aid meets the specifications required by §45.604(e)(1) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing $500 or More); and

(2) a staff person involved in purchasing the adaptive aid for the individual:

(A) contacts the individual to determine whether the adaptive aid meets the needs of the individual; and

(B) documents the results of that visit on the Documentation of Completion of Purchase form as described in the *CLASS Provider Manual.*

(b) If the DSA determines that the adaptive aid does not meet the specifications required by §45.604(e)(1) of this division, the DSA must work with the vendor to ensure that the adaptive aid meets the specifications within 30 calendar days after the DSA's determination.

(c) If the staff person or individual or LAR determines that the adaptive aid does not adequately meet the individual's needs because the individual needs training or other assistance, or the adaptive aid requires repair or adjustment, the DSA must ensure that, within 14 business days after the determination, a person who is qualified to perform such training, assistance, repair, or adjustment visits the individual in person and performs the necessary functions.

(d) If the individual or LAR has concerns about the adaptive aid that are not addressed by the DSA's compliance with subsections (b) and (c) of this section, the DSA must process the individual's or LAR's concerns as a complaint in accordance with §49.309 of this title (relating to Complaint Process) [~~§45.808 of this chapter (relating to DSA: Complaint Process)~~].

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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DIVISION 2. MINOR HOME MODIFICATIONS

40 TAC §45.619

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that

operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.619. Satisfaction of Minor Home Modification.

(a) A DSA must ensure that a staff person involved in purchasing the minor home modification for the individual:

(1) visits the individual to determine whether the individual and LAR is satisfied with the minor home modification; and

(2) documents the result of that visit on a Documentation of Completion of Purchase form as described in *CLASS Provider Manual.*

(b) If the individual or LAR is not satisfied with the minor home modification, the DSA must process the individual's or LAR's dissatisfaction as a complaint in accordance with §49.309 of this title (relating to Complaint Process) [§45.808 of this chapter (relating to DSA: Complaint Process)].

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

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SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

40 TAC §§45.701, 45.703, 45.707

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.701. CMA Compliance with [Laws,] Rules[, Regulations, and Requirement for E-mail Subscription].

(a) A CMA must comply with [applicable state and federal laws, rules, and regulations including]:

(1) this chapter; and

(2) Chapter 49 of this title (relating to Contracting for Community [Care] Services).[; and]

[(3) 1 Texas Administrative Code (TAC), §355.505 (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).]

(b) A CMA is not required to be a HCSSA.

[(c) A CMA must subscribe to receive e-mail notifications regarding the CLASS Program by entering information at the website address listed in the *CLASS Provider Manual.*]

§45.703. Qualifications of CMA Staff Persons.

(a) A CMA must have a full-time or part-time program director who:

(1) manages and oversees the CMA's operations, including the provision of case management services to individuals enrolled with the CMA;

(2) is at least 18 years of age;

(3) has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; and

(4) is an employee of the CMA.

(b) A CMA must ensure that a case manager working for the CMA:

(1) has:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is an employee of the CMA;

(3) is not employed by or contracting with a DSA to provide a direct service to an individual served by the CMA; and

(4) is not a relative of the individual to whom the case manager is providing case management.

[(c) A CMA must ensure that its staff persons:]

[(1) have not been convicted of an offense listed under §250.006 of the Texas Health and Safety Code; and]

[(2) are not listed as unemployable in either the Employee Misconduct Registry or the Nurse Aid Registry maintained by DADS.]

§45.707. CMA: Quality Management [and Complaint] Process.

(a) A CMA must, at least annually, conduct a survey of all individuals, LARs, and persons actively involved with the individual to determine their satisfaction with the provision of case management.

(b) A CMA must develop a written quality assurance process to evaluate and improve the quality of case management provided by the CMA based, at least in part, on the results of the survey required by subsection (a) of this section.

[(c) A CMA must:]

[(1) have a written process by which complaints about the provision of case management from the individual and LAR or person actively involved with the individual are submitted to the CMA;]

[(2) allow complaints to be submitted either orally or in writing;]

[(3) obtain and maintain documentation of receipt of the complaint process by the individual or LAR;]

[(4) have written evidence of the date a written complaint was received;]

[(5) document receipt of an oral complaint, with the date of receipt and a narrative of the allegations;]

[(6) investigate each complaint and respond, in writing, to the complainant regarding the results of the investigation in a timely manner; and]

[(7) maintain a written log of complaints filed by individuals and LARs or persons actively involved with the individual that contains the following information:]

[(A) the date the CMA received the complaint;]

[(B) the name of the person who filed the complaint;]

[(C) a description of the nature of the complaint;]

[(D) the name of the staff person who conducted the investigation of the complaint;]

[(E) the names of persons contacted during the investigation of the complaint;]

[(F) the outcome of the complaint; and]

[(G) the date final action was taken by the CMA in response to the complaint.]

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 April 4, 2014.

TRD-201401544
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

40 TAC §45.801

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.801. DSA Compliance with [Laws,] Rules[, Regulations, and Requirement for E-mail Subscription].

[(a)] A DSA must comply with [applicable state and federal laws, rules, and regulations including]:

(1) this chapter;

(2) Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(3) Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services); and

(4) Chapter 49 of this title (relating to Contracting for Community [Care] Services).[; and]

[(5) 1 TAC §355.505 (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).]

[(b) A DSA must subscribe to receive e-mail notifications regarding the CLASS Program by entering information at the website address listed in the *CLASS Provider Manual*.]

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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40 TAC §45.808

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.808. DSA: Complaint Process.

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

SUBCHAPTER I. FISCAL MONITORING

40 TAC §45.901

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.901. Administrative Errors.

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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40 TAC §45.902

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.902. Financial Errors.

[~~A reduction of 100 percent of the paid unit rate is the financial error exception. This exception is applied to the unit(s) of service on the documentation reviewed in the CLASS Program. This exception is not extrapolated. Financial errors include, but are not limited to, the following:~~]

[~~(1) DADS reimburses the program provider for services, but the CLASS Program documentation of services delivered form, or facsimile, is missing for the period for which services are reimbursed. DADS applies the error to the total number of units documented on the time sheet.~~]

[~~(2) The habilitation service provider, nurse, therapist, or other professional leaves the entire record of time section blank. DADS applies the error to the total number of units documented on the time sheet.~~]

[~~(3) DADS reimburses the program provider for hours that exceed the authorization given by DADS. DADS applies the error to the total number of units reimbursed in excess of the units authorized by DADS, unless purchased following emergency procedures.~~]

[~~(A) For nursing services, the maximum that may be reimbursed is the number of hours listed under "Nursing Services" in the IPC form.~~]

[~~(B) For habilitation services, the maximum that may be reimbursed for a month is the monthly amount authorized on the CLASS IPC/IPP plus any hours not used due to individual stay while in a hospital or in a rehabilitation hospital.~~]

[~~(4) DADS reimburses the program provider for any waiver service that is not identified on the individual's IPC form and attachments, unless the service was provided as a result of an emergency and is supported by back-up documentation within seven business days from the date the emergency was determined.~~]

[~~(5) DADS reimburses the program provider for hours that exceed the total number of hours recorded on the documentation of services delivered form or facsimile or generated by an electronic visit verification system. DADS applies the error to the total number of units reimbursed in excess of the units recorded on the time sheet. If the sum of the daily total of hours does not equal what is written in the monthly total blank, the lesser of the two totals is used to calculate the total number of hours subject to the error.~~]

[~~(6) DADS reimburses the program provider for nursing, physical therapy, occupational therapy, or speech pathology services, but a valid order by a licensed health care professional legally authorized to issue such an order is missing. DADS applies the error to the total number of units claimed and not covered by a valid order.~~]

(a) [~~(7)~~] DADS reimburses the program provider for a claim for service, other than the initial administrative fee, delivered prior to the eligibility effective date on the IPC form. DADS applies the error to the total number of units reimbursed for such services that were delivered before the effective date on the form.

[~~(8) DADS reimburses the program provider for any hours that consisted of non-billable time and activities as identified in the *CLASS Provider Manual*.~~]

(b) [~~(9)~~] DADS reimburses the program provider for more than four hours of nursing used to decide whether to delegate to the habilitation service provider. DADS applies the error to the total number of units reimbursed for such services in excess of the four hour maximum for such services.

(c) [~~(10)~~] DADS reimburses the program provider for more than 10 hours during the individual's IPC year for nursing services being performed by a nurse to prevent service breaks caused by the habilitation service provider not being available to provide delegated nursing tasks. DADS applies the error to the total number of units reimbursed in excess of the 10 hour maximum for such services.

[~~(11) DADS reimburses the program provider for an amount in excess of the amount documented on the invoice/receipt for adaptive aids/vehicle modifications or minor home modifications. DADS applies the error to the total number of dollars reimbursed in excess of the amount on the invoice/receipt.~~]

[~~(12) If there is no invoice/receipt for the purchase of adaptive aids/vehicle modifications or for the completion of minor home modifications for which the provider has been reimbursed, DADS applies the error to the total dollar amount reimbursed for adaptive aids/vehicle modifications or minor home modifications in question.~~]

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§46.11, 46.19, 46.21, 46.23, and 46.33 concerning contracting requirements, recordkeeping, reimbursement, monitoring reviews, and staff training; and the repeal of §46.17 and §46.25, concerning termination of contract, and complaints; in Chapter 46, Contracting to Provide Assisted Living and Residential Care Services.

BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to update and delete rules in Chapter 46 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including assisted living and residential care services. The rules are being amended and repealed to delete provisions addressed in the proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §46.11 deletes provisions regarding assisted living contracting requirements and contract assignment because those subjects are addressed in proposed new Chapter 49. The amendment also updates references to the former Department of Human Services (DHS) to the Department of Aging and Disability Services (DADS).

The proposed repeal of §46.17 deletes provisions related to contract termination because that subject is addressed in proposed new Chapter 49.

The proposed amendment to §46.19 deletes provisions regarding general recordkeeping requirements, record retention, financial records, and subcontractor records because those subjects are addressed in proposed new Chapter 49.

The proposed amendment to §46.21 deletes provisions regarding general billing requirements, and acceptance of the rate paid by DADS as payment in full because those subjects are addressed in proposed new Chapter 49.

The proposed amendment to §46.23 deletes provisions related to compliance monitoring and fiscal monitoring because those subjects are addressed in proposed new Chapter 49.

The proposed repeal of §46.25 deletes a provision requiring a complaint process because that subject is addressed in proposed new Chapter 49.

The proposed amendment to §46.33 deletes a provision requiring training after initial orientation and referencing a section in

proposed new Chapter 49 because the section is being repealed. The amendment also corrects the title of §92.41.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses because the amendments and repeal do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER B. PROVIDER CONTRACTS

40 TAC §§46.11, 46.19, 46.21, 46.23

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§46.11. Contracting Requirements.

(a) General contracting requirements. A facility must meet all provisions described in this chapter and Chapter 49 of this title (relating to Contracting for Community [~~Care~~] Services).

[~~(b) Assisted living services contracting requirements. To qualify to provide assisted living services under contract with the Texas Department of Human Services (DHS), a facility must comply with the following requirements:~~]

[~~(1) The facility must be licensed as defined in §92.4 of this title (relating to Types of Assisted Living Facilities). The facility must be allowed under licensure to provide the required services described in §46.41 of this chapter (relating to Required Services). Due to the licensure requirements, Type C and Type E facilities are not able to provide the required services under this chapter.~~]

[~~(2) The facility must have a separate contract for each facility that provides assisted living services.~~]

(b) [~~(3)~~] Number of beds. The facility must specify [~~the number of beds for DHS clients~~] in its contract the number of beds for clients of the Department of Aging and Disability Services (DADS), as follows:

(1) [~~(A)~~] The facility must ensure that the number of [~~beds~~] contracted DADS beds are in rooms that meet the requirements in §46.13 of this chapter (relating to Housing Options).

(2) [~~(B)~~] The facility must ensure the number of DADS [~~DHS~~] clients served by the facility does not exceed the number of contracted DADS [~~DHS~~] beds.

(3) [~~(C)~~] The facility may adjust the number of beds for DADS [~~DHS~~] clients by contract amendment.

[~~(4) The facility must comply with all other applicable DADS DHS rules and regulations.~~]

(c) Disclosure statement requirements. The facility must ensure that the Assisted Living Disclosure Statement, as required by Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities), does not conflict with the program requirements.

(d) Client referrals. The facility must accept all DADS [~~DHS~~] referrals unless:

(1) the referral would cause the facility to exceed licensed capacity;

(2) the referral would cause the facility to exceed the number of beds for DADS [~~DHS~~] clients that the facility has specified in its contract; or

(3) the facility is unable to meet the client's needs and has followed the procedures described in §46.35 of this chapter (relating to Interdisciplinary Team).

[(e) Contract assignment. In addition to the procedures described in §49.5 of this title (relating to Contract Assignment), the facility must follow the procedures described in §46.71 of this chapter (relating to Trust Fund Procedures for Client Discharge) for assignment of the trust fund account and records.]

§46.19. Recordkeeping.

[(a) General documentation requirements. The facility must maintain the documentation described in Chapter 49 of this title (relating to Contracting for Community Care Services).]

[(b) Record retention requirements. The facility must retain records for the time periods described in §69.205 of this title (relating to Contractor's Records).]

(a) [(c)] Daily service delivery documentation. The facility must document the client's daily service delivery.

(1) The daily service delivery documentation must contain the:

(A) client name;

(B) facility contract [vendor] number issued by the [Texas] Department of Aging and Disability [Human] Services (DADS) [(DHS)];

(C) coverage period of the daily service delivery documentation;

(D) tasks assigned;

(E) tasks performed during the coverage period;

(F) signature of the facility manager or supervisor; and

(G) date of signature of the facility manager or supervisor.

(2) The daily service delivery documentation must be on a single document. If services delivered during the coverage period exceed the space on the single document, the facility may use multiple pages. The daily service delivery document must clearly indicate the number of pages used for the coverage period.

(b) [(d)] Daily census documentation. The facility must document the daily census of clients.

(1) The daily census documentation must contain the:

(A) name of the facility;

(B) facility contract [vendor] number issued by DADS [DHS];

(C) coverage period of the daily census documentation;

(D) name of each client served during the coverage period;

(E) one of the following categories for the daily status of each client for each day during the coverage period[. Types of daily status are]:

(i) admission;

(ii) discharge;

(iii) present;

(iv) personal leave;

(v) institutional leave;

(vi) emergency care (emergency care applies only to the Community Care for Aged and Disabled (CCAD) Residential Care (RC) program); and

(vii) ineligible emergency care (ineligible emergency care applies only to the CCAD RC program);

(F) total of each type of daily status during the coverage period;

(G) signature of the authorized timekeeper; and

(H) date of the authorized timekeeper's signature.

(2) The daily census documentation must be on a single document. If the number of clients served during the coverage period exceeds the space on the single document, the facility may use multiple pages. The daily census document must clearly indicate the number of pages used for the coverage period.

[(e) Financial records. The facility must maintain financial records:]

[(1) to support its billings to DHS for payment under §46.21 of this chapter (relating to Reimbursement);]

[(2) to document reimbursements made by DHS. The documentation must include:]

[(A) amount of reimbursement;]

[(B) voucher number;]

[(C) warrant number;]

[(D) date of receipt; and]

[(E) any other information necessary to trace deposits of reimbursements and payments made from the reimbursements in the facility's accounting system.]

[(3) in accordance with generally accepted accounting principles (GAAP) and DHS procedures. A facility's financial records must include but are not limited to the following:]

[(A) deposit slips, bank statements, cancelled checks, and receipts;]

[(B) purchase orders;]

[(C) invoices;]

[(D) journals and ledgers;]

[(E) timesheets and payroll and tax records;]

[(F) inventory records for food and other supplies;]

[(G) Internal Revenue Service, Department of Labor, and other government records and forms;]

[(H) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and worker's compensation);]

[(I) equipment inventory records;]

[(J) records of the facility's internal accounting procedures;]

[(K) chart of accounts, as defined by GAAP; and]

[(L) records of the facility's company policies.]

[(f) Subcontractor records. If a provider agency utilizes a subcontractor, the provider agency must maintain records of the subcontractor's activities. Maintenance of all records to support subcontractor claims is the responsibility of the provider agency.]

(c) [~~(g)~~] Registered nurse access. The facility must allow the home and community support services agency's registered nurse access to the client's medical and service plan records for use in the assessment.

§46.21. Reimbursement.

[~~(a) The facility must bill for services provided as described in Chapter 49 of this title (relating to Contracting for Community Care Services).~~]

[~~(b) The Department of Aging and Disability Services (DADS) will pay for eligible services provided and billed in compliance with this chapter.~~]

(a) [~~(c)~~] A unit of service is one billable day of authorized service delivered to a client.

[~~(d) The facility must agree to accept the unit rate authorized by DADS, plus any applicable room and board payments, as payment in full for services required by DADS.~~]

(b) [~~(e)~~] The unit rate reimbursed by Department of Aging and Disability Services (DADS) [~~DADS~~] includes any copayment. The combined reimbursement from DADS and the client or the client's representative for the required services described in §46.41 of this chapter (relating to Required Services) must not exceed the unit rate plus room and board specified for each type of setting. The unit rate does not include charges for services described in §46.15 of this chapter (relating to Additional Services and Fees).

(c) [~~(f)~~] The facility must deduct the copayment amount from reimbursement claims submitted to DADS.

(d) [~~(g)~~] The facility must not bill DADS for the day of discharge, unless the discharge is due to the death of the client.

(e) [~~(h)~~] The facility must bill the double occupancy (Residential Care Apartment) rate for clients in the single occupancy (Assisted Living Apartment) setting who request double occupancy.

(f) [~~(i)~~] The facility must bill DADS for the balance of the bedhold charge for any clients whose daily copayment is less than the maximum bedhold charge allowed by DADS.

(1) The facility must determine the client's daily copayment amount by dividing the client's monthly copayment charge by the number of days in the month.

(2) The facility must deduct the client's daily copayment amount from the bedhold rate and submit the claim to DADS.

(3) This subsection does not apply to the Assisted Living (AL) services allowed in the Community Based Alternatives (CBA) [~~Assisted Living/Residential Care (AL/RC)~~] Program.

(g) [~~(j)~~] The facility may bill DADS for emergency care provided to clients for:

(1) up 60 days per authorization for eligible clients; or

(2) five days for a client ineligible for emergency care.

(h) [~~(k)~~] The facility must not bill for services provided before or after the authorized effective dates for CBA AL [~~AL/RC~~] or Community Care for Aged and Disabled (CCAD) Residential Care (RC) services, as those dates are determined by DADS.

(i) [~~(l)~~] When the facility requests a level of care reset, the facility may bill DADS at the new payment rate effective the date of the new assessment. The facility may request only two level of care resets during each calendar year for each CBA client for the following time periods:

(1) January through June; and

(2) July through December.

(j) [~~(m)~~] CCAD RC services will be reimbursed at the double occupancy rate, regardless of the actual occupancy.

§46.23. Financial Errors [~~Monitoring Reviews~~].

[~~Monitoring reviews are conducted through an on-site review and in accordance with Chapter 49 of this title (relating to Contracting for Community Care Services). The Texas Department of Human Services (DHS) reviews records on a regular and systematic basis, and as often as DHS deems necessary. DHS conducts the following types of monitoring:~~]

[~~(1) Compliance monitoring. Compliance monitoring is a review to determine if the facility is delivering services according to the rules in this chapter. Compliance monitoring includes:~~]

[~~(A) review of consumer satisfaction surveys conducted;~~]

[~~(B) review of client records;~~]

[~~(C) interviews with clients and staff;~~]

[~~(D) observation of clients and staff; and~~]

[~~(E) consultations with others as appropriate.~~]

[~~(2) Fiscal monitoring. Fiscal monitoring is a review of documentation that supports the facility's billing. The facility is liable for recoupment of payment if monitoring errors indicate the monthly claims do not correspond with the daily census documentation and daily service delivery documentation. Fiscal monitoring includes:~~]

[~~(A)~~] [~~Financial errors. DHS applies the error to the entire unit of service.~~] Financial errors include the errors described in this section.

(1) [~~(i)~~] The facility is reimbursed for services, but the daily census documentation and the daily service delivery documentation are missing for the period for which services are reimbursed. DADS [~~DHS~~] applies the error to the total number of units reimbursed for the billing period for which forms are missing.

(2) [~~(ii)~~] The facility is reimbursed for units that exceed the units recorded on daily census documentation and daily service delivery documentation. DADS [~~DHS~~] applies the error to the total number of units reimbursed in excess of units recorded.

(3) [~~(iii)~~] The facility is reimbursed for units of service and the client did not receive services. DADS [~~DHS~~] applies the error to the total number of units reimbursed for the days the client did not receive services.

(4) [~~(iv)~~] The facility is reimbursed for units of service and the client was Medicaid ineligible. DADS [~~DHS~~] applies the error to the total number of units reimbursed for the days the client was Medicaid ineligible. This does not apply to the Community Care for Aged and Disabled (CCAD) Residential Care (RC) program.

[~~(B) Administrative errors. Documentation is reviewed for administrative errors as they exist at the time DHS staff arrive to conduct the monitoring review. DHS applies the error to the administrative portion of the unit of service. The administrative portion is 12% of the paid unit rate. Administrative errors include:~~]

[~~(i) The facility enters a date of signature on the daily census documentation that is before the date the last day services are provided. DHS applies the error to the total number of units reimbursed after the signature date.~~]

[*(ii)* ~~The facility fails to sign the daily census documentation. DHS applies the error to the total number of units reimbursed on the unsigned form.~~]

[*(iii)* ~~The facility fails to enter a date of signature on the daily census documentation to certify total number of units provided to the client. DHS applies the error to the number of units reimbursed on the undated form.~~]

[*(iv)* ~~The facility corrects the date of signature on the daily census documentation, but fails to initial the correction. DHS applies the error to the total number of units reimbursed after the earliest signature date.~~]

[*(v)* ~~The facility uses a signature stamp on the daily census documentation, but fails to initial the stamped signature. DHS applies the error to the total number of units reimbursed on the signature stamped form.~~]

[*(vi)* ~~The facility makes an illegible entry or illegible correction to any portion of the record of time on the daily census documentation. DHS applies the error to the total number of units reimbursed for the days in which entries are illegible.~~]

[*(vii)* ~~The facility enters an illegible date of signature or makes an illegible correction to the date of signature on the daily census documentation. DHS applies the error to the total number of units on the form.~~]

[*(viii)* ~~The facility fails to complete the entire daily census documentation in ink, as described in §49.11(d) of this title (relating to Record Documentation Requirements). DHS applies the error to the total number of units reimbursed that were not completed in ink.~~]

[*(ix)* ~~The facility uses a method other than crossing out and initialing to change an entry on the daily census documentation. DHS applies the error to the total number of units reimbursed that were corrected in a manner other than crossing out and initialing.~~]

[*(x)* ~~The facility fails to list the client on the daily census documentation, but the client was listed on the daily service delivery documentation. DHS applies the error to the total number of units reimbursed for the period the client was left off the daily census documentation.~~]

[*(xi)* ~~The facility leaves the daily status blank on the daily census documentation, but daily activity can be verified on the daily service delivery documentation. DHS applies the error to the total number of units reimbursed for which the daily status is left blank on the daily census documentation.~~]

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

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

40 TAC §46.17, §46.25

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§46.17. Termination of Contract.

§46.25. Complaints.

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

SUBCHAPTER C. PROVIDER REQUIREMENTS

40 TAC §46.33

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§46.33. Staff Training.

(a) General training requirements. The facility must provide all staff with training as described in §92.41 of this title (relating to Standards for Type A and[,] Type B[, and Type E] Assisted Living Facilities).

(b) Facility manager. In addition to the requirements described in subsection (a) of this section, the facility must train the facility manager on the following topics:

(1) facility requirements for the Community Care for Aged and Disabled (CCAD) Residential Care (RC) or Assisted Living (AL) Services allowed in the Community Based Alternatives (CBA) [Assisted Living/Residential Care (AL/RC)] programs or both, as applicable; and

(2) client characteristics and needs.

(c) Attendants. In addition to the requirements described in subsection (a) of this section, the facility must train the attendant in performing the tasks identified on the service plan described in §46.39(d) of this chapter (relating to Service Initiation).

[(d) Training of new staff. The facility must provide training to new staff hired after the initial orientation described in §49.3(b) of this title (relating to General Contractual Requirements).]

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

Filed with the Office of the Secretary of State on April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

CHAPTER 47. CONTRACTING TO PROVIDE PRIMARY HOME CARE

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §47.11, concerning contracting requirements, and §47.89, concerning reimbursement; and the repeal of §47.75, concerning complaints, and §47.87, concerning record keeping, in Chapter 47, Contracting to Provide Primary Home Care.

BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to update and delete rules in Chapter 47 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including primary home care. Therefore, the rules are being amended and repealed to delete provisions addressed in the proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §47.11 deletes a provision that excepts a contractor that has been assigned a contract from a provision in Chapter 49 because the referenced provision is proposed for repeal. In addition, the requirement that a provider have a license is deleted because licensure requirements are addressed in proposed new Chapter 49.

The proposed repeal of §47.75 deletes a provision regarding complaint procedures because a complaint process is required by proposed new Chapter 49.

The proposed repeal of §47.87 deletes provisions related to record keeping because that subject is addressed in proposed new Chapter 49.

The proposed amendment to §47.89 deletes a reference to a section of Chapter 49 that is proposed for repeal. Submission of claims for payment is addressed in the proposed new Chapter 49.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses because the amendments and repeals do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the

Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER B. PROVIDER CONTRACTS

40 TAC §47.11

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§47.11. Contracting Requirements.

(a) General contracting requirements. A provider must comply with [~~meet all provisions described in~~] this chapter and Chapter 49 of this title (relating to Contracting for Community [~~Care~~] Services)[~~, except if a contract is assigned to the provider, the provider is not required to comply with §49.14(c) of this title (relating to Provisional Contracts)~~].

(b) Services provided [~~Licensure~~]. The provider [~~in the PHC Program~~] must deliver only personal assistance services, as defined in §97.2 of this title (relating to Definitions) [~~and must provide services in accordance with all licensure requirements pursuant to Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies)~~].

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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Lorri Haden
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Department of Aging and Disability Services
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SUBCHAPTER E. SERVICE REQUIREMENTS

40 TAC §47.75

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§47.75. Complaints.

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

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SUBCHAPTER F. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §47.87

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that

operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§47.87. Record Keeping.

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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40 TAC §47.89

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§47.89. Reimbursement.

(a) Billing requirements.

[~~(1) A provider must bill for services provided as described in §49.41 of this title (relating to Billings and Claims Payment).~~]

[~~(2)~~] A [~~The~~] provider must not bill DADS for:

(1) [~~(A)~~] more hours than an individual's weekly authorization, except when services are delivered as described in §47.63(b)(2) of this chapter (relating to Service Delivery);

(2) [~~(B)~~] services delivered in a licensed facility, if the facility is required by the license to provide those services;

(3) [~~(C)~~] services provided outside the contracted service delivery area except if provided in compliance with §47.63(e) of this chapter; and

(4) [~~(D)~~] services or tasks that duplicate any services or tasks provided to the individual by another source.

(b) Hourly rate. A [~~The~~] provider must agree to accept the hourly rate authorized by DADS.

(c) Documentation. A [~~The~~] provider must maintain the documentation described in this chapter to be eligible for reimbursement.

(d) Rounding. A [~~The~~] provider must bill DADS for services in quarter-hour increments, rounding up to the next quarter-hour if the actual time worked is eight minutes or more, and rounding down to the previous quarter hour if the actual time worked is seven minutes or less.

(e) Allowable tasks. A [~~The~~] provider must bill DADS only for the tasks described in §47.41 of this chapter (relating to Allowable Tasks).

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 48. COMMUNITY CARE FOR AGED AND DISABLED

SUBCHAPTER K. MINIMUM STANDARDS FOR ADULT FOSTER CARE

40 TAC §§48.8901, 48.8906, 48.8907

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§48.8901, 48.8906, and 48.8907, concerning minimum standards; enrollment and licensure requirements; and provider responsibilities, in Subchapter K, Minimum Standards for Adult Foster Care, in Chapter 48, Community Care for Aged and Disabled.

BACKGROUND AND PURPOSE

The purpose of the amendments is to update and delete rules regarding adult foster care homes in Chapter 48, Subchapter K, in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including adult foster care services. Therefore, the rules are being amended and repealed to remove provisions addressed in proposed new Chapter 49 and to update the rules to reflect current practice.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §48.8901 requires a provider of adult foster care (AFC) services to comply with Chapter 48, Subchapter K, containing the minimum standards for AFC, and with proposed new Chapter 49.

The proposed amendment to §48.8906 deletes outdated requirements in subsection (a)(1) so it only requires that an AFC provider not exceed the capacity for which a home is enrolled or licensed, whether the residents receive AFC services or private

pay services. The amendment deletes licensure requirements for an AFC provider because licensure is addressed in the proposed new Chapter 49. The amendment also clarifies that an AFC provider that is required to be licensed must provide a copy of the license to DADS adult foster care staff each time the license is renewed and must notify DADS adult foster care staff if DADS Regulatory Services identifies a licensure problem.

The proposed amendment to §48.8907 replaces the term "client" with "resident" to use consistent terminology within the subchapter to refer to an individual who receives AFC services; replaces "DHS" with "DADS;" and adds that an AFC provider serving three or less residents must comply with federal law regarding advance directives. This provision applies only to an AFC provider serving three or fewer residents because an AFC provider serving four or more residents must be licensed as an assisted living facility and advance directives are addressed in licensure standards for an assisted living facility, which are in 40 TAC Chapter 92.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments do not require contractors to expend any additional funds.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is increased consistency in the rules governing community services; outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§48.8901. Compliance with Rules [~~Minimum Standards~~].

Providers of adult foster care services must comply with this subchapter and Chapter 49 of this title (relating to Contracting for Community Services) [~~meet the minimum standards in this undesignated head. Adult foster care staff have the authority to enforce these standards, initiate corrective action plans for noncompliance, and if necessary, remove the home from enrollment for noncompliance with the standards~~].

§48.8906. Enrollment and Licensure Requirements.

(a) To receive payment from the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services (DADS), an [~~(DHS), all~~] adult foster care provider [~~homes and providers~~] must:

(1) not exceed the capacity for which an adult foster care home is enrolled or licensed regardless of whether the residents are receiving adult foster care services or private pay services;

[~~(1) meet all of the minimum standards and provide care for no more than four adults unrelated to the provider, whether DHS residents or private pay residents, unless the home meets the requirements in subsection (b) of this section. The home census may not exceed the capacity for which the home is enrolled or licensed;~~]

(2) serve only those foster care and private pay residents approved by DADS [~~DHS~~] to ensure that the provider can meet the needs of all residents;

(3) not provide room and board to any individuals who are under 18 years of age and who are not related to the provider;

(4) comply with all applicable fire, health, and safety laws, ordinances, and regulations;

(5) obtain the necessary fire safety and health inspections and comply with any resulting requirements;

(6) be inspected at least annually by fire safety authorities and meet or exceed the regulations. The provider must correct any hazardous conditions identified in the inspection within the time specified

by the inspector, or before DADS [DHS's] enrollment/reassessment of the home, whichever is earlier;

(7) be inspected at least annually by health authorities and meet or exceed the regulations. If local health authorities are unable to inspect the home, adult foster care staff may conduct the inspection using the health inspection checklist. The provider must correct any unsanitary and unsafe conditions identified by the inspection within the time specified by the inspector, or before DADS [DHS's] enrollment/reassessment of the home, whichever is earlier;

(8) demonstrate the ability to evacuate all residents from the home within three minutes;

(9) interview a prospective resident before or at the time of admission to determine the needs of the prospective resident and whether the home can meet these needs;

(10) orient any new resident, within 72 hours of arrival, on fire safety, how to respond to a fire alarm, and how to exit from the home in an emergency; and

(11) except in the case of emergency evacuations, notify DADS [DHS] of a change of residence before the change. The new home must meet all adult foster care requirements and be enrolled in the adult foster care program before payments can be made. Enrollment is not retroactive.

[(b) Four-bed adult foster care homes must be licensed by the State of Texas licensing authority as a Type C personal care home.]

(b) [(c)] Adult foster care homes serving five, six, seven, or eight residents must also:

[(1) be licensed by the State of Texas licensing authority as a Type A-Class I personal care home. These homes are licensed for eight or fewer adult residents exclusive of "live-in" houseparents, family, or staff. These homes must meet all DHS enrollment requirements. Home census may not exceed the capacity for which the home is enrolled/licensed. If there is conflict between the DHS standards and the licensing requirements, the strictest standards and/or rules shall apply;]

(1) [(2)] ensure the presence of an additional member of the staff who has been approved by the adult foster care caseworker at least two hours a day for homes serving five residents, and four hours a day for homes serving six residents, including private pay residents;

(2) [(3)] ensure the presence of an additional member of the staff who has been approved by the caseworker at least six hours a day for homes serving seven residents, and eight hours a day for homes serving eight residents, including private pay residents; and

(3) [(4)] ensure that additional qualified staff are on-site for the specified number of hours, during the hours from 6 a.m. until 8 p.m. The provider must have records to document that qualified staff were serving residents for the required number of hours each day.[;]

(c) An adult foster care provider that must be licensed in accordance with Chapter 49 of this title (relating to Contracting for Community Services) must:

(1) [(5)] provide a copy of the assisted living facility [personal care] license to DADS adult foster care staff each time the license is renewed [before enrollment for over four residents and upon renewal thereafter]; and

(2) [(6)] report to DADS adult foster care staff any licensure problems identified by DADS Regulatory Services [the state licensing authority].

§48.8907. Provider Responsibilities.

(a) Resident care and services. The adult foster care provider must:

(1) provide services to residents according to the individual service plan and the resident/provider [client/provider] agreement;

(2) meet all requirements and conditions stated on the resident/provider [client/provider] agreement, approval of foster care, and resident [client] service plan;

(3) ensure that an approved substitute provider is present in the home if at least one resident remains in the home when the provider plans to be absent from the home for more than three hours in a 24-hour period. Residents whose care plans specify the need for 24-hour supervision may not be left without the supervision of an approved substitute provider for any period of time;

(4) receive prior approval from the adult foster care caseworker or supervisor if he plans to be absent for more than 24 hours. The proposed substitute provider must have prior Department of Aging and Disability [Human] Services (DADS) [(DHS)] approval. The provider must ensure that the substitute provider is aware of and takes responsibility for meeting resident needs and providing services according to the residents service plans and the requirements of these standards. If two adults in the home have been approved as dual providers, this notification is not necessary when one provider leaves for more than 24 hours;

(5) ensure that residents are not abused, neglected, or exploited while in foster care. Validated reports of the provider, the provider's family, or employees willfully inflicting injury, physical suffering, intimidation, or mental anguish on any resident in the home shall constitute grounds for immediate removal of the home from enrollment;

(6) respond to, investigate, and document resident complaints and report unresolved complaints to the adult foster care caseworker within five days of receipt of the complaint;

(7) have clearly defined house rules, including smoking policies. House rules must be shared with the resident before moving to the foster home;

(8) take appropriate action if he finds that a resident threatens the health or safety of others or himself; and

(9) provide the resident with a final accounting of the resident's funds and refund any monies owed to the resident within five days of discharge. Any unused room and board money must be reimbursed within 30 days.

(b) The foster care provider providing services to three or less residents must comply with Title 42 United States Code §1396a(w) regarding advance directives.

(c) [(b)] Recordkeeping. The adult foster care provider must:

(1) maintain for each resident a record with the following information:

(A) the names, addresses, and telephone numbers of:

(i) person(s) other than DADS [DHS] staff to be notified in case of emergency[,] (if any);

(ii) the resident's physician[,] (if any); and

(iii) the resident's adult foster care caseworker;

(B) current and past copies of the client and provider agreement, signed by the resident [client] and/or responsible party, provider, and the adult foster care caseworker;

(C) current and past copies of the approval of adult foster care;

(D) current and past copies of the client service plan;

(E) any DADS [~~DHS~~] communications regarding the resident;

(F) personal papers of the resident, such as life insurance policies, burial arrangements, savings accounts, etc., if requested by the resident; and

(G) records related to assistance provided the resident with money management, payments, distribution of personal allowance, expenditures, etc.;

(2) file claims for services according to DADS [~~DHS~~] rules using the appropriate DADS [~~DHS~~] forms and agree to accept the claimed amount as full payment from DADS [~~DHS~~] for services provided. Nursing facility waiver residents [~~clients~~] are required to pay a co-payment.

(d) [~~(c)~~] Reporting and notification. The adult foster care provider must:

(1) report to the adult foster care caseworker, within 24 hours or the next work day after awareness of the change, all significant changes in the resident's physical health, mental and/or behavior status;

(2) report to the adult foster care caseworker pending resident hospitalizations before the hospitalization, and unplanned hospitalizations within 24 hours of the hospitalization or the next work day;

(3) report pending hospital discharges of approved residents to the adult foster care caseworker before the actual discharge, or on the day the resident returns to the foster care setting, to ensure continued resident appropriateness;

(4) notify the adult foster care caseworker, at a minimum, within 24 hours or the next work day after a resident is away from or vacates the adult foster home;

(5) notify the adult foster care caseworker immediately by telephone upon becoming aware of the following: death of a resident, serious physical injury or distress of a resident, offense against the resident, or public indecency of a resident. The provider must submit a written report within 48 hours of the verbal report. The provider must also notify the police in the following situations: the death of a resident in the foster home, serious physical injury resulting from assault or battery, offenses against the resident, and public indecency;

(6) notify the adult foster care caseworker about serious occurrences involving the provider, the home, or the residents. These may include, but are not limited to, fire, accidents, altercations among residents, break-ins, or illness of the provider or residents. The provider must notify the caseworker by telephone no later than the next calendar day after awareness of the occurrence;

(7) notify the adult foster care caseworker before any resident receives home health services;

(8) notify the adult foster care caseworker when the provider, substitute provider, or a family member is the subject of an adult protective services investigation. The provider must notify the adult foster care caseworker within 24 hours of the beginning of the investigation or the next work day; and

(9) report to the adult foster care caseworker's supervisor or another adult foster care staff person any of the required notifications if the caseworker is not available to speak with the provider.

(e) [~~(d)~~] Responding/acting. The adult foster care provider must:

(1) upon awareness, obtain medical attention for a resident exhibiting signs of physical injury, pain, or discomfort;

(2) seek medical attention/care on the same day of awareness for a resident exhibiting acute changes in physical health, mental or behavior status; and

(3) follow DADS [~~DHS~~] adult foster care directives related to resident care within the specified time frames.

(f) [~~(e)~~] Nutrition. The adult foster care provider must:

(1) provide a resident with at least three meals daily which meet each resident's dietary and nutritional needs;

(2) consider a resident's food preferences and make reasonable accommodations within his dietary needs;

(3) serve a variety of foods, within the resident's dietary needs; and

(4) follow special diets as prescribed in writing by the resident's physician.

(g) [~~(f)~~] Medications. The adult foster care provider must comply with the following rules regarding the storage and management of medications:

(1) prescription medications must be in the original container labeled with the resident's name, date, instructions, name of medication and dosage, and the physician's name;

(2) medications requiring refrigeration must be separated from food in a clearly labeled, designated locked container;

(3) medications must be transferred with the resident when the resident leaves the home. Medications must be disposed of when resident medication regimen changes, or when the medication is out of date;

(4) medications prescribed for one resident must not be taken by or given to any other resident;

(5) the adult foster care provider must ensure that a resident takes over-the-counter medications according to the package directions. Excessive use of these medications must be reported to the adult foster care caseworker;

(6) the adult foster care provider must ensure that all medications are taken as prescribed and in a timely manner according to the instructions on the medication label or instructions from the resident's physician;

(7) the adult foster care provider may administer medications only as allowed by state law or regulation; and

(8) prescription medications must be kept in a locked container.

(h) [~~(g)~~] Resident rights and responsibilities. The adult foster care provider must:

(1) inform the resident verbally and in writing, before or at the time of admission, of his rights and responsibilities. The rights and responsibilities include rules governing resident conduct, complaints, bedhold policies for hospital and personal leave, and eviction procedures. The policies must not violate the rules specified in this subchapter [~~undesignated head~~] nor adversely affect the resident's health or safety. All policies must have an effective date. If the provider amends any policy, each resident must be informed before the change becomes effective. A written copy of these policies must be given to

the resident to initial and date. This copy must be filed in the resident's casefolder. A copy of the policies must also be given to the resident. If the resident is unable to read or understand the policies, a copy must be given to the person responsible for him;

(2) allow the resident to manage his finances or trust funds. The provider must assist the resident in managing his finances only if the resident requests assistance in writing. The resident may rescind this authorization at any time by doing so in writing;

(3) investigate all problems, deficiencies, and non-compliance [~~noncompliance~~] with policies, procedures, and standards which are reported by the resident or DADS [~~DHS~~] staff within five workdays from receipt of the report. A copy of the documented complaint must be submitted to the adult protective services caseworker within 30 days of the receipt of the report;

(4) provide each resident with a general orientation about his needs and the tasks to be provided before or at the time the service begins;

(5) not require a resident to perform services for the provider or other residents; and

(6) treat each resident with dignity and respect. The provider must guarantee certain basic rights to each resident living in his home. Such rights include the right to privacy, humane care and environment, safety of personal possessions and funds, receipt of visitors, confidentiality of personal records, freedom of religion, freedom from physical or mental abuse, neglect and exploitation, freedom from physical or chemical restraints, freedom from financial exploitation, and the right to voice grievances without retribution or intimidation.

(i) [~~(h)~~] Transportation. Adult foster care providers must provide or make arrangements to meet the transportation needs of a resident for medical appointments/care, shopping for personal needs, and church activities as identified by the adult foster care caseworker. An escort must also be provided if specified in the individual service plan for a resident.

(j) [~~(i)~~] Provider rights. Each provider must post a providers' bill of rights in a prominent place in the foster home. The bill of rights must state that the adult foster care provider has the right to:

(1) be shown consideration and respect that recognizes the dignity and individuality of the provider;

(2) terminate the client/provider agreement after a written 30-day notice;

(3) terminate the client/provider agreement immediately, after notice to DADS [~~DHS~~], if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of the provider or the other residents of the foster home;

(4) refuse to perform services for the resident or the resident's family other than those specified in the client/provider agreement;

(5) refuse to accept a person referred to the foster home if the referral is inappropriate;

(6) refuse to allow the presence of illegal drugs and weapons in the home; and

(7) be made aware of a resident's problems, including aggressive or violent behavior, disease, alcoholism, or drug abuse.

(k) [~~(j)~~] Termination of services. Adult foster care providers cannot terminate services to a resident without the prior approval of the adult foster care caseworker or supervisor, unless the resident creates a serious or immediate threat to the health, safety, or welfare of the provider or the other residents of the foster home.

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 49. CONTRACTING FOR COMMUNITY CARE SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 49, Contracting for Community Care Services, Subchapter A, consisting of §49.1, concerning definitions; Subchapter B, consisting of §§49.11 - 49.18 and §49.20, concerning contractor requirements; Subchapter C, consisting of §§49.31 - 49.33, concerning records; Subchapter D, consisting of §49.41 and §49.42, concerning billings and payments; Subchapter E, consisting of §§49.51 - 49.54, concerning audits, monitoring, and reviews; Subchapter F, consisting of §§49.61 - 49.63, concerning sanctions and terminations; and Subchapter G, consisting of §§49.71 - 49.73, concerning personal attendants wages; and proposes new Chapter 49, Contracting for Community Services, Subchapter A, consisting of §49.101 and §49.102, concerning application and definitions; Subchapter B, consisting of §§49.201 - 49.211, concerning contractor enrollment; Subchapter C, consisting of §§49.301 - 49.312, concerning requirements of a contractor; Subchapter D, Division 1, consisting of §49.401, concerning applicability of Subchapter D; Division 2, consisting of §§49.411 - 49.414, concerning monitoring and investigation; Subchapter E, Division 1, consisting of §49.501, concerning applicability of Subchapter E; Division 2, consisting of §49.511, concerning immediate protection; Division 3, consisting of §§49.521 - 49.523, concerning actions; Division 4, consisting of §§49.531 - 49.534, concerning sanctions; Division 5, consisting of §49.541, appeals; Division 6, consisting of §49.551, concerning termination by contractor; Subchapter F, consisting of §49.601, concerning review by DADS of expiring or terminated contract; and Subchapter G, consisting of §49.701 and §49.702, concerning application denial period.

BACKGROUND AND PURPOSE

This purpose of the proposed repeal and new sections is to repeal Chapter 49, Contracting for Community Care Services, and adopt a new Chapter 49, Contracting for Community Services. Generally, the new chapter provides the basis for contracting with DADS to provide community-based services. The new chapter clarifies and revises requirements for obtaining, maintaining, and terminating those contracts. Some significant provisions in the new chapter include requiring a comprehensive screening of potential contractors and controlling parties. The new chapter also requires a contractor to receive a provisional contract with a stated expiration date as an initial contract. At

the end of the term of a provisional contract, a contractor may be considered for a standard contract with no expiration date. The new chapter also establishes standardized application denial periods, which are periods of time during which DADS will deny the application of a former contractor. The new chapter provides consistency in DADS recoupment process by allowing DADS to recoup funds if a contractor does not appeal the proposed recoupment or the contractor appeals the proposed recoupment and the final decision from the administrative hearing is favorable to DADS. DADS will not recoup funds while an administrative hearing is pending, which is the current practice in some programs. Subject to the exceptions stated in Chapter 49, the new chapter applies to the Home and Community-Based Services (HCS) Program and Texas Home Living (TxHmL) Program, which current Chapter 49 does not.

Other rules are proposed for amendment or repeal in this issue of the *Texas Register* to conform to the changes resulting from the proposed new Chapter 49. Specifically, Chapter 9, Subchapter Q, governing enrollment of contractors in the HCS and TxHmL Programs, and Chapter 69, governing contract administration, are proposed for repeal. In addition, sections in Chapter 9, Subchapter D, governing the Home and Community-based Services Program, and Subchapter N, governing the Texas Home Living Program; Chapter 30, governing Medicaid hospice services; Chapter 41, governing consumer directed services option; Chapter 42, governing Deaf Blind with Multiple Disabilities (DBMD) Program; Chapter 43, governing the service responsibility option; Chapter 44, governing consumer-managed personal attendant services; Chapter 45, governing community living assistance and support services; Chapter 46, governing assisted living and residential care services; Chapter 47, governing primary home care services; Chapter 48, governing adult foster care; Chapter 51, governing Medically Dependent Children Program; Chapter 52, governing emergency response services; Chapter 55, governing home-delivered meals; Chapter 58, governing special services to persons with disabilities; Chapter 60, governing programs of all inclusive care for the elderly; Chapter 62, governing contracting to provide transition assistance services; and Chapter 98, governing day activity and health services, are proposed for amendment and repeal to be consistent and avoid duplication with the proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

Proposed repeal of Chapter 49 deletes §§49.1, 49.11 - 49.18, 49.20, 49.31 - 49.33, 49.41, 49.42, 49.51 - 49.54, 49.61 - 49.63, 49.71 - 49.73, concerning contracting for community care services, including provisions related to definitions; contractor requirements; records; billings and payment; audits, monitoring, and reviews; sanctions and terminations; and personal attendant wages.

Proposed new §49.101 describes the community-based programs and services to which Chapter 49 applies which, unlike the current Chapter 49, includes the HCS and TxHmL Programs. The section also identifies the provisions in Chapter 49 that do not apply to certain programs and services.

Proposed new §49.102 provides definitions for words and terms used in the chapter.

Proposed new §49.201 identifies the provisions in Subchapter B that do not apply to certain programs or services. Specifically, §49.206, relating to eligibility to contract due to criminal history, is the only section in Subchapter B that applies to consumer managed personal attendant services (CMPAS), Special Services to Persons with Disabilities Program (SSPD), SSPD - 24-hour shared attendant care, and relocation services.

Proposed new §49.202 provides that a person must apply for a provisional contract, which is a time-limited initial contract, to obtain a contract for a service or program for which a person does not have a contract or to obtain a contract in a contracting area in which the person does not have a contract. A time-limited initial contract is new for some programs and services governed by the proposed new Chapter 49. The section also allows DADS to limit a contract to a single facility or contracting area.

Proposed new §49.203 describes the application process that an applicant must follow to obtain a provisional contract, including completing any required pre-application orientation and training, obtaining approval from DADS, and submitting a completed application packet. The section also describes the manner in which an application must be delivered and gives an applicant one opportunity to submit missing, incorrect, or incomplete information.

Proposed new §49.204 describes additional requirements that an applicant for a Title XX residential care (RC) or adult foster care (AFC) contract must meet to obtain a provisional contract. In addition, it requires an applicant for an HCS or TxHmL Program contract to score at least 85% on the provider competency exam, rather than 70%, as currently required.

Proposed new §49.205 describes any license, certification, accreditation, or other document required for an applicant to receive a contract. To receive a Title XX AFC contract for an AFC facility serving four to eight individuals, an applicant must have an assisted living license Type A or B; a Type C license for a facility serving four individuals will no longer be accepted for applicants.

Proposed new §49.206 provides that DADS may determine an applicant or contractor is ineligible to contract with DADS based on certain criminal convictions. The section also lists the factors that DADS considers in making this determination.

Proposed new §49.207 sets forth the reasons DADS denies a provisional contract application. In addition, the section states that DADS may deny a provisional contract application for good cause and lists examples of good cause. The section also states that DADS provides written notification to an applicant whose application for a provisional contract is denied and that the applicant must repeat the application process if it wants to be a contractor.

Proposed new §49.208 describes the actions that DADS takes if it approves a provisional contract application. The section also states that a provisional contract may be subject to conditions recommended by HHSC. The section requires the effective date of a provisional contract resulting from a change of ownership or change of legal entity to be the effective date of that change. The effective date of other provisional contracts is determined by DADS. In addition, the section allows DADS and a contractor to extend the term of a provisional contract; however, an extension of a provisional contract is not a determination by DADS that the contractor qualifies for a standard contract.

Proposed new §49.209 sets forth the criteria used by DADS to determine if a contractor with a provisional contract qualifies for a standard contract. Specifically, for a contract other than one for the HCS Program, TxHmL Program, hospice, or financial management services, an overall compliance score of 90% or greater is required to qualify for a standard contract. The specific criteria for HCS, Texas Home Living, hospice, and financial manage-

ment services contracts are described in the rule. The section also states that a standard contract may be subject to conditions recommended by HHSC. The section requires the effective date of a standard contract to be the day after the provisional contract expires. The section also states that DADS notifies a contractor in writing if the contractor does not qualify for or refuses a standard contract and includes in the notification the length of the application denial period set by DADS. Any controlling person of the contractor is also notified in writing of the application denial period.

Proposed new §49.210 describes the actions a contractor that intends to undergo a change of ownership or change of legal entity must take to obtain a new provisional contract, including notifying DADS and applying for a provisional contract at least 60 days before the proposed date of change. The section sets forth the actions that DADS takes if a contractor undergoes a change of ownership or change of legal entity. The section also states that DADS does not enter into a provisional contract with a contractor or new legal entity that does not receive approval of its application in accordance with the section.

Proposed new §49.211 provides that DADS does not discriminate based on an applicant's religious character or affiliation in approving or denying an application.

Proposed new §49.301 states the purpose of Chapter 49, Subchapter C which is to describe the requirements a contractor must meet to maintain a contract.

Proposed new §49.302 sets forth numerous requirements of a contractor during the term of its contract. Among these requirements are that a contractor must maintain licensure, certification, accreditation, or other documentation required by §49.205, subject to two exceptions, which are described in the section. In addition, a contractor must ensure that an employee, subcontractor, or volunteer can effectively communicate with an individual or LAR concerning service planning and the provision of services, which may require the contractor to provide an interpreter. A contractor must not allow an individual to perform services under the contract or perform work that benefits the contractor, except if allowed by rules governing a particular program. A contractor must subscribe to receive e-mail updates from DADS and be informed of the content of those updates. A contractor must accept the reimbursement rate for a service as payment in full under the contract and must not make an additional charge for the service to the individual or other source, unless specifically allowed by federal or state law, rule, or regulation. The section includes several provisions requiring contractors to notify DADS when certain events occur or when the contractor becomes aware of certain information. The section also provides that notice under Chapter 49 must be in writing, signed by an authorized person, and sent to DADS Community Services Contracts Section. A contractor must allow DADS and any other authorized federal or state agency access to individuals, employees, subcontractors, volunteers, and any premises controlled by the contractor. A contractor must not pay for any item or service furnished, ordered, or prescribed by a person on either list of excluded individuals and entities described in §49.304(h)(1).

Proposed new §49.303 states that a contractor is required to comply with applicable federal and state laws regarding confidentiality of information and that a contractor may use confidential information only for the authorized purposes for which the information was legally obtained.

Proposed new §49.304 requires a contractor that is licensed to comply with licensure requirements regarding criminal history checks, the employee misconduct registry, and the nurse aide registry for employees, subcontractors, and volunteers. Unlicensed contractors are required to conduct criminal history checks and other forms of background checks on employees, subcontractors, and volunteers in accordance with this section. Criminal history and other forms of background checks are not currently required to be conducted for volunteers in all programs. A contractor must check the status of a potential subcontractor with various sources, including the Texas Secretary of State and the Texas Comptroller, and must not contract with a potential subcontractor that does not have the required status or documentation.

Proposed new §49.305 sets forth requirements for developing and maintaining records. The rule requires a contractor's records to support a claim for services submitted under the contract. A contractor must develop and implement written procedures to protect data from falsification and unauthorized access, ensure the integrity of data, and ensure that persons making an entry, modification, or correction on records used to support a claim can be identified. Specific requirements are included in the section for paper records and electronic records. A contractor must ensure records are available for review in accordance with the contract and as requested by DADS or any federal or state agency with authority to access records.

Proposed new §49.306 requires compliance with 40 TAC Chapter 68, governing an electronic visit verification system, by a contractor that is required to use such a system.

Proposed new §49.307 sets forth the requirements of a contractor related to the retention and destruction of records.

Proposed new §49.308 requires contractors to ensure subcontractors comply with all requirements applicable to contractors, as if the subcontractor was a contractor. A contractor is required to monitor whether the subcontractor is complying with those requirements and to document the monitoring.

Proposed new §49.309 requires a contractor to develop and implement written procedures for investigating and resolving complaints about services provided under a contract.

Proposed new §49.310 requires a contractor to develop and implement written procedures for reporting and investigating an allegation of abuse, neglect, or exploitation. The procedures must meet the requirements set forth in the section.

Proposed new §49.311 requires a contractor to ensure that a claim for services meets certain criteria. The rule provides that DADS denies a claim that does not meet those criteria. If a contractor receives payment for a claim that does not meet those criteria, the contractor may submit a corrected claim or DADS recoups funds from the contractor. If a claim for services is denied, a contractor may submit a corrected claim within the period allowed for submitting a claim. DADS may adjust amounts paid to a contractor after the period allowed for submitting a claim.

Proposed new §49.312 requires a contractor to pay a personal attendant a base wage of at least $7.86 per hour and to notify a personal attendant of this requirement within three days after the personal attendant accepts an offer of employment or enters into a contract with the contractor. This is not a new requirement because Chapter 49 currently requires payment of this base wage effective September 1, 2014, which is the anticipated effective date for the proposed new Chapter 49. A contractor that has

a financial management services agency (FMSA) contract must ensure that an employer or designated representative pays a personal attendant in accordance with a budget that meets the requirements of §41.505. "Personal attendant" is a defined term that only applies to certain contractors.

Proposed new §49.401 provides that Subchapter D, relating to monitoring and investigation of a contractor, does not apply to a contractor that has a contract for the HCS or TxHmL Program or for hospice services.

Proposed new §49.411 describes the purpose of fiscal and contract monitoring and the procedures followed by DADS during such monitoring. A contractor is required to provide DADS with specified records at the entrance conference of fiscal and contract monitoring. If the contractor does not provide the records, DADS conducts the monitoring with the records provided. The section requires a contractor to receive a score of at least 90% on overall compliance to maintain substantial compliance with the contract. The section describes the actions DADS may take if a contractor does not obtain a score of at least 90% on individual compliance standards or on overall compliance. If, during fiscal and contract monitoring, DADS determines a contractor is not protecting an individual's health and safety, DADS may require the contractor to immediately protect the individual's health and safety and submit an immediate protection plan.

Proposed new §49.412 describes the purpose of financial monitoring of an FMSA and the procedures used by DADS during such monitoring. An FMSA contractor is required to provide DADS with specified records at the entrance conference. If the contractor does not provide the records, DADS conducts the monitoring with the records provided. The section requires a contractor to receive a score of at least 90% on overall compliance to maintain substantial compliance with the contract. The section also describes the actions DADS may take if a score of at least 90% is not obtained.

Proposed new §49.413 describes the procedures used by DADS for conducting investigations of a contractor, on-site or by desk review. The section requires a contractor to provide records to DADS upon request and sets forth the time period allowed for providing those records. It also describes the actions DADS may take if DADS determines from the investigation that the contractor is out of compliance with its contract. If DADS determines a contractor is not protecting an individual's health and safety, DADS may require the contractor to immediately protect the individual's health and safety and submit an immediate protection plan.

Proposed new §49.414 allows DADS to conduct a financial review of a contractor at any time. The review may be on-site or by desk review. If, based on a financial review, DADS determines a contractor is out of compliance with its contract, DADS may impose an action or sanction on the contractor.

Proposed new §49.501 provides that Subchapter E, Divisions 2 and 3 do not apply to a contractor that has a contract for the HCS or TxHmL Program. In addition, Subchapter E, §49.523 does not apply to a contractor that has a contract for hospice.

Proposed new §49.511 provides that DADS requires a contractor to immediately protect an individual's health and safety if DADS determines the contractor is not complying with its contract and the contractor's failure to comply jeopardizes the health and safety of an individual. The section describes the procedures DADS uses for requiring immediate protection and the elements of an immediate protection plan.

Proposed new §49.521 describes the actions DADS may take against a contractor in accordance with §49.522 and §49.523. Specifically, DADS may require a contractor to develop and comply with a corrective action plan, may impose a referral hold, or both. The section describes the factors DADS may consider in determining the action to be taken.

Proposed new §49.522 states that DADS requires corrective action if a contractor's compliance score for a standard is less than 90%. In addition, the section states that DADS may require corrective action if DADS determines the contractor has not complied with its contract for other reasons. The section describes the procedures DADS uses for requiring corrective action and the elements of a corrective action plan.

Proposed new §49.523 describes the reasons DADS may place a contractor on referral hold and the procedures of DADS for imposing and releasing a referral hold. The section also provides that a contractor may request an informal review of a referral hold.

Proposed new §49.531 describes the sanctions DADS may take against a contractor in accordance with §§49.532 - 49.534. Specifically, DADS may impose a vendor hold, recoup funds, terminate a contract, or take any combination of those sanctions. The section describes the factors DADS may consider in determining the sanction to be taken.

Proposed new §49.532 describes when DADS imposes a vendor hold and when DADS has the discretion to impose a vendor hold. The section also describes the procedures DADS uses for imposing and releasing a vendor hold.

Proposed new §49.533 provides that a contractor is liable for amounts paid to the contractor if the contractor has not complied with contract requirements regarding a service claim or payment for a service and that DADS may propose to recoup funds for the amount due to DADS. The section states that DADS notifies a contractor in writing of proposed recoupment before the effective date of the recoupment. The section also provides that DADS recoups funds if the contractor does not appeal the proposed recoupment or the contractor appeals the proposed recoupment and the final decision from the administrative hearing is favorable to DADS. This is a change in some programs from DADS current practice of recouping funds while an administrative decision regarding the recoupment is pending.

Proposed new §49.534 allows DADS to terminate a contract without cause with 60 days' notice. The section also allows DADS to terminate a contract for good cause. Examples of good cause are provided in the section. In particular, failure to serve clients for twelve consecutive months is good cause to terminate a contract. Currently, failure to serve clients for either six months or eighteen months is cause for termination of a contract, depending on the program. The section describes the procedures of DADS for terminating a contract, including that DADS notifies individuals receiving services from the contractor that DADS is proposing to terminate the contract and that the individuals may choose to receive services from another contractor. The section also provides that DADS does not pay a contractor for services provided after the effective date of contract termination. The section also provides that, if a contract is terminated, DADS notifies the contractor and any controlling person of the application denial period set by DADS in accordance with §49.702.

Proposed new §49.541 allows a contractor to appeal a sanction proposed or imposed by DADS by requesting an administrative hearing in accordance with rules of HHSC.

Proposed new §49.551 sets forth the procedures a contractor must follow to terminate its contract, including giving DADS notice at least 60 days before the effective date of termination. The section provides that DADS notifies individuals receiving services from the contractor that the contractor is terminating the contract and they may choose to receive services from another contractor. DADS also removes the contractor's name from the appropriate choice list. The section provides that DADS notifies the contractor and any controlling person of the application denial period set by DADS in accordance with §49.702.

Proposed new §49.601 allows DADS to review a contractor's records to evaluate billing standards if a contract expires or is terminated. A contractor must provide records to DADS and DADS may recoup funds based on the results of the review.

Proposed new §49.701 provides that a contractor that has a contract for CMPAS, SSPD, SSPD - 24-hour shared attendant care, or relocation services is not subject to Subchapter G relating to application denial period.

Proposed new §49.702 sets forth the length of an application denial period set by DADS on a contractor or controlling party when a contract expires or is terminated. The application denial period is the period of time during which DADS denies a contract application submitted to DADS. The length of the denial period depends on the circumstances that led to the expiration or termination. The section provides that after the application denial period expires, DADS may deny an application for a reason described in §49.207.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal and new sections are in effect, enforcing or administering the repeal and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal and new sections will not have an adverse economic effect on small businesses or micro-businesses because there are no new requirements that require contractors to expend any additional funds. Contractors must obtain the criminal history record of volunteers; however, a contractor may require a volunteer to provide this record to avoid incurring additional costs.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the repeal and new sections are in effect, the public benefit expected as a result of enforcing the repeal and new sections is increased consistency in the rules, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the repeal and new sections. Contractors must obtain the criminal history record of volunteers. However, a contractor may require a volunteer to provide this record or may decide not to use volunteers to avoid incurring the additional costs.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Terry Pierce at (512) 438-4722 in DADS Community Services Contracts. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER A. DEFINITIONS

40 TAC §49.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.1. Definitions.

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

SUBCHAPTER B. CONTRACTOR REQUIREMENTS

40 TAC §§49.11 - 49.18, 49.20

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.11. Contracting Requirements.

§49.12. General Requirements for Participation.

§49.13. General Contractual Requirements.

§49.14. Provisional Contracts.

§49.15. Contract Assignment.

§49.16. Background Checks.

§49.17. Complaint Procedures.

§49.18. Client Rights and Responsibilities.

§49.20. Religious and Charitable Organizations.

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 C. RECORDS

40 TAC §§49.31 - 49.33

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.31. Record Requirements.
§49.32. Record Retention.
§49.33. Access to Contractor's Records.

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 D. BILLINGS AND PAYMENT

40 TAC §49.41, §49.42

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or

regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.41. Billings and Claims Payment.

§49.42. Method of Payment.

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

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SUBCHAPTER E. AUDITS, MONITORING, AND REVIEWS

40 TAC §§49.51 - 49.54

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.51. Audits.

§49.52. Fiscal Monitoring.

§49.53. Compliance Monitoring.

§49.54. Administrative Review.

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

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Department of Aging and Disability Services
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SUBCHAPTER F. SANCTIONS AND TERMINATION

40 TAC §§49.61 - 49.63

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.61. Sanctions.

§49.62. Contract Termination Without Cause.

§49.63. Recontracting.

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER G. PERSONAL ATTENDANT WAGES

40 TAC §§49.71 - 49.73

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.71. Personal Attendants.

§49.72. Financial Management Services Agencies.

§49.73. Enforcement of Personal Attendant Wages.

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.101, §49.102

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.101. Application.

(a) Except as provided in subsections (b) - (d) of this section, all of the subchapters of this chapter apply to an applicant or contractor for one or more of the following programs and services:

(1) Medicaid waiver programs and services under Title XIX, §1915(c) of the Social Security Act as follows:

(A) Community Living Assistance and Support Services (CLASS) Program:

(i) CLASS-case management agency (CMA);

(ii) CLASS-continued family services (CFS);

(iii) CLASS-direct service agency (DSA); and

(iv) CLASS-support family services (SFS);

(B) Deaf Blind with Multiple Disabilities (DBMD) Program;

(C) Home and Community Based Services (HCS) Program;

(D) Medically Dependent Children Program (MDCP):

(i) MDCP-adaptive aids (AA);

(ii) MDCP-home and community support services agency (HCSSA);

(iii) MDCP-minor home modifications; and

(iv) MDCP-out of home respite (OHR):

(I) MDCP-OHR-camp;

(II) MDCP-OHR-special care facility;

(III) MDCP-OHR-child care facility;

(IV) MDCP-OHR-nursing facility (NF);

(V) MDCP-OHR-hospital; and

(VI) MDCP-OHR-host family;

(E) Texas Home Living (TxHmL) Program; and

(F) transition assistance services (TAS);

(2) Medicaid state plan services under Title XIX, §1902(a)(10)(A) of the Social Security Act as follows:

(A) hospice;

(B) primary home care (PHC)/ community attendant services (CAS); and

(C) day activity and health services (DAHS);

(3) services and programs under Title XX, Subtitle A of the Social Security Act as follows:

(A) adult foster care (AFC);

(B) emergency response system;

(C) home delivered meals (HDM);

(D) residential care (RC);

(E) DAHS;

(F) family care (FC);

(G) consumer managed personal attendant services (CMPAS);

(H) special services to persons with disabilities (SSPD); and

(I) SSPD - 24-hour shared attendant care;

(4) relocation services; and

(5) financial management services under the consumer directed services option authorized under Texas Government Code, §531.051 as follows:

(A) financial management services agency (FMSA)--CLASS;

(B) FMSA-DBMD;

(C) FMSA-HCS;

(D) FMSA-MDCP;

(E) FMSA-PHC/CAS/FC; and

(F) FMSA-TxHmL.

(b) Subchapter D of this chapter (relating to Monitoring and Investigation of a Contractor) and Subchapter E, Divisions 2 and 3 of this chapter (relating to Immediate Protection; and Actions) do not apply to a contractor that has a contract for:

(1) the HCS Program; or

(2) the TxHmL Program.

(c) Subchapter D of this chapter and §49.523 of this chapter (relating to Referral Hold) do not apply to a contractor that has a contract for hospice.

(d) Sections 49.202 - 49.205 and §§49.207 - 49.211 of this chapter (relating to Provisional Contract; Provisional Contract Application Process; Additional Provisional Contract Application Requirements; License, Certification, Accreditation, and Other Requirements; Provisional Contract Application Denial; Provisional Contract Application Approval; Standard Contract; Contractor Change of Ownership or Legal Entity; and Religious Organization Applicants) and Subchapter G of this chapter (relating to Application Denial Period) do not apply to a contractor that has a contract for:

(1) CMPAS;

(2) SSPD;

(3) SSPD - 24-hour shared attendant care; or

(4) relocation services.

§49.102. Definitions.

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

(1) AA--Adaptive aids.

(2) Abuse--Abuse as defined in Texas Human Resources Code, §48.002 or, in reference to children, Texas Family Code, §261.001.

(3) AFC--Adult foster care.

(4) Applicant--A person seeking to obtain a contract.

(5) Application denial period--A period of time during which DADS denies a contract application submitted to DADS.

(6) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(7) CAS--Community attendant services.

(8) CFS--Continued family services.

(9) Change of legal entity--An event that occurs when a contractor is required to obtain a new federal tax identification number.

(10) Change of ownership--An event that occurs when:

(A) as a result of a transfer or sale, at least 50 percent of the ownership of a contractor is held by one or more persons who owned less than 5 percent of the contractor before the transfer or sale; and

(B) the contractor is not required to obtain a new federal tax identification number.

(11) Choice list--A list of contractors from which an individual or LAR chooses to receive services unless DADS has imposed a referral hold on the contractor.

(12) CLASS Program--Community Living Assistance and Support Services Program.

(13) Clean claim--In accordance with Code of Federal Regulations, Title 42, §447.45(b), a claim for services submitted by a contractor that can be processed without obtaining additional information from the contractor or a party other than DADS, including a claim with errors originating in the Texas claims management system, but not including a claim from a contractor under investigation for fraud or abuse, or a claim under review for medical necessity.

(14) CMA--Case management agency.

(15) CMPAS--Consumer managed personal attendant services.

(16) Contract--A written agreement between DADS and another person that obligates the other person to provide a service described in §49.101 of this subchapter (relating to Application) in exchange for payment from DADS. The term includes standard and provisional contracts.

(17) Contractor--The person other than DADS who is a party to a contract.

(18) Contractual agreement--A written, legally binding agreement that is not a contract as defined in this section.

(19) Controlling ownership interest--A direct ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests, of 5 percent or more in an applicant or contractor.

(20) Controlling person--A person who:

(A) has a controlling ownership interest;

(B) is a managing employee;

(C) has been delegated the authority to obligate or act on behalf of an applicant or contractor;

(D) is an officer or director of a corporation that is an applicant or contractor;

(E) is a partner in a partnership that is an applicant or contractor;

(F) is a member or manager in a limited liability company that is an applicant or contractor;

(G) is a trustee or trust manager of a trust that is an applicant or contractor;

(H) is a spouse of a person who is an applicant or contractor; or

(I) because of a personal, familial, or other relationship with an applicant or contractor, is in a position of actual control or authority with respect to the applicant or contractor, regardless of the person's title.

(21) Conviction--A determination of being found or proved guilty that:

(A) is any of the following:

(i) a judgment of conviction that has been entered by a federal, state or local court, regardless of whether:

(I) there is a post-trial motion or an appeal pending; or

(II) the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;

(ii) a finding of guilt made by a federal, state, or local court; or

(iii) an acceptance of a plea of guilty or *nolo contendere* by a federal, state, or local court; and

(B) does not include successful completion of a period of deferred adjudication community supervision and receipt of a dismissal and discharge in accordance with Texas Code of Criminal Procedure, Article 42.12, Section 5(c).

(22) DADS--The Department of Aging and Disability Services.

(23) DADS debarment list--A list, made before the effective date of this chapter, of persons and entities prohibited by DADS from conducting business with DADS in any capacity for a specified period.

(24) DAHS--Day activity and health services.

(25) Day--A calendar day, including weekends and holidays.

(26) DBMD Program--Deaf Blind with Multiple Disabilities Program.

(27) Desk review--A review by DADS of a contractor's service delivery or business operation that takes place away from the contractor's administrative and service delivery sites, using records provided to DADS by the contractor. The scope of the review is at the discretion of DADS.

(28) DFPS--The Department of Family and Protective Services.

(29) Direct ownership interest--An interest in the ownership of an applicant or contractor as described in subparagraphs (A) and (B) of this paragraph.

(A) Direct ownership interest is:

(i) ownership of equity in the capital, stock, or profits of an applicant or contractor; or

(ii) ownership in a mortgage, deed of trust, note, or other obligation secured by property of an applicant or contractor.

(B) The percentage of direct ownership interest of an applicant or contractor, based on ownership of a mortgage, deed of trust, note, or other obligation, is determined by multiplying the percentage of ownership in the obligation by the percentage of the applicant's or contractor's assets used to secure the obligation. For example, ownership of 10 percent of a note secured by 60 percent of a contractor's or applicant's assets equals 6 percent direct ownership interest in the applicant or contractor (that is, 0.1 x 0.6 = 0.06).

(30) DSA--Direct service agency.

(31) Exploitation--Exploitation as defined in Texas Human Resources Code, §48.002.

(32) FC--Family care.

(33) FMSA--Financial management services agency. An entity that contracts with DADS to provide financial management services, as defined in §41.103 of this title (relating to Definitions).

(34) Governmental entity--An agency or other entity of federal, state, or local government.

(35) HCS Program--Home and Community Based Services Program.

(36) HCSSA--Home and community support services agency.

(37) HDM--Home delivered meals.

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

(39) Indirect ownership interest--An interest in the ownership of an applicant or contractor as described in subparagraphs (A) and (B) of this paragraph.

(A) Indirect ownership interest is an ownership interest in a person that has a direct or indirect ownership interest in an applicant or contractor.

(B) The percentage of indirect ownership interest is determined by multiplying the percentage of ownership interest in the person that has a direct ownership interest in the applicant or contractor by the percentage of direct ownership that the person has in the applicant or contractor. For example:

(i) ownership of 10 percent of the stock of a corporation that owns 80 percent of the stock of an applicant or contractor equals 8 percent indirect ownership of the applicant or contractor (that is, 0.1 x 0.8 = 0.08); and

(ii) ownership of 50 percent of the stock of a corporation that owns 10 percent of the stock of a corporation that owns 80 percent of the stock of an applicant or contractor equals 4 percent indirect ownership of the applicant or contractor (that is, 0.5 x 0.1 x 0.8 = 0.04).

(40) Individual--A person who is enrolled in a program or service described in §49.101(a) of this subchapter.

(41) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a particular matter. The term may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(42) LEIE--List of excluded individuals and entities. In this context, "individual" does not have the meaning as defined in this section.

(43) Local authority--An entity to which HHSC's authority and responsibility, as described in Texas Health and Safety Code, §531.002(11), has been delegated.

(44) Managing employee--A person who exercises operational or managerial control over, or who conducts the day-to-day operation of, an applicant or contractor.

(45) MDCP--Medically Dependent Children Program.

(46) Neglect--Neglect as defined in Texas Human Resources Code, §48.002 or, in reference to children, Texas Family Code, §261.001.

(47) OHR--Out of home respite.

(48) Person--A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(49) Personal attendant--An employee or subcontractor of a contractor or an employee of a CDS employer who provides:

(A) PHC;

(B) FC;

(C) CAS;

(D) DAHS;

(E) RC;

(F) flexible family support in MDCP;

(G) respite services in MDCP;

(H) personal attendant services in the CMPAS Program;

(I) habilitation in the CLASS Program;

(J) residential habilitation in the DBMD Program;

(K) chore services in the DBMD Program;

(L) day habilitation in the DBMD Program;

(M) supported home living in the HCS Program; or

(N) community support in the TxHmL Program.

(50) PHC--Primary home care.

(51) Provisional contract--An initial contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date.

(52) RC--Residential care.

(53) Records--Documentation of a contractor, including written, electronic, digital, audio, and video documentation.

(54) Recoup--To reduce payments that are due to a contractor under a contract to satisfy a debt the contractor owes to DADS but does not include making routine adjustments for prior overpayments to the contractor.

(55) Referral hold--An action in which DADS prohibits a contractor from, for a period of time determined by DADS, providing services to an individual not receiving services from the contractor at the time the referral hold was imposed.

(56) SFS--Support family services.

(57) SSPD--Special Services to Persons with Disabilities (SSPD) Program.

(58) Standard contract--A contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(59) Subcontract--An agreement, other than a contract, between a contractor and another person that obligates the other person to provide all or part of the goods, services, work, or materials required of the contractor in a contract.

(60) Subcontractor--The person other than a contractor who is a party to a subcontract.

(61) TAS--Transition assistance services.

(62) TxHmL Program--Texas Home Living Program.

(63) Vendor hold--A temporary suspension of payments that are due to a contractor under a contract.

(64) Volunteer--A person who works for a contractor without compensation, other than reimbursement for actual expenses.

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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SUBCHAPTER B. CONTRACTOR ENROLLMENT

40 TAC §§49.201 - 49.211

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.201. Contractors Not Subject to Certain Portions of Subchapter B.

Sections 49.202 - 49.205 and §§49.207 - 49.211 of this subchapter (relating to Provisional Contract; Provisional Contract Application Process; Additional Provisional Contract Application Requirements; License, Certification, Accreditation, and Other Requirements; Provisional Contract Application Denial; Provisional Contract Application Approval; Standard Contract; Contractor Change of Ownership or Legal Entity; and Religious Organization Applicants) do not apply to a contractor that has a contract for:

(1) CMPAS;

(2) SSPD;

(3) SSPD - 24-hour shared attendant care; or

(4) relocation services.

§49.202. Provisional Contract.

(a) To obtain a contract for a service or program for which a person does not have a contract, or a contract in a service or catchment area in which the person does not have a contract, the person must apply for a provisional contract in accordance with §49.203 of this subchapter (relating to Provisional Contract Application Process) and §49.204 of this subchapter (relating to Additional Provisional Contract Application Requirements).

(b) DADS may require that a contract be limited to a single facility or single service or catchment area.

§49.203. Provisional Contract Application Process.

(a) To apply for a provisional contract, an applicant must:

(1) if required by DADS as stated on the DADS website, complete DADS pre-application orientation (PAO) and training in accordance with the instructions on the DADS website before submitting an application packet to DADS as described in paragraph (4) of this subsection;

(2) if applying for a Title XX HDM contract, obtain written approval from DADS staff in the region in which the applicant is seeking to provide services regarding budgetary issues and health inspections before submitting an application packet to DADS as described in paragraph (4) of this subsection;

(3) if applying for an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), complete DADS training in accordance with the instructions on the DADS website and receive a passing score on DADS financial management services test before submitting an application packet to DADS as described in paragraph (4) of this subsection; and

(4) submit an application packet that contains:

(A) a DADS provisional contract application completed in accordance with the application instructions;

(B) other documents required by the application instructions including:

(i) if required to complete PAO or training, a certificate of completion of the PAO or training issued by DADS;

(ii) if the applicant is applying not because of a change of ownership as described in §49.210 of this subchapter (relating to Contractor Change of Ownership or Legal Entity), a copy of any document required to be a contractor as described in §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements);

(iii) if the applicant is applying because of a change of ownership or because of a change of legal entity as described in §49.210 of this subchapter, a copy of the application for change of ownership of any license required to be a contractor as described in §49.205 of this subchapter; and

(iv) if the applicant is not required to have a license issued by DADS under §49.205 of this subchapter, a written acknowledgement from the Texas Department of Public Safety that the applicant has requested, in accordance with the application instructions, a criminal history record be sent to DADS for all persons with a controlling interest in the applicant.

(b) An applicant must submit the completed application packet to DADS in a timely manner as described in this subsection.

(1) An application packet must be delivered to DADS, in accordance with the application instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 60 days after the applicant completed the PAO;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 60 days after the applicant completed the PAO; or

(C) hand delivery, no later than 60 days after the applicant completed the PAO.

(2) For purposes of paragraph (1)(B) and (C) of this subsection, if the 60th day is a day on which the DADS office receiving the application packet is closed, the period extends through the end of the next day the office is open.

(c) If the applicant timely submits an incomplete or incorrect application packet, including failing to submit a required document, DADS:

(1) requests, in writing, that the applicant submit a missing document; or

(2) returns a document to the applicant for correction or completion.

(d) DADS gives an applicant only one opportunity to submit a missing document or to complete or correct a document in accordance with this subsection. An applicant must submit a missing, completed, or corrected document to DADS in a timely manner as described in this subsection.

(1) A missing document must be delivered to DADS, in accordance with DADS instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 30 days after the date of DADS written request for a missing document;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 30 days after the date of DADS written request for a missing document; or

(C) hand delivery, fax, or e-mail no later than 30 days after DADS written request for a missing document.

(2) A properly completed or corrected document must be delivered to DADS, in accordance with DADS instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 30 days after the date of the letter from DADS returning the incomplete or incorrect document;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 30 days after the date of the letter from DADS returning the incomplete or incorrect document; or

(C) hand delivery, fax, or e-mail no later than 30 days after the date of the letter from DADS returning the incomplete or incorrect document.

(3) For purposes of paragraphs (1)(B) and (C) and (2)(B) and (C) of this subsection, if the 30th day is a day on which the DADS office receiving the missing, completed, or corrected document is closed, the period extends through the end of the next day the office is open.

§49.204. Additional Provisional Contract Application Requirements.

(a) An applicant that is licensed as an assisted living facility, applies for a Title XX RC contract, and otherwise meets application requirements must meet the requirements in §46.13 of this title (relating to Housing Options), as determined by DADS based on an on-site visit.

(b) An applicant that applies for a Title XX AFC contract and otherwise meets application requirements must meet the requirements in Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care).

(c) An applicant that applies for an HCS or TxHmL contract and otherwise meets application requirements must complete provider applicant training and receive a score of at least 85 percent on the provider competency examination.

§49.205. License, Certification, Accreditation, and Other Requirements.

(a) To be a contractor, an applicant must have a license, certification, accreditation, or other document as follows:

(1) CLASS-CFS and CLASS-SFS require:

(A) a foster home verification certificate issued by a child-placing agency in accordance with Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies);

(B) an independent foster home license issued by DFPS in accordance with Chapter 745 of this title (relating to Licensing); or

(C) a HCSSA license issued by DADS in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) with:

(i) the licensed home health services (LHHS) category; or

(ii) the licensed and certified home health services (L&CHHS) category;

(2) CLASS-DSA requires a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(A) the LHHS category; or

(B) the L&CHHS category;

(3) DBMD requires:

(A) a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(i) the LHHS category; or

(ii) the L&CHHS category; and

(B) for a contractor that provides residential services to four to six individuals, an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities);

(4) MDCP-AA requires, for a contractor that provides vehicle modification services, a copy of a current contractual agreement with the Department of Assistive and Rehabilitative Services (DARS) to provide vehicle modification services;

(5) MDCP-HCSSA requires a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(A) the personal assistance services (PAS) category;

(B) the LHHS category; or

(C) the L&CHHS category;

(6) MDCP-OHR-camp requires written accreditation by the American Camping Association for providing summer camp services;

(7) MDCP-OHR-special care facility requires a special care facility license issued by the Department of State Health Services (DSHS) in accordance with 25 TAC Chapter 125 (relating to Special Care Facilities);

(8) MDCP-OHR-child care facility requires a child-care center license issued by DFPS in accordance with Chapter 745 of this title;

(9) MDCP-OHR-NF requires a nursing facility license issued by DADS in accordance with Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification);

(10) MDCP-OHR-hospital requires a hospital license issued by DSHS in accordance with 25 TAC Chapter 133 (relating to Hospital Licensing);

(11) MDCP-OHR-host family requires a foster family home license issued by DFPS in accordance with Chapter 745 of this title or verification as a child-placing agency foster family home issued by a child placing agency in accordance with Chapter 749 of this title;

(12) TAS requires:

(A) written documentation from DARS or the Rehabilitation Services Administration that the applicant is a center for independent living, as defined by 29 United States Code §796a;

(B) a contract other than the TAS contract; or

(C) written designation by DADS as an area agency on aging;

(13) Medicaid hospice requires:

(A) a HCSSA license for hospice issued by DADS in accordance with Chapter 97 of this title; and

(B) a written notification from the Centers for Medicare and Medicaid Services that the applicant is certified to participate as a hospice agency in the Medicare Program;

(14) PHC/CAS, and FC require a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(A) the LHHS category;

(B) the L&CHHS category; or

(C) the PAS category;

(15) DAHS requires an adult day care license issued by DADS in accordance with Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements);

(16) Title XX AFC requires for an AFC facility serving four to eight individuals, an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title;

(17) Title XX ERS requires:

(A) a license as a personal emergency response system provider issued by DSHS in accordance with 25 TAC Chapter 140, Subchapter B (relating to Personal Emergency Response System Providers); or

(B) a license as an alarm systems company issued by the Texas Private Security Board in accordance with the Texas Occupations Code, Chapter 1702; and

(18) Title XX RC requires an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title.

(b) The license, certification, accreditation, or other document required by subsection (a) of this section must be valid in the service or catchment area:

(1) in which the applicant is seeking to provide services; or

(2) covered under the contractor's contract.

§49.206. Ineligibility Due to Criminal History.

(a) DADS may determine an applicant or contractor is ineligible to contract with DADS if the applicant, contractor, or a controlling person has a conviction of any of the following misdemeanor or felony offenses, regardless of the date of conviction:

(1) an offense listed in §99.2(a) of this title (relating to Convictions Barring Licensure);

(2) an offense related to the person's involvement in any program under Medicare, Medicaid, or Title XX, Subtitle A of the Social Security Act;

(3) an offense described in Texas Occupations Code, §102.001 or §102.006 (relating to Solicitation, Offense; and Failure to Disclose, Offense); or

(4) an offense of aiding, abetting, or conspiring to commit an offense described in paragraphs (1) - (3) of this subsection.

(b) DADS considers a conviction of an offense under the laws of another state, federal law, or the Uniform Code of Military Justice containing elements that are substantially similar to the elements of an offense listed in subsection (a) of this section as if it is a conviction of one of the listed offenses.

(c) If an applicant, contractor or a controlling person of an applicant or contractor has a conviction of an offense listed in subsection (a) or (b) of this section, DADS considers the following information when determining if the applicant or contractor is eligible to contract with DADS:

(1) the nature and seriousness of the offense;

(2) the relationship of the offense to the applicant's, contractor's, or controlling person's duties under the contract;

(3) the extent to which a contract might offer an opportunity for the applicant, contractor, or controlling person to engage in activity similar to the offense;

(4) the age of the applicant, contractor, or controlling person at the time of the offense;

(5) the amount of time since the offense;

(6) whether the applicant, contractor, or controlling person has been convicted of other offenses; and

(7) any other information provided by the applicant, contractor, or controlling person to explain the circumstances of the offense or to evidence the applicant's, contractor's, or controlling person's conduct since the offense.

§49.207. Provisional Contract Application Denial.

(a) DADS denies a provisional contract application if:

(1) HHSC has not approved the applicant or contractor for enrollment in accordance with 1 TAC Chapter 352 (relating to Medicaid and Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening);

(2) HHSC has denied the enrollment application of the applicant or contractor, or has disenrolled the applicant or contractor, in accordance with 1 TAC Chapter 352 or Chapter 371, Subchapter E;

(3) the applicant or a controlling person of the applicant is under an application denial period as described in §49.702 of this chapter (relating to Application Denial Period);

(4) the applicant or a controlling person of the applicant is under a period of exclusion in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act;

(5) the applicant or a controlling person of the applicant is listed on:

(A) the DADS employee misconduct registry as unemployable;

(B) the nurse aide registry as revoked or suspended;

(C) the United States System for Award Management maintained by the General Services Administration;

(D) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(E) the LEIE maintained by the Texas Health and Human Services Commission, Office of Inspector General;

(F) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the period of debarment has not expired; or

(G) the DADS debarment list;

(6) the applicant has not submitted a completed application packet as required by §49.203 of this subchapter (relating to Provisional Contract Application Process);

(7) the applicant does not have a license, certification, accreditation, or other document required by §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements);

(8) the applicant is applying because of a change of ownership or a change of legal entity and DADS has denied the application for change of ownership of any license required to be a contractor as described in §49.205 of this subchapter;

(9) the applicant or a controlling person of the applicant is ineligible to contract with DADS in accordance with §49.206 of this subchapter (relating to Ineligibility Due to Criminal History);

(10) the applicant or a controlling person of the applicant is prohibited from contracting with DADS in accordance with Chapter 79, Subchapter S of this title (relating to Contracting Ethics);

(11) the applicant does not meet a requirement described in §49.204 of this subchapter (relating to Additional Provisional Contract Application Requirements);

(12) a DSA in the CLASS Program is applying to be a CMA in the CLASS Program in the same catchment area in which the applicant is a DSA;

(13) a CMA in the CLASS Program is applying to be a DSA in the CLASS Program in the same catchment area in which the applicant is a CMA;

(14) the applicant is applying to be a DSA and CMA in the CLASS Program in the same catchment area;

(15) the applicant is required to register with the Texas Secretary of State and the applicant's status with the Texas Secretary of State is not "in existence"; or

(16) the applicant is required to pay Texas franchise tax and the applicant's right to transact business status with the Texas Comptroller of Public Accounts is not "active."

(b) DADS may deny a provisional contract application for good cause, including that:

(1) the application packet contains incorrect information;

(2) the applicant or a controlling person of the applicant terminated a contractual agreement with a governmental entity in a federal health care program, as defined in §1128B(f) of the Social Security Act, while an adverse action or sanction was proposed or in effect;

(3) the applicant or a controlling person of the applicant terminated a contract while an action or sanction by DADS, as described in §49.521 or §49.531 of this chapter (relating to Action by DADS; Sanction by DADS) was proposed or in effect;

(4) DADS proposed or imposed an action or sanction, as described in §49.521 or §49.531 of this chapter, against:

(A) a contract of the applicant, contractor or a controlling person of the applicant; or

(B) a contract of a person for whom the applicant or a controlling person of the applicant was a controlling person;

(5) DADS, another governmental entity, or a managed care organization contracting with a governmental entity, proposed or imposed a termination, suspension, recoupment, or penalty against:

(A) a contractual agreement of the applicant or a controlling person of the applicant; or

(B) a contract of a person for whom the applicant or a controlling person of the applicant was a controlling person;

(6) DADS or another governmental entity proposed or imposed a penalty, revocation, denial, termination, or suspension against a license, certification, or registration held by the applicant or a controlling person of the applicant;

(7) the applicant or a controlling person of the applicant has an unresolved financial liability with DADS or another governmental entity; or

(8) the applicant or a controlling person of the applicant has been confirmed by DFPS as having committed abuse, neglect, or exploitation.

(c) If DADS denies a provisional contract application, DADS provides written notification to the applicant. If the applicant wants to be a contractor, the applicant must repeat the application process described in §49.203 and §49.204 of this subchapter.

§49.208. Provisional Contract Application Approval.

(a) DADS approves a provisional contract application if it is not denied in accordance with §49.207 of this subchapter (relating to Provisional Contract Application Denial).

(b) If DADS approves a provisional contract application, DADS:

(1) provides written notification to the applicant;

(2) enters into a provisional contract with the applicant; and

(3) places the contractor's name on the choice list for the program or service covered by the provisional contract.

(c) A provisional contract may be subject to conditions recommended by HHSC in accordance with 1 TAC Chapter 352 (relating to Medicaid and the Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

(d) The effective date of a provisional contract is as follows:

(1) if the applicant applied for the contract in accordance with §49.210(a)(2) of this subchapter (relating to Contractor Change of Ownership or Legal Entity), the effective date is the effective date of the change of ownership or legal entity of the contractor; or

(2) for an applicant other than one described in paragraph (1) of this subsection, the effective date is determined by DADS.

(e) DADS and a contractor may agree to extend the term of a provisional contract. The extension of a provisional contract is not a determination by DADS that the contractor qualifies for a standard contract.

§49.209. Standard Contract.

(a) Except as provided in subsection (f) of this section, a contractor that has a provisional contract, other than a provisional contract for the HCS Program, TxHmL Program, hospice, or financial management services, qualifies for a standard contract if, based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), DADS determines that the overall compliance score for the expiring provisional contract is 90 percent or greater.

(b) Except as provided in subsection (f) of this section, a contractor that has a provisional contract for the HCS or TxHmL Program qualifies for a standard contract if:

(1) at the end of the provisional contract term, the contractor is certified by DADS in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action) or §9.577 of this title (relating to Program Provider Compliance and Corrective Action); and

(2) during the term of the provisional contract, DADS has not imposed a vendor hold on the contractor in accordance with §9.185 or §9.577 of this title.

(c) Except as provided in subsection (f) of this section, a contractor that has a provisional contract for hospice qualifies for a standard contract if at the end of the provisional contract term, the contractor has the license and written notification required by §49.205(a)(13) of this subchapter (relating to License, Certification, Accreditation, and Other Requirements).

(d) Except as provided in subsection (f) of this section, a contractor that has a provisional contract for financial management services qualifies for a standard contract if:

(1) based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), DADS determines that the overall compliance score for the expiring provisional contract is 90 percent or greater; and

(2) based on financial monitoring described in §49.412 of this chapter (relating to Financial Monitoring of FMSAs), DADS determines that the contractor's overall compliance score for the expiring provisional contract is 90 percent.

(e) A standard contract issued by DADS in accordance with subsections (a) - (d) of this section is for the same program, service, or facility in the same service, catchment, or waiver contract area as the provisional contract.

(f) A contractor may not qualify for a standard contract for any reason for which DADS may deny a provisional contract application, as described in §49.207 of this subchapter (relating to Provisional Contract Application Denial).

(g) A standard contract may be subject to conditions recommended by HHSC in accordance with 1 TAC Chapter 352 (relating to Medicaid and the Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

(h) A standard contract is effective the day after the provisional contract expires.

(i) If DADS determines a contractor does not qualify for a standard contract, DADS notifies:

(1) the contractor of the determination, in writing, and includes in the notification the application denial period set in accordance with §49.702(a) of this chapter (relating to Application Denial Period); and

(2) any controlling person, in writing, of the application denial period.

(j) If a contractor refuses a standard contract, DADS notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(b) of this chapter.

§49.210. Contractor Change of Ownership or Legal Entity.

(a) If a contractor intends to undergo a change of ownership or change of legal entity, the following action must be taken to obtain a new provisional contract with an effective date that is the same as the date of the change of ownership or change of legal entity:

(1) at least 60 days before the proposed date of the change of ownership or change of legal entity, the contractor must notify DADS of the planned change and the proposed date of the change;

(2) the contractor (for a change of ownership) or new legal entity (for a change of legal entity) must apply for a provisional contract in accordance with §49.203 of this subchapter (relating to Provisional Contract Application Process) at least 60 days before the proposed date of the change of ownership or change of legal entity;

(3) the contractor or new legal entity must receive approval from DADS of the provisional contract application before the date of the change of ownership or change of legal entity in accordance with §49.208 of this subchapter (relating to Provisional Contract Application Approval); and

(4) if required to have a license under §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements) to be a contractor, the contractor or new legal entity must ensure that the date of the change of ownership or change of legal entity is the same as the date of the change of ownership or change of legal entity for the new license.

(b) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1) - (4) of this section are met, DADS:

(1) proposes to terminate the contractor's contract in accordance with §49.534(a)(2)(C) of this chapter (relating to Termination of Contract by DADS);

(2) notifies individuals receiving services or LARs in accordance with §49.534(c)(1) and (2) of this chapter; and

(3) enters into a new provisional contract with the contractor or new legal entity with an effective date the same as the date of the change of ownership or change of legal entity.

(c) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1) - (4) of this section are not met, DADS:

(1) proposes to terminate the contractor's contract in accordance with §49.534(a)(2)(C) of this chapter;

(2) notifies individuals receiving services or LARs in accordance with §49.534(c)(1) and (2) of this chapter; and

(3) does not enter into a new provisional contract with the contractor or new legal entity with an effective date the same as the date of the change.

(d) If a contractor or new legal entity does not receive approval in accordance with subsection (a)(3) of this section, DADS does not enter into a contract with the contractor or new legal entity.

§49.211. Religious Organization Applicants.

(a) The provisions in this section are based on Code of Federal Regulations, Title 45, Part 87.

(b) An applicant that is a religious organization is eligible to become a contractor on the same basis as any other applicant.

(c) DADS does not discriminate against an applicant based on the applicant's religious character or affiliation, in approving or denying an applicant's 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.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §§49.301 - 49.312

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.301. Purpose.

This subchapter describes the requirements a contractor must meet to maintain a contract with DADS.

§49.302. General Requirements.

(a) A contractor must have and maintain a license, certification, accreditation, or other documentation required of an applicant in §49.205 of this chapter (relating to License, Certification, Accreditation, and Other Requirements), except:

(1) a contractor that has had a contract for the DBMD Program continuously from September 1, 1999 until September 1, 2014 and that does not provide home health or personal assistance services is not required to have a HCSSA license issued in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) for a contract in effect on September 1, 2014; and

(2) a contractor that has had a contract for AFC services in a four-bed facility continuously from January 15, 2009 until September 1, 2014, and that has an assisted living facility Type C license issued in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) is not required to have an assisted living facility Type A or Type B license issued in accordance with Chapter 92 of this title.

(b) A contractor must complete any training required by DADS as stated on the DADS website before DADS places the contractor on a choice list.

(c) A contractor must ensure that an employee, subcontractor, or volunteer can effectively communicate with an individual or LAR concerning service planning and the provision of services, which may require the contractor to provide an interpreter for the individual.

(d) Except as provided in DADS rules governing services provided under the contract, a contractor must not allow an individual to perform services under the contract or perform other work that benefits the contractor.

(e) A contractor must comply with the terms of its contract, which requires compliance with applicable federal and state laws, rules, and regulations, including this chapter, rules governing services provided under the contract, and applicable reimbursement rules in 1 TAC Chapter 355 (relating to Reimbursement Rates).

(f) A contractor:

(1) must accept the reimbursement rate for a service in effect at the time the service is provided as payment in full for performance under the contract; and

(2) must not make an additional charge to the individual, any member of the individual's family, or any other source for supplementation for performance under the contract, unless specifically allowed by federal or state law, rule, or regulation.

(g) A contractor must:

(1) subscribe to receive DADS e-mail updates, using the link provided at the DADS website; and

(2) be informed of the content of the e-mail updates.

(h) A contractor must notify DADS of a change of ownership or change in legal entity in accordance with §49.210(a)(1) of this chapter (relating to Contractor Change of Ownership or Legal Entity).

(i) If there is a change to a contractor's physical, mailing, or e-mail address, as stated on the contractor's contract application packet or on a prior written notice of change to the information, the contractor must notify DADS of the change and provide the new physical, mailing, or e-mail address:

(1) at least 30 days before the address changes; or

(2) if a natural or unforeseen disaster prevents compliance with paragraph (1) of this subsection, within three days after the change.

(j) If there is a change to the name of the person authorized to negotiate and execute a contract on behalf of a contractor, as stated on the DADS form, "Governing Authority Resolution," the contractor must notify DADS of the change within 30 days after the change by submitting a new, fully executed DADS form, "Governing Authority Resolution."

(k) If there is a change to the information regarding the applicant or a controlling person of the applicant being confirmed by DFPS as having committed abuse, neglect, or exploitation, as stated on the contractor's contract application packet or on a prior written notice of change to the information, the contractor must notify DADS of the change within three business days after the contractor or controlling person becomes aware of the change.

(l) If a controlling person of a contractor is convicted of any crime listed in §49.206 of this chapter (relating to Ineligibility Due to Criminal History), the contractor must notify DADS within three business days after the contractor or controlling person becomes aware of the conviction.

(m) If a contractor files for bankruptcy, the contractor must notify DADS within 14 days after filing.

(n) If a contractor or controlling person is excluded in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act, the contractor must notify DADS of the exclusion change within three business days after the contractor or controlling person becomes aware of the exclusion.

(o) If a contractor or a controlling person of a contractor becomes aware the contractor or controlling person is listed on any of the following, the contractor must notify DADS within three business days after the contractor becomes aware of the listing:

(1) DADS Employee Misconduct Registry as unemployable;

(2) DADS Nurse Aide Registry as revoked or suspended;

(3) the United States System for Award Management maintained by the General Services Administration;

(4) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(5) the LEIE maintained by the Texas Health and Human Services Commission, Office of Inspector General; or

(6) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts.

(p) If there is a change to any of the information on the contractor's contract application packet or on a prior written notice of change to the information, other than the information referenced in subsections (i) - (o) of this section, a contractor must notify DADS of the change and provide the new information within 14 days after the information changes.

(q) For a notice that a contractor is required to send to DADS in accordance with this chapter, the contractor must ensure that the notice is:

(1) in writing;

(2) signed by the person authorized to negotiate and execute a contract on behalf of a contractor, as stated on the DADS form, "Governing Authority Resolution"; and

(3) sent to DADS Community Service Contracts Section.

(r) A contractor must allow DADS and any authorized federal or state agency access to:

(1) individuals;

(2) employees, subcontractors, or volunteers of the contractor; and

(3) any premises controlled by the contractor.

(s) A contractor must not pay for any item or service furnished, ordered, or prescribed by an individual listed on either LEIE described in §49.304(h)(1) of this subchapter (relating to Background Checks).

§49.303. Confidentiality of Information.

(a) A contractor must comply with applicable federal and state laws regarding confidentiality of information regarding an individual.

(b) A contractor may use confidential information, including the names and contact information of an individual receiving services from another contractor, only for the authorized purpose for which the confidential information was legally obtained.

§49.304. Background Checks.

(a) A contractor that is required to have a license, as described in §49.302(a) of this subchapter (relating to General Requirements), must comply with licensure requirements regarding criminal history record checks, the employee misconduct registry and the nurse aide registry for employees, subcontractors, and volunteers.

(b) A contractor that is not required to have a license, as described in §49.302(a) of this subchapter, must:

(1) before offering employment to an unlicensed applicant for employment, contracting with an unlicensed potential subcontractor, or accepting an unlicensed volunteer applicant for a volunteer position, obtain from the Department of Public Safety the criminal history record of the applicant or potential subcontractor;

(2) review the criminal history record of the unlicensed applicant or potential subcontractor;

(3) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position, for the time periods set forth in Texas Health and Safety Code, §250.006, if the applicant or potential subcontractor has been convicted of an offense listed in Texas Health and Safety Code, §250.006; and

(4) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position if the applicant or potential subcontractor has been convicted of an offense that the contractor determines is a contraindication to the applicant's employment, contracting, or volunteering.

(c) A contractor that is not required to have a license, as described in §49.302(a) of this subchapter, must:

(1) before offering employment to an unlicensed applicant for employment, contracting with an unlicensed potential subcontractor, or accepting an unlicensed volunteer applicant for a volunteer position, search DADS Employee Misconduct Registry and the Nurse Aide Registry for the name of the applicant or potential subcontractor; and

(2) not employ an unlicensed applicant for employment, contract with a unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position if the applicant or potential subcontractor is listed on:

(A) the DADS Employee Misconduct Registry as unemployable; or

(B) the Nurse Aide Registry as revoked or suspended.

(d) A contractor must:

(1) before contracting with a potential subcontractor that is required to register with the Secretary of State of Texas, obtain a copy of the potential subcontractor's certificate of status with the Secretary of State of Texas; and

(2) not contract with the potential subcontractor if the potential subcontractor does not have a certificate of status stating that the potential subcontractor is "in existence."

(e) A contractor must:

(1) before contracting with a potential subcontractor or offering employment to an applicant for employment, search the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts; and

(2) not contract with the potential subcontractor or employ the applicant if the potential subcontractor or applicant is listed on the Debarred Vendor List and the period of debarment has not expired.

(f) A contractor must:

(1) before contracting with a potential subcontractor that is required to pay Texas franchise tax, search the franchise tax account status maintained by the Texas Comptroller of Public Accounts; and

(2) not contract with the potential subcontractor if the potential subcontractor's right to transact business status with the Texas Comptroller of Public Accounts is not "active."

(g) A contractor must develop and implement a policy that requires an employee, volunteer, or subcontractor to report to the contractor if any of the information obtained in accordance with subsection (b)(1), (c)(1), (d)(1), (e)(1), or (f)(1) of this section has changed. If a contractor becomes aware that information the contractor obtained in accordance with subsection (b)(1), (c)(1), (d)(1), (e)(1), or (f)(1) of this section was erroneous or has subsequently changed so the contractor

would not be allowed to employ the person, contract with the person, or accept the person for volunteer status in accordance with subsection (b)(3) or (4), (c)(2), (d)(2), or (e)(2) of this section, the contractor must terminate the person's employment, volunteer status, or contract.

(h) A contractor must:

(1) review the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General, and the LEIE maintained by the Texas Health and Human Services Commission, Office of Inspector General:

(A) before hiring an applicant for employment or contracting with a potential subcontractor; and

(B) at least monthly, for each employee and subcontractor;

(2) not employ an applicant for employment or contract with a potential subcontractor to perform any duties that may be paid for directly or indirectly through a contract if the applicant or potential subcontractor is listed on either LEIE described in paragraph (1) of this subsection;

(3) prohibit an employee or subcontractor listed on either LEIE described in paragraph (1) of this subsection from performing any duties that may be paid for directly or indirectly through a contract; and

(4) if an employee or subcontractor is listed on either LEIE described in paragraph (1) of this subsection, immediately report to HHSC, Office of Inspector General, the identity of an excluded employee or subcontractor and amount paid by the contractor to the employee or subcontractor for services provided under a contract in accordance with the self-reporting protocol of HHSC, Office of Inspector General.

§49.305. Records.

(a) A contractor must develop and maintain records in accordance with its contract, this subchapter, and DADS rules governing services provided under the contract.

(b) A contractor must:

(1) use forms required by DADS or, if a specific form is not required by DADS, develop records that include elements required by DADS; and

(2) ensure that:

(A) a beginning time for a service is not documented until after the service being documented has been initiated; and

(B) an ending time or a time period for a service is not documented until after the service has been provided.

(c) A contractor's records must support a claim for services submitted under its contract.

(d) A contractor's records must be maintained in accordance with generally accepted accounting principles, referred to as GAAP, established by the Financial Accounting Standards Board.

(e) A contractor must develop and maintain records that:

(1) document the extent of services provided;

(2) document compliance with this chapter; and

(3) include records required by rules governing services provided under its contract.

(f) A contractor must develop and maintain records for an employee, subcontractor, or volunteer that include:

(1) a description of the employee, subcontractor, or volunteer's responsibilities;

(2) the employee's completed application;

(3) records that the employee, subcontractor, or volunteer is qualified for the position for which the person is employed, contracting, or volunteering, in accordance with rules governing services provided under the contract;

(4) records that the contractor conducted the reviews described in §49.304 of this subchapter (relating to Background Checks);

(5) records that the employee, subcontractor, or volunteer received any training required by rules governing services provided under the contract; and

(6) records of any disciplinary action.

(g) For purposes of subsection (f)(4) of this section, records maintained to show compliance with §49.304(h) of this subchapter must include:

(1) documentation of the first and last name, date of birth, and social security or employer identification number of an employee or subcontractor required to be the subject of a review described in §49.304(h)(1) of this subchapter;

(2) the printed first and last name and signature of the person conducting the review;

(3) documentation of the date the review was conducted;

(4) documentation of whether the employee and subcontractor who was the subject of the review was listed on either of the LEIEs described in §49.304(h)(1) of this subchapter; and

(5) a copy of the report made in accordance with §49.304(h)(4) of this subchapter.

(h) A contractor must develop and implement written procedures to:

(1) prevent falsification or unauthorized access, disclosure, modification, or destruction of records and data;

(2) ensure the availability, integrity, authenticity, completeness, and confidentiality of records and data; and

(3) ensure that appropriate audit trails and sufficiently complete transaction histories are maintained to identify the person or position that makes an entry, modification, or correction to records or data that supports a claim for services under its contract.

(i) If a contractor uses paper records related to service delivery, the contractor must:

(1) ensure records are completed in ink;

(2) except as provided in DADS rules governing services provided under the contract, ensure records are signed and dated by the person making the entry;

(3) ensure a stamped signature is not used; and

(4) ensure that if a correction to records is necessary, the correction is made by:

(A) marking a single line through the error;

(B) adding the date the correction was made and the initials of the person who made the correction; and

(C) not using correction fluid or tape or otherwise obliterating the original entry.

(j) If a contractor uses electronic records related to service delivery:

(1) develop and implement written procedures, which must include maintaining current virus protection software, to prevent the loss or corruption of data due to malicious code;

(2) develop and implement written procedures governing the use of electronic signatures that:

(A) require electronic signature authentication;

(B) describe the method of authentication used, such as password, personal identification number, digital signature, or other unique identifier, by document type;

(C) identify the person or position who is authorized to sign electronically by document type; and

(D) describe security measures used to prevent unauthorized use of electronic signatures; and

(3) use an electronic record system that documents:

(A) any change in content that was made to the electronic record;

(B) the date the change was made; and

(C) the name and employee number or other unique identifier of the person who made the change.

(k) A contractor must:

(1) ensure records are available for review in accordance with the contract; and

(2) as requested by DADS or any federal or state agency authorized to have access to records:

(A) provide, at no charge, a copy of any records to DADS and the federal or state agency; or

(B) allow DADS and the federal or state agency to make a copy of any records, at no charge.

§49.306. Electronic Visit Verification System.

A contractor using an electronic visit verification system must comply with Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System).

§49.307. Record Retention and Disposition.

(a) Unless a contractor is required to retain records for a longer period by the contract or rules governing services provided under the contract, a contractor must retain records in the form in which they were created until the latest of the following occurs:

(1) six years elapse from the date the records were created;

(2) all litigation, claims, and audit findings involving the records are resolved; or

(3) the individual about whom the records relate becomes 21 years of age.

(b) If a contractor destroys records containing confidential information, the records must be destroyed in a manner that makes the confidential information unusable, as follows:

(1) for paper, film, and other hard copy records, shredding, pulping, or burning; and

(2) for electronic records, disintegration, degaussing, digital shredding, or using specialized software to copy over the data.

§49.308. Subcontracts.

If a contractor uses a subcontractor, the contractor must:

(1) have a written agreement with the subcontractor that requires the subcontractor and any of its subcontractors to comply with applicable provisions of the contract, this subchapter, and DADS rules governing services provided under the contract, as if the subcontractor and its subcontractors were the contractor;

(2) monitor the subcontractor to ensure that the subcontractor is in compliance with the written agreement referenced in paragraph (1) of this section; and

(3) maintain records of its monitoring of the subcontractor.

§49.309. Complaint Process.

(a) A contractor must develop and implement written procedures for investigating and resolving a complaint about services provided under a contract, other than an allegation of abuse, neglect, or exploitation, that:

(1) allow a complaint to be submitted to the contractor:

(A) either orally or in writing; and

(B) anonymously; and

(2) require the contractor to:

(A) request the name, mailing address, and telephone number of a complainant;

(B) investigate and resolve a complaint within 30 days after the complaint is received by the contractor;

(C) document the name of the person who conducted the investigation;

(D) document the name of persons contacted during an investigation;

(E) obtain written statements from persons contacted during an investigation or document conversations with those persons; and

(F) provide the following information to the complainant within 30 days after a complaint is received by the contractor:

(i) the findings of the investigation;

(ii) the contractor's resolution of the complaint;

(iii) the telephone number of the DADS Consumer Rights and Services hotline (1-800-458-9858); and

(iv) an explanation that the DADS hotline may be used if the complainant is not satisfied with the contractor's resolution of the complaint.

(b) The contractor must give the information described in subsection (a)(2)(F) of this section as follows:

(1) in person, if the complainant is the individual receiving services; or

(2) if the complainant is not the individual receiving services:

(A) by mail, if the contractor knows the complainant's mailing address; or

(B) by telephone, if the contractor does not know the complainant's mailing address, but knows the complainant's telephone number.

(c) A contractor must maintain a written log that contains the following information:

(1) the date the contractor received a complaint;

(2) a description of the complaint;

(3) the findings of the investigation;

(4) the contractor's resolution of the complaint and the date of resolution; and

(5) the date the contractor provided information to the complainant in accordance with subsection (b) of this section.

(d) A contractor must provide the following information to an individual and LAR:

(1) a description of the contractor's complaint process;

(2) the telephone number of the DADS Consumer Rights and Services hotline (1-800-458-9858); and

(3) an explanation that the DADS hotline may be used to file a complaint with DADS.

(e) A contractor must provide the information described in subsection (d) of this section orally and in writing, as follows:

(1) before or at the time the individual begins receiving program services from the contractor; and

(2) at least once every 12 months thereafter.

§49.310. Abuse, Neglect, and Exploitation Allegations.

A contractor must develop and implement written procedures for reporting and investigating an allegation of abuse, neglect or exploitation regarding an individual that:

(1) comply with applicable laws and rules governing services provided under the contract;

(2) require the contractor to report an allegation of abuse, neglect, or exploitation to the appropriate investigative authority;

(3) ensure that the contractor's employees, subcontractors, and volunteers:

(A) are knowledgeable of:

(i) acts that constitute abuse, neglect, or exploitation of an individual;

(ii) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts to the appropriate investigative authority;

(iii) how to report allegations of abuse, neglect, or exploitation to the appropriate investigative authority; and

(iv) methods to prevent the occurrence of abuse, neglect, and exploitation; and

(B) report suspected abuse, neglect, or exploitation as instructed by the contractor;

(4) ensure that individuals and LARs are informed, orally and in writing, of how to report allegations of abuse, neglect, or exploitation:

(A) before or at the time the individual begins receiving program services from the contractor; and

(B) at least once every 12 months thereafter;

(5) if the contractor suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, require the contractor to:

(A) take necessary actions to secure the safety of the individual; and

(B) notify, as soon as possible but no later than 24 hours after the contractor reports or is notified of an allegation, the individual, or the individual's LAR of the allegation report and the actions that have been or will be taken;

(6) if abuse, neglect, or exploitation is confirmed by the investigative authority, require the contractor to take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against the employee, subcontractor, or volunteer confirmed to have committed abuse, neglect, and exploitation;

(7) at least annually, require the contractor to review incidents of confirmed abuse, neglect, or exploitation and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery; and

(8) prohibit the contractor from discharging or otherwise retaliating against:

(A) an employee, subcontractor, volunteer, individual, or other person because the employee, subcontractor, volunteer, individual, or other person files a complaint, presents a grievance, or otherwise provides good faith information relating to possible abuse, neglect, or exploitation of an individual; or

(B) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to possible abuse, neglect, or exploitation of the individual.

§49.311. Claims Payment.

(a) DADS pays a contractor for a claim for services that meets the requirements described in subsection (b) of this section.

(b) A contractor must ensure a claim for services is:

(1) for a service that has been provided by a contractor;

(2) a clean claim;

(3) complete and accurate;

(4) submitted within 12 months after one of the following, whichever is later:

(A) the last day of the month in which the service was provided, the adaptive aid or medical supply delivered, or the minor home modification completed; or

(B) the date the individual's eligibility for the service was determined;

(5) for a type and amount of service that is authorized by DADS;

(6) for a service provided to an individual who is eligible for the service;

(7) except as provided in DADS rules governing services provided under the contract, for a service provided to an individual whose authorization for services has not been suspended or terminated by DADS;

(8) for a service provided during a time period authorized by DADS;

(9) for a service provided during the term of, and in accordance with, the contract, this subchapter, and DADS rules governing services provided under the contract;

(10) supported by records required by the contract and DADS rules governing services provided under the contract;

(11) for a service provided by a qualified service provider in accordance with DADS rules governing services provided under the contract;

(12) for a service ordered by a qualified practitioner, if required by the contract or DADS rules governing services provided under the contract;

(13) submitted in accordance with procedures required by DADS rules governing services provided under the contract and by the claims administrator; and

(14) not for a service that a source other than DADS would have paid for if the contractor had submitted a proper, complete, and timely request for payment to the other source.

(c) As used in subsection (b)(11) and (12) of this section, the terms "qualified service provider" and "qualified practitioner" do not include a person whose health-related license has been suspended or revoked or who has been excluded from participation in a program administered under Title V, XVIII, XIX, or XX of the Social Security Act.

(d) DADS denies a claim for services that does not meet the requirements in subsection (b) of this section and DADS rules governing services provided under the contract. If DADS denies a claim for services, a contractor may request and receive an administrative hearing.

(e) If a contractor or DADS determines that the contractor received payment for a claim for services that does not meet the requirements in subsection (b) of this section and DADS rules governing services provided under the contract:

(1) the contractor may submit a corrected claim for services to allow DADS to adjust amounts paid to a contractor, even if it is after the 12-month period described in subsection (b)(4) of this section; or

(2) DADS recoups funds paid to the contractor in accordance with §49.533 of this chapter (relating to Recoupment).

(f) If a claim for services is denied by DADS, the contractor that submitted the claim may submit a corrected claim within the 12-month period described in subsection (b)(4) of this section.

(g) DADS may adjust amounts paid to a contractor after the 12-month period described in subsection (b)(4) of this section.

§49.312. Personal Attendants.

(a) A contractor, other than a contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), must:

(1) pay a personal attendant a base wage of at least $7.86 per hour; and

(2) notify a person who becomes employed or contracts as a personal attendant within three days after the person accepts the offer of employment or enters into the contract that the contractor is required to pay the wage described in paragraph (1) of this subsection.

(b) A contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter must ensure that an employer or designated representative pays a personal attendant in accordance with a budget that meets the requirements of §41.505(a)(1) of this title (relating to Payroll Budgeting).

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 D. MONITORING AND INVESTIGATION OF A CONTRACTOR
DIVISION 1. APPLICABILITY OF SUBCHAPTER

40 TAC §49.401

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.401. Contractors Not Subject to Subchapter D.

This subchapter does not apply to a contractor that has a contract for the HCS Program, TxHmL Program, or hospice.

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DIVISION 2. MONITORING AND INVESTIGATION

40 TAC §§49.411 - 49.414

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§49.411. Contract and Fiscal Monitoring.

(a) DADS conducts contract and fiscal monitoring:

(1) to determine if:

(A) a contractor is in compliance with its contract, which requires compliance with applicable federal and state laws, rules, and regulations, provider manuals and handbooks, billing guidelines, and communications promulgated by DADS, including information letters;

(B) a contractor is in compliance with a corrective action plan as described in §49.522 of this chapter (relating to Corrective Action Plan) or an immediate protection plan as described in §49.511 of this chapter (relating to Immediate Protection and Immediate Protection Plan);

(2) for purposes described in paragraph (1)(A) of this subsection, at least once during the term of a provisional contract and periodically after the effective date of a standard contract, on a schedule determined by DADS;

(3) by evaluating standards in accordance with a program-specific DADS contract and fiscal compliance monitoring tool; and

(4) at a location identified by DADS, which may include a location where the contractor conducts business or provides contracted services.

(b) To conduct contract and fiscal monitoring, DADS:

(1) sends a written notice to a contractor that includes the date the monitoring will begin and lists the records the contractor must provide at the entrance conference described in paragraph (2) of this subsection;

(2) conducts an on-site entrance conference with the contractor;

(3) performs other activities, which may include:

(A) reviewing the contractor's records;

(B) reviewing the contractor's policies and procedures;

(C) reviewing consumer satisfaction surveys;

(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor's employee; and

(E) observing an individual receiving services;

(4) conducts an on-site exit conference with the contractor, at which DADS reports the compliance score for each standard reviewed and an overall compliance score; and

(5) notifies the contractor, in writing, of the results of the monitoring.

(c) A contractor must provide records listed in the notice described in subsection (b)(1) of this section to DADS at the entrance conference described in subsection (b)(2) of this section. If a contractor does not provide records in accordance with this subsection, DADS conducts contract monitoring with any records provided.

(d) If DADS determines that a contractor's compliance score for a standard is less than 90 percent, DADS requires the contractor to submit an acceptable corrective action plan to DADS in accordance with §49.522 of this chapter.

(e) If DADS determines that a contractor's overall compliance score is less than 90 percent, DADS considers the contractor out of substantial compliance with the contract and may:

(1) determine that a contractor does not qualify for a standard contract;

(2) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor);

(3) conduct additional monitoring in accordance with this section; or

(4) take a combination of the actions described in paragraphs (1) - (3) of this subsection.

(f) If, during a contract and fiscal monitoring, DADS determines that the contractor is not protecting an individual's health and safety, DADS may require the contractor to:

(1) immediately protect the individual's health and safety; and

(2) submit an immediate protection plan in accordance with §49.511 of this chapter.

§49.412. Financial Monitoring of FMSAs.

(a) In addition to the contract and fiscal monitoring described in §49.411 of this division (relating to Contract and Fiscal Monitoring), DADS conducts financial monitoring of contractors that have an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application):

(1) to determine if:

(A) an FMSA contractor is in compliance with its contract, which requires compliance with applicable federal and state laws, rules, and regulations, provider manuals and handbooks, billing guidelines, and communications promulgated by DADS, including information letters;

(B) an FMSA contractor is in compliance with a corrective action plan as described in §49.522 of this chapter (relating to Corrective Action Plan);

(2) for purposes described in paragraph (1)(A) of this subsection, at least once during the term of a provisional contract and periodically after the effective date of a standard contract, on a schedule determined by DADS;

(3) by evaluating standards in accordance with a program-specific DADS financial compliance monitoring tool; and

(4) at a location identified by DADS, which may include a location where the FMSA contractor conducts business or provides contracted services.

(b) To conduct financial monitoring, DADS:

(1) sends a written notice to an FMSA contractor that includes the date the monitoring will begin and lists the records the contractor must provide at the entrance conference described in paragraph (2) of this subsection;

(2) conducts an on-site entrance conference with the FMSA contractor;

(3) performs other activities, which may include:

(A) reviewing the FMSA contractor's records;

(B) reviewing the FMSA contractor's policies and procedures;

(C) reviewing consumer satisfaction surveys; and

(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor's employee;

(4) conducts an on-site exit conference with the FMSA contractor, at which DADS reports the compliance score for each standard reviewed and an overall compliance score; and

(5) notifies the FMSA contractor, in writing, of the results of the monitoring.

(c) An FMSA contractor must provide the records listed in the notice described in subsection (b)(1) of this section to DADS at the entrance conference described in subsection (b)(2) of this section. If a contractor does not provide records in accordance with this subsection, DADS conducts financial monitoring with any records provided.

(d) If DADS determines that an FMSA contractor's overall compliance score is less than 90 percent, DADS considers the contractor out of substantial compliance with the contract and may:

(1) determine that a contractor does not qualify for a standard contract;

(2) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor);

(3) conduct additional monitoring in accordance with this section; or

(4) take a combination of the actions described in paragraphs (1) - (3) of this subsection.

§49.413. Investigation.

(a) If DADS receives an oral or written allegation that indicates a contractor may have violated a contract or program requirement, DADS conducts an unannounced investigation of the contractor. The investigation is conducted on-site or by a desk review.

(b) To conduct an investigation, DADS:

(1) conducts an entrance conference with the contractor if the investigation is conducted on-site;

(2) performs other activities, which may include:

(A) reviewing the contractor's records;

(B) reviewing the contractor's policies and procedures;

(C) reviewing consumer satisfaction surveys;

(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor's employee; and

(E) observing an individual receiving services.

(c) A contractor must provide records requested by DADS as follows:

(1) for an investigation conducted on-site, the contractor must provide the records to DADS within one hour after the entrance conference described in subsection (b)(1) of this section; and

(2) for an investigation conducted by a desk review, the contractor must provide the records to DADS within one business day after DADS request.

(d) DADS notifies the contractor, in writing, of the results of the investigation.

(e) If, based on an investigation, DADS determines that the contractor is out of compliance with the contract, DADS may:

(1) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor);

(2) conduct additional monitoring in accordance with §49.411 of this division (relating to Contract and Fiscal Monitoring) or §49.412 of this division (relating to Financial Monitoring of FMSAs); or

(3) take a combination of the actions described in paragraphs (1) and (2) of this subsection.

(f) If, during an investigation, DADS determines that the contractor is not protecting an individual's health and safety, DADS may require the contractor to:

(1) immediately protect the individual's health and safety; and

(2) submit an immediate protection plan in accordance with §49.511 of this chapter (relating to Immediate Protection and Immediate Protection Plan).

§49.414. Financial Review.

(a) DADS may conduct a financial review, including an audit, of a contractor at any time. The review is conducted on-site or by a desk review.

(b) To conduct a financial review, DADS:

(1) conducts an entrance conference with the contractor; and

(2) performs other activities, which may include:

(A) reviewing the contractor's records;

(B) reviewing the contractor's policies and procedures; or

(C) interviewing a person with knowledge relevant to the contract.

(c) If, based on a financial review, DADS determines that the contractor is out of compliance with the contract, DADS may impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor).

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SUBCHAPTER E. ENFORCEMENT BY DADS AND TERMINATION BY CONTRACTOR

DIVISION 1. APPLICABILITY OF SUBCHAPTER

40 TAC §49.501

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.501. Contractors Not Subject to Certain Portions of Subchapter E.

(a) Divisions 2 and 3 of this subchapter (relating to Immediate Protection; and Actions) do not apply to a contractor that has a contract for the HCS Program or the TxHmL Program.

(b) Section 49.523 of this subchapter (relating to Referral Hold) does not apply to a contractor that has a contract for hospice.

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DIVISION 2. IMMEDIATE PROTECTION

40 TAC §49.511

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.511. Immediate Protection and Immediate Protection Plan.

(a) DADS requires a contractor to immediately protect an individual's health and safety if DADS determines that:

(1) the contractor is not complying with its contract; and

(2) the contractor's failure to comply with its contract jeopardizes the health and safety of the individual.

(b) If DADS requires immediate protection in accordance with subsection (a) of this section, DADS notifies the contractor:

(1) orally or in writing, that the contractor must immediately protect the individual's health and safety; and

(2) in writing, that the contractor must submit and implement a written immediate protection plan.

(c) If DADS notifies the contractor in accordance with subsection (b) of this section, the contractor must:

(1) immediately protect the individual's health and safety; and

(2) submit a written immediate protection plan to DADS within three business days after the date of the notice from DADS.

(d) An immediate protection plan submitted in accordance with subsection (c)(2) of this section must:

(1) describe the non-compliance that jeopardized the health and safety of the individual;

(2) describe the immediate protection taken by the contractor;

(3) describe the activities the contractor will perform to prevent the non-compliance described in paragraph (1) of this subsection from reoccurring;

(4) include a schedule for performing the activities described in paragraph (3) of this subsection; and

(5) include:

(A) the title of the person who ensured completion of the immediate protection; and

(B) the title of the person responsible for completion of the activities described in paragraph (3) of this subsection.

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

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DIVISION 3. ACTIONS

40 TAC §§49.521 - 49.523

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.521. Action by DADS.

(a) DADS may take one or more of the following actions against a contractor in accordance with §49.522 and §49.523 of this division (relating to Corrective Action Plan and Referral Hold):

(1) require the development of and compliance with a corrective action plan; and

(2) impose a referral hold.

(b) DADS may consider the following factors in determining the action to be taken:

(1) the extent and seriousness of the contractor's non-compliance with the contract that is the subject of the action;

(2) the contractor's history of previous non-compliance with:

(A) the contract that is the subject of the action;

(B) a contract other than the one that is the subject of the action;

(C) another contractual agreement with DADS; and

(D) a contractual agreement with a governmental entity;

(3) previous action taken or sanctions imposed against the contractor by DADS; and

(4) the contractor's written response to DADS finding that the contractor is not in compliance with the contract.

§49.522. Corrective Action Plan.

(a) DADS requires corrective action if the contractor's compliance score for a standard is less than 90 percent as described in §49.411(d) of this chapter (relating to Contract and Fiscal Monitoring).

(b) DADS may require corrective action if DADS determines the contractor has not complied with its contract, including a determination of non-compliance described in §49.411(e) of this chapter, §49.412(d) of this chapter (relating to Financial Monitoring of FMSAs), or §49.413(e) of this chapter (relating to Investigation). Corrective action may include the contractor paying or ensuring payment to a personal attendant who was not paid the wage required by §49.312 of this chapter (relating to Personal Attendants) the difference between the amount required and the amount paid to the personal attendant.

(c) If DADS requires corrective action in accordance with subsection (a) or (b) of this section, DADS notifies the contractor in writing that the contractor must submit and implement a written corrective action plan.

(d) If DADS notifies the contractor in accordance with subsection (c) of this section, the contractor must submit a written corrective action plan to DADS within 10 business days after the date of the notice from DADS.

(e) A corrective action plan submitted in accordance with subsection (c) of this section must:

(1) describe the non-compliance that DADS identified from the monitoring or investigation resulting in the corrective action plan;

(2) describe the activities the contractor will perform to correct or prevent the non-compliance described in paragraph (1) of this subsection from reoccurring;

(3) include the title of the person responsible for completion of the activities described in paragraph (2) of this subsection; and

(4) include a schedule for accomplishing the activities described in paragraph (2) of this subsection.

§49.523. Referral Hold.

(a) DADS may place a contractor on a referral hold if:

(1) DADS has proposed to terminate the contract;

(2) DADS determines the contractor has not complied with the contract, including a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring), §49.412(d) of this chapter (relating to Financial Monitoring of FMSAs), or §49.413(e) of this chapter (relating to Investigation);

(3) the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(4) the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this division (relating to Corrective Action Plan); or

(5) the contractor's application packet:

(A) contained incorrect information; or

(B) contains information that has become incorrect and the contractor has not notified DADS in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements).

(b) If DADS places a contractor on a referral hold in accordance with subsection (a) of this section, DADS notifies the contractor of the referral hold in writing.

(c) A contractor may request that DADS conduct an informal review of a referral hold. The request must be in writing and received by DADS within 20 days after the date of the notice of the referral hold from DADS. The contractor must include in the written request:

(1) the reasons the contractor believes the referral hold was improper;

(2) documentation to support the reasons; and

(3) a copy of the notice from DADS of the referral hold.

(d) DADS releases a referral hold:

(1) imposed in accordance with subsection (a)(1) of this section if:

(A) DADS withdraws the proposed contract termination;

(B) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to the contractor; or

(C) the contractor requests an informal review in accordance with subsection (c) of this section and, as a result of the review, DADS determines that the referral hold was improper;

(2) imposed in accordance with subsection (a)(2) - (5) of this section if:

(A) a period of time determined by DADS has elapsed; or

(B) the contractor requests an informal review in accordance with subsection (c) of this section and, as a result of the review, DADS determines that the referral hold was improper.

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DIVISION 4. SANCTIONS

40 TAC §§49.531 - 49.534

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.531. Sanction by DADS.

(a) DADS may take one or more of the following sanctions against a contractor in accordance with §§49.532 - 49.534 of this division (relating to Vendor Hold; Recoupment; and Termination of Contract by DADS):

(1) impose a vendor hold;

(2) recoup funds; and

(3) terminate the contract.

(b) DADS may consider factors in determining the sanction to be taken including the following:

(1) the extent and seriousness of the contractor's non-compliance with the contract that is the subject of the sanction;

(2) the contractor's history of previous non-compliance with:

(A) the contract that is the subject of the sanction;

(B) a contract other than the one that is the subject of the sanction;

(C) another contractual agreement with DADS; and

(D) a contractual agreement with a governmental entity;

(3) previous action taken or sanctions imposed against the contractor by DADS; and

(4) the contractor's written response to DADS finding that the contractor is not in compliance with the contract.

§49.532. Vendor Hold.

(a) DADS imposes a vendor hold on a contractor if:

(1) DADS has proposed to terminate the contract and the contractor participates in attendant compensation rate enhancement as described in 1 TAC §355.112 (relating to Attendant Compensation Rate Enhancement); or

(2) DADS is notified by HHSC Office of Inspector General (OIG) that a vendor hold must be imposed in accordance with 42 CFR §455.23(a) due to a credible allegation of fraud for which an investigation is pending under the Medicaid Program.

(b) DADS may impose a vendor hold on a contractor:

(1) if DADS has proposed to terminate the contract and the contractor does not participate in attendant compensation rate enhancement as described in 1 TAC §355.112;

(2) if the contractor does not qualify for a standard contract at the expiration of a provisional contract;

(3) if the contractor qualifies for a standard contract at the expiration of a provisional contract but refuses a standard contract;

(4) if the contractor terminates the contract;

(5) if DADS determines the contractor has not complied with the contract, including a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring), §49.412(d) of this chapter (relating to Financial Monitoring of FMSAs), or §49.413(e) of this chapter (relating to Investigation);

(6) if the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(7) if the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan); or

(8) if the contractor's application packet described in §49.203(a)(4) of this chapter (relating to Provisional Contract Application Process):

(A) contained incorrect information; or

(B) contains information that has become incorrect and the contractor has not notified DADS in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements);

(9) for a contractor that has a contract for the HCS Program, in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action); or

(10) for a contractor that has a contract for the TxHmL Program, in accordance with §9.577 of this title (relating to Program Provider Compliance and Corrective Action).

(c) If DADS imposes a vendor hold on a contractor in accordance with subsection (a) or (b) of this section, DADS notifies the contractor of the vendor hold in writing. DADS may impose a vendor hold pending an administrative hearing appealing the vendor hold.

(d) DADS releases a vendor hold less any amounts being recouped by DADS:

(1) imposed in accordance with subsections (a)(1) and (b)(1) - (4) of this section if:

(A) the contract has been terminated or expires and any amounts owed to individuals and LARs have been paid by the contractor;

(B) DADS withdraws the proposed contract termination; or

(C) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to the contractor;

(2) imposed in accordance with subsection (a)(2) of this section, if the HHSC OIG notifies DADS that it must resume payment under the contract;

(3) imposed in accordance with subsection (b)(5) - (8) of this section, if DADS determines the contractor has resolved the reason for the vendor hold; or

(4) imposed in accordance with subsection (b)(9) - (10) of this section if DADS determines it may be released as described in §9.185 or §9.577 of this title.

§49.533. Recoupment.

(a) A contractor is liable to DADS for amounts paid to the contractor for a service if the contractor has not complied with contract requirements regarding a service claim or payment for a service, including §49.311 of this chapter (relating to Claims Payment) and other DADS rules governing services provided under the contract.

(b) If a contractor is liable to DADS in accordance with subsection (a) of this section, DADS may propose to recoup funds for the amount due to DADS.

(c) If DADS proposes to recoup funds paid to a contractor in accordance with subsection (b) of this section, DADS notifies the contractor of the proposed recoupment in writing before the effective date of recoupment.

(d) DADS recoups funds paid to contractor on the date given in DADS notice of proposed recoupment if:

(1) the contractor does not appeal the proposed recoupment; or

(2) the contractor appeals the proposed recoupment and the final decision from the administrative hearing is favorable to DADS.

§49.534. Termination of Contract by DADS.

(a) DADS may propose to terminate a contract:

(1) without cause by giving at least 60 days written notice to the contractor as provided by the contract; or

(2) for good cause as determined by DADS, including if:

(A) the contractor has not provided any services under the contract during a period of 12 consecutive months;

(B) the contractor has not complied with the terms of the contract, including:

(i) the contractor's overall compliance score from a contract monitoring is less than 90 percent, as described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring);

(ii) the contractor has not submitted or complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan);

(iii) the contractor has not submitted or complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(iv) DADS has imposed repeated actions or sanctions against the contractor that, when considered cumulatively, constitute significant non-compliance with the contract; or

(v) for a contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), the contractor's overall compliance score from a financial monitoring is less than 90 percent, as described in §49.412(d) of this chapter (relating to Financial Monitoring for FMSAs);

(C) the contractor undergoes a change of ownership or change of legal entity as described in §49.210(b)(1) or (c)(1) of this chapter (relating to Contractor Change of Ownership or Legal Entity);

(D) the contractor's application packet described in §49.203(a)(4) of this chapter (relating to Provisional Contract Application Process):

(i) contained incorrect information; or

(ii) contains information that has become incorrect and the contractor has not notified DADS in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements);

(E) the contractor or a controlling person of the contractor is under a period of exclusion in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act;

(F) the contractor or a controlling person of the contractor is ineligible to contract with DADS in accordance with §49.206 of this chapter (relating to Ineligibility Due to Criminal History);

(G) the contractor or a controlling person of the contractor is prohibited from contracting with DADS in accordance with Chapter 79, Subchapter S of this title (relating to Contracting Ethics);

(H) the contractor is required to register with the Texas Secretary of State and contractor's status with the Texas Secretary of State is not "in existence";

(I) the contractor is required to pay Texas franchise tax and the contractor's right to transact business status with the Texas Comptroller of Public Accounts is not "active";

(J) DADS or another governmental entity proposed or imposed a penalty, revocation, denial, termination, or suspension against a license, certification, registration held by the contractor;

(K) the contractor no longer has a license, certification, accreditation or other document required by §49.302(a) of this chapter;

(L) the contractor or a controlling person of the contractor is listed on:

(i) the DADS Employee Misconduct Registry as unemployable;

(ii) the Nurse Aide Registry as revoked or suspended;

(iii) the United States System for Award Management maintained by the General Services Administration;

(iv) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(v) the LEIE maintained by HHSC, Office of Inspector General;

(vi) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the period of debarment has not expired; or

(vii) DADS debarment list;

(M) the contractor or a controlling person of the contractor has been confirmed by DFPS as having committed abuse, neglect, or exploitation;

(N) DADS proposed or imposed an action or sanction against:

(i) another contract of the contractor or a controlling person of the contractor; or

(ii) a contract of a person for whom the contractor or a controlling person of the contractor was a controlling person;

(O) a governmental entity other than DADS or a managed care organization contracting with a governmental entity proposed or imposed an action or sanction against:

(i) a contractual agreement of the contractor or a controlling person of the contractor; or

(ii) a contractual agreement of a person for whom the contractor or a controlling person of the contractor was a controlling person;

(P) the contractor or a controlling person of the contractor terminated a contractual agreement with a governmental entity in a federal health care program, as defined in §1128B(f) of the Social Security Act, while an adverse action or sanction was proposed or in effect;

(Q) the contractor or a controlling person of the contractor terminated another contract while an action or sanction was proposed or in effect;

(R) the contractor or a controlling person of the contractor has an unresolved financial liability with DADS or another governmental entity;

(S) DADS denies or terminates certification of a contractor that has a contract for the HCS or TxHmL Program, in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action) or §9.577 of this title (relating to Program Provider Compliance and Corrective Action);

(T) DADS does not certify a contractor that has a contract for the HCS or TxHmL Program for a new certification period as described in §9.185(c) and §9.577(c) of this title; or

(U) for a contractor that has a contract for Title XIX DAHS, Title XX AFC, RC or DAHS, the contractor does not have a legal right to occupy the facility under the contract.

(b) If DADS proposes to terminate a contract:

(1) in accordance with subsection (a)(1) of this section, DADS notifies the contractor of the proposed termination in writing at least 60 days before the effective date of termination; or

(2) in accordance with subsection (a)(2) of this section, DADS notifies the contractor of the proposed termination in writing, which may be less than 60 days before the effective date of termination.

(c) If DADS proposes to terminate a contract, DADS notifies individuals receiving services from the contractor and the individual's LARs that:

(1) DADS has proposed to terminate the contract and has placed the contractor's payments on a vendor hold; and

(2) an individual or LAR may choose to receive services from a contractor listed on the choice list, subject to program-specific requirements.

(d) DADS terminates a contract on the date given in DADS notice of proposed termination if:

(1) the contractor does not appeal the proposed contract termination; or

(2) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to DADS.

(e) DADS does not pay a contractor for services provided after the effective date of contract termination.

(f) If a contractor undergoes a change of ownership or change of legal entity and complies with §49.210(a) of this chapter, the date given in DADS notice of proposed termination, as described in subsection (d) of this section, is the day before the date of the change

of ownership or change of legal entity. If a contractor undergoes a change of ownership or change of legal entity and does not comply with §49.210(a) of this chapter, the date given in DADS notice of proposed termination as described in subsection (d) of this section, is the date of the change of ownership or change of legal entity.

(g) If DADS terminates a contract, DADS notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(c) or (d) of this chapter (relating to Application Denial 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.

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Lorri Haden

Acting General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2014

For further information, please call: (512) 438-3734

DIVISION 5. APPEALS

40 TAC §49.541

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§49.541. Contractor's Right to Appeal.

(a) A contractor may appeal a sanction, as described in §49.531(a) of this subchapter (relating to Sanction by DADS), proposed or imposed by DADS.

(b) To appeal a sanction proposed or imposed by DADS, a contractor must request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing).

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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Acting General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

DIVISION 6. TERMINATION BY CONTRACTOR

40 TAC §49.551

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.551. Termination of Contract by Contractor.

(a) If a contractor intends to terminate a contract, the contractor must notify DADS of the intended termination. The notification must:

(1) include:

(A) the contract number;

(B) the type of program or service; and

(C) the effective date of the termination; and

(2) be received by DADS at least 60 days before the effective date of the termination.

(b) If a contractor notifies DADS that it intends to terminate a contract, the contractor must:

(1) cooperate fully with DADS, the local authority if applicable, and other contractors to transfer individuals receiving services from the contractor; and

(2) submit documentation or take other action as directed by DADS.

(c) If DADS receives notification that a contractor intends to terminate a contract, DADS:

(1) notifies individuals receiving services from the contractor or LARs that:

(A) the contractor is terminating the contract and that DADS has placed the contractor's payments on a vendor hold; and

(B) that the individuals or LARs may choose to receive services from a contractor listed on the choice list, subject to program-specific requirements; and

(2) removes the contractor's name from the appropriate choice list.

(d) If a contractor terminates a contract, DADS notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(e) or (f) of this chapter (relating to Application Denial 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.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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SUBCHAPTER F. REVIEW BY DADS OF EXPIRING OR TERMINATED CONTRACT

40 TAC §49.601

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§49.601. DADS Review and Contractor Requirements Related to Expiring or Terminated Contract.

(a) DADS may review a contractor's records to evaluate billing standards in accordance with program-specific requirements if:

(1) DADS proposes to terminate a contract;

(2) a contractor does not qualify for a standard contract at the expiration of a provisional contract;

(3) a contractor qualifies for a standard contract at the expiration of a provisional contract but refuses a standard contract; or

(4) a contractor terminates the contract.

(b) If one of the events described in subsection (a)(1) - (4) of this section occurs, a contractor must provide the following information to DADS:

(1) the location of records related to the contract expiring or being terminated; and

(2) the name, address, phone number, and e-mail address of a person DADS may contact to arrange access to records.

(c) DADS may recoup funds in accordance with §49.533 of this chapter (relating to Recoupment) based on the results of a review described in subsection (a) of this section.

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 G. APPLICATION DENIAL PERIOD

40 TAC §49.701, §49.702

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§49.701. Contractors Not Subject to Subchapter G.

This subchapter does not apply to a contractor that has a contract for:

(1) CMPAS;

(2) SSPD;

(3) SSPD - 24-hour shared attendant care; or

(4) relocation services.

§49.702. Application Denial Period.

(a) If a contractor does not qualify for a standard contract at the expiration of a provisional contract, as described in §49.209 of this

chapter (relating to Standard Contract), DADS sets an application denial period for the contractor or controlling person that applies:

(1) to all programs and services; and

(2) for 24 months after the date of expiration.

(b) If a contractor qualifies for a standard contract at the expiration of a provisional contract, as described in §49.209 of this chapter, but the contractor refuses a standard contract at that time, DADS sets an application denial period for the contractor or controlling person that applies:

(1) to the same program or service as the provisional contract; and

(2) for 12 months after the date of expiration.

(c) If DADS terminates a provisional or standard contract for the contractor's failure to provide services for 12 consecutive months, as required by §49.534(a)(2)(A) of this chapter (relating to Termination of Contract by DADS), DADS sets an application denial period for the contractor or controlling person that applies:

(1) to the same program or service as the provisional or standard contract; and

(2) for 12 months after the date of termination.

(d) If DADS terminates a provisional or standard contract for a reason other than the one described in subsection (c) of this section, DADS sets an application denial period for the contractor or controlling person that applies:

(1) to all programs and services; and

(2) for a period of time determined by DADS, but no less than 12 months after the date of termination.

(e) If a contractor terminates a provisional or standard contract in accordance with the contract, including §49.551 of this chapter (relating to Termination of Contract by Contractor), DADS sets an application denial period for the contractor or controlling person that applies:

(1) to the same service or program as the provisional or standard contract; and

(2) for a period of time determined by DADS, but no less than 12 months after the date of termination.

(f) If a contractor terminates a provisional or standard contract not in accordance with the contract, including §49.551 of this chapter, DADS sets an application denial period for the contractor or controlling person that applies:

(1) to all programs and services; and

(2) for a period of time determined by DADS, but no less than 12 months after the date of termination.

(g) If a contractor submits a contract application to DADS after the expiration of an application denial period described in subsections (a) - (f) of this section, DADS may deny the contract application for a reason described in §49.207 of this chapter (relating to Provisional Contract Application Denial).

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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Lorri Haden
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Department of Aging and Disability Services
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CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §51.103, concerning definitions; §51.203, concerning eligibility requirements; §51.219, concerning maintaining enrollment; §51.231, concerning service limitations; §51.233, concerning choosing a provider; §51.235, concerning consumer directed services option; §51.237, concerning service schedule changes; §51.241, concerning service suspensions; §51.243, concerning service reductions, service denials, and case closures; §51.245, concerning respite services or adaptive aids outside of the contracted service delivery area; §51.251, concerning appeals; §51.401, concerning contracting requirements; §51.411, concerning general service delivery requirements; §51.415, concerning notification to the individual; §51.417, concerning notification to the case manager; §51.419, concerning service suspensions; §51.471, concerning general requirements; §51.475, concerning inspection and follow-up; §51.505, concerning purchase completion documentation; §51.509, concerning claims and service delivery records; §51.511, concerning billable time and activities; §51.513, concerning non-billable time and activities; and §51.515, concerning record keeping; new §51.413, concerning response to service authorization; §51.418, concerning protective devices; §51.421, concerning requirements for attendants providing respite and flexible family support services; §51.423, concerning respite and flexible family support services; §51.441, concerning CDS backup plans; §51.481, concerning employment assistance; §51.483, concerning supported employment; and §51.485, concerning service provider qualifications for providing employment assistance and supported employment; and the repeals of §51.205, concerning disability criteria; §51.232, concerning exception to service limit; §51.413, concerning response to service authorization; §51.421, concerning requirements for attendants; §51.441, concerning consumer directed services; §51.501, concerning service delivery record; §51.503, concerning in-home record; and §51.507, concerning reimbursement, in Chapter 51, Medically Dependent Children Program.

BACKGROUND AND PURPOSE

The purpose of the amendments, new sections, and repeals is, in part, to implement the provisions for employment services outlined in Senate Bill 45, 83rd Legislature, Regular Session, 2013, and to ensure the program rules reflect changes made in the Medically Dependent Children's Program (MDCP) waiver renewal effective September 1, 2012.

The proposal revises the eligibility section of the rules to allow an individual to be eligible for initial enrollment if the individual is determined eligible to receive Medicaid through a state plan program instead of meeting one of the disability criteria.

The proposed rules add employment assistance to help an individual locate paid employment, and supported employment to help support an individual maintain employment, as additional

services in the MDCP to implement Texas Human Resources Code, §32.075 which requires the Department of Aging and Disability Services (DADS) to provide employment assistance and supported employment to individuals in the various Medicaid waiver programs, including the MDCP. The proposed rules also establish the qualifications for service providers of employment assistance and supported employment to help ensure that service providers of employment assistance and supported employment have sufficient expertise to provide these services. The proposed rules also include certain requirements the program provider must comply with to receive payment for employment assistance and supported employment, such as not using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training and not providing employment assistance or supported employment to an individual with the individual present at the same time that certain other services are provided.

The proposed rules define "primary caregiver" to include persons who are not parents or guardians of the individual receiving MDCP services because other persons, including relatives, often provide the daily uncompensated care. In addition, the definition for "flexible family support" has been revised to allow for "routine uncompensated care" provided by a primary caregiver instead of "daily uncompensated care." This allows greater flexibility for individuals who live independently and receive MDCP services. Currently, the MDCP rules do not prohibit the primary caregiver from being the back-up provider in the back-up plan. The proposed rules define the back-up plan as the plan for delivery of services to an individual when the service provider is unavailable, and prohibit the MDCP program provider from assigning the primary caregiver as the back-up service provider. The proposed rules also require the program provider to send the back-up plan to the case manager within 14 days of completing the back-up plan.

The proposed rules require all minor home modifications to comply with the Americans with Disabilities Act Standards. The proposed rules change the qualifications for minor home modification providers and inspectors to require five years of experience as a contractor, knowledge of Texas Accessibility Standards, and general liability insurance for errors and omissions. These changes are designed to assure that these persons have the experience and knowledge necessary to provide quality services. The reference to the Texas Residential Construction Commission has been deleted, as this entity no longer exists.

The proposed rules modify documentation and record keeping requirements to reflect streamlining changes and clarify existing procedures. The amendments delete duplicative contract information contained in proposed new Chapter 49, Contracting for Community Services, and revise service definitions. Specifically, the requirement to maintain seven days of service delivery documentation in the individual's home and the requirement to send copies of practitioner's orders to the case manager are deleted.

The proposed rules allow an attendant to serve two individuals in the same household, allowing flexibility for families that have more than one individual receiving MDCP waiver services.

The proposed rules clarify when an individual is eligible to receive in-home respite and identify locations in which in-home respite may be provided. The proposed rules also allow out-of-home respite to be provided with doctor's orders and identify locations in which out-of-home respite may be provided. The proposed rules allow an individual to take any adaptive aids the individual is using to an out-of-home respite facility to ensure the individual's needs are met during out-of-home respite services.

The proposed rules add definitions for the terms "restrictive intervention" and "protective device." The proposed rules state that the only restrictive intervention that may be used is a protective device. The proposed rules also specify the requirements for using a protective device, including under what circumstances a protective device may be used; the steps taken before a protective device may be used; when the use of a protective device must be reviewed; and documentation requirements when using a protective device.

The proposed rules update terms and definitions used in the chapter. Specifically, definitions for "legally authorized representative (LAR)," "financial management services (FMS)," and "financial management services agency (FMSA)," which are all terms used in the consumer directed services option, are added; the definitions of "program provider," and "service provider" are amended and "home and community support services agency (HCSSA)" is added to clarify which requirements apply to each of these entities. The proposed rules delete the definition of "adjunct support services" and replace it with "flexible family support services" because the name of the service changed in the waiver renewal. The proposed rules also delete the definition of "Board of Nurse Examiners," which is not referenced in Chapter 51. The proposed rules also add a definition of "termination" and delete the definition of "case closure" to standardize terminology used in other waiver programs. The proposed rules add definitions for "restrictive intervention" and "protective device" because policy regarding restrictive intervention was added to the waiver application at its renewal. The amendment also replaces "parent and guardian" with "primary caregiver" recognizing that a person other than a parent or guardian may provide routine or daily uncompensated care and the definition of "individual" is amended to clarify that a reference in the chapter to "individual" includes the individual's primary caregiver, unless the context indicates otherwise.

The proposed rules provide greater clarity as to when services may be denied, reduced or terminated and establish processes for program providers and case managers to follow when there is a request to terminate an individual's services.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §51.103 replaces "adjunct support services" with "flexible family support services," "case closure" with "termination," and "consumer directed services" with "CDS option." The proposed amendment also deletes the definition of "BNE." In addition, the proposed amendment adds new definitions for "back-up plan," "discriminate," "employment assistance," "FMS," "FMSA," "HCSSA," "protective device," "restrictive intervention," "service planning team," "service provider," and "supported employment." The proposed amendment also changes the definition of "appeal," "attendant," "contract," "DADS RN," "day," "delegated task," "host family," "imminent danger," "individual," "primary caregiver," "program provider," "service reduction," "service schedule," "service suspension," and "working day." The proposed amendment also makes minor editorial changes.

The proposed amendment to §51.203 includes the disability criteria that must be met to be eligible for initial enrollment in MDCP. The disability criteria a person must meet is one of the following: (1) receive disability benefits from the Social Security Administration, (2) receive disability benefits from railroad retirement, or

(3) be determined to have a disability by HHSC. The proposed amendment also allows an individual to be eligible for initial enrollment if the individual is determined eligible to receive Medicaid through a state plan program instead of meeting one of the disability criteria. The proposed amendment also specifies other eligibility requirements that are in addition to the eligibility requirements for initial enrollment. In addition, the proposed amendment deletes a reference to §51.205, which is proposed for repeal and reformats the section. The proposed amendment also replaces "foster family" with "foster home" for a person under 18 years of age who resides in a foster home.

The proposed repeal of §51.205 is necessary because the eligibility criteria related to having a disability are included in the proposed amendment to §51.203.

The proposed amendment to §51.219 replaces the phrase "parent or guardian" with "primary caregiver." The proposed amendment also uses updated terms to distinguish between a "program provider" and a "service provider." The proposed amendment also requires the individual or the individual's primary caregiver to participate in the redetermination of eligibility and the monitoring of service delivery to maintain enrollment in MDCP. The proposed amendment also deletes the requirement for the individual or the individual's primary caregiver to maintain an in-home record of the most recent seven days of service delivery documentation. The proposed amendment deletes a reference to §51.503, which is proposed for repeal.

The proposed amendment to §51.231 prohibits a program provider from providing services to a member of an individual's household if the member is not eligible for MDCP services. The proposed amendment also clarifies that an individual may not receive respite services in a setting in which identical services are already being provided. The proposed amendment also replaces "adjunct support services" with "flexible family support services." The proposed amendment also deletes service limits for respite and flexible family support services, and deletes references to §51.232, proposed for repeal, for the service limits that are no longer being imposed. The proposed amendment also clarifies that an individual may request and receive an exception to the 29-day limit on facility-based respite during an individual plan of care year (IPC year). The proposed amendment also deletes an incorrect reference to §51.217(b). The proposed amendment clarifies that after the lifetime maximum of $7,500 has been met, an individual may receive, during an IPC year, a maximum of $300 for repair and maintenance of a minor home modification. The proposed amendment also makes minor editorial changes in the service limits for transition assistance services.

The proposed repeal of §51.232 is necessary because the section relates to exceptions to service limits that are no longer being imposed.

The proposed amendment to §51.233 changes the title of the section to "Choosing a Program Provider" rather than "Choosing a Provider". The proposed amendment also replaces "parent or guardian" with "primary caregiver" and "provider" with "program provider."

The proposed amendment to §51.235 changes the title of the section to "CDS Option" rather than "Consumer Directed Services Option". The proposed amendment also requires an individual's case manager to inform an individual or primary caregiver at initial enrollment and during each annual reassessment of the CDS option and services provided through that option.

The proposed amendment to §51.237 revises how an individual changes the service schedule for respite and flexible family support services. The proposed amendment states that an individual may change the service schedule for respite and flexible family support services if the change (1) does not exceed the individual's cost ceiling per IPC year; (2) only uses hours not used in a previous month; and (3) does not increase the individual's total monthly hours by more than three times the monthly hours authorized.

The proposed amendment to §51.241 changes the title of the section to "Service Suspensions by DADS" rather than "Service Suspensions". The proposed amendment allows an individual admitted to certain institutions to avoid a suspension of services if the case manager approves a break in service delivery that exceeds 60 days. The proposed amendment also replaces some of the terminology with person-first respectful language. The proposed amendment provides that DADS will notify an individual and program provider if suspension occurs. The proposed amendment sets forth what the case manager does if the case manager becomes aware of the individual exhibiting reckless behavior that places the program provider or other residents in the home in imminent danger, including convening an interdisciplinary team meeting.

The proposed amendment to §51.243 changes the title of the section to "Denials, Terminations, and Service Reductions" rather than "Service Reductions, Service Denials, and Case Closures". The proposed amendment also adds that a service denial or termination may result if DADS is unable to locate a home and community support services agency (HCSSA) program provider that reasonably expects to be able to meet the individual's medical and nursing needs in the individual's residence. The proposed amendment also describes the situations in which termination of waiver services requires advanced notice versus those situations that do not require advance notice. The proposed amendment also sets forth the procedures a program provider must follow to recommend that DADS terminate services. It also describes the case manager's responsibilities if DADS terminates services.

The proposed amendment to §51.245 clarifies that the section applies to an adaptive aids program provider. Specifically, the proposed amendment allows an adaptive aids provider to accept or decline to provide adaptive aids outside of its service delivery area. The proposed amendment also replaces "provider" with "program provider" and "individual's parent or guardian" with "individual."

The proposed amendment to §51.251 updates the reference to Chapter 357 of Title 1 of the Texas Administrative Code, by adding "Subchapter A". The proposed amendment revises the requirement regarding continuation of services when an individual requests a fair hearing. The proposed amendment also updates rule cross-references and section titles.

The proposed amendment to §51.401 clarifies that a program provider must comply with Chapter 51, proposed new Chapter 49, Contracting for Community Services, and the program provider manual, billing guidelines, and information letters issued by DADS. The proposed amendment deletes references to licensing and contract requirements because those provisions are addressed in proposed new Chapter 49.

The proposed amendment to §51.411 requires services to be provided according to the IPC and in accordance with Appendix C of the MDCP waiver application. The proposed amendment

replaces the term "adjunct support services" with "flexible family support services." The amendment also replaces the term "alternative service delivery plan" with "back-up plan." The amendment also prohibits a primary caregiver from being designated as the service provider in the back-up plan, and requires the program provider to send a copy of the back-up plan to the case manager within 14 days after receiving the initial assessment or an annual reassessment or within 14 days after the back-up plan is revised. The proposed amendment also states that before changing the program provider authorized in the IPC, a program provider must coordinate the change with the case manager and the individual and obtain a new service authorization form.

The proposed repeal of §51.413 deletes provisions related to a program provider receiving and responding to a service authorization form that are replaced by proposed new §51.413.

The proposed new §51.413 requires a program provider to receive a service authorization from the case manager before beginning services. The proposed new rule requires the program provider to return a signed service authorization to the case manager within 14 days if the provider agrees to provide the services as authorized. If a program provider does not agree to provide services as outlined on the service authorization form, the proposed new rule requires the program provider to notify the case manager. If a program provider is unable to provide services as authorized, the proposed new rule requires the program provider to notify the individual. The proposed new rule prohibits the program provider from delivering services after the IPC end date or the termination date stated on the DADS Notification of Waiver Services form.

The proposed amendment to §51.415 requires a program provider to notify an individual no later than the authorization begin date if the program provider is unable to provide services. The amendment also sets forth the information that must be included in the notification. The amendment also describes the program provider's responsibility to provide an individual with a copy of the program provider's backup plan and a revised backup plan.

The proposed amendment to §51.417 requires a program provider to notify the case manager if the program provider is unable to begin services on the begin date indicated on the service authorization form, has any limitations in service delivery, does not agree with the services as indicated on the service authorization form, changes services indicated on the service authorization form, suspends an individual's services, or determines it can no longer meet the individual's needs. The proposed amendment also requires certain information to be contained in the notification.

The proposed new §51.418 provides that the only restrictive intervention a program provider may use is a protective device for the purpose of protecting or positioning an individual. The proposed new rule specifically prohibits a protective device from being used to control an individual's behavior, for disciplinary purposes, for convenience, or as a substitute for effective assistance. The proposed new rule describes the action a program provider must take before using a protective device. The proposed new rule also sets forth when the use of a protective device has to be reviewed and the documentation requirements when a protective device is used.

The proposed amendment to §51.419 changes the title to "Service Suspensions by Program Provider" rather than "Service Suspensions". The proposed amendment also updates the requirements of a program provider related to suspension of services when an individual is admitted to certain institutions. The proposed amendment clarifies that an individual's services may be suspended if the individual or someone in the individual's residence exhibits reckless behavior that may result in imminent danger to other persons. The proposed amendment updates the rule to use person-first respectful language and distinguishes between a "program provider" and a "service provider".

The proposed repeal of §51.421 is necessary because the requirements for an attendant providing respite or flexible family support have been redrafted and proposed in new §51.421.

The proposed new §51.421 requires an attendant providing respite or flexible family support services to be at least 18 years of age, have a high school diploma or certificate of high school equivalency or documentation by a HCSSA RN of a proficiency evaluation of experience and competence to perform the job tasks assigned, have documentation of current training in cardiopulmonary resuscitation (CPR) and first-aid, and be oriented to the specific tasks to be provided to the individual according to the IPC. The new section prohibits an attendant from being the individual's primary caregiver or spouse. The new section requires an attendant used by a HCSSA program provider to also be employed by the HCSSA and be determined competent by a HCSSA RN to provide the services according to the IPC.

The proposed new §51.423 describes the criteria for receiving in-home respite and the places in-home respite may be provided. The proposed new section also allows out-of-home respite to be provided if ordered by the individual's physician and describes the locations where out-of-home respite may be provided. The proposed new section also states that an individual may take any adaptive aids the individual is using to an out-of-home respite facility. The proposed new section also adds flexible family support and describes the circumstances under which the service may be provided.

The proposed repeal of §51.441 deletes provisions related to consumer directed services that are addressed in proposed amendments to 40 TAC Chapter 41, Consumer Directed Services Option.

The proposed new §51.441 requires an individual who uses the CDS option to develop a backup plan.

The proposed amendment to §51.471 requires a minor home modification provider to have five years of experience as a building contractor, three references, and current general comprehensive liability coverage for errors and omissions. The proposed amendment requires minor home modification program providers to comply with the Americans with Disabilities Act Standards. Other terminology in the section is changed to reflect current terminology in the waiver.

The proposed amendment to §51.475 requires a minor home modification inspector to have five years of experience as a building contractor, three references, and working knowledge of Texas Accessibility Standards and Americans with Disabilities Act Standards. The proposed amendment also requires a program provider to conduct a home visit within seven working days after the inspection and provide orientation if needed. The proposed amendment also requires a program provider to attempt to resolve any issues within seven working days of the home visit. The proposed amendment also makes changes to improve the clarity of the section.

The proposed new §51.481 sets forth requirements related to the provision of employment assistance, including activities that a service provider must perform. The proposed new section prohibits the provision of employment assistance at the same time respite, flexible family support, or supported employment is provided. The proposed new section also places limits on the use of Medicaid funds paid by DADS.

The proposed new §51.483 sets forth requirements related to the provision of supported employment, including activities that a service provider must perform. The proposed new section prohibits the provision of supported employment at the same time respite, flexible family support, or employment assistance is provided. The proposed new section also places limits on the use of Medicaid funds paid by DADS.

The proposed new §51.485 establishes the qualifications for a service provider of employment assistance or supported employment. The proposed new section describes the documentation the service provider must have to prove that he or she meets those qualifications.

The proposed repeal of §51.501 is necessary because the information is included in the proposed amendment to §51.509.

The proposed repeal of §51.503 deletes requirements related to in-home records that are included in proposed new Chapter 49, Contracting for Community Services.

The proposed amendment to §51.505 makes changes to reflect current terminology and requires the purchase completion document for a minor home modification to state if the modification was completed in accordance with §51.471(c).

The proposed repeal of §51.507 deletes requirements related to reimbursement that are included in proposed new Chapter 49, Contracting for Community Services.

The proposed amendment to §51.509 updates the requirements regarding the content of a service delivery record.

The proposed amendment to §51.511 adds supported employment and employment assistance as billable services. The proposed amendment provides that a program provider must, before including supported employment or employment assistance on an individual's IPC, ensure that the service is not available to the individual under other identified programs. The program provider must maintain documentation of this activity in the individual's record. The proposed amendment also allows a program provider to bill for services if approved on the service authorization form and provided in accordance with Chapter 51.

The proposed amendment to §51.513 states that a service not provided in accordance with Chapter 51 is non-billable. The proposed amendment also provides that a program provider may not bill for services provided to a member of an individual's household if the household member is not eligible to receive MDCP services. The proposed amendment also does not allow more than 24 hours of respite and flexible family support to be billed in a 24-hour period.

The proposed amendment to §51.515 deletes requirements related to financial records that are included in proposed new Chapter 49, Contracting for Community Services.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeals are in effect, enforcing or administering the amendments, new sections, and repeals have foreseeable implications relating to costs or revenues of state or local governments.

There may be an increase in cost to the state if the use of flexible family support services increases for individuals 18-20 years of age. DADS cannot determine the impact because it cannot be predicted how many individuals in MDCP will choose to receive flexible family support while living outside of the individual's primary caregiver's home or how many hours of service will be provided. However, the cost to the state is not expected to be significant.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeals will not have an adverse economic effect on small businesses or micro-businesses because compliance with new requirements imposed by the rules does not require a program provider to incur a cost.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments, new sections, and repeals are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeals is the rules will be consistent with the MDCP waiver renewal process and comply with legislative requirements.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeals. The amendments, new sections, and repeals will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Debra Campbell at (512) 438-5645 in DADS Waiver and State Plan Services division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R04, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R07" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §51.103

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.103. Definitions.

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

(1) §1915(c) waiver program--A home or community-based service authorized by §1915(c) of the Social Security Act and approved by the Centers for Medicare and Medicaid Services.

(2) Activities of daily living--Activities that are essential to daily self care, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer and ambulation, positioning, range of motion, and assistance with self-administered medications.

(3) Adaptive aid--A device that is needed to treat, rehabilitate, prevent, or compensate for a condition that results in a disability or a loss of function and helps an individual perform the activities of daily living or control the environment in which the individual [~~he~~] lives.

[~~(4) Adjunct support services--Direct care services needed because of an individual's disability that:~~]

[~~(A) help an individual participate in:~~]

[~~*(i)* child care;~~]

[~~*(ii)* post-secondary education; or~~]

[~~*(iii)* independent living; or~~]

[~~(B) support an individual's move to an independent living situation.~~]

(4) [~~(5)~~] Appeal--A request for a fair hearing to challenge a program or service suspension, [~~service reduction, service~~] denial, termination, or service reduction [~~or case closure~~].

(5) [~~(6)~~] Attendant--An employee of a program provider or of an individual who has selected the CDS [~~consumer directed services~~] option who:

(A) provides direct care to the individual; and[~~.~~]

(B) meets the requirements in §51.421 of this chapter (relating to Requirements for Attendants Providing Respite and Flexible Family Support Services).

(6) Backup plan--A documented plan to ensure that services are provided to an individual when a service provider is not available to deliver services as specified on the service schedule.

(7) Basic child care--Watchful attention and supervision of an individual while the individual's primary caregiver is at work, in job training, or at school.

[~~(8) BNE--Formerly, this referred to the Board of Nurse Examiners for the State of Texas. It now refers to the Texas Board of Nursing.~~]

[~~(9) Case closure--A DADS action that terminates an individual from MDCP services.~~]

(8) [~~(10)~~] Case manager--A DADS employee who is responsible for case management activities for an individual, including eligibility determination, enrollment, assessment and reassessment of the individual's need, service plan development, and intercession on the individual's behalf.

(9) [~~(11)~~] CDS option--Consumer directed services option.[--] A [~~means of~~] service delivery option as defined in §41.103 of this title (relating to Definitions) [~~in which an individual or the individual's parent or guardian is the employer of the attendant~~].

(10) [~~(12)~~] Contract--A written agreement between DADS and a program provider to provide MDCP services to an individual [~~in exchange for payment~~].

(11) [~~(13)~~] Cost ceiling--The maximum dollar amount available to an individual for MDCP services per IPC year.

(12) [~~(14)~~] DADS--Department of Aging and Disability Services.

(13) [~~(15)~~] DADS RN--A DADS employee who is an RN [~~and has two years of experience in pediatric nursing~~].

(14) [~~(16)~~] Day--A [~~Any reference to a day means a~~] calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(15) [~~(17)~~] Delegated task--A task that a physician [~~practitioner~~] or RN delegates in accordance with state law.

(16) Discriminate--To treat a person differently based on the person's race, color, national origin, gender, or age, without a reason approved by DADS.

(17) [~~(18)~~] DFPS--Department of Family and Protective Services.

(18) Employment assistance--Assistance provided to an individual to help the individual locate paid employment in the community.

(19) Facility-based respite--Respite services provided to an individual in a licensed hospital or nursing facility.

(20) Family member--A person who is related by blood, by affinity, or by law to an individual.

(21) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(22) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS to an individual participating in the CDS option.

(23) Flexible family support services--A diverse array of DADS approved, individualized, disability-related services that support independent living, participation in community based child care, employment, and participation in post-secondary education.

(24) [~~(21)~~] Foster home--A [~~Means a~~] foster home as defined in the Human Resources Code, §42.002.

(25) [~~(22)~~] Guardian--A person appointed as a guardian of the estate or of the person by a court.

(26) [(23)] HHSC--Texas Health and Human Services Commission.

(27) HCSSA--A home and community support services agency licensed by DADS in accordance with Texas Health and Safety Code, Chapter 142.

(28) [(24)] Host family--A program provider with whom an individual lives when the individual's parents are unable to care for the individual in their home [him].

(29) [(25)] Imminent danger--An immediate, real threat to a person's health or safety.

(30) [(26)] Individual--A person who has been determined eligible to receive MDCP services. A reference in this chapter to "individual" includes the individual's primary caregiver, unless the context indicates otherwise.

(31) [(27)] Interest list--A list of people who have contacted DADS and expressed an interest in MDCP services but have not applied for nor been determined eligible for MDCP services.

(32) [(28)] IPC--Individual plan of care. A plan that documents [the following]:

(A) the services provided to an individual through both MDCP and third-party resources, and the sources or providers of those services;

(B) medical information about the individual obtained by a DADS RN;

(C) a social assessment of the individual and the individual's family obtained by the case manager;

(D) the projected cost of the MDCP services;

(E) the authorization begin date stated on the service authorization form [initiation date]; and

(F) a program provider's service schedule for [the] respite or flexible family [adjunct] support services [provider's service schedule].

(33) [(29)] IPC year--A period [not to exceed 365 days that is] recorded on an [the] IPC with a beginning and end date.

(34) LAR--Legally authorized representative. A term defined in §41.103 of this title for an individual who selects the CDS option.

(35) [(30)] LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing or who holds a license from another state recognized by the Texas Board of Nursing to practice vocational nursing in Texas.

(36) [(31)] MDCP--Medically Dependent Children Program. A §1915(c) waiver program that provides community-based services to help the primary caregiver care for an individual in the community.

(37) [(32)] Medical necessity--The medical criteria a person must meet for admission to a Texas nursing facility.

(38) [(33)] Minor home modification--A physical change to an individual's residence that is needed to prevent institutionalization or to support the most integrated setting for an individual to remain in the community.

(39) [(34)] Parent--An individual's natural or adoptive parent or the spouse of the natural or adoptive parent.

(40) [(35)] Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or an RN approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(41) [(36)] Primary caregiver--A person, including a parent or guardian, who: [A person who:]

(A) for an individual who receives a service other than flexible family support services, provides daily uncompensated care; or

(B) for an individual who receives flexible family support services, routinely provides uncompensated care.

[(A) is legally responsible for an individual's routine daily care, provision of food, shelter, clothing, health care, education, nurturing, and supervision; and]

[(B) provides daily, uncompensated care for the individual.]

(42) [(37)] Program provider [Provider]--A person, as defined in §49.102 of this title (relating to Definitions) [An entity], that has a contract with DADS to provide MDCP services, excluding an FMSA.

(43) Protective device--

(A) Except as provided in subparagraph (B) of this paragraph, an item or device, such as a safety vest, belt, body strap, bed rail, safety padding or adaptation to furniture, if:

(i) used:

(I) to protect an individual from injury; or

(II) for body positioning of the individual to ensure health and safety; and

(ii) not used as a mechanical restraint to modify or control behavior.

(B) A helmet is a protective device if used to address a medical condition, such as seizures.

(44) [(38)] Reckless behavior--Acting with conscious indifference to the consequences.

(45) [(39)] Residence--The place where an individual lives.

(46) [(40)] Respite services--Direct care services needed because of an individual's disability that provide a primary caregiver temporary relief from caregiving activities when the primary caregiver would usually perform such activities.

(47) Restrictive intervention--An action or procedure that limits an individual's movement or access to other individuals, locations, or activities; or that restricts an individual's rights.

(48) [(41)] RN--Registered nurse. A person licensed by the Texas Board of Nursing or who holds a license from another state recognized by the Texas Board of Nursing to practice professional nursing in Texas.

(49) [(42)] Service authorization form--A DADS form that authorizes a program provider [Document that shows DADS' approval for a provider] to deliver MDCP services.

(50) [(43)] Service initiation date--The first day a program provider begins providing an [individual begins receiving] MDCP service [services].

(51) Service planning team--A team comprised of persons convened and facilitated by a DADS case manager for the purpose of developing, reviewing, and revising an individual's IPC. In addition to a DADS case manager, the team:

(A) includes:

(i) the individual; and

(ii) the primary caregiver; and

(B) may include:

(i) the program provider; and

(ii) other persons whom the individual or primary caregiver invites to participate.

(52) Service provider--A person who provides an MDCP service directly to an individual and who is an employee or contractor of a program provider.

(53) [(44)] Service reduction--A DADS action that temporarily or permanently decreases services [temporary or permanent decrease in the number of service hours] delivered to an individual.

(54) [(45)] Service schedule--A schedule for delivering respite or flexible family [adjunct] support services to an individual that is agreed upon and signed by the individual or the individual's primary caregiver [parent or guardian]. A service schedule may be:

(A) a fixed service schedule that specifies certain days, times of day, or time periods for delivery of the services; or[. A]

(B) a variable service schedule that specifies the number of authorized hours of services to be delivered per day, per week, or per month, but does not specify certain days, times of day, or time periods for delivery of the services.

(55) [(46)] Service suspension--A temporary cessation [stoppage] of MDCP services by a program provider or DADS without loss of program or Medicaid eligibility.

(56) Supported employment--Assistance provided, in order to sustain paid employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(57) Termination--An action taken by DADS that ends an authorized MDCP service or ends an individual's enrollment in MDCP.

(58) [(47)] Texas Accessibility Standards--Texas Department of Licensing and Regulation building standards adopted to meet the provisions of Texas Government Code, Chapter 469, and to meet or exceed the construction and alterations requirements of Title III of the Americans with Disabilities Act (42 U.S.C. §§12181-12189).

(59) [(48)] Third-party resources--Goods and services available to an individual from a source other than MDCP, such as Medicaid home health, Texas Health Steps Comprehensive Care Program, and private insurance.

(60) [(49)] Transition assistance services--One-time service provided to a Medicaid-eligible resident of a nursing facility located in Texas to assist the resident in moving from the nursing facility into the community to receive MDCP services.

(61) [(50)] Working day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b)[, or a federal holiday].

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 April 3, 2014.

TRD-201401503
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES

DIVISION 1. ELIGIBILITY

40 TAC §51.203

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.203. Eligibility Requirements.

(a) To be eligible for initial enrollment in MDCP, a person must:

(1) meet one of the following disability criteria;

(A) receive disability benefits from the Social Security Administration;

(B) receive disability benefits from railroad retirement; or

(C) be determined to have a disability by HHSC; or

(2) be determined eligible to receive Medicaid through a state plan program.

(b) In addition to the eligibility requirement in subsection (a) of this section, to [To] be eligible to participate in MDCP, a person must:

(1) live in Texas;

(2) be:

(A) a citizen of the United States (U.S.);

(B) an alien who entered the U.S. before August 22, 1996, who has lived in the U.S. continuously since entry, and who meets the definition of a qualified alien at 8 U.S.C. §1641(b) or (c); or

(C) an alien who entered the U.S. on or after August 22, 1996, who has lived in the U.S. continuously since entry, and who meets the definition of a qualified alien at 8 U.S.C. §1612(b) and §1613;

(3) be under 21 years of age;

(4) meet the financial Medicaid eligibility criteria described in Texas Administrative Code, Title 1, Chapter 358 (relating to Medicaid Eligibility), based on the person's income and resources;

[~~(5) for initial enrollment only, meet at least one of the disability criteria described in §51.205(b) of this chapter (relating to Disability Criteria);~~]

(5) [~~(6)~~] meet medical necessity as described in §51.207 of this division [~~chapter~~] (relating to Medical Necessity);

(6) [~~(7)~~] have an IPC with a cost for MDCP services at or below 50 percent of the reimbursement rate that would have been paid for the same individual to receive nursing facility services considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program); and

(7) [~~(8)~~] if the person is under 18 years of age, reside:

(A) with a family member; or

(B) in [~~with~~] a foster home [~~family~~] that includes no more than four children unrelated to the individual.

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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Lorri Haden
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40 TAC §51.205

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.205. Disability Criteria.

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

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DIVISION 2. ENROLLMENT

40 TAC §51.219

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.219. Maintaining Enrollment.

(a) To maintain enrollment in MDCP, the individual or the individual's primary caregiver [~~parent or guardian~~] must:

(1) participate in:

(A) the development and implementation of the IPC;

(B) the redetermination of eligibility; and

(C) the monitoring of service delivery;

(2) ensure that there is not a [~~60-day~~] break in service delivery that exceeds 60 days[~~,~~] unless the [~~60-day~~] break in service is due to extenuating circumstances and the case manager has approved a [~~the 60-day~~] break in service that exceeds 60 days;

(3) use MDCP services as described in the IPC;

(4) select the program provider; and

(5) train [provide training], monitor, and supervise the service providers. [provider; and]

[(6) keep in the residence the most recent seven days of service delivery documentation as referenced in §51.503 of this chapter (relating to In-Home Record) and make it available to DADS upon request.]

(b) An individual may lose eligibility for MDCP if the individual or the individual's primary caregiver does not comply [parent or guardian fails to comply] with the requirements in subsection (a) of this section.

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

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DIVISION 3. SERVICES

40 TAC §§51.231, 51.233, 51.235, 51.237, 51.241, 51.243, 51.245

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.231. Service Limitations.

(a) General. A program provider may not [The individual or the individual's parent or guardian may not ask the provider to] provide MDCP services to a member of an individual's [any other] household who is not eligible to receive MDCP services [member while serving the individual in the individual's residence].

(b) Respite and flexible family support services.

(1) An individual may not receive respite services [Respite services may not be provided] in a setting in which identical services are already being provided.

[(2) Subject to an exception granted by DADS in accordance with §51.232 of this division (relating to Exception to Service Limit), an individual may receive a maximum of 2,096 hours of respite during an IPC year, of which 144 hours (six days) may be used for facility based respite.]

[(3) The service limit described in paragraph (2) of this subsection is in effect through August 31, 2013.]

(2) [(4)] An [Effective September 1, 2013, an] individual may be admitted to facility-based respite for a maximum of 29 days during an IPC year unless the individual requests an exception to the 29-day limit and the case manager grants the request. The [with the] amount of respite other than facility-based respite is subject to the IPC cost limit as described in §51.203(b)(6) [§51.203(7)] of this subchapter (relating to Eligibility Requirements). [If the DADS case manager receives information demonstrating the need of the parent or guardian to admit the individual to facility-based respite in excess of 29 days during an IPC year, the DADS case manager determines whether providing facility-based respite in excess of the limit is necessary for the IPC to meet the criteria described in §51.217(b) of this subchapter (relating to Individual Plan of Care).]

(3) [(5)] Respite may be provided to an individual outside the provider's contracted service delivery area during a period of no more than 60 consecutive days, as described in §51.245 of this division (relating to Respite Services or Adaptive Aids Outside of the Contracted Service Delivery Area).

[(c) Adjunct support services.]

[(1) Subject to an exception granted by DADS in accordance with §51.232 of this division, an individual may receive a maximum of 1,875 hours of adjunct support services during an IPC year.]

[(2) The service limit described in paragraph (1) of this subsection is in effect through August 31, 2013.]

(4) [(3)] Flexible family [Adjunct] support services may be used only when the primary caregiver is working, attending job training, or attending school.

(c) [(d)] Adaptive aids.

(1) An individual may receive adaptive aids having a maximum cost of $4,000 during an IPC year.

[(2) The service limit described in paragraph (1) of this subsection is not subject to an exception.]

(2) [(3)] DADS does not reimburse for an adaptive aid costing less than $100.

(3) [(4)] Adaptive aids may be provided to an individual outside the provider's contracted service delivery area during a period of no more than 60 consecutive days, as described in §51.245 of this division.

(d) [(e)] Minor home modifications.

(1) An individual may receive minor home modifications during the individual's lifetime having a maximum cost of $7,500, which may be paid in one or more IPC years.

(2) After the lifetime maximum of $7,500 has been met, an [An] individual may receive, during an IPC year, a maximum of $300 for repair and maintenance of a minor home modification.

(e) [(f)] Transition assistance services.

(1) An individual may receive [access] transition assistance services only once in the individual's lifetime.

(2) The maximum cost [ceiling] for transition assistance services is $2,500.

§51.233. Choosing a Program Provider.

(a) The individual or the individual's primary caregiver [parent or guardian] must choose the program provider. The case manager gives a list of program providers to the individual or the individual's primary caregiver [parent or guardian].

(b) If the individual or the individual's primary caregiver [parent or guardian] chooses an entity that is not on the case manager's list of program providers for a particular service, that service may not begin until the entity contracts with DADS to provide that service.

§51.235. CDS [Consumer Directed Services] Option.

An individual's case manager informs the individual or LAR at initial enrollment and during each annual reassessment: [An individual may choose to participate in a payment option that allows the individual or the individual's parent or guardian to direct the recruiting, hiring, management, and termination of the individual's attendant or nurse as described in Chapter 41 of this title (relating to Consumer Directed Services Option). The consumer directed services option is available only for respite or adjunct support services.]

(1) of the CDS option in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination);

(2) of the services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(3) that the individual or LAR may elect to have one or more of those services provided through the CDS option.

§51.237. Service Schedule Changes.

[(a)] An individual or the individual's primary caregiver [parent or guardian] may change [make minor changes in] the service schedule for respite and flexible family [adjunct] support services [without prior approval] if the change [changes]:

(1) does [do] not exceed the individual's cost ceiling per IPC year; [and]

(2) only uses hours not used in a previous month; and [do not increase the individual's total monthly hours, unless the individual approves the use of hours not used in a previous month and the use of hours not used in a previous month increases the total monthly hours by less than 50%.]

(3) does not increase the individual's total monthly hours by more than three times the monthly hours authorized.

[(b) DADS must give prior approval for the use of hours not used in a previous month if the use of those hours increases the total monthly hours by 50% or more.]

§51.241. Service Suspensions by DADS.

(a) Except as provided in subsection (b) of this section, DADS suspends [or a provider must suspend] an individual's [MDCP] services if [or when]:

(1) the individual is admitted for purposes other than respite services in accordance with §51.423(c)(1) of this chapter (relating to Respite and Flexible Family Support Services) to:

(A) a hospital [(if an RN or an LVN provides the services)];

(B) a nursing facility [(if an RN or an LVN provides the services)];

(C) a state supported living center [mental retardation facility];

(D) a state mental health facility;

(E) a rehabilitation hospital; or

(F) an intermediate care facility for individuals [persons] with an intellectual disability [mental retardation] or related conditions; or

(2) the individual or someone in the individual's residence exhibits reckless behavior that may result in imminent danger to [the health and safety of] the individual, a service [the] provider, DADS staff, or another person in the individual's residence.

(b) To avoid a suspension of services for the reason described in subsection (a)(1) of this section, an individual or an individual's primary caregiver must obtain approval from the individual's case manager if the admission will result in a break in service delivery that exceeds 60 days.

(c) [(b)] DADS [or a provider] may suspend an individual's [MDCP] services if the individual or someone in the individual's residence discriminates against a service provider or [a] DADS staff [employee].

(d) DADS notifies an individual in writing if DADS suspends the individual's services and sends a copy of the notification to the individual's program provider.

(e) If a case manager becomes aware of the circumstance described in subsection (a)(2) of this section, the case manager immediately:

(1) files a report with local law enforcement;

(2) makes a referral to DFPS;

(3) suspends the individual's services; and

(4) initiates efforts to resolve the situation, including holding a service planning team meeting.

[(c) The provider resumes services after a suspension:]

[(1) on a date specified in writing by the case manager;]

[(2) upon the individual's return home from an institution listed in subsection (a)(1) of this section; or]

[(3) on the date the provider becomes aware of the individual's return home.]

[(d) DADS notifies the individual in writing of the process to appeal a service suspension as described in §51.251 of this chapter (relating to Appeals).]

§51.243. [Service Reductions, Service] Denials, Terminations, and Service Reductions [and Case Closures].

(a) Service reductions. DADS reduces [will reduce] services to an individual if [when]:

(1) third-party resources become available to the individual;

(2) the individual's annual cost ceiling decreases; [or]

(3) budgetary constraints require cost reductions; or[.]

(4) the individual's need for service decreases.

(b) Denials [Service denials].

(1) DADS denies [may deny] services to an individual if [when]:

(A) DADS does not approve the individual's initial program eligibility;

(B) DADS is unable to locate a HCSSA program provider that reasonably expects to be able to meet the individual's medical and nursing needs in the individual's residence; or

(C) DADS does not authorize:

(i) a service requested when the initial IPC is authorized;

(ii) a service requested during the initial IPC year;

(iii) a service requested on an IPC that was not authorized on a prior IPC; or

(iv) a portion of the amount or level of a service requested on an IPC that was not authorized on a prior IPC.

(2) DADS may deny services to an individual if:

[(1) the individual no longer meets the eligibility requirements described in §51.203 of this chapter (relating to Eligibility Requirements);]

[(2) the individual does not use MDCP services for 60 or more consecutive days without prior approval from the case manager;]

(A) [(3)] the individual or the individual's primary caregiver does not participate in the development or implementation of the IPC; or

(B) [(4)] budgetary constraints require cost reductions.

(c) Terminations without advance notice. DADS terminates an individual's services if:

(1) DADS confirms the death of the individual;

(2) the primary caregiver notifies DADS that the individual's admission to an institution is for long-term care purposes;

(3) the individual enrolls in another §1915(c) waiver program;

(4) DADS receives a written statement signed by the individual that the individual no longer wants services;

(5) the individual's whereabouts are unknown and the post office returns mail directed to the individual, indicating no forwarding address; or

(6) DADS establishes that the individual has been accepted for Medicaid services by another state.

(d) Terminations with advance notice. DADS may terminate an individual's services with advance notice if:

(1) the individual no longer meets the eligibility requirements described in §51.203 of this subchapter (relating to Eligibility Requirements);

(2) the individual, as described in §51.219(a)(2)(B) of this subchapter (relating to Maintaining Enrollment), does not receive any MDCP services:

(A) for more than 60 consecutive days without approval from the case manager; or

(B) for more than 180 consecutive days;

(3) the individual or the individual's primary caregiver does not participate in the development and implementation of the IPC;

(4) DADS is unable to locate a HCSSA program provider that reasonably expects to be able to meet the individual's medical and nursing needs in the individual's residence; or

(5) the individual or the individual's primary caregiver refuses to participate in the redetermination of eligibility or the monitoring of service delivery.

(e) A program provider may recommend that DADS terminate services for the reasons stated in subsection (d)(3) - (5) of this section. Within two working days after the program provider determines there is a reason to request termination, the program provider must:

(1) send a written request to the case manager; and

(2) include written documentation that supports the recommendation including:

(A) a description of the circumstances and interventions the program provider attempted before deciding to recommend the termination of MDCP services; and

(B) a description of the program provider's use of strategies and negotiations with the individual and the results of those actions.

(f) If the case manager becomes aware of a circumstance described in subsection (d)(3) - (5) of this section, or receives a program provider's recommendation to terminate services as described in subsection (e) of this section, the case manager attempts to resolve the circumstance, including holding a service planning team meeting.

(g) If the case manager is unable to resolve the circumstance, the case manager within two working days sends:

(1) written notice of the termination to the individual; and

(2) a copy of the written notice to the program provider.

[(c) Case closure. DADS closes an individual's case if:]

[(1) the individual no longer meets the eligibility requirements described in §51.203 of this chapter;]

[(2) the individual dies;]

[(3) the individual enters an institution for long-term care purposes;]

[(4) the individual starts receiving services through another §1915(c) waiver program;]

[(5) the individual does not use MDCP services for 60 or more consecutive days without prior approval from the case manager;]

[(6) the individual's primary caregiver does not participate in the development of the individual's IPC; or]

[(7) the individual requests that services end.]

[(d) Notifications.]

[(1) The effective date of the service reduction, service denial, or case closure is 30 days after the date on the individual's notification letter.]

[(2) DADS notifies the individual in writing of the process to appeal the service reduction, service denial, or case closure as described in §51.251 of this chapter (relating to Appeals).]

§51.245. Respite Services or Adaptive Aids Outside of the Contracted Service Delivery Area.

(a) A HCSSA program provider may accept or decline an individual's [a] request for the provision of respite services, or an adaptive aid program provider may accept or decline an individual's request for

the provision of adaptive aids, [to an individual] while the individual is temporarily staying at a location outside the provider's contracted service delivery area but within the state of Texas.

(b) If the program provider accepts the request of an individual as described in subsection (a) of this section, the program provider:

(1) may provide respite services or adaptive aids to the individual during a period of no more than 60 consecutive days;

(2) must, within three working days after the program provider begins providing respite or adaptive aids to the individual outside the program provider's contracted service delivery area, notify the individual's case manager in writing of the following:

(A) that the individual is receiving respite services or adaptive aids outside the program provider's contracted service delivery area;

(B) the location where the individual is receiving respite services or adaptive aids;

(C) the estimated length of time the individual is expected to be outside the program provider's contracted service delivery area; and

(D) contact information for the individual; and

(3) must notify the case manager in writing that the individual has returned to the program provider's contracted service delivery area, within three working days after becoming aware of the individual's return.

(c) If an individual receives respite services or adaptive aids outside the program provider's contracted service area during a period of 60 consecutive days, the individual must return to the program provider's contracted service delivery area and receive services in that area before the program provider may agree to another request from the individual for the provision of services outside the program provider's contracted service delivery area.

(d) If a HCSSA program provider or an adaptive aid program provider declines the request of an individual [individual's parent or guardian] as described in subsection (a) of this section, the program provider [HCSSA] must:

(1) inform the individual [individual's parent or guardian] orally or in writing:

(A) of the reasons for declining the request; and

(B) that the individual [individual's parent or guardian] may request a meeting with the case manager and the program provider to discuss the reasons for declining the request; and

(2) inform the individual's case manager in writing, within three days after declining the request, that the request was declined and the reasons for declining the request.

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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40 TAC §51.232

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.232. Exception to Service Limit.

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

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DIVISION 4. APPEALS

40 TAC §51.251

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall

adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.251. Appeals.

(a) Appeals and fair hearings are conducted as described in 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules [~~Medical Fair Hearings~~]).

(b) An individual may appeal a DADS action. In this section, a DADS action means a service suspension as described in §51.241 of this subchapter [~~chapter~~] (relating to Service Suspensions by DADS), or a service reduction, [~~service~~] denial, or termination [~~case closure~~] as described in §51.243[~~(a), (b), and (c)(1)-(6)~~] of this subchapter [~~chapter~~] (relating to [~~Service Reductions, Service~~] Denials, Terminations, and Service Reductions [~~and Case Closures~~]).

(c) To appeal a DADS action, an individual must make a request for a fair hearing orally or in writing to the case manager within 90 days from the date on the notice of the DADS action.

(d) Except as provided in subsection (f) of this section, if an individual who is currently receiving services requests a fair hearing before the effective date of the DADS action on the notice, the case manager notifies the program provider to continue services.

(e) If an individual who is currently receiving services does not submit a request for a fair hearing before the effective date of DADS action on the notice, the program provider must, unless otherwise directed by the case manager, discontinue services on the effective date of the DADS action on the notice.

[~~(d) DADS may continue MDCP services until the hearing is conducted if an individual who is currently receiving services requests a hearing within 30 days from the date on the notice of the DADS action and requests that services continue during the appeal process. An individual must contact the case manager orally or in writing to make these requests. If the hearing officer upholds the DADS action, DADS may require the individual to pay DADS for the cost of services delivered after the effective date of the DADS action.~~]

(f) [~~(e)~~] If a suspension occurs because of the reckless behavior described in §51.241(a)(2) of this subchapter [~~chapter~~], then services must not continue during the appeal process.

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SUBCHAPTER D. PROVIDER REQUIREMENTS

DIVISION 1. CONTRACTING REQUIREMENTS

40 TAC §51.401

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.401. Contracting Requirements.

[~~(a)~~] [~~General contracting requirements.~~] A program provider must comply with:

(1) this chapter;

(2) Chapter 49 of this title (relating to Contracting for Community Services); and

(3) the program provider manual, billing guidelines, and information letters issued by DADS.

[~~(1) meet all provisions described in:~~]

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

[~~(B) Chapter 49 of this title (relating to Contracting for Community Care Services); and~~]

[~~(C) Chapter 69 of this title (relating to Contract Administration);~~]

[~~(2) be contracted with DADS to provide MDCP services;~~]

[~~(3) operate within the scope of its:~~]

[~~(A) licensure;~~]

[~~(B) accreditation;~~]

[~~(C) education; or~~]

[~~(D) experience; and~~]

[~~(4) meet all local, state, and federal regulations.~~]

[~~(b) Specific contracting requirements.~~]

[~~(1) A home and community support services agency must be licensed in the personal assistance services, licensed home health, or licensed and certified home health categories of licensure.~~]

[~~(2) A host family must be licensed as a foster home by DFPS or verified by a child-placing agency that is licensed by DFPS.~~]

[~~(3) An adaptive aid provider must be:~~]

[~~(A) enrolled with DADS as a provider of durable medical equipment;~~]

[~~(B) an entity that sells its products directly; and~~]

[(C) approved by the Department of Assistive and Rehabilitative Services to install van lifts (if applicable).]

[(4) A minor home modification provider must be a general contractor registered with the Texas Residential Construction Commission.]

[(5) A provider contracted to provide consumer directed services must comply with the requirements in Chapter 41 of this title (relating to Consumer Directed Services Option).]

[(6) A transition assistance services provider must meet the requirements in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services).]

[(7) A camp must be licensed and accredited by the American Camping Association.]

[(8) Other entities that contract to provide MDCP services must maintain any applicable license.]

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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Lorri Haden
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DIVISION 2. SERVICE DELIVERY REQUIREMENTS FOR ALL PROVIDERS

40 TAC §§51.411, 51.413, 51.415, 51.417 - 51.419

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.411. General Service Delivery Requirements.

(a) A program provider must ensure that each service is provided in accordance with an individual's IPC and with Appendix C of the MDCP waiver application approved by CMS and found at www.dads.state.tx.us [provide services as indicated on the service authorization form] .

(b) A program [respite or adjunct support services] provider must provide respite or flexible family support services as specified on [indicated on the service authorization form and according to] the service schedule, unless an individual changes the service schedule in accordance with §51.237 of this chapter (relating to Service Schedule Changes).

(c) A program provider must have a backup [an alternative service delivery] plan in case the program provider is unable to deliver respite or flexible family support services as specified on the service schedule [scheduled]. A program provider must not use a primary caregiver in a backup plan.

(d) Within 14 days after a program provider receives an initial assessment or annual reassessment service authorization form, a program provider must send the case manager a copy of the program provider's backup plan for service delivery.

(e) Within 14 days after the backup plan changes, a program provider must send the case manager a copy of the revised backup plan.

(f) Before changing the program provider authorized in the IPC, a program provider must coordinate the change with the case manager and the individual and obtain a new service authorization form.

[(d) The provider must ensure that an attendant, RN, or LVN provides MDCP services to only one individual during the time scheduled for the individual.]

§51.413. Response to Service Authorization.

(a) A program provider must receive a service authorization form from an individual's case manager before providing services to the individual.

(b) If a program provider agrees to provide services as indicated on a service authorization form, the program provider must send the individual's case manager a signed copy of the service authorization form within 14 days after the program provider receives the service authorization form.

(c) If a program provider does not agree to provide services as indicated on a service authorization form, the program provider must notify the individual's case manager in accordance with §51.417 of this division (relating to Notification to the Case Manager).

(d) If a program provider is unable to provide services as indicated on a service authorization form, the program provider must notify the individual in accordance with §51.415(a) of this division (relating to Notification to the Individual).

(e) A program provider must not deliver services after the IPC end date or the termination date stated on the DADS Notification of Waiver Services form.

§51.415. Notification to the Individual.

[(a) Within 14 days of receiving the service authorization form, a provider must give the following information to the individual:]

[(1) the provider's alternative service delivery plan in case the provider is unable to deliver services as scheduled;]

[(2) the individual's right to change providers;]

[(3) the procedure to file a complaint about the provider, in accordance with §49.17 of this title (relating to Complaint Procedures); and]

[(4) the procedure to report abuse and neglect.]

(a) [(b)] A program [The] provider must notify an [the] individual in writing no later than the authorization begin date specified on

a service authorization form [~~on or before the service initiation date~~] if the program provider is unable to provide services as indicated on the service authorization form or has any limitations in delivery of services. The written notice must include:

(1) the reason the program provider is unable to provide services to the individual;

(2) for a delay in beginning the services by the authorization begin date, the reason for the delay and the date the program provider can begin providing the services; or

(3) the program provider's limitations in providing services and the reason for the limitations.

(b) Within 14 days after a program provider receives an initial assessment and annual reassessment service authorization form, a program provider must give an individual in writing:

(1) a copy of the program provider's backup plan for service delivery if the program provider is unable to provide services as scheduled; and

(2) the individual's right to change program providers.

(c) A program provider must give an individual a copy of a revised backup plan within 14 days after the backup plan changes.

(d) [~~(c)~~] After the service initiation date, a program [~~the~~] provider must notify an [~~the~~] individual orally or in writing [~~at least five days~~] before suspending services [~~as referenced~~] in accordance with §51.419 of this division [~~chapter~~] (relating to Service Suspensions by Program Provider). If the program provider's first notification is oral, the program provider must send written notification to the individual within five working days of the oral [~~first~~] notification.

§51.417. Notification to the Case Manager.

(a) Required notification.

(1) A program provider must notify the case manager if:

(A) [~~(1)~~] the individual's primary caregiver refuses to comply with the IPC;

(B) [~~(2)~~] the program provider is unable to verify the individual's Medicaid eligibility as required in §51.405 of this subchapter [~~chapter~~] (relating to Monitoring Medicaid Eligibility);

(C) [~~(3)~~] the program provider is unable to begin services on the authorization begin date stated on the service authorization form; [~~on the service initiation date. This notification must include:~~]

[~~(A) an explanation of why there is a delay in the service initiation date; and~~]

[~~(B) an expected date that services will begin; or~~]

(D) the program provider does not agree to provide the services specified on the service authorization form;

(E) the program provider has any limitations in delivering the services specified on the service authorization form;

(F) [~~(4)~~] the program provider makes any changes in service delivery;[~~.~~]

(G) the program provider suspends services for a reason listed in §51.419 of this division (relating to Service Suspensions by Program Provider); or

(H) a HCSSA program provider determines it is unable to continue providing services because it is not able to meet the individual's needs.

(2) Notification described in paragraph (1)(C) of this subsection must include:

(A) an explanation of why there is a delay in beginning services by the authorization begin date; and

(B) an expected date that services will begin.

(3) Notification described in paragraph (1)(G) of this subsection must include:

(A) the date of service suspension;

(B) the reason for the suspension;

(C) the duration of the suspension, if known; and

(D) for the reasons listed in §51.419(a)(2) and (b) of this division, an explanation of the program provider's attempts to resolve the problem that caused the suspension, including the reason why the problem was not resolved.

(4) Notification described in paragraph (1)(H) of this subsection must include:

(A) the specific reason the HCSSA program provider can no longer meet the needs of the individual; and

(B) the specific rule or licensure citation supporting the reason.

(b) Method and deadline for notification.

(1) The program provider must notify the case manager orally or by fax about any circumstance described in subsection (a) of this section within [~~no later than~~] one working day after awareness.

(2) If the program provider's notification is oral, the program provider must speak directly with the case manager. If the program provider is unable to speak directly with the case manager, the program provider may leave a telephone message. If the program provider leaves a telephone message, the program provider must document all attempts to meet the deadline specified in paragraph (1) of this subsection and make a follow-up contact with the case manager within one working day.

(3) If the program provider's notification is oral, the program provider must send written notification to the case manager within five working days after [~~of~~] the oral notification.

§51.418. Protective Devices.

(a) The only type of restrictive intervention a program provider may use is a protective device for the purpose of protecting or positioning an individual in specific circumstances.

(b) A program provider must not use a protective device to control an individual's behavior, for disciplinary purposes, for convenience, or as a substitute for effective assistance.

(c) Before a program provider uses a protective device, the program provider must:

(1) attempt less restrictive methods;

(2) document in the program provider's case record the less restrictive methods attempted and failure of the methods;

(3) have a HCSSA RN conduct an assessment of the individual's needs;

(4) obtain a physician's order for the use of a protective device and instructions on how and when to use it;

(5) obtain and retain in the program provider's case record written consent of the individual or primary caregiver to use a protective device;

(6) provide oral and written notification to the individual or primary caregiver of the right at any time to withdraw consent for the use of a protective device;

(7) have a HCSSA RN, with input from the individual, the individual's primary caregiver, the individual's service planning team, and other professional personnel, develop a written service plan for the use of a protective device that describes:

(A) the type of device and the circumstances under which it may be used;

(B) how to implement the physician's orders;

(C) how and when to document the use of the protective device;

(D) how to monitor the protective device; and

(E) when and whom the program staff must notify of a protective device's use;

(8) ensure the service planning team approves the service plan in writing; and

(9) ensure that each person who will use a protective device has been trained in the proper use and the training is documented in the program provider's case record.

(d) A program provider that uses a protective device must:

(1) document in the program provider case record any use of a protective device in accordance with the written service plan;

(2) ensure that a HCSSA RN, the individual's service planning team, and other professional personnel, at least annually, and as the individual's needs change:

(A) evaluate and document in the program provider's case record the effects of the protective device on the individual's health and welfare; and

(B) review the use of a protective device to determine its effectiveness and the need to continue the protective device; and

(3) ensure that a HCSSA RN, in accordance with subsection (c)(7) of this section, revises the service plan when the individual's service planning team and physician determine that a protective device is not effective or needed.

§51.419. Service Suspensions by Program Provider.

(a) Required service suspensions. A program provider must suspend services to an individual if [or when]:

(1) the individual is admitted for purposes other than respite services in accordance with §51.423(c)(1) of this subchapter (relating to Respite and Flexible Family Support Services) to:

(A) a hospital [(if the services are provided by an RN or an LVN)];

(B) a nursing facility [(if the services are provided by an RN or an LVN)];

(C) a state supported living center [mental retardation facility];

(D) a state mental health facility;

(E) a rehabilitation hospital; or

(F) an intermediate care facility for individuals [persons] with an intellectual disability [mental retardation] or related conditions; or

(2) the individual or someone in the individual's residence exhibits reckless behavior that may result in imminent danger to the health and safety of the individual, a service [the] provider, or another person in the residence. If this occurs the program provider must make an immediate report [referral] to:

(A) DFPS [or other appropriate protective services agency];

(B) local law enforcement; and

(C) the individual's case manager.

(b) Other service suspensions. A program provider may suspend services to an individual if the individual or someone in the individual's residence discriminates against a service provider [or a DADS employee].

(c) Notification of service suspension. A program [The] provider must notify the individual's case manager [orally or by fax] about a service suspension in accordance with §51.417 of this division (relating to Notification to the Case Manager) [no later than one working day after services are suspended. If the provider's notification is oral, the provider must send written notification to the case manager within five working days of the first notification].

[(d) Notification requirements. The notification must include:]

[(1) the date of service suspension;]

[(2) the reason for the suspension;]

[(3) the duration of the suspension, if known; and]

[(4) an explanation of the provider's attempts to resolve the problem that caused the suspension, including the reason why the problem was not resolved. This subparagraph applies only to circumstances described in subsections (a)(2) and (b) of this section.]

(d) [(e)] Resuming services after a suspension. A program [The] provider must resume services after a suspension:

(1) on the date specified in writing by the individual's case manager; or

[(2) upon the individual's return home from an institution listed in subsection (a)(1) of this section; or]

(2) [(3)] on the date the program provider becomes aware of the individual's return home from an institution listed in subsection (a)(1) of this section.

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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40 TAC §51.413

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.413. Response to Service Authorization.

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

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DIVISION 3. SERVICE DELIVERY REQUIREMENTS FOR RESPITE AND ADJUNCT SUPPORT SERVICES

40 TAC §51.421

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STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.421. Requirements for Attendants.

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

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DIVISION 3. SERVICE DELIVERY REQUIREMENTS FOR RESPITE AND FLEXIBLE FAMILY SUPPORT SERVICES

40 TAC §51.421, §51.423

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.421. Requirements for Attendants Providing Respite and Flexible Family Support Services.

(a) An attendant must:

(1) be at least 18 years of age;

(2) have:

(A) a high school diploma or certificate of high school equivalency (General Educational Development credentials); or

(B) documentation by a HCSSA RN of a proficiency evaluation of experience and competence to perform the job tasks assigned;

(3) have documentation of current training in cardiopulmonary resuscitation (CPR) and first-aid;

(4) before providing the tasks, be oriented to the specific tasks to be provided to the individual according to the IPC; and

(5) not:

(A) be the individual's primary caregiver; or

(B) be the individual's spouse.

(b) In addition to the requirements listed in subsection (a) of this section, an attendant used by a HCSSA program provider to provide MDCP services to an individual must:

(1) be employed by the HCSSA; and

(2) be determined competent by a HCSSA RN to provide the services according to the IPC.

§51.423. Respite and Flexible Family Support Services.

(a) Respite services are subject to the limitations found in §51.231 of this chapter (relating to Service Limitations).

(b) An individual may receive in-home respite services if necessary to provide relief for the primary caregiver for a period when the primary caregiver normally provides uncompensated care.

(1) In-home respite services must be authorized in the individual's IPC before delivery.

(2) In-home respite services are provided:

(A) in the individual's home or foster home; or

(B) in community settings, including a park, a respite provider's home, or a relative's home.

(c) An individual who resides in the individual's own home or a foster home may receive out-of-home respite services if ordered by the individual's physician.

(1) Out-of-home respite services must be provided in a DADS contracted:

(A) hospital;

(B) special care facility;

(C) licensed nursing facility;

(D) camp; or

(E) child day care facility.

(2) An out-of-home respite facility must:

(A) allow an individual to take any adaptive aids the individual is using to the out-of-home respite facility; and

(B) deliver services:

(i) as authorized on the IPC before being delivered; and

(ii) in accordance with the applicable licensure requirements for the out-of-home respite facility.

(d) Flexible family support services. Flexible family support services must be authorized on the IPC before being delivered. Flexible family support services may only be provided to an individual while:

(1) a primary caregiver is working, attending job training, or attending school; and

(2) the individual, because of the individual's disability, needs direct care services that help the individual participate in child care, post-secondary education, employment, independent living, or support the individual's move to an independent living situation.

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DIVISION 5. SERVICE DELIVERY REQUIREMENTS FOR CONSUMER DIRECTED SERVICES

40 TAC §51.441

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.441. Consumer Directed Services.

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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40 TAC §51.441

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.441. CDS Backup Plans.

An individual who uses the CDS option must develop a backup plan in accordance with §41.217 of this title (relating to Employer Responsibilities Regarding Service Backup Plan).

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

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DIVISION 8. SERVICE DELIVERY REQUIREMENTS FOR MINOR HOME MODIFICATIONS

40 TAC §51.471, §51.475

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.471. General Requirements.

(a) A minor home modification program provider must have:

(1) five years of experience as a building contractor;

(2) three references from previous contractor clients; and

(3) current General Comprehensive Liability coverage for Errors & Omissions.

(b) [(a)] A minor home modification program [The] provider must obtain all necessary [applicable] building permits before starting a minor home modification.

(c) [(b)] A minor home modification program [The] provider must complete a [the] minor home modification according to:

(1) the written specifications;

(2) Texas Accessibility Standards; [and]

(3) Americans with Disabilities Act Standards; and

(4) [(3)] any [other] agreement signed by all parties before the job began.

(d) [(c)] A minor home modification program [The] provider must not hire or pay [reimburse] a spouse or a primary caregiver[, parent, or guardian] of an individual for work related to the modification, including preparation of the written specifications and the inspection.

§51.475. Inspection and Follow-Up.

(a) A minor home modification program [The] provider must ensure that someone who did not complete the minor home modification inspects the minor home modification within seven working days after the program provider completes the modification.

(b) A minor home modification inspector must have:

(1) five years of experience as a building contractor;

(2) three references from previous contractor clients; and

(3) working knowledge of Texas Accessibility Standards and Americans with Disabilities Act Standards.

(c) [(b)] The inspection must be made on-site [within seven working days of the completion date] to determine whether the modification was completed in compliance with:

[(1) was completed;]

(1) [(2)] [is in compliance with] the Texas Accessibility Standards and any other applicable standards or codes; and

(2) [(3)] [is in compliance with] the written specifications, if applicable.

(d) [(c)] DADS allows [For requirements concerning] reimbursement of the inspection fee in accordance with[, see] §51.477 of this division [chapter] (relating to Reimbursement of Minor Home Modifications).

(e) [(d)] Within seven working days after [of] the date a completed minor home modification is inspected, the program provider must make a home visit [contact the individual] to:

(1) provide orientation to the individual, if needed [verify the completion of the minor home modification]; and

(2) determine [and document] the individual's satisfaction or dissatisfaction with the minor home modification.

(f) [(e)] If [The provider must make a home visit if] the individual is dissatisfied with the minor home modification,[. If] the program provider must attempt to [can] resolve the dissatisfaction[, the provider must do so] within seven working days after [of] the home visit. If the program provider cannot resolve the dissatisfaction, the program provider must contact the case manager within seven working days after [of] the home visit.

[(f) Within 14 working days of the initial contact required in subsection (d) of this section, the provider must complete the home visit and document the completion and inspection of the minor home modification as described in §51.505 of this chapter (relating to Purchase Completion Documentation).]

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DIVISION 9. SERVICE DELIVERY REQUIREMENTS FOR EMPLOYEE ASSISTANCE AND SUPPORTED EMPLOYMENT

40 TAC §§51.481, 51.483, 51.485

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.481. Employment Assistance.

A program provider must ensure that employment assistance:

(1) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate paid employment in the community; and

(E) participating in service planning team meetings;

(2) is not provided to an individual with the individual present at the same time that respite, flexible family support services, or supported employment is provided; and

(3) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support and adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business.

§51.483. Supported Employment.

A program provider must ensure that supported employment:

(1) consists of a service provider performing the following activities:

(A) employment adaptations, supervision, and training related to an individual's disability;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(2) is not provided to an individual with the individual present at the same time that respite, flexible family support services, or employment assistance is provided; and

(3) does not include:

(A) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(B) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) for supervision, training, support and adaptations for an individual that the employer typically makes available to

other workers without disabilities filling similar positions in the business; or

(ii) paying the individual:

(I) as an incentive to participate in supported employment activities; or

(II) for expenses associated with the start-up costs or operating expenses of an individual's business.

§51.485. Service Provider Qualifications for Providing Employment Assistance and Supported Employment.

(a) A service provider of employment assistance and a service provider of supported employment must be at least 18 years of age, not be the individual's legally responsible person, and have:

(1) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(2) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing employment services to people with disabilities.

(b) A program provider must ensure that the experience required by subsection (a) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §§51.501, 51.503, 51.507

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.501. Service Delivery Record.

§51.503. In-Home Record.

§51.507. Reimbursement.

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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40 TAC §§51.505, 51.509, 51.511, 51.513, 51.515

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§51.505. Purchase Completion Documentation.

(a) An adaptive aid or minor home modification program provider must document [record] the completion of purchase for a minor home modification or an adaptive aid on a single document that includes:

(1) the name of the individual and the individual's parent or guardian, if applicable;

(2) the individual's address;

(3) a description of the minor home modification or adaptive aid;

(4) the date of completion or delivery;

(5) a statement of satisfaction or dissatisfaction with the minor home modification or adaptive aid; and

(6) the program provider's name and contract [vendor] number.

(b) In addition to the requirements in subsection (a) of this section, the minor home modification program provider must include the following on the purchase completion document:

(1) the name and qualifications of the inspector;

(2) whether the minor home modification was completed in accordance with §51.471(c) of this chapter (relating to General Requirements);[:]

[(A) completed according to Texas Accessibility Standards; and]

[(B) completed according to any required written specifications;]

(3) the inspector's dated signature; [and]

(4) the individual's dated signature; and[.]

(5) the name and title of the person completing the orientation to the minor home modification.

(c) In addition to the requirements in subsection (a) of this section, an [the] adaptive aid program provider must include the following on the purchase completion document:

(1) the name and title of the person completing the orientation on the adaptive aid; and

(2) the date of the orientation on the adaptive aid.

[(d) If the provider must make a home visit to the individual due to the individual's dissatisfaction or to provide additional orientation, the provider must send a copy of the purchase completion documentation to the case manager within seven working days of the home visit.]

(d) [(e)] The adaptive aid or minor home modification program provider [After all purchase completion documentation activities are complete, the provider's representative] must sign and date the purchase completion document described [referenced] in subsection (a) of this section and submit it to the case manager within seven working days after [of] the dated signature.

§51.509. Claims and Service Delivery Records.

(a) A program [The] provider must ensure that a [the] claim for reimbursement corresponds to the program provider's service authorization form and service delivery record. The service delivery record must contain: [records and that the records contain:]

(1) the IPC and attachments; and

(2) documentation of services delivered to an individual that includes the:[.]

(A) individual's name;

(B) individual's Medicaid number;

(C) IPC year;

(D) program provider's name and contract number;

(E) name of the person providing services and any applicable credentials;

(F) service provided, unless the service provided is a non-delegated task provided by unlicensed staff;

(G) date of service delivery;

(H) time service delivery begins and ends; and

(I) units of service delivered.

(b) In addition to the requirements in subsection (a) of this section, the minor home modification provider's service delivery records must contain:

(1) receipts from the subcontractor (if applicable) for the completed minor home modification, documenting the date of completion and the cost of the modification;

(2) any applicable building permits;

(3) written specifications, if required;

(4) written approval from the homeowner for the minor home modification made; and

(5) purchase completion documentation, as described in §51.505 of this subchapter [chapter] (relating to Purchase Completion Documentation).

(c) In addition to the requirements in subsection (a) of this section, an adaptive aid provider's service delivery records must contain:

(1) written approval from the vehicle owner for any vehicle modification made; and

(2) purchase completion documentation, as described in §51.505 of this subchapter [chapter].

§51.511. Billable Time and Activities.

A program [The] provider may bill for and DADS approves [will approve] payment for the following services if the service is approved on the service authorization form and provided in accordance with this chapter:

(1) respite services;

(2) flexible family [adjunct] support services;

(3) minor home modifications, including:

(A) cost of labor;

(B) materials;

(C) sales tax;

(D) actual cost of written specification development up to $200; and

(E) actual cost of the inspection up to $150;

(4) adaptive aids, including:

(A) invoice cost of the item;

(B) actual cost, when the item is purchased through a supplier; and

(C) sales tax; [and]

(5) transition assistance services;[.]

(6) employment assistance, if the program provider, before including employment assistance on an individual's IPC, ensures, and maintains documentation in the individual's record, that employment assistance is not available to the individual under a program funded

under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.); and

(7) supported employment, if the program provider, before including supported employment on an individual's IPC, ensures, and maintains documentation in the individual's record, that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

§51.513. Non-billable Time and Activities.

A program provider must not bill for and DADS will not approve payment for:

(1) services that are not provided in accordance with this chapter;

(2) [(1)] more than 16 hours of services provided by the same service provider [person] within a 24-hour period;

(3) more than 24 hours of respite and flexible family support within a 24-hour period;

(4) [(2)] services provided to a [any family] member of an individual's household who is not eligible to receive MDCP services [other than the individual];

(5) [(3)] time spent filing claims for services;

(6) [(4)] travel to and from the individual's home;

(7) [(5)] processing paperwork or completing records or reports;

(8) [(6)] services not approved on the service authorization form [by authorized DADS staff];

(9) [(7)] the cost of making a home visit that is not included in the bid (for example, to perform orientation or make adjustments to an adaptive aid);

(10) [(8)] the delivery charge for an adaptive aid;

(11) [(9)] office equipment, supplies, and other office expenses, including:

(A) fax machines;

(B) printers and copiers;

(C) scanners; and

(D) Internet and e-mail services;

(12) [(10)] a repair covered under a warranty;

(13) [(11)] a minor home modification that does not pass inspection;

(14) [(12)] interest or other charges on past due expenses;

(15) [(13)] property or income taxes;

(16) [(14)] insurance coverage or benefits payments, such as:

(A) life insurance;

(B) accidental insurance;

(C) death benefits;

(D) burial policies;

(E) funeral expenses; or

(F) home insurance coverage or deductibles;

(17) [(15)] any expenses related to having respite services or adaptive aids provided outside the provider's contracted service delivery area, including costs for transportation or lodging; or

(18) [(16)] respite services or adaptive aids provided to an individual outside the provider's contracted service delivery area during a period of more than 60 consecutive days.

§51.515. Record Keeping.

(a) A program provider must maintain records that demonstrate compliance with the requirements of this chapter.

(b) If a program provider delivers services that will be reimbursed by a third-party resource, the program provider must maintain records that specify the date and time those services were provided.

[(a) General record-keeping requirements. The provider must maintain records according to:]

[(1) Chapter 49 of this title (relating to Contracting for Community Care Services);]

[(2) Chapter 69 of this title (relating to Contract Administration); and]

[(3) the terms of the contract.]

[(b) Program-specific records.]

[(1) The provider must maintain records that demonstrate compliance with the requirements of this chapter.]

[(2) If a provider delivers services that will be reimbursed by a third-party resource, the provider's records must specify the date and time those services were delivered.]

[(c) Financial records. The provider must maintain financial records:]

[(1) to support billing for payment under §51.507 of this chapter (relating to Reimbursement);]

[(2) to document the receipt of the reimbursement. The documentation must include:]

[(A) the amount of the reimbursement;]

[(B) the voucher number;]

[(C) the warrant number;]

[(D) the date of receipt; and]

[(E) any other information necessary to trace deposits of reimbursements and payment made from the reimbursements in the provider's accounting system (if applicable); and]

[(3) in accordance with generally accepted accounting principles (GAAP) and DADS procedures. A provider's financial records must include the following, as applicable:]

[(A) deposit slips, bank statements, cancelled checks, and receipts;]

[(B) purchase orders;]

[(C) invoices;]

[(D) journals and ledgers;]

[(E) payroll and tax records;]

[(F) service delivery documentation;]

[(G) Internal Revenue Service and Department of Labor records and other government records and forms;]

[(H) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);]

[(I) equipment inventory records;]

[(J) records of the provider's internal accounting procedures;]

[(K) chart of accounts, as defined by GAAP; and]

[(L) records of the provider's company policies.]

[(d) Subcontractor records. The provider must maintain invoices, contracts, and service delivery records on all subcontractors. Maintenance of all records to support claims is the responsibility of the provider.]

[(e) Failure to maintain records. Failure to maintain records as required in this section may result in:]

[(1) corrective action plans;]

[(2) vendor hold as described in §49.61(b) of this title (relating to Sanctions); or]

[(3) other action that DADS deems necessary or appropriate.]

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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Lorri Haden

Acting General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

CHAPTER 52. CONTRACTING TO PROVIDE EMERGENCY RESPONSE SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§52.201, 52.501, and 52.503, concerning general contracting requirements; record keeping; and payment, in Chapter 52, Contracting to Provide Emergency Response Services.

BACKGROUND AND PURPOSE

The purpose of the amendments is to update rules in Chapter 52 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community based services, including emergency response services (ERS). Therefore, rules are being amended to remove provisions addressed in the proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §52.201 deletes the licensing requirement for an ERS provider because licensure requirements are included in proposed new Chapter 49. The amendment also deletes a requirement to comply with §49.13 and Chapter 69, Subchapter D because those provisions are proposed for repeal.

The proposed amendment to §52.501 deletes duplicative language regarding compliance with Chapter 49, Chapter 69, and the contract for general record keeping requirements. The amendment also deletes requirements related to maintenance of financial records and subcontractor records because those requirements are addressed in proposed new Chapter 49.

The proposed amendment to §52.503 deletes a requirement to bill DADS as described in §49.41 of this title (relating to Billings and Claims Payments) because that section is proposed for repeal and requirements related to claims for payment are addressed in proposed new Chapter 49.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is increased consistency in the rules governing community services; outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER B. CONTRACTING REQUIREMENTS

40 TAC §52.201

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§52.201. General Contracting Requirements.

(a) A provider must comply with [~~meet all provisions of~~] this chapter and Chapter 49 of this title (relating to Contracting for Community [~~Care~~] Services).

(b) A provider must:

[~~(1) be licensed:~~]

[~~(A) by the Public Security Bureau of the Texas Department of Public Safety as an alarm systems company; or~~]

[~~(B) by the Department of State Health Services as a personal emergency response system provider;~~]

(1) [~~(2)~~] have emergency monitoring capability 24 hours a day, seven days a week; and

(2) [~~(3)~~] be equipped to provide verifiable data using technology capable of producing a printed record of:

(A) the type of alarm code (test, accidental, or emergency);

(B) the unit subscriber number;

(C) the date; and

(D) the time of the activated alarm in seconds.

[~~(c) A provider must comply with §49.13 of this title (relating to General Contractual Requirements) and Chapter 69, Subchapter D of this title (relating to Subgrants and Subcontracts) if the provider chooses to subcontract any portion of ERS.~~]

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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Department of Aging and Disability Services
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SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §52.501, §52.503

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§52.501. Record Keeping.

[~~(a) General requirements. A provider must maintain records according to:~~]

[~~(1) Chapter 49 of this title (relating to Contracting for Community Care Services);~~]

[~~(2) Chapter 69 of this title (relating to Contract Administration); and~~]

[~~(3) the terms of the contract.~~]

[~~(b)~~] Individual's file. A provider must maintain the following information for each individual:

(1) the individual's name, telephone number, address, and medical condition;

(2) the name and telephone number of each responder;

(3) a record of all completed and attempted system checks;

(4) a record of each alarm call;

(5) a copy of all required notices sent to the case manager;

(6) a signed release for forcible entry;

(7) acknowledgement that the equipment belongs to the provider;

(8) if applicable, documentation showing approval for the continuation of service delivery; and

(9) if applicable, documentation showing that service delivery is suspended.

[(c) Financial records.]

[(1) A provider must maintain financial records in accordance with generally accepted accounting principles (GAAP) and DADS procedures:]

[(A) to support billing for payment; and]

[(B) to document payment by DADS. The documentation must include:]

[(i) the amount of payment;]

[(ii) the voucher number;]

[(iii) the warrant number;]

[(iv) the date of receipt; and]

[(v) sufficient direct deposit information to trace deposits through the provider's accounting system.]

[(2) A provider's financial records must include:]

[(A) deposit slips, bank statements, cancelled checks, program income and individual fee ledgers, donation ledgers, and receipts;]

[(B) purchase orders;]

[(C) invoices, statements, and delivery receipts;]

[(D) journals, ledgers, and other books of account and other supporting documentation;]

[(E) payroll and tax records;]

[(F) inventory records for supplies;]

[(G) service delivery documentation;]

[(H) Internal Revenue Service, Department of Labor, and other government records and forms;]

[(I) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);]

[(J) equipment inventory records;]

[(K) the provider's internal accounting procedures;]

[(L) chart of accounts, as defined by GAAP; and]

[(M) company policies and procedures.]

[(d) Subcontractor records. A provider must maintain invoices, contracts, and service delivery records for a subcontractor who contracts with the provider to provide ERS.]

§52.503. Payment.

[(a) Billing requirements. A provider must bill DADS for ERS provided as described in §49.41 of this title (relating to Billings and Claims Payment).]

(a) [(b)] Unit rate ceiling. A provider must agree to accept and DADS pays only the unit rate ceiling established by the Health and Human Services Commission.

(b) [(c)] Documentation. The provider must maintain the documentation described in this chapter to be eligible for payment.

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 55. CONTRACTING TO PROVIDE HOME-DELIVERED MEALS

40 TAC §55.5, §55.39

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §55.5, concerning contracting requirements for provider agencies, and §55.39, concerning recordkeeping, in Chapter 55, Contracting to Provide Home-Delivered Meals.

BACKGROUND AND PURPOSE

The purpose of the amendments is to update rules in Chapter 55 in conjunction with new Chapter 49, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including home-delivered meals. Therefore, the rules are being amended to remove provisions addressed in proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §55.5 changes the reference to Chapter 49 to reflect the title of the proposed new chapter, deletes unnecessary headings, and changes agency references from "DHS" to "DADS."

The proposed amendment to §55.39 deletes record keeping requirements because they are addressed in proposed new Chapter 49.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments do not impose new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§55.5. Contracting Requirements for Provider Agencies.

(a) [Eligibility requirements.] A provider agency must comply with [meet the provisions contained in] Chapter 49 of this title (relating to Contracting for Community [Care] Services).

(b) [Reporting requirements for the United States Department of Agriculture (USDA) incentive program.] A provider agency and its subcontractors must comply with reporting requirements for the USDA incentive program.

(1) The reporting requirements of the USDA incentive program are provided annually through a DADS [Texas Department of Human Services (DHS)] memo to contracted agencies.

(2) A provider agency must maintain documentation of all eligible meals delivered under the USDA incentive program according to the terms of the contract.

(3) This subsection [requirement] does not apply to Title XIX (Medicaid) funded home-delivered meals contracts.

(c) [Additional commitments.] A provider agency that wants to contract with DADS [DHS] to provide home-delivered meals must agree to provide services:

(1) for a specific number of service days, with a minimum of five meals per week;

(2) within specific geographic service areas established in the contract;

(3) to all eligible clients in a service area unless services are suspended or unless the provider agency is unable to provide a certain therapeutic medical diet; and

(4) for the reimbursement rate that DADS [DHS] negotiates with the provider agency on an annual basis. This negotiated rate must be within the DADS [DHS] unit rate ceiling then in effect.

§55.39. Recordkeeping.

[(a) A provider agency must maintain records according to Chapter 49 of this title (relating to Contracting for Community Care Services) and according to the terms of the contract.]

[(b) The provider agency must maintain financial records:]

[(1) to support its billings to the Texas Department of Human Services (DHS) for payment under §55.41 of this chapter (relating to Billing and Claims Payment);]

[(2) to support the source and application of other funding, such as Title III meals program;]

[(3) to document reimbursements made by DHS. The documentation must include:]

[(A) amount of reimbursement;]

[(B) voucher number;]

[(C) warrant number;]

[(D) date of receipt; and]

[(E) any other information necessary to trace deposits of reimbursements and payments made from the reimbursements in the provider agency's accounting system; and]

[(4) in accordance with generally accepted accounting principles (GAAP) and DHS procedures. A provider agency's financial records must include the following:]

[(A) deposit slips, bank statements, cancelled checks, and receipts;]

[(B) purchase orders;]

[(C) invoices;]

[(D) journals and ledgers;]

[(E) timesheets, payroll, and tax records;]

[(F) inventory records for food and other supplies;]

[(G) Internal Revenue Service and Department of Labor and other government records and forms;]

[(H) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);]

[~~(I) equipment inventory records;~~]

[~~(J) records of the provider agency's internal accounting procedures;~~]

[~~(K) chart of accounts, as defined by GAAP; and~~]

[~~(L) records of company policies.~~]

[~~(5) If a provider agency utilizes a subcontractor, the provider agency must maintain records of the subcontractor's activity. Maintaining records to support subcontractor claims is the responsibility of the provider agency.~~]

[~~(c)~~] A provider agency must maintain a record of names of employees and volunteers who deliver meals.

[~~(d) A provider agency must retain all service delivery records, including financial records, according to the terms of the contract.~~]

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 April 4, 2014.

TRD-201401579
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

CHAPTER 58. CONTRACTING TO PROVIDE SPECIAL SERVICES TO PERSONS WITH DISABILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §58.11, concerning what general contract requirements must the provider agency follow, and the repeal of §58.131, concerning what are the recordkeeping requirements for the SSPD Program, and §58.137, concerning what must the provider agency do to get paid by DHS, in Chapter 58, Contracting to Provide Special Services to Persons with Disabilities.

BACKGROUND AND PURPOSE

The purpose of the amendment and repeal is to update and delete rules in Chapter 58 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community based services, including special services to persons with disabilities. Therefore, the rules are being amended and repealed to remove provisions addressed in the new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §58.11 updates the requirement to comply with Chapter 49 to reflect the title of proposed new Chapter 49.

The proposed repeal of §58.131 deletes provisions regarding record keeping because the subject is addressed in proposed new Chapter 49.

The proposed repeal of §58.137 deletes provisions regarding contractor billing because the subject is addressed in proposed new Chapter 49.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment and repeal are in effect, enforcing or administering the amendment and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and repeal will not have an adverse economic effect on small businesses or micro-businesses because the amendment and repeal do not impose new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendment and repeal are in effect, the public benefit expected as a result of enforcing the amendment and repeal is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendment and repeal. The amendment and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER B. PROVIDER AGENCY CONTRACTS

40 TAC §58.11

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§58.11. What general contract requirements must the provider agency follow?

The provider agency must:

(1) comply with [~~meet all provisions described in~~] Chapter 49 of this title (relating to Contracting for Community [~~Care~~] Services);

(2) deliver services under the appropriate license for the setting in which the provider agency will deliver SSPD services; and

(3) comply with the plan of operation, which is incorporated in the contract by reference.

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 April 4, 2014.

TRD-201401580
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

SUBCHAPTER I. CLAIMS PAYMENT AND DOCUMENTATION REQUIREMENTS

40 TAC §58.131, §58.137

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§58.131. What are the recordkeeping requirements for the SSPD Program?

§58.137. What must the provider agency do to get paid by DHS?

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 April 4, 2014.

TRD-201401581
Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 18, 2014
For further information, please call: (512) 438-3734

CHAPTER 62. CONTRACTING TO PROVIDE TRANSITION ASSISTANCE SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §62.11, concerning contracting requirements and §62.41, concerning record keeping; and the repeal of §62.43, concerning reimbursement, in Chapter 62, Contracting to Provide Transition Assistance Services.

BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to update and delete rules in Chapter 62 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register*. Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including transition assistance services. Therefore, the rules are being amended and repealed to remove provisions addressed in proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §62.11 updates the reference to Chapter 49 to reflect the title of the proposed new Chapter 49. The proposed amendment deletes the requirement that a provider be a Center for Independent Living, have a current community care contract, or be currently designated as a Texas Area Agency on Aging because the requirements for obtaining and maintaining a contract are addressed in proposed new Chapter 49.

The proposed amendment to §62.41 deletes the requirements to keep records as required in Chapter 49 for the period described in §69.205 of this title (relating to Contractor's Records) because that section is proposed for repeal and proposed new Chapter 49 addresses record keeping. The proposed amendment clarifies

that service delivery documentation includes purchase receipts, and that such documentation must be kept in the client file.

The proposed repeal of §62.43 deletes provisions regarding reimbursement because that subject is addressed in the proposed new Chapter 49.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the amendments and repeal do not impose new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us*. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

SUBCHAPTER B. PROVIDER AGENCY REQUIREMENTS

40 TAC §62.11

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§62.11. Contracting Requirements.

[~~(a)~~] General contracting requirements. A TAS [~~The~~] provider agency must comply with [~~meet all provisions described in~~] this chapter and Chapter 49 of this title (relating to Contracting for Community [~~Care~~] Services).

[~~(b) Provider agency requirements. The provider agency must:~~]

[~~(1) be a Center for Independent Living as defined by the Rehabilitation Act of 1973, as amended; or~~]

[~~(2) have a current Community Care contract; or~~]

[~~(3) be currently designated as a Texas Area Agency on Aging.~~]

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 April 4, 2014.

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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

SUBCHAPTER E. CLAIM PAYMENTS AND DOCUMENTATION

40 TAC §62.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§62.41. Record Keeping.

[~~(a) The provider agency must maintain the documentation described in Chapter 49 of this title (relating to Contracting for Community Care Services).~~]

[~~(b) The provider agency must retain records for the time periods described in §69.205 of this title (relating to Contractor's Records).~~]

[~~(c)~~] The provider agency must maintain service delivery documentation in the client file that includes [~~contains~~] the:

(1) name of the client;

(2) client Medicaid number;

(3) month of service delivery;

(4) provider agency name and contract [~~vendor~~] number;

(5) service description;

(6) date services were purchased;

(7) date services were delivered;

(8) total dollar amount of the purchase, including taxes and delivery fees; [~~and~~]

(9) purchase receipts; and

(10) [~~(9)~~] dated signature of the employee(s) who provided services.

[~~(d) The provider agency must maintain service delivery documentation and purchase receipts in the client file.~~]

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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40 TAC §62.43

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§62.43. Reimbursement.

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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CHAPTER 69. CONTRACT ADMINISTRATION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 69, consisting of §§69.1 - 69.4, 69.11 - 69.19, 69.31 - 69.40, 69.51 - 69.55, 69.71 - 69.73, 69.81, 69.91 - 69.93, 69.101 - 69.103, 69.111 - 69.118, 69.131 - 69.139, 69.151 - 69.160, and 69.171 - 69.186, concerning Contract Administration.

BACKGROUND AND PURPOSE

The purpose of the proposed repeal is to remove Chapter 69, Contract Administration, from the DADS rule base. The rules in Chapter 69 will no longer be needed because new Chapter 49, concerning Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register* will govern contracts for community services. Contracts are also governed by applicable statutes, as well as rules of the Texas Health and Human Services Commission in 1 TAC Chapter 391, making the rules in Chapter 69 unnecessary.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §69.1 deletes rules regarding the purpose of Chapter 69.

The proposed repeal of §69.2 deletes rules regarding the process of contract administration.

The proposed repeal of §69.3 deletes definitions of terms used in Chapter 69.

The proposed repeal of §69.4 deletes rules regarding how agency staff handles written inquiries from contractors.

The proposed repeal of §69.11 deletes rules regarding the meaning of competition in relation to the solicitation of bids for a contract.

The proposed repeal of §69.12 deletes rules regarding the extent to which the agency uses competition in awarding vendor purchases and subgrants.

The proposed repeal of §69.13 deletes rules regarding the meaning of open enrollment.

The proposed repeal of §69.14 deletes rules regarding how a contractor would know if it is in its best interest to enter into an open enrollment contract.

The proposed repeal of §69.15 deletes rules regarding historically underutilized businesses.

The proposed repeal of §69.16 deletes rules regarding contracts with charitable and religious organizations.

The proposed repeal of §69.17 deletes rules regarding the characteristics of an agency solicitation package.

The proposed repeal of §69.18 deletes rules regarding whether the agency must make an award if it posts a solicitation.

The proposed repeal of §69.19 deletes rules regarding how bidders and offerors are made aware of an award.

The proposed repeal of §69.31 deletes rules regarding the kinds of agency awards that can and cannot be protested.

The proposed repeal of §69.32 deletes rules regarding who can request a procurement protest review.

The proposed repeal of §69.33 deletes rules regarding how the public is made aware of when the agency makes a sole source or emergency award.

The proposed repeal of §69.34 deletes rules regarding limits to what can be protested.

The proposed repeal of §69.35 deletes rules regarding how a protestor can obtain copies of protest policies and procedures.

The proposed repeal of §69.36 deletes rules regarding how a protestor can request a review.

The proposed repeal of §69.37 deletes rules regarding whether protest proceedings are formal.

The proposed repeal of §69.38 deletes rules regarding how protest reviews are conducted.

The proposed repeal of §69.39 deletes rules regarding what happens to a contract if a protest is filed.

The proposed repeal of §69.40 deletes rules regarding administrative recourse for a dissatisfied protestor.

The proposed repeal of §69.51 deletes rules regarding whether an agency contractor can carry out its contract by entering into subgrants or subcontracts.

The proposed repeal of §69.52 deletes rules regarding what the agency considers when deciding whether to approve a subgrant or subcontract.

The proposed repeal of §69.53 deletes rules regarding the format that the agency uses to give approval.

The proposed repeal of §69.54 deletes rules regarding the potential consequences of failing to obtain prior approval.

The proposed repeal of §69.55 deletes rules regarding the specific provisions that are required when a contractor enters into subgrants and subcontracts.

The proposed repeal of §69.71 deletes rules regarding how the agency determines which costs are allowable.

The proposed repeal of §69.72 deletes rules regarding whether a contractor must refer only to federal regulations to determine allowable costs.

The proposed repeal of §69.73 deletes rules regarding whether the agency can pay for costs that are not necessary during a contractor's contract period.

The proposed repeal of §69.81 deletes rules regarding what the agency considers when deciding to renew or reduce a subrecipient's block grant funds.

The proposed repeal of §69.91 deletes rules regarding renewal of a contract.

The proposed repeal of §69.92 deletes rules regarding whether renewal is automatic if a contract contains a renewal clause.

The proposed repeal of §69.93 deletes rules regarding what occurs if a contract is terminated.

The proposed repeal of §69.101 deletes rules regarding actions that the agency can take against a contractor in the event of a dispute.

The proposed repeal of §69.102 deletes rules regarding recourse that a contractor has if the contractor does not agree with an action that the agency takes against it.

The proposed repeal of §69.103 deletes rules regarding whether the agency will resolve a grievance that arises between a contractor and a subrecipient or subcontractor.

The proposed repeal of §69.111 deletes rules regarding whether a contractor is subject to audit and contract review.

The proposed repeal of §69.112 deletes rules regarding a contractor's obligations during a review or an audit.

The proposed repeal of §69.113 deletes rules regarding whether review and audit procedures include the use of sampling and extrapolation.

The proposed repeal of §69.114 deletes rules regarding how sampling and extrapolation are used in an audit.

The proposed repeal of §69.115 deletes rules regarding how the agency determines an extrapolated improper payment.

The proposed repeal of §69.116 deletes rules regarding which contractors are required to have single audits.

The proposed repeal of §69.117 deletes rules regarding whether the agency helps pay the costs of a subrecipient's single audit.

The proposed repeal of §69.118 deletes rules regarding the special audit requirements for block grant subrecipients.

The proposed repeal of §69.131 deletes rules regarding how the agency recovers improper payments to a contractor.

The proposed repeal of §69.132 deletes rules regarding the meaning of recoupment and restitution.

The proposed repeal of §69.133 deletes rules regarding how improper billing or accounting practices are determined.

The proposed repeal of §69.134 deletes rules regarding how the agency notifies a contractor when discrepancies are found.

The proposed repeal of §69.135 deletes rules regarding the recourse that a contractor has if it disagrees with review or audit findings.

The proposed repeal of §69.136 deletes rules regarding whether a contractor has to pay for additional audit work.

The proposed repeal of §69.137 deletes rules regarding whether the agency charges interest on outstanding balances on unpaid debts.

The proposed repeal of §69.138 deletes rules regarding how long a contractor has to make payment before interest begins to accrue.

The proposed repeal of §69.139 deletes rules regarding whether the agency charges interest during an administrative appeal.

The proposed repeal of §69.151 deletes rules regarding whether the agency can release applicant and client information to a contractor.

The proposed repeal of §69.152 deletes rules regarding prohibitions on a contractor's use of information about people who apply for or receive assistance from the agency.

The proposed repeal of §69.153 deletes rules regarding the circumstances under which information about people who apply for or receive assistance can be released to other entities.

The proposed repeal of §69.154 deletes rules regarding a contractor's responsibility for the security of information about people who apply for or receive assistance.

The proposed repeal of §69.155 deletes rules regarding whether the state and federal governments have a right to access a contractor's, subrecipient's, or subcontractor's records.

The proposed repeal of §69.156 deletes rules regarding what state and federal authorities can do with the records of a contractor, subrecipient, or subcontractor.

The proposed repeal of §69.157 deletes rules regarding which contractor records must be accessible.

The proposed repeal of §69.158 deletes rules regarding how long contractors, subrecipients, and subcontractors must keep contract-related records.

The proposed repeal of §69.159 deletes rules regarding what must happen to contract-related records upon termination of business operations.

The proposed repeal of §69.160 deletes rules regarding the need for contracts with subrecipients and subcontractors to require compliance with Chapter 69.

The proposed repeal of §69.171 deletes rules regarding debarment and suspension.

The proposed repeal of §69.172 deletes definitions of terms used in Chapter 69, Subchapter L.

The proposed repeal of §69.173 deletes rules regarding the types of contracts that debarment and suspension apply to.

The proposed repeal of §69.174 deletes rules regarding whom the agency may debar or suspend.

The proposed repeal of §69.175 deletes rules regarding whether every contract violation results in debarment or suspension.

The proposed repeal of §69.176 deletes rules regarding the reasons for debarring an individual or entity.

The proposed repeal of §69.177 deletes rules regarding what is considered failure to perform or unsatisfactory performance.

The proposed repeal of §69.178 deletes rules regarding whether a contractor can employ or subcontract with a debarred individual or entity.

The proposed repeal of §69.179 deletes rules regarding the effect of debarment on a contractor or potential contractor.

The proposed repeal of §69.180 deletes rules regarding when the agency can suspend a contractor.

The proposed repeal of §69.181 deletes rules regarding what happens during suspension.

The proposed repeal of §69.182 deletes rules regarding what happens if a contractor is able to correct problems that led to suspension.

The proposed repeal of §69.183 deletes rules regarding what happens if a contractor is not able to correct problems leading to suspension.

The proposed repeal of §69.184 deletes rules regarding what amounts to sufficient evidence to establish debarment or suspension.

The proposed repeal of §69.185 deletes rules regarding the appeal rights of debarred or suspended parties.

The proposed repeal of §69.186 deletes rules regarding what must be included in the notices of suspension and debarment.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for each year of the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because compliance with Chapter 69 will no longer be necessary.

PUBLIC BENEFIT AND COSTS

Lynn Blackmore, DADS Chief Operating Officer, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the chapter is to delete rules that will no longer be necessary.

Mr. Blackmore anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R22, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R22" in the subject line.

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §§69.1 - 69.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.1. What is the purpose of this chapter?

§69.2. What is contract administration?

§69.3. What do certain words and terms in this chapter mean?

§69.4. How does DHS handle written inquiries from contractors?

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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Lorri Haden
Acting General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4466

SUBCHAPTER B. PURCHASE OF GOODS AND SERVICES AND AWARD OF SUBGRANTS

40 TAC §§69.11 - 69.19

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

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The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.11. What is competition?

§69.12. To what extent does DHS use competition in awarding vendor purchases and subgrants?

§69.13. What is open enrollment?

§69.14. How does a potential contractor know if it is in its best interest to enter an open enrollment contract?

§69.15. Does DHS recognize historically underutilized businesses (HUBs)?

§69.16. Does DHS recognize charities and religious organizations?

§69.17. What are the characteristics of a DHS solicitation package?

§69.18. Does DHS have to make an award if it posts a solicitation?

§69.19. How will bidders and offerors know about awards?

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 C. PROCUREMENT PROTESTS

40 TAC §§69.31 - 69.40

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

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The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.31. Can DHS's award decisions be protested?

§69.32. Who can request a procurement protest review?

§69.33. How does the public know when DHS makes a sole source or emergency award?

§69.34. Are there limits to what may be protested?

§69.35. How does a protestor get copies of applicable protest policies and procedures?

§69.36. How must a protestor request a review?

§69.37. Are the protest proceedings formal?

§69.38. How is a protest review conducted?

§69.39. What happens to the contract if a protest is filed?

§69.40. If a protestor is dissatisfied with the results of the review, is there any other administrative remedy?

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 D. SUBGRANTS AND SUBCONTRACTS

40 TAC §§69.51 - 69.55

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.51. Can a DHS contractor carry out its contract by entering into subgrants or subcontracts?

§69.52. What does DHS consider when deciding whether to approve a subgrant or subcontract?

§69.53. In what format does DHS give approval?

§69.54. If prior approval is not obtained, what are the potential consequences?

§69.55. Must subgrants and subcontracts contain any specific provisions?

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

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SUBCHAPTER E. COST PRINCIPLES

40 TAC §§69.71 - 69.73

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall

study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.71. How does DHS determine which costs are allowable?

§69.72. Must a contractor refer only to federal regulations to determine allowable costs?

§69.73. Can DHS pay for costs that fall outside a contractor's contract 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.

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SUBCHAPTER F. NONRENEWAL OR REDUCTION OF BLOCK GRANT FUNDS

40 TAC §69.81

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.81. What does DHS consider when deciding whether to renew or reduce a subrecipient's block grant funds?

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 G. CONTRACT RENEWAL AND TERMINATION

40 TAC §§69.91 - 69.93

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

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The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.91. What is renewal?

§69.92. Is renewal automatic if a contract contains a renewal clause?

§69.93. What happens if a contract is terminated?

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

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SUBCHAPTER H. DISPUTES

40 TAC §§69.101 - 69.103

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

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The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.101. What action may DHS take against a contractor in the case of a dispute?

§69.102. If a contractor does not agree with an action that DHS takes against it, what recourse does the contractor have?

§69.103. If a contractor and its subrecipient or subcontractor have a grievance that they cannot settle, can they turn to DHS to resolve the grievance?

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 I. AUDITS

40 TAC §§69.111 - 69.118

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

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The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.111. Is a contractor subject to audit and contract review?

§69.112. What are a contractor's obligations during a review or audit?

§69.113. May DHS's review and audit procedures include the use of sampling and extrapolation?

§69.114. How are sampling and extrapolation used in a review or audit?

§69.115. How does DHS determine an extrapolated improper payment?

§69.116. Which contractors are required to have single audits?

§69.117. Does DHS help pay the costs of a subrecipient's single audit?

§69.118. Are there special audit requirements for block grant subrecipients?

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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Lorri Haden
Acting General Counsel
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SUBCHAPTER J. RECOVERY OF IMPROPER PAYMENTS

40 TAC §§69.131 - 69.139

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

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governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.131. How does DHS recover improper payments to a contractor?

§69.132. What are recoupment and restitution?

§69.133. How are improper billing or accounting practices determined?

§69.134. How does DHS notify a contractor when discrepancies are found?

§69.135. What recourse does a contractor have if it disagrees with review or audit findings?

§69.136. Does the contractor have to pay for additional audit work?

§69.137. Can DHS charge interest on outstanding balances on unpaid debts?

§69.138. How long does a contractor have to make payment before interest begins to accrue?

§69.139. If a contractor files an appeal, does DHS charge interest while the appeal is resolved?

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

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SUBCHAPTER K. INFORMATION AND RECORDS

40 TAC §§69.151 - 69.160

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

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The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.151. Can DHS release applicant and client information to a contractor?

§69.152. Is there any prohibition on a contractor's use of information about people who apply for or receive assistance from DHS?

§69.153. Under what circumstances can information about people who apply for or receive assistance be released to other entities?

§69.154. Does a contractor have responsibility for the security of information about people who apply for or receive assistance?

§69.155. Do state and federal governments have a right to access a contractor's, subrecipient's, or subcontractor's records?

§69.156. What may state and federal authorities and their duly authorized representatives do with the records?

§69.157. What contractor records need to be accessible?

§69.158. How long must contractors, subrecipients, and subcontractors keep contract-related records?

§69.159. What must happen to contract-related records upon termination of business operations?

§69.160. Must the requirements of this subchapter appear in contracts with subrecipients and subcontractors?

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 L. DEBARMENT AND SUSPENSION

40 TAC §§69.171 - 69.186

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

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operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§69.171. What is the purpose of debarment and suspension?

§69.172. What do certain words and terms in this subchapter mean?

§69.173. Do debarment and suspension apply to all types of contracts?

§69.174. Whom may DHS debar or suspend?

§69.175. Does every contract violation result in debarment or suspension?

§69.176. What are the reasons for debarring an individual or entity?

§69.177. What is considered failure to perform or unsatisfactory performance?

§69.178. Can a contractor employ or subcontract with a debarred individual or entity?

§69.179. What is the effect of debarment on the contractor or potential contractor?

§69.180. When can DHS suspend a contractor?

§69.181. What happens during suspension?

§69.182. What happens if the contractor is able to correct the problems that led to the suspension?

§69.183. What happens if the contractor is not able to correct the problems that led to the suspension?

§69.184. What is sufficient evidence to establish debarment or suspension?

§69.185. Are there appeal rights for debarred or suspended parties?

§69.186. What must be included in the notices of suspension and debarment?

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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Lorri Haden

Acting General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466

CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER H. DAY ACTIVITY AND HEALTH SERVICES (DAHS) CONTRACTUAL REQUIREMENTS

40 TAC §§98.202, 98.210, 98.212

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§98.202, 98.210, and 98.212, concerning program overview; administrative errors and corrections; and sanctions, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements.

BACKGROUND AND PURPOSE

The purpose of the amendments is to update rules in Chapter 98 in conjunction with new Chapter 49, Contracting for Community Services, proposed elsewhere in this issue of the *Texas Register.* Proposed new Chapter 49 establishes a comprehensive rule base for contractors of community-based services, including day activity and health services. Therefore, the rules are being amended to update language and delete provisions addressed in proposed new Chapter 49.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §98.202 improves the structure of the section and clarifies the provider must comply with proposed new Chapter 49, rather than certain sections in Chapter 49. The proposed amendment also deletes the provision allowing DADS to deny a DAHS contract if it is not in the best interest of DADS. Denial of contract applications by DADS is addressed in the proposed new Chapter 49.

The proposed amendment to §98.210 changes the title of the section to "Financial Errors" rather than "Administrative Errors and Corrections" and deletes provisions regarding administrative errors because contract monitoring is addressed in the proposed new Chapter 49. The provisions regarding financial errors that are specific to DAHS have not been deleted. The proposed amendment also replaces "client" with "individual" and "caseworker" with "case manager" to reflect current terminology.

The proposed amendment to §98.212 deletes subsection (a), which allows DADS to sanction a DAHS facility, because sanctions are addressed in proposed new Chapter 49.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments do not impose any new requirements.

PUBLIC BENEFIT AND COSTS

Elisa Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is increased consistency in the rules governing community services, outdated rules will be replaced with current ones, and DADS will have the ability to better ensure that it contracts with qualified and competent service providers, which will promote higher quality in service delivery.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kathie Carleton-Morales at (512) 438-5046 in DADS Contract Oversight and Support. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-8R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 8R031" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§98.202. Program Overview.

[~~(a)~~] A DAHS facility must:

(1) contract with DADS to provide DAHS [~~day activity and health services (DAHS)~~];

(2) provide services at least 10 continuous hours each day, five days a week (Monday through Friday), except for published holidays;

(3) serve eligible clients, unless a DAHS facility is at licensed capacity;

(4) participate in the Child and Adult Care Food Program (CACFP);[~~. The DAHS facility must~~]

(5) submit documentation of participation in the CACFP to DADS consisting[~~. Documentation consists~~] of a copy of the CACFP agreement or a copy of the approval letter for participation in the CACFP, or both;

(6) [~~(5)~~] advise the individual of the individual's [~~his~~] rights in a language the individual [~~he~~] understands, [~~and~~] provide the individual [~~him~~] with a signed copy, and[~~. The DAHS facility must~~] maintain the original in the record; and

(7) [~~(6)~~] comply with Chapter 49 [~~complaint procedures in community services generic contracting rules §49.18(a)(4) and §49.18(b)-(c)~~] of this title (relating to Contracting for Community Services) [~~Client Rights and Responsibilities), and §49.17 of this title (relating to Complaint Procedures)~~].

[~~(b) DADS reserves the right to deny any DAHS facility a contract if it is not in the best interest of DADS.~~]

§98.210. Financial [~~Administrative~~] Errors [~~and Corrections~~].

[~~(a) Administrative errors include the following:~~]

[~~(1) The DAHS facility enters a date of signature on DADS' Daily Attendance Record form that is before the date of the last day services are provided. DADS applies the error to the total number of units reimbursed after the signature date.~~]

[~~(2) The DAHS facility fails to sign DADS' Daily Attendance Record form and the signature can be verified on DADS' Daily Transportation Record form. DADS applies the error to the total number of units reimbursed on the unsigned form.~~]

[~~(3) The DAHS facility fails to list the client on DADS' Daily Attendance Record form, but the client was listed on DADS' Daily Transportation Record form. DADS applies the error to the total number of units reimbursed for the period the client was left off the attendance record form.~~]

[~~(4) The DAHS facility completes the total units of service column and leaves the time in and time out columns blank on DADS' Daily Attendance Record form, but the time in and time out can be verified on DADS' Daily Transportation Record form. DADS applies the error to the total number of units reimbursed in which the time in time out days were left blank.~~]

[~~(5) The DAHS facility leaves the days of service blank on DADS' Daily Attendance Record form, but the days of service can be verified elsewhere on the form or on DADS' Daily Transportation Record form. DADS applies the error to the total number of units reimbursed for the days left blank.~~]

[~~(6) The DAHS facility fails to enter a date of signature on DADS' Daily Attendance Record form to certify total number of units provided to the client. DADS applies the error to the total number of units reimbursed on the undated form.~~]

[~~(7) The DAHS facility corrects the date of signature on DADS' Daily Attendance Record form, but fails to initial the correction. DADS applies the error to the number of units reimbursed after the earliest signature date.~~]

[~~(8) The DAHS facility uses a signature stamp, but fails to initial the stamped signature. DADS applies the error to the total number of units reimbursed on the signature stamped form.~~]

[~~(9) The DAHS facility makes an illegible entry or illegible correction to any portion of record of time of DADS' Daily Attendance or Daily Transportation Record form. DADS applies the error to the total number of units reimbursed for the days in which entries are illegible.~~]

[~~(10) The DAHS facility completes DADS' Daily Attendance or Daily Transportation Record form in pencil. DADS applies the error to the total number of units reimbursed that were completed in pencil.~~]

[~~(11) The DAHS facility uses liquid paper or correction fluid to correct an entry in DADS' Daily Attendance or Daily Trans-~~

~~portation Record form. DADS applies the error to the total number of units reimbursed that were corrected for the billing period.~~]

(a) [~~(b)~~] In the absence of acceptable secondary documentation, financial errors include the errors described in this section. [~~specified in paragraphs (1) - (3) of this subsection.~~]

(1) The DAHS facility is reimbursed for services, but DADS' Daily Attendance and Daily Transportation Record form is missing for the period for which services are reimbursed. DADS applies the error to the total number of units reimbursed for the billing period.

(2) The DAHS facility is reimbursed for units that exceed the units recorded on DADS' Daily Attendance and Daily Transportation Record form. DADS applies the error to the total number of units reimbursed in excess of the units recorded.

(3) The DAHS facility is reimbursed for units of service and the client did not receive services or was Medicaid ineligible (not applicable to Title XX clients). DADS applies the error to the total number of units reimbursed for the days the client did not receive services or was Medicaid ineligible.

(b) [~~(c)~~] Corrections of critical omissions or errors in DAHS facility documentation must be postmarked or date stamped as received by DADS within 14 days after the regional nurse mails DADS [~~DADS'~~] Notification of Critical Omissions/Errors in Required Documentation form to the DAHS facility. If the DAHS facility fails to meet this time frame;

(1) the date of prior approval can be no earlier than the postmark or DADS-stamped date on the corrected documentation; or[~~,~~]

(2) DADS may refer the individual [~~client~~] to another DAHS facility of the individual's [~~client's~~] choice.

(A) If there is space in another DAHS facility, the regional nurse notifies the case manager [~~caseworker~~] by the next workday to give the individual [~~client~~] or individual's [~~client's~~] family/representative the option to be referred to another DAHS facility.

(B) The case manager [~~caseworker~~] will contact the individual [~~client~~] within three workdays after being notified by the regional nurse and refer [~~refers~~] the individual [~~client~~] to another DAHS facility, if the individual [~~client~~] or the individual's [~~client's~~] family/representative prefers this option.

[~~(d) An exception of 12% of the paid unit rate is the administrative portion applied to the unit of service.~~]

§98.212. Sanctions.

[~~(a) A DAHS facility may be sanctioned under §49.11(d) of this title (relating to Contracting Requirements) for failing to follow the terms of the DAHS facility contract, or failure to comply with program rules, policies, and procedures, or both.~~]

[~~(b)~~] DADS may [~~can~~] deny and recoup funds from a DAHS facility for the days it exceeded its licensed capacity. The amount denied or recouped is two units of service (regardless of the number of units actually provided) for every individual (client, applicant, private pay, etc.) that exceeded the DAHS facility license capacity.

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 April 4, 2014.

TRD-201401585

Lorri Haden

Acting General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2014

For further information, please call: (512) 438-3734

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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 §355.8066

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8066, concerning Hospital-Specific Limit Methodology, with changes to the proposed text as published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 822). The text of the rule will be republished.

Background and Justification

The hospital-specific limit (HSL) is the maximum payment amount that a hospital may receive in reimbursement for the uncompensated cost of providing Medicaid-allowable services to individuals who are Medicaid-enrolled or uninsured. Section 355.8066 describes the methodology used to calculate the HSL for each Medicaid hospital participating in either the Disproportionate Share Hospital (DSH) program, described in §355.8065, or in the Uncompensated Care (UC) program under the Texas Healthcare Transformation and Quality Improvement Program, described in §355.8201.

As part of the state-federal partnership in administering the Medicaid program, the Centers for Medicare and Medicaid Services (CMS) issues guidance in the form of letters to State Medicaid Directors, Informational Bulletins, and Frequently Asked Questions to communicate with states and other stakeholders regarding operational issues related to Medicaid. CMS guidance, contained in a document entitled "Additional Information on the DSH Reporting and Audit Requirements" (http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Downloads/AdditionalInformationontheDSHReporting.pdf), directs states to offset both Medicaid and third-party revenue associated with a Medicaid-eligible day against costs in the calculation of the HSL. In compliance with CMS direction, HHSC began offsetting third-party revenue associated with a Medicaid-eligible day when calculating a hospital's HSL in federal fiscal year 2011.

In 2012, some hospitals negatively impacted by the revised methodology initiated efforts to reverse CMS' position on the treatment of third-party payments in the HSL calculation or to minimize the negative impact to their DSH payments. In 2013, the Legislature enacted Senate Bill (S.B.) 7, 83rd Legislature, Regular Session, 2013, which amended the Human Resources Code by adding §32.0284: "(f)or purposes of calculating the hospital-specific limit used to determine a hospital's uncompensated care payment under a supplemental hospital payment program, the commission shall ensure that to the extent a third-party commercial payment exceeds the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment." The Legislature determined that a change in state law was necessary because state law did not already authorize HHSC to exclude third-party commercial payments in the HSL calculation.

S.B. 7 also included the following instruction: "(i)f before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted." Through this language, the Legislature authorized HHSC to determine whether federal approval of the bill's limitation on the use of third-party commercial payments in the HSL calculation is necessary. S.B. 7 was effective September 1, 2013.

The methodology described in §32.0284 of the Human Resources Code is inconsistent with the guidance provided by CMS in the document entitled "Additional Information on the DSH Reporting and Audit Requirements." For that reason, HHSC determined that in order to ensure that federal matching funds will continue to be available for payments to hospitals participating in the DSH and UC programs, it is necessary to obtain federal approval to implement the methodology.

On January 13, 2014, HHSC submitted a State Plan amendment (SPA) to CMS requesting authorization for this change in the calculation of HSLs. Under the Social Security Act, CMS has 90 days to consider and approve or disapprove a SPA; if CMS does not act by the 90th day, the SPA is automatically approved. CMS has yet to approve or disapprove the January 13, 2014, SPA.

In order to ensure that the change in state law enacted in S.B. 7 can be implemented, HHSC must also amend its administrative rules to conform to that change. For that reason, HHSC is amending §355.8066 by adding subsection (c)(1)(B)(i)(III) to indicate that, contingent upon the approval of a corresponding Medicaid SPA by CMS, to the extent that third-party commercial payment exceeds the Medicaid allowable cost of a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment for purposes of calculat-

ing the HSL. The amended rule describes an alternate methodology in the event the SPA is not approved by CMS. If the SPA is not approved, HHSC intends to implement the methodology in a manner consistent with the CMS guidance, which is that the full amount of the third-party commercial payment will be considered a medical assistance payment and will be included in the HSL calculation.

By including both methodologies in the adopted rule - the methodology described in §32.0284 and the methodology currently directed by CMS - HHSC intends to minimize any delay in payment of DSH and UC funds that might otherwise result if CMS disapproves the SPA.

Comments

HHSC conducted a public hearing to receive comment on the proposed amendment to §355.8066. HHSC also received written comments on the proposed amendment. Oral and written comments were received from the following entities (listed in alphabetical order):

Doctors Hospital at Renaissance

Texas Hospital Association

Summaries of the comments and HHSC's responses to the comments follow.

Comment: Concerning §355.8066(b)(19), a commenter indicated that HHSC should amend the proposed language upon adoption to require that inpatient and outpatient ratios of cost-to-charges distinguish between payor types such as Medicare, Medicaid, or private pay to the extent possible. This commenter indicated that HHSC errs when accounting for the costs of dual-eligible patients (i.e., patients enrolled in both the Medicare and Medicaid programs) in its current HSL methodology. The commenter stated that the present HSL formula utilized by the state to calculate costs for dual-eligible patients is based on Medicaid's cost-to-charge ratio and that Medicaid's cost-to-charge ratio is an inaccurate cost basis for dual-eligible patients because the conditions and acuity experienced by senior patients is vastly different from traditional Medicaid patients who are overwhelmingly women and children with lower acuity. The commenter continued by stating that applying this cost-to-charge ratio to the dual-eligible population significantly understates a hospital's true costs. The disparity prompted by this error increases for facilities who serve a large percentage of low income, dual-eligible seniors.

Response: The requested change would not have the end result desired by the commenter. The term "ratio of cost-to-charges" detailed in (b)(19) is only used in the definition of "Medicaid allowable cost" as laid out in subsection (b)(11) of §355.8066, and the term "Medicaid allowable cost" is only used in subsection (c)(1)(B)(i)(III) of §355.8066 in the sentence that states "...to the extent that third-party commercial payment exceeds the Medicaid allowable cost for such a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment." Changing the definition of "ratio of cost-to-charges" in (b)(19) would only impact the determination of which third-party commercial payments are included in the calculation of the HSL and would not result in the use of a Medicare cost-to-charge ratio in determining costs for dual-eligible claims for use in the calculation of the HSL. HHSC added language to (b)(11) and (19) to indicate when the terms defined in these paragraphs are used in the subsection in hopes that this additional language will simplify the interpretation of the rule.

HHSC disagrees that the present HSL formula utilized by the state to calculate costs for dual-eligible patients is based on a cost-to-charge ratio specific to Medicaid patients only; rather the cost-to-charge ratio used for this purpose is an all-payor cost-to-charge ratio as described in subsection (b)(13) of §355.8066. It appears that the commenter's goal could be met by amending the definition of Medicaid cost-to-charge ratio (inpatient and outpatient) detailed in subsection (b)(13) to calculate different cost-to-charge ratios for different payor types.

However, HHSC is not making any changes to subsection (b)(13) at this time. While commenter indicates that all the information required to calculate payor-type specific cost-to-charge ratios is contained within the Medicaid cost report, HHSC believes that it would be required to collect additional information from each hospital pertaining to claims filed for dual-eligible patients as well as information regarding costs specifically associated with those patients. The required calculations would be complex and time consuming. As well, CMS would have to approve such a change in the HSL calculation methodology before it could be implemented by HHSC.

While HHSC is not making the requested change at this time, we do see value in further exploring how a payor-type specific cost-to-charge ratio could be calculated, the impact of using payor-type specific cost-to-charge ratios in the place of all-payor cost-to-charge ratios in the calculation of the HSL, and whether CMS would approve the use of such cost-to-charge ratios. HHSC staff will work with the commenter and other interested parties in exploring this idea and if the idea proves feasible, acceptable to CMS, and more equitable than the current methodology, HHSC will consider proposing a change to implement such a policy in a future rule action. Due to the complexities of the work required to evaluate such a change, it is unlikely that it could be put in place prior to the calculation of 2016 HSLs.

Comment: Concerning §355.8066(c)(1)(B)(i)(III), commenters indicated that HHSC should strike the term "commercial" from the proposed language. These commenters indicated that the inclusion of any third-party payments, commercial or non-commercial, as an offset against the HSL was inconsistent with the underlying federal statute. These commenters stated that by deleting the term "commercial" the Commission would be able to apply the proposed policy to all third-party payers, including Medicare. These commenters indicated that including Medicare payments for dual-eligibles in the HSL calculation is contrary to the intent of federal statute (§1923(g)(1)(A) under Title XIX of the Social Security Act) in determining losses attributable to Medicaid and uninsured patients. These commenters indicated that the inclusion of dual-eligibles in the HSL calculation is a discretionary policy that is punitive to many hospitals that serve a disproportionate share of low-income, elderly patients.

Response: HHSC did not make any changes in response to this comment for the following reasons.

First, the text of §355.8066(c)(1)(B)(i)(III) is designed to implement §32.0284 of the Human Resources Code which states "(f)or purposes of calculating the hospital-specific limit used to determine a hospital's uncompensated care payment under a supplemental hospital payment program, the commission shall ensure that to the extent a third-party commercial payment exceeds the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the

medical assistance program, the payment is not considered a medical assistance payment." Deleting the term "commercial" from the proposed language would go beyond the requirements of the Human Resources Code and the intent of the Legislature in S.B. 7.

Second, CMS indicated that the Social Security Act at Section 1923(g) supports the offsetting of Medicare revenue for dually-eligible individuals in the preamble to the adoption of the DSH audit rule, 73 Federal Register 245 (19 Dec 2008), p. 77912, stating "since Section 1923(g)(1) does not contain an exclusion for dually-eligible individuals, we believe the costs attributable to dual-eligibles should be included in the calculation of the uncompensated costs of serving Medicaid-eligible individuals. But in calculating those uncompensated care costs, it is necessary to take into account both the Medicare and Medicaid payments made, since those payments are contemplated under Title XIX." In addition, CMS addressed revenues for dually-eligible individuals in the "Additional Information on the DSH Reporting and Audit Requirements" document referred to in the Background and Justification of this preamble as follows: "Section 1923(g) of the Act defines hospital-specific limits on FFP for Medicaid DSH payments. Under the hospital-specific limits, a hospital's DSH payment must not exceed the costs incurred by that hospital in furnishing services during the year to Medicaid and uninsured patients less payments received for those patients. There is no exclusion in §1923(g)(1) for costs for, and payments made, on behalf of individuals dually eligible for Medicare and Medicaid. Hospitals that include dually-eligible days to determine DSH qualifications must also include the costs attributable to dual-eligibles when calculating the uncompensated costs of serving Medicaid-eligible individuals. Hospitals must also take into account the payment made on behalf of the individual, including all Medicare and Medicaid payments made on behalf of dual-eligible." CMS also stated in that same document "For the purposes of the DSH audits and reporting requirements, dual-eligible includes all individuals with Medicare who are eligible for some form of Medicaid benefit. This includes those individuals for whom Medicaid pays only Medicare deductibles, coinsurance, or Medicare Part A or B premiums." Deleting the term "commercial" from the proposed language would have the effect of excluding any third-party payment, including Medicare payments associated with dually-eligible patients (which are governmental rather than commercial payments) from the calculation of the HSL, which would violate the CMS direction outlined in this paragraph.

Third, the exclusion of Medicare payments associated with dually-eligible patients from the calculation of the HSL would change HSLs and associated DSH and UC payments for almost every hospital participating in the DSH and UC programs. Because both the DSH and UC programs have limited funding, the end result of changing HSLs would be that payments for some hospitals (those serving a large dual-eligible population) would likely increase while payments for other hospitals (those serving a small dual-eligible population) would likely decrease. A change in a proposed rule upon adoption that would have a significant negative impact on a subset of stakeholders is not appropriate because those stakeholders negatively impacted would never have had a chance to comment upon the change.

However, HHSC understands the negative impact that the inclusion of such payments in the calculation of the HSL has on hospitals that serve large numbers of dually-eligible patients. In recognition of that impact, HHSC will prepare and submit to CMS a SPA deleting the term "commercial" from language regarding which third-party payments are to be excluded from the calculation of the HSL. If the SPA is approved by CMS, HHSC will be able to amend its rules regarding the calculation of the HSL to exclude Medicare payments made on behalf of dually-eligible patients that exceed the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the medical assistance program. If the SPA is denied by CMS, HHSC will not be able to pursue such a rule amendment.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Human Resources Code Chapter 32.

§355.8066. Hospital-Specific Limit Methodology.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate a hospital-specific limit for each Medicaid hospital participating in either the Disproportionate Share Hospital (DSH) program, described in §355.8065 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology), or in the Texas Healthcare Transformation and Quality Improvement Program (the waiver), described in §355.8201 of this title (relating to Waiver Payments to Hospitals).

(b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payor.

(2) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(3) Data year--A 12-month period that is two years before the program year from which HHSC will compile data to determine DSH or uncompensated-care waiver program qualification and payment.

(4) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(5) DSH survey--The HHSC data collection tool completed by each DSH hospital and used by HHSC to calculate the interim and final hospital-specific limit, as described in this section, and to estimate the hospital's DSH payments for the program year, as described in §355.8065 of this title. A hospital may be required to complete multiple surveys due to different data requirements between the interim and final hospital-specific limit calculations.

(6) Dually eligible patient--A patient who is simultaneously enrolled in Medicare and Medicaid.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Hospital-specific limit--The maximum payment amount that a hospital may receive in reimbursement for the cost of providing Medicaid-allowable services to individuals who are Medicaid eligible or uninsured. The term does not apply to payment for costs

of providing services to non-Medicaid-eligible individuals who have third-party coverage; costs associated with pharmacies, clinics, and physicians; or costs associated with Delivery System Reform Incentive Payment projects. The calculation of the hospital-specific limit must be consistent with federal law as determined by the Secretary of the United States Department of Health and Human Services and CMS.

(A) Interim hospital-specific limit--Applies to payments that will be made during the program year and is calculated as described in subsection (c)(1) of this section using cost and payment data from the data year.

(B) Final hospital-specific limit--Applies to payments made during a prior program year and is calculated as described in subsection (c)(2) of this section using actual cost and payment data from that period.

(9) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(10) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, defined in §1905(i) of the Social Security Act.

(11) Medicaid allowable cost--The allowable charge for a claim multiplied by the applicable ratio of cost-to-charges from subsection (b)(19) of this section for the cost reporting period described in subsection (c)(1)(C)(i) of this section. This term is only used in subsection (c)(1)(B)(i)(III) of this section.

(12) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(13) Medicaid cost-to-charge ratio (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio calculated for each ancillary cost center that covers all applicable hospital costs and charges relating to inpatient and outpatient care for that cost center. This ratio is used in calculating the hospital-specific limit and does not distinguish between payor types such as Medicare, Medicaid, or private pay.

(14) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(15) Medicaid hospital--A hospital meeting the qualifications set forth in §54.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(16) Non-DSH survey--The HHSC data collection tool completed by non-DSH hospitals and used by HHSC to calculate the interim and final hospital-specific limit, as described in this section, and to calculate uncompensated care waiver payments for the program year, as described in §355.8201 of this title. A hospital may be required to complete multiple surveys due to different data requirements between the interim and final hospital-specific limit calculations.

(17) Outpatient charges--Amount of gross outpatient charges related to the applicable data year and used in the calculation of the hospital specific limit.

(18) Program year--The 12-month period beginning October 1 and ending September 30. The period corresponds to the waiver demonstration year.

(19) Ratio of cost-to-charges.

(A) Inpatient ratio of cost-to-charges--A ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(B) Outpatient ratio of cost-to-charges--A ratio that covers all applicable hospital costs and charges relating to outpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(C) The terms "ratio of cost-to-charges"; "inpatient ratio of cost-to-charges"; and "outpatient ratio of cost-to-charges" are only used in the definition of "Medicaid allowable cost" as laid out in subsection (b)(11) of this section.

(20) The waiver--The Texas Healthcare Transformation and Quality Improvement Program, a Medicaid demonstration waiver under §1115 of the Social Security Act that was approved by CMS on December 12, 2011. Pertinent to this section, the waiver establishes a funding pool to assist hospitals with uncompensated-care costs.

(21) Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payor.

(22) Total state and local payments--Total amount of state and local payments that a hospital received for inpatient care during the data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(23) Uncompensated-care waiver payments--Payments to hospitals participating in the waiver that are intended to defray the uncompensated costs of eligible services provided to eligible individuals.

(24) Uninsured cost--The cost to a hospital of providing inpatient and outpatient hospital services to uninsured patients as defined by CMS.

(c) Calculating a hospital-specific limit. Using information from each hospital's DSH or non-DSH survey, Medicaid cost report and from HHSC's Medicaid contractors, HHSC will determine the hospital's interim hospital-specific limit in compliance with paragraph (1) of this subsection. The interim hospital-specific limit will be used for both DSH and uncompensated care waiver interim payment determinations. Final hospital-specific limits will be determined in compliance with paragraph (2) of this subsection.

(1) Interim Hospital-Specific Limit.

(A) Uninsured charges and payments.

(i) Each hospital will report in its survey its inpatient and outpatient charges for services that would be covered by Medicaid that were provided to uninsured patients discharged during the data year. In addition to the charges in the previous sentence, for DSH calculation purposes only, an IMD may report charges for Medicaid-allowable services that were provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64.

(ii) Each hospital will report in its survey all payments received during the data year, regardless of when the service was

provided, for services that would be covered by Medicaid and were provided to uninsured patients.

(I) For purposes of this paragraph, a payment received is any payment from an uninsured patient or from a third party (other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under §1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except as described in subclause (II) of this clause.

(II) State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.

(B) Medicaid charges and payments.

(i) HHSC will request from its Medicaid contractors the inpatient and outpatient charge and payment data for claims for services provided to Medicaid-enrolled individuals that are adjudicated during the data year.

(I) The requested data will include, but is not limited to, charges and payments for:

(-a-) claims associated with the care of dually eligible patients, including Medicare charges and payments;

(-b-) claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation;

(-c-) outpatient claims associated with the Women's Health Program; and

(-d-) claims for which the hospital received payment from a third-party payor for a Medicaid-enrolled patient.

(II) HHSC will exclude charges and payments for:

(-a-) claims for services that do not meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act. Examples include:

(-1-) claims for the Children's Health Insurance Program; and

(-2-) inpatient claims associated with the Women's Health Program; and

(-b-) claims submitted after the 95-day filing deadline.

(III) Contingent upon the approval of a corresponding Medicaid State Plan amendment by CMS that contains the specific policies prescribed by this subclause, to the extent that third-party commercial payment exceeds the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment. If such an amendment is not approved by CMS, the payment is considered a medical assistance payment and HHSC will include the entire payment amount in the calculation described in subparagraph (D)(ii)(I) of this paragraph.

(ii) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid cost settlement payment or recoupment amounts attributable to the cost report period determined in subparagraph (C)(i) of this paragraph.

(iii) HHSC will notify hospitals following HHSC's receipt of the requested data from the Medicaid contractors. A hospital's right to request a review of data it believes is incorrect or incomplete is addressed in subsection (e) of this section.

(iv) Each hospital will report on the survey the inpatient and outpatient Medicaid days, charges and payment data for out-of-state claims adjudicated during the data year.

(v) HHSC may apply an adjustment factor to Medicaid payment data to more accurately approximate Medicaid payments following a rebasing or other change in reimbursement rates under other sections of this division.

(C) Calculation of in-state and out-of-state Medicaid and uninsured total costs for the data year.

(i) Cost report period for data used to calculate cost-per-day amounts and cost-to-charge ratios. HHSC will use information from the Medicaid cost report for the hospital's fiscal year that ends during the calendar year that falls two years before the end of the program year for the calculations described in clauses (ii)(I) and (iii)(I) of this subparagraph. For example, for program year 2013, the cost report year is the provider's fiscal year that ends between January 1, 2011, and December 31, 2011.

(I) For hospitals that do not have a full year cost report that meets this criteria, a partial year cost report for the hospital's fiscal year that ends during the calendar year that falls two years before the end of the program year will be used if the cost report covers a period greater than or equal to six months in length.

(II) The partial year cost report will not be prorated. If the provider's cost report that ends during this time period is less than six months in length, the most recent full year cost report will be used.

(ii) Determining inpatient routine costs.

(I) Medicaid inpatient cost per day for routine cost centers. Using data from the Medicaid cost report, HHSC will divide the allowable inpatient costs by the inpatient days for each routine cost center to determine a Medicaid inpatient cost per day for each routine cost center.

(II) Inpatient routine cost center cost. For each Medicaid payor type and the uninsured, HHSC will multiply the Medicaid inpatient cost per day for each routine cost center from subclause (I) of this clause times the number of inpatient days for each routine cost center from the data year to determine the inpatient routine cost for each cost center.

(III) Total inpatient routine cost. For each Medicaid payor type and the uninsured, HHSC will sum the inpatient routine costs for the various routine cost centers from subclause (II) of this clause to determine the total inpatient routine cost.

(iii) Determining inpatient and outpatient ancillary costs.

(I) Inpatient and outpatient Medicaid cost-to-charge ratio for ancillary cost centers. Using data from the Medicaid cost report, HHSC will divide the allowable ancillary cost by the sum of the inpatient and outpatient charges for each ancillary cost center to determine a Medicaid cost-to-charge ratio for each ancillary cost center.

(II) Inpatient and outpatient ancillary cost center cost. For each Medicaid payor type and the uninsured, HHSC will multiply the cost-to-charge ratio for each ancillary cost center from subclause (I) of this clause by the ancillary charges for inpatient claims and the ancillary charges for outpatient claims from the data year to determine the inpatient and outpatient ancillary cost for each cost center.

(III) Total inpatient and outpatient ancillary cost. For each Medicaid payor type and the uninsured, HHSC will sum the ancillary inpatient and outpatient costs for the various ancillary cost centers from subclause (II) of this clause to determine the total ancillary cost.

(iv) Determining total Medicaid and uninsured cost. For each Medicaid payor type and the uninsured, HHSC will sum the result of clause (ii)(III) of this subparagraph and the result of clause (iii)(III) of this subparagraph plus organ acquisition costs to determine the total cost.

(D) Calculation of the interim hospital-specific limit.

(i) Total hospital cost. HHSC will sum the total cost by Medicaid payor type and the uninsured from subparagraph (C)(iv) of this paragraph to determine the total hospital cost for Medicaid and the uninsured.

(ii) Interim hospital-specific limit.

(I) HHSC will reduce the total hospital cost under clause (i) of this subparagraph by total payments from all payor sources for inpatient and outpatient claims, except as limited by subparagraph (B)(i)(III) of this paragraph, and including but not limited to, graduate medical services and out-of-state payments.

(II) HHSC will not reduce the total hospital cost under clause (i) of this subparagraph by supplemental payments (including upper payment limit payments), or uncompensated-care waiver payments for the data year to determine the interim hospital-specific limit. HHSC may reduce the total hospital cost by supplemental payments or uncompensated-care waiver payments (excluding payments associated with pharmacies, clinics, and physicians) attributed to the hospital for the program year if necessary to prevent total interim payments to a hospital for the program year from exceeding the interim hospital-specific limit for that program year.

(E) Inflation adjustment.

(i) HHSC will trend each hospital's interim hospital-specific limit using the inflation update factor.

(ii) HHSC will trend each hospital's-specific limit from the midpoint of the data year to the midpoint of the program year.

(2) Final hospital-specific limit.

(A) HHSC will calculate the individual components of a hospital's final hospital-specific limit using the calculation set out in paragraph (1)(A) - (D) of this subsection, except that HHSC will:

(i) use information from the hospital's Medicaid cost report(s) that cover the program year and from cost settlement payment or recoupment amounts attributable to the program year for the calculations described in paragraphs (1)(C)(ii)(I) and (1)(C)(iii)(I) of this subsection. If a hospital has two or more Medicaid cost reports that cover the program year, the data from each cost report will be pro-rated based on the number of months from each cost report period that fall within the program year;

(ii) include supplemental payments (including upper payment limit payments) and uncompensated-care waiver payments (excluding payments associated with pharmacies, clinics, and physicians) attributable to the hospital for the program year when calculating the total payments to be subtracted from total costs as described in paragraph (1)(D)(ii) of this subsection;

(iii) use the hospital's actual charges and payments for services described in paragraph (1)(A) and (B) of this subsection provided to Medicaid-eligible and uninsured patients during the program year; and

(iv) include charges and payments for claims submitted after the 95-day filing deadline for Medicaid-allowable services provided during the program year unless such claims were submitted after the Medicare filing deadline.

(B) For payments to a hospital under the DSH program, the final hospital-specific limit will be calculated at the time of the independent audit conducted under §355.8065(o) of this title.

(d) Due date for DSH or non-DSH survey.

(1) HHSC Rate Analysis must receive a hospital's completed survey no later than 30 calendar days from the date of HHSC's written request to the hospital for the completion of the survey, unless an extension is granted as described in paragraph (2) of this subsection.

(2) HHSC Rate Analysis will extend this deadline provided that HHSC receives a written request for the extension by hand delivery, U.S. mail, or special mail delivery no later than 30 calendar days from the date of the request for the completion of the survey.

(3) The extension gives the requester a total of 45 calendar days from the date of the written request for completion of the survey.

(4) If a deadline described in paragraph (1) or (3) of this subsection is a weekend day, national holiday, or state holiday, then the deadline for submission of the completed survey is the next business day.

(5) HHSC will not accept a survey or request for an extension that is not received by the stated deadline. A hospital whose survey or request for extension is not received by the stated deadline will be ineligible for DSH or uncompensated-care waiver payments for that program year.

(e) Verification and right to request a review of data. This subsection applies to calculations under this section beginning with calculations for program year 2014.

(1) Claim adjudication. Medicaid participating hospitals are responsible for resolving disputes regarding adjudication of Medicaid claims directly with the appropriate Medicaid contractors as claims are adjudicated. The review of data described under paragraph (2) of this subsection is not the appropriate venue for resolving disputes regarding adjudication of claims.

(2) Request for review of data.

(A) HHSC will pre-populate certain fields in the DSH or non-DSH survey, including data from its Medicaid contractors.

(i) A hospital may request that HHSC review any data in the hospital's DSH or non-DSH survey that is pre-populated by HHSC.

(ii) A hospital may not request that HHSC review self-reported data included in the DSH or non-DSH survey by the hospital.

(B) A hospital must submit a written request for review and all supporting documentation to HHSC's Director of Hospital Rate Analysis within 30 days following the distribution of the pre-populated DSH or non-DSH survey to the hospital by HHSC. The request must allege the specific data omissions or errors that, if corrected, would result in a more accurate HSL.

(3) HHSC's review.

(A) HHSC will review the data that is the subject of a hospital's request. The review is:

(i) limited to the hospital's allegations that data is incomplete or incorrect;

(ii) supported by documentation submitted by the hospital or by the Medicaid contractor;

(iii) solely a data review; and

(iv) not an adversarial hearing.

(B) HHSC will notify the hospital of the results of the review.

(i) If changes to the Medicaid data are made as a result of the review process, HHSC will use the corrected data for the HSL calculations described in this section and for other purposes described in §355.8065 and §355.8201 of this title.

(ii) If no changes are made, HHSC will use the Medicaid data from the Medicaid contractors.

(C) HHSC will not consider requests for review submitted after the deadline specified in paragraph (2)(B) of this subsection.

(D) HHSC will not consider requests for review of the following calculations that rely on the Medicaid data and other information described in this subsection:

(i) the hospital-specific limit calculated as described in this section;

(ii) DSH program qualification or payment amounts calculated as described in §355.8065 of this title;

(iii) uncompensated-care payment amounts calculated as described in §355.8201 of this title.

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 April 2, 2014.

TRD-201401499
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: February 14, 2014
For further information, please call: (512) 424-6900

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §33.1001

The Texas Education Agency (TEA) adopts new §33.1001, concerning the charter district bond guarantee reserve fund. The new section is adopted without changes to the proposed text as published in the February 7, 2014, issue of the *Texas Register* (39 TexReg 572) and will not be republished. The adopted new rule establishes procedures for payments by charter holders to the Charter District Bond Guarantee Reserve Fund established under the Texas Education Code (TEC), §45.0571.

With Senate Bill 1, Article 59, 82nd Texas Legislature, First Called Session, 2011, and House Bill 885, 83rd Texas Legislature, Regular Session, 2013, the Texas Legislature expanded the Permanent School Fund Bond Guarantee Program established under the TEC, Chapter 45, Subchapter C. This expansion allowed for the guarantee of bonds issued for the benefit of open-enrollment charter schools. In expanding the program, the legislature created a dedicated fund in the state treasury to serve as a reserve fund for making bond payments on behalf of charter holders that default on guaranteed bonds. Charter holders approved for the guarantee must make annual payments to the commissioner of education for deposit to the fund.

In January 2014, the State Board of Education exercised its rulemaking authority to approve for second reading and final adoption 19 TAC §33.67, which implements the bond guarantee program for charter schools. With adopted new 19 TAC §33.1001, Payments for Remittance to Charter District Bond Guarantee Reserve Fund, the commissioner is exercising his rulemaking authority to establish a rule related to the reserve fund, as authorized under the TEC, §45.0571.

Adopted new 19 TAC §33.1001 provides definitions, including a definition of *charter district;* establishes procedures for charter districts to remit payments for the reserve fund; and specifies the amount of each payment and how that amount was determined.

The adopted new section has no procedural and reporting implications. The adopted new section has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began February 7, 2014, and ended March 10, 2014. Following is a summary of public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, Subchapter AA, Commissioner's Rules, §33.1001, Payments for Remittance to Charter District Bond Guarantee Reserve Fund.

Comment: The Texas Charter Schools Association (TCSA) commented that proposed subsection (d) should be revised to permit a charter district to make the first payment due instead of specifying that the commissioner will direct the comptroller of public accounts to withhold the amount due from the charter district's state funding. The TCSA stated that this change would allow a charter district to finance the first payment that is due to the reserve fund.

Agency Response: The agency disagrees that the subsection should be amended as suggested. Changing the subsection to allow a charter district to make its first payment directly would require the agency to develop a mechanism for tracking and collecting those payments, which would be costly and time-consuming. The proposed rule does provide for direct payment under the TEC, §42.258, if a charter district does not have a sufficient state-funding allocation to cover the amount due. However, accommodating a direct payment in this infrequent situation is

much more manageable than processing direct payments as a matter of course. Also, the agency notes that the amount of the payment is relatively small and should not present a financial burden to a charter district.

Comment: The TCSA commented that proposed subsection (d) should be revised to specify the date on which the payment is to be calculated and made. The TCSA stated that this change would clarify a charter district's payment obligations.

Agency Response: The agency disagrees that subsection (d) should be revised in this way. The agency notes that proposed subsection (d) already specifies that the payment is due (must be made) within 30 days of the closing date. The benefit of specifying the date the payment amount is calculated is unclear. Subsection (c) clearly specifies how the first payment is calculated, and the calculation and amount of the payment are not dependent on the date the calculation is made.

The new section is adopted under the Texas Education Code, §45.0571, which authorizes the commissioner to adopt rules to determine the total and annual amounts due under the Charter District Bond Guarantee Reserve Fund.

The new section implements the Texas Education Code, §45.0571.

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 April 2, 2014.

TRD-201401498
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: April 22, 2014
Proposal publication date: February 7, 2014
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §73.7, concerning Approved Continuing Education Courses, to require continuing education course sponsors to include a copy of proposed advertising for the course in the application and to certify that advertising will be consistent with approved course content. This rule amendment is adopted without changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9190) and will not be republished.

First, the amendment adds a requirement that course applications must include proposed advertising defining course content. In the past, the Board has learned about course advertisements that did not reflect approved course content. Specifically, the advertisement highlighted course areas that were specifically not approved by the Board. This amendment will ensure that any course areas not approved by the Board are not advertised to Texas chiropractors.

The amendment also adds a requirement that the course sponsor must certify on the application that advertising is consistent with the approved course content. This will allow the Board to take action against a course sponsor under subsection (k) if the course sponsor advertises course content that is different from approved course content.

Comments received in writing via mail, fax, and email were accepted by the Board from December 21, 2013 to January 19, 2014. No comments were received by the Board on the proposed amendment during this time period. However, one comment was received a few days before the amendment was proposed.

The early comment was received from a licensee who believes the rules already in place are "fine." He believes that the profession needs to learn more about the human body and not about more rules. The Board disagrees that the previous rule is sufficient, as there have been problems with courses being advertised improperly. No change was made in response to this comment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.356, relating to continuing education. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic; §201.356 requires the Board to adopt rules concerning continuing education.

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 April 4, 2014.

TRD-201401524
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: April 24, 2014
Proposal publication date: December 20, 2013
For further information, please call: (512) 305-6716

CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board or TBCE) adopts an amendment to §80.5, concerning Maintenance of Chiropractic Records, to outline minimum documentation requirements for doctors of chiropractic in Texas. This rule amendment is adopted without changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9191) and will not be republished.

First, the phrase "anniversary date of" is removed from subsection (a) to eliminate confusion over the duration that chiropractic records must be maintained.

Next, the term "legible" is moved in subsection (f) for readability. Previously, the sentence beginning with "Records shall be timely..." was unclear, as it contained multiple conjunctions in the sentence.

Finally, subsections (g) - (j) are adopted to add minimum documentation standards for doctors of chiropractic. Subsection (g) requires doctors of chiropractic to perform an appropriate history and exam based on the nature of the presenting problem described by the patient and in accordance with accepted documentation guidelines. Examples of "accepted documentation guidelines" then follow. Subsection (h) lists minimum documentation standards for initial visits. Subsection (i) lists minimum documentation standards for subsequent visits. Subsection (j) provides that nothing within the rule should be construed to constrain or limit the obligation of chiropractors to meet duly authorized law, rules and regulations.

Comments received in writing via mail, fax, and email were accepted by the Board from December 21, 2013 to January 19, 2014. No comments were received by the Board on the proposed amendment during this time period. However, one comment was received a few days before the amendment was proposed, and one comment was received a few days after the comment period ended.

The first comment was received from a licensee who believes the rules already in place are "fine." He believes that the profession needs to learn more about the human body and not about more rules and more documentation. The Board disagrees that the previous rule is sufficient and that the profession should not improve documentation standards. The current rule does not provide standard guidance for rulemaking beyond some general requirements. The adopted amendments will greatly serve the public of the state of Texas by ensuring uninterrupted care of patients. If a doctor of chiropractic can no longer treat a patient, for whatever reason, the subsequent treating healthcare provider should be able to resume care of the patient without interruption due to complete and accurate documentation in patient records. This amendment will provide minimum standards for that documentation. No change was made in response to this comment.

The second comment was received from the Texas Chiropractic Association (TCA) in opposition to the amendment, as "it seems to place the TBCE into the treatment room with doctor and patient." TCA believes that the Board is changing its philosophy of governance to step into an educational role. Further, TCA believes that this amendment is "better suited as a statewide directive rather than strict legal mandate." The Board disagrees on all points. First, the TBCE is not directing how treatment is rendered by doctors of chiropractic; it is merely providing guidelines for how examinations and treatment are documented by the doctor. This is not stepping into an "educational role." On the contrary, this amendment is an example of proper regulatory governance by a state regulatory agency. A deficiency was noted in the documentation standards in the state, so the Board is attempting to correct that deficiency through the proper rulemaking process. No change was made in response to this comment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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 April 4, 2014.

TRD-201401525

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: April 24, 2014
Proposal publication date: December 20, 2013
For further information, please call: (512) 305-6716

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 227. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS TO PROFESSIONAL NURSING EDUCATION

22 TAC §§227.1 - 227.6

Introduction. The Texas Board of Nursing (Board) adopts the repeal of existing Chapter 227, §§227.1 - 227.6, concerning Pilot Programs for Innovative Applications to Professional Nursing Education, without changes to the proposed text published in the February 28, 2014, issue of the *Texas Register* (39 TexReg 1329). The text will not be republished.

Reasoned Justification. This repeal is necessary because the Board is simultaneously adopting new Chapter 227, concerning Pilot Programs for Innovative Applications to Vocational and Professional Nursing Education, that reorganizes the provisions of the chapter, applies the provisions of the chapter to both professional and vocational nursing education programs, and establishes the requirements and procedures that will apply to pilot programs for innovative applications to professional and vocational nursing education. The adopted new chapter is being published elsewhere in this edition of the *Texas Register,* in conjunction with this adopted repeal.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

The repeal of Chapter 227 is adopted under the Occupations Code, §301.151 and §301.1605.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1605(a) authorizes the Board to approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing.

Section 301.1605(b) provides that the Board shall specify the procedures to be followed in applying for approval of a pilot program. The board may condition approval of a program on compliance with §301.1605 and rules adopted under §301.1605.

Section 301.1605(c) states that, in approving a pilot program, the Board may grant the program an exception to the mandatory reporting requirements of §§301.401 - 301.409 or to a rule adopted under Chapter 301 or Chapter 303 that relates to the practice of nursing, including education and reporting requirements for nurses. However, the Board may not grant an exception to: (i) the education requirements of Chapter 301 unless the program includes alternate but substantially equivalent requirements; or

(ii) the mandatory reporting requirements unless the program: (A) is designed to evaluate the efficiency of alternative reporting methods; and (B) provides consumers adequate protection from nurses whose continued practice is a threat to public safety.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.1605.

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 April 2, 2014.

TRD-201401475
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: April 22, 2014
Proposal publication date: February 28, 2014
For further information, please call: (512) 305-6822

CHAPTER 227. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS TO VOCATIONAL AND PROFESSIONAL NURSING EDUCATION

22 TAC §§227.1 - 227.4

Introduction. The Texas Board of Nursing (Board) adopts new Chapter 227, §§227.1 - 227.4, concerning to Pilot Programs for Innovative Applications to Vocational and Professional Nursing Education. The new chapter is adopted without changes to the proposed text published in the February 28, 2014, issue of the *Texas Register* (39 TexReg 1330) and will not be republished.

Reasoned Justification. The new chapter is adopted under the authority of the Occupations Code, §301.151 and §301.1605 and establishes the procedures and requirements that apply to pilot programs for innovative applications to vocational and professional nursing education.

Background

During the Board's October 2013 meeting, two members of the public representing the Texas Association of Vocational Nurse Educators (TAVNE) addressed the Board during open forum and requested that a task force be formed to address issues relating to vocational nursing education and the role of licensed vocational nurses. Following the meeting, Board Staff met with members of the TAVNE Executive Board to further discuss the individuals' concerns. The individuals indicated that amendments to Chapter 227 to include vocational nursing education would be helpful in addressing some of their concerns related to vocational nursing education curricula and Chapter 214 of this title (relating to Vocational Nursing Education).

At its January 2014 meeting, following deliberation, the Board voted to approve the proposed repeal of existing Chapter 227 and the proposal of new Chapter 227. The adopted repeal of existing Chapter 227, pertaining to Pilot Programs for Innovative Applications to Professional Nursing Education, is being simultaneously published elsewhere in this edition of the *Texas Register,* in conjunction with this rule adoption.

Background

Chapter 227 was originally adopted by the Board in 2005 and has not been amended since its original adoption. Chapter 227 was originally adopted in response to requests from nursing education programs wanting to explore new approaches to nursing education. When the Board considered the original proposal and adoption of Chapter 227, several entities had approached the Board inquiring about the process for obtaining Board permission for waiving certain requirements of Chapter 215 of this title (relating to Professional Nursing Education) in order to develop and implement strategies designed to enhance enrollment in Texas schools of nursing. The Board determined that offering a proposal process that would encourage the development, implementation, and study of innovative approaches would support the efforts of professional nursing education programs to train and graduate competent and safe registered nurses.

As originally adopted by the Board, Chapter 227 applied to professional nursing education programs. The adopted new chapter will apply to both professional nursing education programs and vocational nursing education programs. The Board believes that innovative pilot programs in professional and vocational nursing education programs may contribute to the development of alternative avenues to increase admission into schools of nursing, elicit creative and new approaches to evidence-based nursing education, and provide a stimulus for Board rule revision and/or development. Further, although adopted new Chapter 227 has been reorganized and simplified, many of the requirements of existing Chapter 227 are still contained within the adopted new chapter. Some of the obsolete provisions of existing Chapter 227, however, have been eliminated from the adopted new chapter.

How the Sections Will Function.

Adopted new §227.1 sets forth the purpose of the new chapter. The adopted new chapter establishes the procedures that will apply to pilot programs for innovative applications to nursing education under the Occupations Code §301.1605 for both vocational and professional nursing programs. Consistent with the provisions of §301.1605, pilot programs approved under the adopted new chapter must be conducted in a manner consistent with the Board's role of public protection. Further, any pilot program approved under the adopted new chapter must be structured in a manner that permits the efficacy of the program and the effect on nursing students to be evaluated.

Adopted new §227.2 sets forth the application and approval process for pilot programs under the adopted new chapter. Although adopted new §227.2 has been reorganized, many of the provisions of existing §227.2 and §227.4 are included within the adopted new section. First, adopted new §227.2(a) clarifies that only those applicants who are requesting an exception to one of the rule requirements of Chapter 214 or 215 of this title or an educational requirement under the Occupations Code Chapter 301 are eligible for approval under the adopted new chapter. If an applicant is able to meet the existing statutory and regulatory requirements applicable to a nursing education program, there is no need to establish a pilot program under the adopted new chapter. The provisions of the adopted new chapter are intended to allow nursing education programs to test innovative concepts in nursing education that would not otherwise meet the existing statutory and regulatory requirements applicable to nursing education. Further, pursuant to §301.1605, the adopted new subsection makes clear that if an applicant is seeking an exception to an existing statutory educational requirement in

Chapter 301, the applicant's proposed program must include an alternate, but substantially equivalent requirement. This requirement is necessary to ensure that approved programs continue to graduate nursing students that are competent and safe to practice.

Adopted new §227.2(b) - (g) clarifies the requirements that apply to the application process under the adopted new chapter. Adopted new §227.2(b) clarifies that an applicant must submit a completed application to the Board at least four months prior to the applicant's planned implementation date of a pilot program. This requirement is necessary to provide Board Staff an adequate amount of time to review the applicant's application and to discuss any deficiencies in the application with the applicant. Further, adopted new §227.2(c) clarifies that all applications must be approved by the Board. Because the Board meets on a quarterly basis, this requirement is also necessary to ensure that an application may be timely presented to the Board at one of its regularly scheduled meetings for deliberation and vote.

Adopted new §227.2(d) describes the variety of actions the Board may take after reviewing an application. The Board may approve an application that meets all of the requirements of the adopted new chapter. If the Board determines that it needs additional information in order to make an informed decision, the Board may defer action on the application until receipt of the additional information. Likewise, the Board may also determine that an application should be granted, but that additional conditions or restrictions must be imposed in order to ensure public protection and that the program is able to adequately meet the requirements of the adopted new chapter.

Once an application is approved by the Board, adopted new §227.2(e) makes clear that the applicant must submit a written report of outcomes resulting from the pilot program to the Board within 90 days of completion of the program. Further, the Board reserves the right to request additional and/or more frequent written reports of program outcomes during the duration of the pilot program. These requirements are necessary to ensure adequate monitoring of a program throughout the course of the pilot and to measure the success of the program upon its completion.

Adopted new §227.2(f) makes clear that, if the Board denies an application, an applicant must wait at least one calendar year from the date of the Board's denial before submitting a new application for Board consideration. This requirement is necessary to provide sufficient time for an applicant to review the reasons for the Board's denial and to effectuate appropriate revisions to the program before resubmitting an application to the Board for consideration.

Adopted new §227.3 sets forth the general selection criteria that will be considered by the Board when determining whether to approve an application. Although adopted new §227.3 has been reorganized, the majority of the provisions of existing §227.3 remain within the adopted new section. Under the adopted new section, applications will be evaluated on: (i) the quality of the pilot program; (ii) a description of the pilot program, including the rationale for the pilot program and the financial support for the program; (iii) the methodological design of the pilot program; (iv) the pilot program outcomes, including how the success of the program will improve nursing education and enhance nursing practice and how it will be measured; (v) the pilot program innovation; (vi) the timeline for the pilot program; (vii) controls to maintain quality education and ensure delivery of safe and competent nursing care, including methods to ensure that students in the pilot program receive an equivalent, quality education as students in standard program(s) (comparative group), ongoing evaluation to determine the students' progress in the pilot program, and a plan for corrective measures if students in the pilot program are not meeting objectives; and (viii) other relevant factors, such as an applicant's financial ability to implement the pilot program; state and regional needs and priorities; an applicant's ability to continue the pilot program on a long-term basis; and the past performance of the applicant, if applicable. The Board has determined that careful evaluation of this criteria is necessary to ensure that applicants have a well-defined plan for their pilot, that the quality of nursing education will be substantially equivalent to that received by other nursing students, that applicants have sufficient resources to commit to the pilot, and that appropriate safeguards are in place to maintain quality education and produce safe and competent graduates. Further, by detailing the criteria that will be evaluated by the Board, it is anticipated that interested applicants will be able to prepare their applications in a manner that will expedite the review and approval process.

Finally, adopted new §227.3(b) requires programs to have a defined length of time, not to exceed two years. This requirement is necessary to allow a program's outcomes to be timely and appropriately evaluated to determine if the program was successful in meeting its stated objectives. Further, in the event that an applicant wishes to extend a program beyond a two year time period, adopted new §227.3(b) permits the applicant to file a request for an extension with the Board. This adopted provision is intended to provide additional flexibility for programs with positive outcomes and sustained efficacy results.

Adopted new §227.4 sets forth provisions relating to Board monitoring and the evaluation of programs. Although the adopted new section contains many of the provisions of existing §227.5, the adopted new section does contain a few new provisions as well. First, the adopted new section makes clear that all approved programs will be subject to intermittent monitoring and evaluation by the Board to ensure ongoing compliance with the requirements of the adopted new chapter and to obtain evidence that program goals are being met. The adopted new section specifies that Board monitoring may include the review and analysis of program reports; communication with program directors; and survey visits. The Board may also require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and any other information necessary to evaluate the status of the pilot program. Further, the adopted new section clarifies that survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of a pilot program. Additionally, if necessary, the Board may alter a program's monitoring plan as necessary in order to address the specific needs of a particular program.

Although the purpose of the adopted new chapter is to encourage innovative and new concepts in nursing education, approved programs must be able to produce competent and safe practitioners. Further, the Board remains responsible for ensuring that all approved programs offer a substantially similar education as their traditional counterparts and that the interests of the public are adequately protected. As such, the Board believes that periodic monitoring is prudent and necessary to ensure that programs' objectives are consistently being met and that students are receiving quality instruction. Further, in situations where this may not be the case, the Board must retain its authority to impose necessary restrictions on programs or require remediation strategies to be implemented in order to correct deficiencies. Fi-

nally, where substantial monitoring and evaluation of a program is required, or where a survey visit is necessary, adopted new §227.4(b) - (d) make clear that the Board may require a program to reimburse the Board for the costs of those activities.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The new chapter is adopted under the Occupations Code §301.151 and §301.1605.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1605(a) authorizes the Board to approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing.

Section 301.1605(b) provides that the Board shall specify the procedures to be followed in applying for approval of a pilot program. The board may condition approval of a program on compliance with §301.1605 and rules adopted under §301.1605.

Section 301.1605(c) states that, in approving a pilot program, the Board may grant the program an exception to the mandatory reporting requirements of §§301.401 - 301.409 or to a rule adopted under Chapter 301 or Chapter 303 that relates to the practice of nursing, including education and reporting requirements for nurses. However, the Board may not grant an exception to: (i) the education requirements of Chapter 301 unless the program includes alternate but substantially equivalent requirements; or (ii) the mandatory reporting requirements unless the program: (A) is designed to evaluate the efficiency of alternative reporting methods; and (B) provides consumers adequate protection from nurses whose continued practice is a threat to public safety.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.1605.

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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Jena Abel
Assistant General Counsel
Texas Board of Nursing
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For further information, please call: (512) 305-6822

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 6. CAPTIVE INSURANCE

The commissioner of insurance adopts new 28 TAC Chapter 6 and §§6.1, 6.2, 6.101 - 6.105, 6.201 - 6.203, 6.301 - 6.307, 6.401 - 6.410, 6.501, 6.601, and 6.701 to implement Insurance Code Chapter 964, enacted under SB 734, 83rd Legislature, 2013, effective June 14, 2013. Sections 6.1, 6.101, 6.102, 6.105, 6.202, 6.203, 6.302, 6.404, 6.407, and 6.408 are adopted with changes to the proposed text published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8357). Sections 6.2, 6.103, 6.104, 6.201, 6.301, 6.303 - 6.307, 6.401 - 6.403, 6.405, 6.406, 6.409, 6.410, 6.501, 6.601, and 6.701 are adopted without changes to the proposed text, and will not be republished. The commissioner also adopts by reference the Texas Captive Annual Report form and instructions without changes.

REASONED JUSTIFICATION. The adopted sections implement Insurance Code Chapter 964 and provide the department with flexibility to accommodate the various structures, risks, and management approaches for captive insurance companies. The sections also meet the statutory requirements that captive insurance companies must be financially stable, maintain adequate reserves to service the risks that they insure, and retain experienced management to make success of the entity probable.

In response to written comments on the published proposal, the department has adopted changes to the proposed text in §§6.1(3), 6.101(b), 6.102(c), 6.202(b) and (g), and 6.203(b). The department has adopted nonsubstantive changes to the proposed text in §§6.102, 6.105, 6.202, 6.203, 6.302, 6.404, 6.407, and 6.408 to conform to agency style guidelines. The changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

Subchapter A. General Matters. This subchapter addresses definitions and submission requirements applicable to the chapter.

§6.1. Definitions. This section incorporates the definitions established in Insurance Code §964.001 and establishes additional defined terms that are necessary to implement Insurance Code Chapter 964 and this chapter. Certain definitions are explained in the following paragraphs.

Insurance Code §964.001 defines the terms "captive insurance companies" and "captive management companies." Insurance Code §964.001 defines a captive management company as an entity, and Insurance Code §964.053(b) provides that a captive insurance company may be formed and operated as any type of business organization authorized under the Business Organizations Code. The terms are used throughout Insurance Code Chapter 964, but the reference does not require that these entities must be corporations and does not only apply to entities formed as corporations. Subsection (a) incorporates the statutory definitions into these sections.

After the publication of the proposal, the department solicited captive insurance company applications. The applications tested the proposed procedures, in part because captive insurance companies are unique in comparison to other insurance operations licensed by the department. Due to that process and in response to written comments, the department decided to amend the proposed definition of "captive management company" to clarify that a captive management company is responsible for oversight of the provided administrative service. The adopted definition establishes with certainty the entity the department and captive insurance company will look to for performance of the function. The change will also ensure that the

captive management company vested with such responsibility has been vetted under these rules. This change will have a significant effect on determining whether an entity must register as a captive management company under §6.101 and §6.104.

The term "annual report" incorporates the three required components of the report. As stated in the definition, these component parts are addressed in other sections, and in the adopted Texas Captive Annual Report form and its instructions.

The term "certificate of filing" refers to the document issued by the Texas Secretary of State on the formation of a captive insurance company.

The definition of the term "general partnership" includes a general partnership designated as a limited liability partnership. This is based on information from the Texas Secretary of State that a limited liability partnership is not a separate type of entity, but a designation that a general partnership or limited partnership may hold. This distinction is necessary because Insurance Code §964.053(b) prohibits formation of a captive insurance company as a general partnership.

The adoption defines the term "governing body" for the purpose of implementing Insurance Code Chapter 964 because it may have different meanings between its use in the formation of certain entities under the Business Organizations Code and the department's interpretation of its use in Insurance Code Chapter 964. Specifically, the Business Organizations Code may allow for the governing body of certain entities to be other entities. Insurance Code §964.053(d) and (e) require the captive insurance company to designate individuals as members of a governing body for the purpose of performing acts necessary to comply with Insurance Code Chapter 964 and these sections. The term "governing body" in these sections applies to those individuals and not to formation of the entity. The department in these sections does not intend to create or amend any formation or submission requirements used by the Texas Secretary of State.

§6.2. Submissions and Notifications to the Commissioner and Department. This section provides instructions for delivering submissions and notices to the commissioner and department.

Subchapter B. Captive Management Companies. This subchapter addresses the registration of captive management companies, the duration of the registration, the designation of the responsible party, contracting with the captive insurance company, and requirements of a contract with the captive insurance company.

§6.101. Registration of Captive Management Companies. Registered captive management companies may provide administrative services to captive insurance companies. Captive insurance companies are not required to retain the services of a captive management company. As provided in subsection (a), the commissioner must approve the captive management company's registration prior to providing administrative services. The sections do not prohibit a captive management company from seeking registration approval at the same time the captive insurance company submits its application. However, the department will not approve the captive insurance company's application if the registration is not approved and the unregistered captive management company continues to be listed as providing administrative services to the captive insurance company.

Captive management companies are defined in §6.1 as the entity responsible for oversight of the provided administrative service. The adopted definition affects which entities must register as captive management companies. Limiting the captive management company to the entity responsible for performance of the function establishes with certainty the entity the department and captive insurance company will look to for information and performance of the function. This change does not affect the vetting process for registered captive management companies.

Subsection (b) establishes which individuals may provide administrative services to a captive insurance company. As previously discussed in the reasoned justification section of this adoption, after the publication of the proposal, the department solicited captive insurance company applications. Through that process, and in response to written comments, the department learned that not all individual officers and members of the governing board may be traditional employees of the captive insurance company. Based on that new information, the department decided that §6.101(b) should be amended to better align with the individuals who may be required to provide biographical information under §6.202 and §6.303.

Subsection (c) establishes the information that the captive management company must provide to the department when registering as a captive management company. This includes information about the captive management company and the captive management company's designated responsible party. The designated responsible party will be the primary source of contact for the department. Information related to the designated responsible party is listed in §6.103. While the department may provide a registration form that registrants may submit, these sections do not establish a requirement that the registrant must use a specific form to submit the required information.

Insurance Code §964.067 requires a captive management company to register with the department and to provide information required by the commissioner. This authorizes the department to set a standard for registering and maintaining that registration.

Captive insurance companies will have varying levels of resources and sophistication to independently evaluate solicitations from these third party contractors. In authorizing the department to register and establish registration requirements, the legislature has directed the department to conduct some level of review before the registration is granted. However, a captive management company is not a risk-bearing entity and it is limited to providing administrative services within the scope of a contract with a captive insurance company that is limited under Insurance Code Chapter 964 to insuring its affiliate's risks and unaffiliated controlled business risks. The rules balance the requirement for the department's review and the captive management company's function through a limited level of review that focuses on information about the captive management company's designated responsible party, in addition to basic contact and identification information.

Because the captive management company may have the required information in another format for another jurisdiction, the section does not establish a requirement that the registrant must use a specific Texas form to submit the required information.

§6.102. Maintenance and Duration of the Registration. Subsection (a) provides that a captive management company must notify the department of changes in its registration information within 30 days of the change. Subsection (b) establishes that the captive management company must replace a designated responsible party within 30 days or it may no longer operate as a captive management company. This is because this person is the identified representative of the captive management com-

pany and operating without a designated responsible party does not comply with this chapter. While it is preferred that the captive management company not have any gap in a designated responsible party, the 30-day period allows the captive management company time to comply with the requirement following an unexpected loss of the designated responsible party without an immediate disruption in its operations and the captive insurance company's operations.

Subsection (c) provides that a captive management company's registration will expire if the entity is not actively providing administrative services to a captive insurance company for more than 180 days. The department extended this period from the proposed 90-day period to reduce the potential impact of the requirement. The requirement is necessary to ensure that registered captive managers are active participants in the Texas market and not simply seeking a designation. The requirement for reentry into the market is extremely low and the sections do not prohibit a captive management company from applying for a registration at the time the captive insurance company that it will manage begins the more extensive process of seeking a certificate of authority.

Subsection (d) establishes that a captive management company with an expired registration must resubmit its registration. The subsection also allows for flexibility through the provision that the commissioner may waive requirements for certain information if requested by the registrant and the department determines that the information is unnecessary.

§6.103. Designated Responsible Party. Subsection (a) specifies the qualification for an individual to be designated a responsible party and the information that must be provided about the designated individual. This includes identifying information, professional background information, criminal history, and, unless exempt, a criminal history background check using the procedure under §1.509 of this title and as authorized by Government Code §411.106.

If the designated responsible party has submitted a set of fingerprints to the department for a license that is currently active, the individual is not required to submit another set of fingerprints under §1.504(b)(1) of this title. Otherwise, fingerprint background checks will be conducted using established department processes specified in §1.509. Electronic fingerprinting is preferred, and the Texas Department of Public Safety's (DPS) vendor provides this service. The fingerprint is electronically determined to be usable at the time of collection, forwarded to DPS and the FBI for review, and the results are made available securely to the department within a few days. Persons may also submit paper fingerprint cards. However, reprints are often required if the DPS determines after it receives the prints that they are unsuitable for scanning into an electronic format. Payment of fees is required under §1.509. The vendor, DPS, and the FBI establish fee and payment requirements.

Because the captive management company will be engaged in managing some or all of the captive insurance company's administrative activities, the designated responsible party must not have a prior criminal history that would otherwise bar the person from licensure or other authorization to engage in the business of insurance under §1.502 of this title.

§6.104. Administrative Services Contracts. Captive management companies will contract with captive insurance companies and with other captive management companies. This section addresses those contracts.

Captive insurance companies are not required to contract with captive management companies for administrative services. The captive insurance company may elect to perform administrative service functions in-house, directly contract with separate captive management companies to perform different administrative service functions, or contract with a captive management company that will then contract with other captive management companies.

Subsection (a) provides that the captive insurance company may contract with a number of captive management companies. Subsection (b) provides that captive management companies may contract with other captive management companies if the captive insurance company approves.

Each captive management company will be contractually responsible for performing its administrative service or services. The captive management company may contract with other unregistered entities or individuals to perform certain administrative functions, but the captive management company will still remain responsible for ensuring that functions performed are in compliance with statute and these rules. If the captive management company desires to shift responsibility for the function, it may do so by contracting with another captive management company subject to the approval of the captive insurance company as provided in §6.104(b). A captive management registration will not be required if employees of the captive insurance company or a registered captive management company have oversight responsibility for the administrative service.

Identifying the captive management company as the entity responsible for performance of the function establishes with certainty the entity the department and captive insurance company will look to for information and performance of the function. This change does not affect the vetting process for registered captive management companies.

Subsections (a) and (b) allow for a variety of business organizations. However, as was addressed in subsection (c), regardless of the contractual relationships, the captive insurance company remains responsible for compliance with all statutory and regulatory requirements. The captive insurance company is the entity obligated on the risk, and it has a duty to manage that risk in compliance with the law. Subsection (d) provides that subsection (c) does not limit the duty of the captive management company to also comply with statutes and regulations. The department intends to allow for flexible structures, but the captive insurance company cannot avoid responsibility for compliance by attempting to shift blame for a violation between the entities.

The Insurance Code and other laws require persons performing certain functions to have a license. For example, adjusters must have a license. To the extent the entity or employee performing a function is required to have a license, subsection (e) requires them to hold the license. A captive management company registration does not authorize the captive management company or its employees to perform a licensed service without the required license.

§6.105. Agreements to Provide Administrative Services. This section establishes certain provisions that must be incorporated into a captive management contract. Insurance Code §964.059(b)(3) and (5) authorizes the commissioner to consider the overall soundness of the captive insurance company's plan of operations and factors relevant to determining whether the captive insurance company will be able to meet its policyholder obligations. The requirements are basic, but have presented

impediments to insurers fulfilling their obligations in the department's regulatory experience.

Further, as provided in Insurance Code §964.055, books and records are subject to Insurance Code Chapter 803. Insurance Code §803.005 requires that the books, records, accounts, or offices of a domestic company must be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency. Section 6.105(a)(5) and (6) establishes contracting requirements concerning the captive insurance company's books and records maintained by the captive management company.

Subchapter C. Captive Insurance Company Application Process. This subchapter establishes the procedure for submitting a captive insurance company certificate of authority application and the information the department will require to process that application. The intent of this procedure is to minimize delay and create a reasonable and flexible process within the scope of the statute. While not required by these sections, an applicant who wishes to expedite the actual application process may request from the department an initial meeting and cursory business plan review prior to filing an application. Because the department's financial evaluation and qualifying examination of the proposed captive insurance company may require significantly more time than the Texas Secretary of State's review and issuance of a certificate of filing, the sections do not require the company to be formed prior to the department commencing its review.

§6.201. Captive Insurance Company Certificate of Authority Required. This section requires an applicant to submit an application providing the information in §6.202, and it sets the required fee to apply for a certificate of authority. The department has chosen not to require or adopt a specific form or format for submitting the information because the applicant, in particular those applicants redomesticating to Texas from other domiciles, may have the required information on other forms and in other formats. Under the procedures and requirements in this section, the department can work with applicants in minimizing the cost, delay, and effort required in applying for a Texas certificate of authority.

Insurance Code §964.057(d) establishes an application fee of $1,500 until January 1, 2019. Insurance Code §964.057(c) requires the commissioner to set an application fee of not less than $1,500 by rule for applications commencing on and after January 1, 2019. The adoption sets the fee at $1,500 without expiration. Establishing the fee in this adoption eliminates the need to have another proposal prior to January 1, 2019, simply to set that fee. If the department determines that a greater fee is necessary for applications commencing on and after January 1, 2019, a subsequent proposal to amend the amount of the fee will be necessary.

§6.202. Captive Insurance Company Certificate of Authority Application Contents and Process. This section lists the information an applicant for a certificate of authority must submit and describes the application review process. The application requirements in subsections (a) - (d), including a plan of operation, certifications, and verifications, are authorized under Insurance Code §964.057 and necessary to evaluate the applicant under Insurance Code §964.059.

To retain some flexibility in this new licensing area, subsection (g) provides that the commissioner may waive the submission of certain information if warranted. In response to comments concerning potential impediments to redomesticating entities resulting from existing contracts, the department amends subsection (g) to clarify that the commissioner may grant conditional exceptions to contractual requirements in this chapter for redomesticating applicants. If an applicant has a contract that is unfeasible to terminate or amend immediately, the applicant can request an exception based on an agreement to remedy the situation at its annual renewal or a similarly limited period. The waiver and extension are not intended for all situations. The department expects applicants to comply with these sections, particularly when dealing with affiliates and contractors under their control.

The department has not proposed to adopt and require a specific application form. Subsection (d) will allow the applicant to use forms and formats from other jurisdictions or other recipients that provide the required information.

Subsection (a)(1) - (10) lists general information requirements about the captive insurance company applicant. The required information includes biographical affidavits on certain persons listed in §6.303 of this title, unless the function that person is performing has been, or will be, contracted to a captive management company. This review is authorized under Insurance Code §964.059(b)(2). Fingerprints are not required under this section for these individuals because Insurance Code Chapter 964 currently allows only for pure captives, and to some extent controlled unaffiliated business captives, both of which manage an affiliate's operational risks.

Subsection (a)(11) lists the requirements for a plan of operation. This information is critical in assessing the viability and soundness of the captive insurance company. Subsection (b) lists additional requirements that apply to captive insurance company applicants that are redomesticating to Texas. In response to comments that pure captive insurance companies were not examined in all jurisdictions, the department has changed subsection (b) to clarify the procedure. The change indicates that the date and notice of the last examination are required only if the company was actually examined. The department considers the change to be nonsubstantive because the department would have reviewed an application that stated the applicant had no prior examination. Subsection (c) lists additional requirements that apply to captive insurance company applicants that will be operating with unaffiliated controlled businesses.

As described in subsection (e), the department will review the submitted information. In discussions with the department or during the process of the examination, the applicant entity may amend its information without restarting the application process. Following completion of the review, either the department will issue a certificate of general good, or the commissioner will deny the application.

Denial of the application will trigger administrative rights the applicant has under Insurance Code §964.059. The statute does not require a certificate of general good; however, this section establishes that the department will provide written confirmation to the applicant that the application is acceptable.

As described in subsection (f), the department will then consider a certificate of filing from the Texas Secretary of State as the next step in the process of issuing the certificate of authority. Whether the Texas Secretary of State will consider the certificate of general good in its review is a matter solely within the discretion of the Texas Secretary of State. The certificate of filing must be

accompanied by the affidavits and information required under Insurance Code §964.057.

§6.203. Issuance of Captive Insurance Company Certificate of Authority. This section provides that when the department has received the required information under §6.202 and certificate of filing as required under §6.202, the department will conduct a final review of the documents to determine if a certificate of authority should be issued. This review will satisfy the qualifying examination requirement under Insurance Code §964.058 for start-up captive insurance companies and the commissioner's determination requirement under Insurance Code §964.071 for redomestications.

As previously stated, the department has amended §6.202(g) in response to comments to clarify that the commissioner may grant conditional exceptions to contractual requirements in this chapter for redomesticating applicants. Because the conditional exceptions will require an act to be performed in the future to achieve compliance, it is necessary to document the captive insurance company's agreement to perform the act and make that act a condition of the captive insurance company's certificate of authority. The department has added a sentence to subsection (b) stating this requirement and process.

Subchapter D. Maintenance of a Captive Insurance Company's Certificate of Authority. This subchapter establishes the requirements for maintenance of a captive insurance company's certificate of authority. In addition, §6.302 and §6.303 address the captive insurance company's governing body and persons required to submit biographical information that are also referenced in the application process.

§6.301. Ongoing Requirements. Subsection (a) of this section lists the basic requirements for maintenance of the captive insurance company's certificate of authority. This includes maintenance of its corporate structure and payment of related fees. Notice of these requirements will assist the department in its goal to ensure compliance with Insurance Code Chapter 964 and these sections, including a return to compliance. However, failure to meet these requirements may subject a captive insurance company to disciplinary action as described in §6.701.

§6.302. Governing Body. As required under Insurance Code §964.059, the captive insurance company must have officers or directors with "sufficient insurance experience, ability, standing, and good record to make success of the captive insurance company probable." Meeting this standard requires both individuals overseeing the operation and individuals with technical skill. Rather than attempt to define a management structure for each captive insurance company to include directors and officers regardless of its business structure, the proposed sections require the captive insurance company to have a governing body. The term "governing body" is defined in §6.1 of this title as the "individuals who comprise the ultimate decision-making body of a captive insurance company, including directors and officers."

This section establishes that the persons comprising the governing body collectively must have the experience and ability to oversee the operations of the captive insurance company as part of the fulfillment of the requirement under Insurance Code §964.059. This oversight responsibility is further described in subsection (b). Members of the governing body, other managers, or captive management companies will provide the technical skills necessary to operate the captive insurance company.

§6.303. Captive Insurance Company Biographical Information. This section specifies the individuals for whom the captive insurance company must provide biographical information. The biographical information will be used to evaluate the individual's experience, ability, standing, and good record as required under Insurance Code §964.059. This section includes persons responsible for managing technical operations that the captive insurance company has chosen to perform in-house, members of the governing body, and other corporate officers. Individuals with technical management responsibilities and corporate officers may be members of the governing body. The section does not require captive insurance companies to employ individuals to perform these technical and administrative functions. The captive insurance company is not required to provide biographical information if the function is performed by a captive management company.

Subsection (b) sets forth the biographical information that will be required. As addressed in regard to the application requirement in §6.202, fingerprints are not required for these individuals because they manage an affiliate's operational risks.

§6.304. Material Change in the Plan of Operations. This section requires that the captive insurance company notify the department if it has material changes in its plan of operation. The section defines a material change as a "change in operations of the captive insurance company that results in a significant modification in the risk profile of the captive insurance company" and lists eight examples. This requirement is not a report of the captive insurance company's financial condition, but maintenance of the information supporting its certificate of authority. Because the plan of operation was approved in the decision to grant the captive insurance company's certificate of authority, changes to the plan require prior commissioner approval.

Under subsection (c), the captive insurance company must provide updated financial projections if the change in the plan of operation will result in a variation in the most recently filed projections equal to an amount greater than 15 percent of projected net equity. The captive insurance company must submit updated projections with the notice of the material change.

As provided in subsection (d), the department will evaluate whether a change in the plan of operations may necessitate a change in the captive insurance company's minimum capital and surplus requirements. In considering the change and its effect on capital and surplus, the department may require the captive insurance company to provide an actuarial analysis.

§6.305. Sale of a Covered Affiliate. Insurance Code §§964.051 and 964.052 limit captive insurance companies to insuring and reinsuring the operational risks of their affiliates. This section clarifies that the captive insurance company may no longer provide insurance coverage for a former affiliate effective the date the affiliation ends, unless the captive insurance company provides information acceptable to the commissioner that the coverage provided meets the requirements to be categorized as controlled unaffiliated business coverage.

§6.306. Books and Records. Insurance Code §964.055 requires that a captive insurance company maintain its books and records within this state unless the commissioner authorizes the captive insurance company to locate them outside of the state. This section clarifies the requirement primarily for the purpose of handling electronic records and addresses the difference between maintenance and location of the records. While some entities may use physical records, many will use electronic records accessible from almost any location, rendering the location of the record somewhat elusive. However, maintenance of the records

involves individuals performing data entry, requiring a physical location. This section specifies that the captive insurance company must give notice about where it maintains records, and seek approval from the commissioner if that location is outside of the state. This section does not require all persons maintaining the records to be at the same physical location, but it does require the company to tell the department about all of the locations. Subsection (c) sets forth the information that must be submitted to the commissioner to request permission to locate or maintain records outside of the state.

Section 6.306(d) - (g) establishes the condition of the books and records to enable the department to examine the captive insurance company, particularly for electronic records. Insurance Code §964.002(a)(3) provides that Insurance Code Chapter 401 applies to captive insurance companies. Insurance Code Chapter 401, Subchapter B establishes an examination requirement, and its application to captive insurance companies is referenced in Insurance Code §964.065. These standards include a means of recovering records and data. Because of the variety of potential business structures and constantly changing technology, the section does not specify a means of performing this function. Rather, the captive insurance company must demonstrate or document how it can recover its information in the event of a failure in its information storage system. That system is a business decision of the captive insurance company.

§6.307. Changes to Formation Documents. This section establishes a procedure for captive insurance companies to request the commissioner's approval for changes in their formation documents so that they may comply with Insurance Code §964.062.

Subchapter E. Financial Information and Reporting. This subchapter establishes requirements for annual reports and providing notices of certain financial events, including changes in financial projections, loans to affiliates, letters of credit, and policyholder dividends.

§6.401. Annual Report. The department adopts by reference the Texas Captive Annual Report form and instructions. The department did not receive any comments on the Texas Captive Annual Report form and instructions, and the data and calculation requirements have not been changed from the proposal. The annual report will include formulas in the document based on the data and calculation requirements.

As defined in §6.1, the annual report consists of three parts: (1) the captive insurance company's financial statements, including disclosures and supporting schedules; (2) an actuarial opinion completed by a qualified actuary that provides an opinion relating to policy reserves and other actuarial items for risks insured; and (3) financial projections every third year, as required under §6.406. The submission deadlines for the annual report follow the requirements established in Insurance Code §964.060. If the captive insurance company uses a fiscal year end other than a calendar year end, the deadlines in §6.404 will apply.

§6.402. Basis of Accounting. This section clarifies that the requirement to use generally accepted accounting principles in Insurance Code §964.054(c) means that captive insurance company financial statements in this chapter will be based on generally accepted accounting principles issued by the Financial Accounting Standards Board for use in the United States.

§6.403. Audited Financial Statements. As required under Insurance Code §964.060(b)(2), the captive insurance company must file with the department by June 1 of each year, a report of the captive insurance company's financial condition at last year end. The report must include an independent certified public accountant's opinion of the company's financial condition. Insurance Code §964.002(a)(3) provides that captive insurance companies are also subject to the requirements of Insurance Code Chapter 401. Insurance Code Chapter 401, Subchapter A, applies to audited financial statements. The department considers this to include the filing exemption in Insurance Code §401.006 for insurers with less that $1 million in written premium.

Subsection (a) provides that the Insurance Code §964.060(b)(2) report requirement is subject to Insurance Code Chapter 401, Subchapter A. Subsection (b) provides that the report must include a qualified accountant's opinion of the captive insurance company's financial condition and establishes that the qualified accountant's opinion must meet the requirements established in Insurance Code Chapter 401, Subchapter A, and §7.85 and §7.88 of this title.

§6.404. Captive Insurance Companies Using Other Than Calendar Year Fiscal Years. This section establishes the procedure for requesting permission to use a fiscal year other than a calendar year. If the request is granted, the captive insurance company must submit the annual report using the schedule established in Insurance Code §964.060, which is set forth in subsection (c) for convenience.

For premium tax purposes, the captive insurance company must comply with Insurance Code §964.060(c)(3) and submit certain information before March 1 of each year. Subsection (b) establishes that the information required to be submitted for premium tax purposes must be in the annual report format established in the Texas Captive Annual Report form adopted under §6.401. Subsection (b) refers to the asset page and liability, capital, and surplus page rather than the "balance sheet" because that is the terminology used in the Texas Captive Annual Report form.

§6.405. Capital and Surplus Requirements. Because captive insurance companies cover a broad variety of risks and have various business models, this section does not propose specific capital and surplus requirements. Rather, the commissioner will consider factors that are relevant to the specific risk profile and business model of each captive insurance company. The section also points to three factors that should be relevant in almost all situations: (1) net writings to policyholders' surplus ratio, (2) net reserves to policyholders' surplus ratio, and (3) net retention of an individual loss per occurrence as a percentage of policyholders' surplus.

§6.406. Financial Projections. This section establishes that the captive insurance company must provide financial projections covering the next four years of operations. In general, the captive insurance company will be required to submit projections with its application and with its annual report every third year. Updated financial projections are also required if the captive insurance company reports a material change in operations that will result in a variation in the most recently filed projections equal to an amount greater than 15 percent of projected net equity, or if requested by the department. Subsection (b) requires the financial projections to include a projected asset page; liability, capital, and surplus page; income statement page; and cash flow page in the same format as the annual report. This will provide consistency in reports.

Subsection (c) creates exceptions to the annual report requirement in subsection (a), if the captive insurance company has already submitted updated financial projections during the third year or if the department agrees to waive the requirement. Sub-

section (e) provides that the commissioner will evaluate the captive insurance company's minimum capital and surplus when there is an update to the captive insurance company's financial projections. The department may also require an actuarial opinion on the effect of the change in the financial projections.

§6.407. Loans to Affiliates. The section establishes the standards for approval of a loan to an affiliate. Subsections (a) - (c) establish requirements for a loan if the insurer is not part of an insurance holding company system subject to Insurance Code Chapter 823 under Insurance Code §964.002. To expedite processing, the submission must be labeled as "Loans to Affiliates' Captives."

Insurance Code §964.002 provides that if a captive insurance company is affiliated with another insurance company that is part of a holding company subject to Insurance Code Chapter 823, the captive insurance company is also subject to Insurance Code Chapter 823. Because the holding company requirements differ from the requirements in subsections (a) - (c), subsection (d) clarifies that a captive insurance company subject to Insurance Code Chapter 823 must comply with Insurance Code Chapter 823 and the holding company rules as addressed in §6.410.

§6.408. Letters of Credit. Insurance Code §964.056(c)(2) authorizes a captive insurance company to recognize a letter of credit as an asset that is acceptable for meeting minimum capital and surplus requirements. The commissioner must approve the letter of credit. Subsection (a) provides the standards for an acceptable letter of credit. Using a letter of credit as an asset may be a departure from generally accepted account principles.

Subsection (a) does not apply to the use of a letter of credit in a reinsurance transaction. As provided in Insurance Code §964.052(d), captives may take credit on reserves for risks ceded to reinsurers under Subchapter C, Insurance Code Chapter 492 and Subchapter C, and Insurance Code Chapter 493. Section 7.610 sets standards for a suitable letter of credit under those chapters. Subsection (b) clarifies that a letter of credit used for reinsurance purposes by a captive insurance company must meet the §7.610 requirements.

§6.409. Policyholder Dividends. Insurance Code §964.063 requires the captive insurance company to notify the commissioner when issuing a policyholder dividend. The section establishes that the notice must be given within 30 days of issuing the dividend, which is determined to be a reasonable period.

§6.410. Application of Holding Company Rules. Insurance Code §964.002(c) provides that Insurance Code Chapter 823 applies to a captive insurance company affiliated with another insurance company that is part of a holding company subject to Insurance Code Chapter 823. A captive insurance company in this circumstance is also subject to the regulations and requirements that implement Insurance Code Chapter 823, including the holding company rules in 28 TAC Chapter 7, Subchapter B.

This chapter does not provide a complete listing of the regulations that could apply to a captive insurance company that is subject to Insurance Code Chapter 823 under Insurance Code §964.002(c). However, Insurance Code Chapter 823 and its implementing regulations are not expected to affect the requirements in this chapter, except as provided in §6.407(d).

Subchapter F. Workers' Compensation. This subchapter clarifies in §6.501 that captive insurance companies are subject to workers' compensation insurance statutes in the Insurance Code and the Labor Code.

Subchapter G. Taxes. This subchapter establishes in §6.601 a procedure for a foreign or alien captive insurance company redomesticating from another jurisdiction to request that the commissioner postpone or waive the imposition of any tax or fee under the Insurance Code. The request may be for a waiver of all or part of the maintenance tax, the premium tax, or licensing fees. The commissioner may grant or deny the waiver request in whole or in part, at the commissioner's sole discretion.

Subchapter H. Disciplinary Action. This subchapter clarifies in §6.701 that disciplinary action may be taken for violations of statute and this chapter, including violations of section §6.501 addressing workers' compensation insurance and Labor Code §401.011.

HOW THE SECTIONS WILL FUNCTION.

Section 6.1. Definitions. Section 6.1 incorporates the definitions established in Insurance Code §964.001 and establishes additional defined terms that are necessary to implement Insurance Code Chapter 964 and this chapter.

Section 6.2. Submissions and Notifications to the Commissioner and Department. Section 6.2 provides instructions for delivering submissions and notices to the commissioner and department.

Section 6.101. Registration of Captive Management Companies. Section 6.101 establishes the procedure and requirements for registration of a captive management company, including the requirement that the captive management company have a designated responsible party.

Section 6.102. Maintenance and Duration of the Registration. Section 6.102 establishes requirements for the maintenance of a captive management company registration, notifying the department of changes in its registration and maintaining a designated responsible party. The section also provides that a captive management company's registration will expire if the entity is not actively providing administrative services to a captive insurance company for more than 180 days.

Section 6.103. Designated Responsible Party. Section 6.103 specifies the qualification for an individual to be designated a responsible party and the information that must be provided about the designated individual, including fingerprints and a criminal history background check.

Section 6.104. Administrative Services Contracts. Section 6.104 addresses administrative service contracts between captive management and captive insurance company or other captive management companies.

Section 6.105. Agreements to Provide Administrative Services. Section 6.105 establishes certain provisions that must be incorporated into a captive management contract.

Section 6.201. Captive Insurance Company Certificate of Authority Required. Section 6.201 requires an applicant to submit an application providing the information in §6.202 of this title and the required fee to apply for a certificate of authority. The section also establishes the application fee in the amount $1,500.

Section 6.202. Captive Insurance Company Certificate of Authority Application Contents and Process. Section 6.202 lists the information an applicant for a certificate of authority must submit and describes the application review process.

Section 6.203. Issuance of Captive Insurance Company Certificate of Authority Application. Section 6.203 establishes the

department's procedure for issuing a certificate of authority to a captive insurance company applicant.

Section 6.301. Ongoing Requirements. Section 6.301 lists the basic requirements for maintenance of the captive insurance company's certificate of authority.

Section 6.302. Governing Body. Section 6.302 establishes that the persons comprising the governing body collectively must have the experience and ability to oversee the operations of the captive insurance company as part of the fulfillment of the requirement under Insurance Code §964.059.

Section 6.303. Captive Insurance Company Biographical Information. Section 6.303 specifies the individuals for whom the captive insurance company must provide biographical information, including persons responsible for managing technical operations that the captive insurance company has chosen to perform in-house, members of the governing body, and other corporate officers.

Section 6.304. Material Change in the Plan of Operations. Section 6.304 requires a captive insurance company to notify the department if it has material changes in its plan of operation, including requirements to provide updated financial projections under specified circumstances.

Section 6.305. Sale of a Covered Affiliate. Section 6.305 clarifies procedures for providing insurance to an affiliate after the affiliate entity is sold.

Section 6.306. Books and Records. Section 6.306 clarifies maintenance of its books and records requirement under Insurance Code §964.055 for the purpose of handling electronic records, and addresses the difference between maintenance and location of the records.

Section 6.307. Changes to Formation Documents. Section 6.307 establishes a procedure for captive insurance companies to request the commissioner's approval for changes in their formation documents so that they may comply with Insurance Code §964.062.

Section 6.401. Annual Report. Section 6.401 adopts the Texas Captive Annual Report form and instructions by reference.

Section 6.402. Basis of Accounting. Section 6.402 clarifies that the financial statements in this chapter must be based on generally accepted accounting principles issued by the Financial Accounting Standards Board for use in the United States.

Section 6.403. Audited Financial Statements. Section 6.403 establishes that the report of the captive insurance company's financial condition at last year end, as required under Insurance Code §964.060(b)(2), must include a qualified accountant's opinion of the captive insurance company's financial condition. The qualified accountant's opinion must meet the requirements established in Insurance Code Chapter 401, Subchapter A, and §7.85 and §7.88 of this title.

Section 6.404. Captive Insurance Companies Using Other Than Calendar Year Fiscal Years. Section 6.404 establishes the procedure for requesting permission to use a fiscal year other than a calendar year, and the information that must be submitted for premium tax purposes.

Section 6.405. Capital and Surplus Requirements. Section 6.405 establishes that the commissioner will consider factors that are relevant to the specific risk profile and business model of each captive insurance company when determining capital and surplus requirements.

Section 6.406. Financial Projections. Section 6.406 establishes the requirements for submitting financial projections, including contents and timing.

Section 6.407. Loans to Affiliates. Section 6.407 establishes the standards for approval of a loan to an affiliate, including clarification that a captive insurance company subject to Insurance Code Chapter 823 must comply with Insurance Code Chapter 823 and the holding company rules as addressed in §6.410.

Section 6.408. Letters of Credit. Section 6.408 provides the standards for an acceptable letter of credit for meeting minimum capital and surplus requirements and reinsurance transactions.

Section 6.409. Policyholder Dividends. Section 6.409 establishes that a captive insurance company must provide notice within 30 days of issuing the dividend under Insurance Code §964.063.

Section 6.410. Application of Holding Company Rules. Section 6.410 incorporates into this chapter the requirement under Insurance Code §964.002(c) that Insurance Code Chapter 823 applies to a captive insurance company affiliated with another insurance company that is part of a holding company subject to Insurance Code Chapter 823.

Section 6.501. Workers' Compensation. Section 6.501 clarifies that captive insurance companies are subject to workers' compensation insurance statutes in the Insurance Code and the Labor Code.

Section 6.601. Taxes. Section 6.601 establishes a procedure for a foreign or alien captive insurance company that is redomesticating from another jurisdiction to request that the commissioner postpone or waive the imposition of any tax or fee under the Insurance Code.

Section 6.701. Disciplinary Action. Section 6.701 clarifies that disciplinary action may be taken for violations of statute and this chapter, including violations of §6.501 addressing workers' compensation insurance and Labor Code §415.011.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter expressed concern with proposed National Association of Insurance Commissioner rules and accreditation standards that would override the state rules regulating captive insurance companies.

Agency Response: The department appreciates the comment. The department does not base proposed rules on NAIC models or requirements. The department adopts rules to implement statutes enacted by the Texas Legislature.

Comment: A commenter recommends that the rule specifically address a captive insurance company's authority to write certain accident and health insurance. The commenter asks that the proposed regulations ensure that captive insurance companies do not exceed their statutory authority or escape the application of important consumer protections in those particular instances under which a captive insurance company is authorized to issue accident and health insurance under Insurance Code §964.051.

Agency Response: The department agrees that the legislature established specific limits on the lines of insurance that captive insurance companies may write in Insurance Code §964.051(b) and (c). Restating the prohibitions is not necessary to enforce the prohibitions. Further, a partial listing of prohibitions might

have the unintended effect of suggesting that lines that were not listed could be written.

The department may not grant a certificate of authority to a captive insurance company to write insurance business that is not authorized by the statute as provided under §964.059(c). The department will monitor the lines captive insurance companies market through their plan of operations under §6.202 and §6.302, and their annual reports. The department declines to make any changes in the rule based on this comment.

Comment: A commenter recommends that the department prohibit captive insurance companies from offering a preferred provider benefit plan or, alternatively, require any captive insurance company that seeks to issue a preferred provider benefit plan to comply with all department rules applicable to preferred provider benefit plans, including §§3.3701 - 3.3711 of this title, as if the captive insurance company were an insurer under Insurance Code Chapter 1301.

The commenter notes that it was only with the adoption of §§3.3701 - 3.3705 of this title that insurers were permitted to offer differing levels of coverage. The commenter states a concern that, without the express extension of the application of the regulations applicable to insurers under Insurance Code Chapter 1301 to captive insurance companies issuing preferred provider benefit plans, captive insurance companies would be acting: (1) without real authority to offer such coverage; (2) in a manner that exceeds the authority generally granted to insurers; and (3) in circumvention of the protections for the consumer against misrepresentation, deceptive practices, unjust treatment and unfair discrimination, resulting in potentially grave harm to consumers.

The commenter urges the department to properly exercise its broad rulemaking authority under Insurance Code §36.001 to adopt these proposed changes concerning preferred provider benefit plans under the general duties of the department stated Insurance Code §31.002. The commenter expresses a concern that if the department does not exercise its authority for this purpose in these rules, then it may have waived its ability to do so in the future without separate enabling legislation.

Agency Response: The department agrees that Insurance Code Title 2 applies to captive insurance companies under Insurance Code §964.002. This includes the general provisions in Chapters 31 and 36 discussed in the comment and disciplinary proceedings under Subtitle B of that title. In addition to the rulemaking authority under Insurance Code §36.001, the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions Insurance Code Chapter 964 under Insurance Code §964.069. The department does not agree that this proposal in any way limits the department from proposing rules in the future that it determines to be necessary to implement Insurance Code Chapter 964 under Insurance Code §36.001 and §964.069.

The department declines to make any changes in the rules based on this comment because the proposal does not provide notice that the department would consider rules authorizing, prohibiting, or establishing requirements for captive insurers issuing preferred provider benefit plans under Chapter 1301 and department rules. If necessary the department may consider those matters, and the applicability of other requirements and mandates related to health benefit plans and captive insurance companies, in future rule proposals.

Captive insurers may only issue those lines of coverage authorized in §964.051. As stated in response to a prior comment, the department may not grant a certificate of authority to a captive insurance company to write insurance business that is not authorized by statute, as provided under §964.059(c). The department will monitor captive insurance companies through their initially-submitted plans of operation under §6.202, and maintained under §6.302, as well as their annual reports.

Comment: A commenter urges the department to adopt in these sections a rule clarifying that Insurance Code §964.051 does not authorize a captive insurance company to act as a health maintenance organization (HMO) in Texas without first obtaining a certificate of authority under Chapter 843 of the Texas Insurance Code. In support of this, the commenter notes that: (1) coverage by a health maintenance organization in Texas is, by its own definition, not insurance; instead, it is prepaid healthcare; and (2) the authority granted to captive insurance companies in §964.051 to write "insurance" does not authorize it to include a reference to or authorization for a captive insurance company to provide HMO coverage.

Agency Response: The department agrees that Insurance Code §964.051 does not specifically reference HMO coverage. The department also notes that Insurance Code §964.051 authorizes captive insurance companies to only write insurance. The department is aware that HMOs are usually formed by the Texas Secretary of State using a general purpose provision. This is in contrast to Insurance Code §964.053(a) which establishes the requirement that "a captive insurance company must be formed for the purpose of engaging in the business of insurance under this chapter [Insurance Code Chapter 964]." The department declines to make any changes in the rules based on this comment because the proposal did not provide notice that the department would address HMOs as captive insurers. If necessary, the department may consider these matters in future rule proposals.

As stated in response to prior comments, the department may not grant a certificate of authority to a captive insurance company to write insurance business that is not authorized by statute, as provided under §964.059(c). The department will evaluate an application attempting to license a captive insurance company to provide HMO coverage for full compliance with Insurance Code Chapter 964, Chapter 843, and department rules before granting or denying the application.

Comment: A commenter suggests that under §6.101, the department should provide a captive management company registration exemption for entities holding a department license and providing a service within the scope of that license.

Agency Response: The department considers this comment to apply to licensees that act as captive managing companies and are required to register as a captive management company. Under Insurance Code §964.067, an entity acting as a captive management company must register with the department as required. The statute and proposal define a captive management company as an entity providing an administrative service to a captive insurance company.

Due to concerns that have been raised in the captive insurance company licensing process, which the department initiated prior to the adoption of these rules, the department decided to clarify the proposed definition of captive management company to specify that the captive management company is responsible for oversight of the provided administrative service. The adopted definition establishes with certainty the entity the department and

captive insurer will look to for performance of the function. The change will also ensure that the captive management company vested with the responsibility has been vetted under these rules.

This change applies in §6.101 to describe which entities must register. The requirement will still allow the captive insurer to contract with one or more captive management companies under §6.104. Each captive management company will be contractually responsible for performing its function. The captive management company may contract with other unregistered entities or individuals to perform certain administrative functions, but the captive management company will still remain responsible for ensuring that performance of the function complies with statute and these rules. If the captive management company desires to shift responsibility for the function, it may do so by contracting with another captive management company subject to the approval of the captive insurance company as provided in §6.104(b).

Also concerning the clarification of who may provide an administrative service, the department amended §6.101(b) to better align with the individuals who may be required to provide biographical information under §6.202 and §6.303. The change reflects that the department has learned in the licensing process that not all individual officers and members of the governing board may be traditional employees of the captive insurance company.

The captive management company's registration requirement applies to a licensee if the licensee has oversight responsibility for providing an administrative service as defined in these rules. A captive management registration would not be required if staff of the captive insurer or a registered captive management company had oversight responsibility for the administrative service.

Concerning the comment, registration as a captive management company is a separate grant of authority, beyond the scope of any other department-issued license. In no other capacity is a licensee allowed to act under a separate authority without qualifying for that authority. Further, allowing an entity to act as a captive management company without registering would be inconsistent with the registration requirement under Insurance Code §964.069. The department declines to change the requirement for licensees acting as captive management companies.

In situations when a registration is required, the department has taken steps to minimize the burden of registration of other licensees. Most of the information necessary for registering as a captive management company should be readily available to the entity licensee, and is likely to have been gathered for the other license. This should include information related to the designated responsible party. Further, if that individual has already submitted fingerprints to the department, they may be exempt from further submissions requirements under §1.504(b).

Comment: A commenter questions why a captive management company registration should expire in 90 days under §6.102(c), especially when the captive management company may be actively managing captive insurance companies in other states. The commenter suggests that if the registration must expire, the date should be based on situations in which the captive management company has no captive insurance companies under management in any state for a period of time.

Agency Response: As discussed in the proposal, the department considers the expiration necessary to ensure that registered captive managers are active participants in the Texas market and not simply seeking a designation. Additionally the requirement for reentry into the market is extremely low.

The department is not persuaded by comments that the captive management company should be allowed to retain its Texas registration if it is active in other states. Each state may have its own requirements, if any, for who may act as a captive manager. Activity in another state does not mean the captive management company is in compliance with Texas requirements. However, to reduce the potential impact of the requirement, the period has been extended to 180 days instead of the proposed 90 days.

Comment: A commenter questions whether the reference to an individual in §6.103 precludes an entity from being a designated responsible party.

Agency Response: The department considers that all terms must be read in context. Under §6.103, the individual is required to provide fingerprints, which unambiguously means the reference is to a human being. The department declines to make any changes in the rules based on this comment.

Comment: A commenter states that the fingerprint requirement and criminal history background check for designated responsible parties under §6.103 are unusual and will discourage captive management company registrants.

Agency Response: The department is aware that individuals are cautious about public disclosure of their personal information. Criminal history information obtained by the department is confidential under both state and federal law.

The adopted process and procedures are not new to the department. The requirement applies §§1.503 - 1.509 of this title, which were adopted effective October 23, 2006. Since that date, the department has applied the requirements to new license types and registrations as they have been implemented. The department is not aware of any shortage of qualified applicants for any license or registration type subject to §§1.503 - 1.509. The department declines to make any changes in the rules based on this comment.

Comment: A commenter suggests deleting §6.103(4) and (5) concerning the fingerprint and criminal history requirement and guidelines for determining whether to grant, deny, suspend, or revoke the registration based on a person's prior criminal history. The commenter suggests replacing these provisions with a requirement for a sworn biographical affidavit.

Agency Response: The department disagrees with the comment and declines to make the requested change. The fingerprint requirement under §6.103(4) provides the individual's criminal history from an unbiased source based on a biometric indicator. Section 6.103(5) references the guidelines established in §1.502 of this title that were established for compliance with Occupations Code §53.025. The guidelines would be necessary even without an official criminal history report. The department does not consider that a separate set of guidelines for determining whether to grant, deny, suspend, or revoke a captive management company's registration is necessary.

Comment: A commenter suggests that the contracting requirements under §6.104 be changed to require that the department be notified if a captive management company retains any additional third parties.

Agency Response: The department disagrees with the commenter's suggestion. As part of maintaining its plan of operation, §6.304(a)(3) requires the captive insurance company to provide

the department with notice of changes in its captive management companies. The department declines to impose this requirement on captive management companies.

Section 6.104 authorizes a captive insurance company to retain none, one, or more than one captive management company to provide administrative services to the captive insurance company. A captive management company may also retain additional captive management companies if the captive insurance company agrees.

As addressed previously in responses to comments, the definition of captive management company has been changed. The adopted definition and requirement in §6.104 establish that oversight administrative services will be provided through department-vetted captive management companies and emphasizes that the "captive insurance company retains ultimate accountability and responsibility for compliance with all statutory and regulatory requirements," as stated in §6.104(c). Having the captive insurance company maintain and report changes in captive management companies under §6.304 is consistent with §6.104. The department declines to make any changes in the rules based on this comment.

Comment: A commenter suggests that the rules provide an exemption from the captive management company contracting requirements listed in §6.105(a) for redomesticating captive insurance companies.

Agency Response: The department considers the requirements listed in §6.105(a) to be basic and essential for the management and regulation of the captive insurance companies. The department believes that the matters can be handled by addendum. The department declines to make any changes in the rules based on this comment.

Comment: A commenter suggests that the rules, in §6.201, provide a clear distinction between the requirements for captive insurance companies that are redomesticating to Texas and new start-up captive insurance companies.

Agency Response: The requirements for an applicant seeking to redomesticate an existing captive insurance company or to form a new captive insurance company are substantially similar. The proposal specifically identifies additional information a redomesticating captive insurance company must provide in §6.202(c). The department chose this approach rather than creating two subchapters with minimal differences. The department declines to make any changes in the rules based on this comment.

Comment: A commenter asks if the Secretary of State has provided an official comment or commitment concerning §6.202 and the acceptance of redomestication documents.

Agency Response: The proposal has been provided to the Texas Secretary of State. The department is not aware of any official published guidance or rule issued by the Texas Secretary of State on Insurance Code Chapter 964 concerning the redomestication of captive insurance companies.

Comment: A commenter states that many jurisdictions do not examine pure captive insurance companies, and as such redomesticating captives may not be able to submit prior examination reports in compliance with §6.202(b).

Agency Response: The subsection has been revised to indicate that the submission requirement applies if the applicant has been examined. The department considers this change to be nonsubstantive because the department would have reviewed the application if the applicant reported that it had not been examined.

Comment: A commenter suggests that the department state in §6.403(a) that an exemption to the Insurance Code Chapter 401 audited financial requirement exists for insurers with written premium of $1 million or less.

Agency Response: The exemption is established in Insurance Code Chapter 401, as are many other requirements for compliance with this section. Referencing the exemption may result in confusion if the statute is changed. The department declines to make any changes in the rules based on this comment.

Comment: A commenter suggests that the required contractual provisions relating to books and records in a loan to an affiliate under §6.407(b)(4)(B) should be placed in §6.306, which addresses books and records.

Agency Response: The department disagrees. Section 6.407 relates to contractual obligations that must be included in the documentation. Section 6.306 relates to general practices concerning books and records. The department declines to make any changes in the rules based on this comment.

Comment: A commenter suggests that required contractual provisions in a loan to an affiliate under §6.407(b) and letters of credit under §6.408 may present an impediment to redomesticating entities that have existing contracts without the required provisions.

Agency Response: The department agrees that the redomestication of captive insurers should not be impeded due to matters of a technical nature that do not impair the operation of an applicant. The department will expect applicants to comply with these sections, particularly when dealing with affiliates and contractors under their control. The department recognizes that in some instances a change may not be possible or financially reasonable.

Those situations were meant to be addressed by the waiver provision in §6.202(g). The department amends §6.202(g) to clarify that the commissioner may grant conditional exceptions to contractual requirements in this chapter for redomesticating applicants. If an applicant has a contract that is unfeasible to terminate or amend immediately, the applicant can request an exception based on an agreement to remedy the situation by its annual renewal or a similarly limited period. This is not for all situations. The department expects applicants comply with these sections, particularly when dealing with affiliates and contractors under their control.

NAMES OF THOSE COMMENTING ON THE PROPOSAL.

For with changes: Delaware Captive Insurance Association; Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.; and Texas Medical Association.

Against: None.

SUBCHAPTER A. GENERAL MATTERS

28 TAC §6.1, §6.2

STATUTORY AUTHORITY. The department adopts the new sections under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity

holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization. Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Section 964.002 provides that a captive insurance company is subject to Insurance Code Chapters 401 and 823. Further, the section provides that Insurance Code Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Section 964.051 provides that a captive insurance company may only insure the operational risks of the company's affiliates and risks of a controlled, unaffiliated business. The section further provides that a captive insurance company is authorized to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Labor Code Chapter 407 or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

Section 964.053 provides that a captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code, except as a risk retention group or general partnership. The section further provides that the captive insurance company must have a board of directors or governing body. Section 964.054 requires the captive insurance company to use generally accepted accounting principles as an accounting basis, except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant, and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§6.1. Definitions.

(a) The definitions in Insurance Code §964.001 apply to this chapter.

(b) The following words and terms when used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) Administrative services--Insurance-related services necessary for the operation of a captive insurance company, including: claims adjustment; underwriting; accounting; investment advice; risk management; regulatory compliance; compiling statistics and preparing premium, loss, and tax reports; maintaining books and records; handling reinsurance matters; and processing premiums.

(2) Annual report--The annual report includes the following information, as required in the Texas Captive Annual Report form and instructions adopted under §6.401 of this title (relating to Annual Report):

(A) the captive insurance company's financial statements, including disclosures and supporting schedules;

(B) an actuarial opinion completed by a qualified actuary that provides an opinion relating to policy reserves and other actuarial items for risks insured; and

(C) financial projections every third year, as required under §6.406 of this title (relating to Financial Projections).

(3) Captive management company--A legal entity, not an individual, that has oversight responsibility for providing any administrative service to a captive insurance company.

(4) Certificate of filing--Evidence of the acceptance and filing of an instrument authorized to be filed with the Texas Secretary of State under the Business Organizations Code, Insurance Code Chapter 964, and this chapter.

(5) General partnership--The term includes a general partnership designated as a limited liability partnership. The term does not include a limited partnership, including a limited partnership designated as a limited liability partnership.

(6) Generally accepted accounting principles--Current and future generally accepted accounting principles issued by the Financial Accounting Standards Board for use in the United States as provided in §6.402 of this title (relating to Basis of Accounting).

(7) Governing body--The individuals designated by the captive insurance company who comprise the ultimate decision-making body of a captive insurance company, including a board of directors or officers of the captive insurance company. This definition applies to the use of the term in this chapter and the relationship of the captive insurance company to the department. To the extent that the term has a different meaning under the Business Organizations Code related to the formation of entities and filings with the Texas Secretary of State, this definition does not apply.

(8) Licensed attorney--A person licensed and eligible to practice law.

(9) Qualified accountant--An independent certified public accountant or accounting firm that meets the requirements of Insurance Code §401.011.

(10) Qualified actuary--A person who meets the basic education, experience, and continuing education requirements set forth in the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States, promulgated by the American Academy of Actuaries, and is either:

(A) a member of the American Academy of Actuaries who has demonstrated actuarial competence to the satisfaction of the commissioner; or

(B) a member of the Casualty Actuarial Society.

(11) Qualified United States financial institution--An institution that:

(A) is organized under the laws of the United States or any state of the United States;

(B) is regulated, supervised, and examined by a federal or state authority that has regulatory authority over banks and trust companies; and

(C) is approved by the commissioner.

(12) Service providers--Captive management companies that provide administrative services and individuals or entities providing legal, actuarial, or auditing services.

(13) Texas Captive Annual Report--The forms, instructions, and requirements adopted by reference in §6.401 of this title that are necessary for completing the annual report and other submissions under this chapter.

(14) Ultimate controlling person--Person or persons who control a captive insurance company and who are not controlled by another person.

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 April 7, 2014.

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Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: April 27, 2014
Proposal publication date: November 22, 2013
For further information, please call: (512) 463-6327

SUBCHAPTER B. CAPTIVE MANAGEMENT COMPANIES

28 TAC §§6.101 - 6.105

STATUTORY AUTHORITY. The department adopts the new sections under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization. Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Section 964.002 provides that a captive insurance company is subject to Insurance Code Chapters 401 and 823. Further, the section provides that Insurance Code Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Section 964.051 provides that a captive insurance company may only insure the operational risks of the company's affiliates and risks of a controlled, unaffiliated business. The section further provides that a captive insurance company is authorized to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Labor Code Chapter 407 or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

Section 964.053 provides that a captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code, except as a risk retention group or general partnership. The section further provides that the captive insurance company must have a board of directors or governing body. Section 964.054 requires the captive insurance company to use generally accepted accounting principles as an accounting basis, except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant, and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this

section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§6.101. Registration of Captive Management Companies.

(a) A captive management company may not provide administrative services to a captive insurance company prior to obtaining the commissioner's written approval of its registration as a captive management company.

(b) An individual may not provide administrative services or be registered to provide such services unless the individual is:

(1) a member of the governing body or officer of the captive insurance company; or

(2) an employee of the captive insurance company or an affiliate.

(c) To register as a captive management company, the entity must submit the following information to the department in manner that is acceptable to the department:

(1) the name of the entity;

(2) the entity's federal employer identification number;

(3) information regarding the location and means of contacting the entity; and

(4) the name and biographical information, including fingerprints, of a designated responsible party, who qualifies under §6.103 of this title (relating to Designated Responsible Party), and who will be the contact for the department.

(d) The department may provide a form the registrant can use to comply with this section.

§6.102. Maintenance and Duration of the Registration.

(a) The captive management company must notify the department of changes to the information required for registration not later than 30 days after the change.

(b) A captive management company may not operate without a designated responsible party except as provided in this subsection. If a designated responsible party leaves a captive management company, the captive management company must notify the department of a replacement designated party and provide all information required under §6.103 of this title (relating to Designated Responsible Party) within the 30-day period specified in subsection (a) of this section.

(c) The captive management company's registration will expire if the captive management company does not provide administrative services to at least one Texas domestic captive insurance company for a period of more than 180 days.

(d) If a captive management company's registration expires, the captive management company must submit a new registration to the department, which the commissioner must approve in writing before the entity can act as a captive management company. The captive management company may submit a written request for the commissioner to waive any portion of the registration requirement under this section. At the commissioner's sole discretion, the commissioner may grant the waiver in writing if the commissioner determines that the requirement or information is not applicable or provides no additional value in reviewing the registration submission.

§6.105. Agreements to Provide Administrative Services.

(a) An agreement with a captive management company described in §6.104 of this title (relating to Administrative Services Contracts) must be in writing and include the following:

(1) a requirement that all parties to the agreement must comply with the applicable requirements of the Insurance Code and department rules, including holding the appropriate licenses or certificates of authority;

(2) a requirement that the captive management company must permit the commissioner or the captive insurance company to examine at any time:

(A) the financial solvency of the captive management company; and

(B) the captive management company's ability to perform its responsibilities under the written agreement;

(3) a description of the duties or services that the captive management company is to provide;

(4) a provision relating to continuation of services following termination and the transfer of the books and records of a captive insurance company from one captive management company to another captive management company;

(5) a requirement that the books and records of the captive insurance company:

(A) remain the property of the captive insurance company at all times;

(B) are available to the captive insurance company or its designee at any time while in the custody of a captive management company; and

(C) will be timely transferred to the captive insurance company or its designee:

(i) on request of the captive insurance company;

(ii) at the termination or cancellation of a written agreement entered into by a captive management company; and

(iii) in compliance with all applicable statutory and rule requirements;

(6) a requirement that the books and records must be maintained as required in §6.306 of this title (relating to Books and Records); and

(7) a provision that the captive management company has no automatic right to terminate the agreement if all terms of the agreement are being met and the captive insurance company is placed in receivership under Insurance Code Chapter 443.

(b) Under this chapter, a written agreement includes an agreement that is prepared, signed, or stored electronically.

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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Sara Waitt
General Counsel
Texas Department of Insurance
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Proposal publication date: November 22, 2013
For further information, please call: (512) 463-6327

SUBCHAPTER C. CAPTIVE INSURANCE COMPANY APPLICATION PROCESS

28 TAC §§6.201 - 6.203

STATUTORY AUTHORITY. The department adopts the new sections under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization. Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Section 964.002 provides that a captive insurance company is subject to Insurance Code Chapters 401 and 823. Further, the section provides that Insurance Code Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Section 964.051 provides that a captive insurance company may only insure the operational risks of the company's affiliates and risks of a controlled, unaffiliated business. The section further provides that a captive insurance company is authorized to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Labor Code Chapter 407 or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

Section 964.053 provides that a captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code, except as a risk retention group or general partnership. The section further provides that the captive insurance company must have a board of directors or governing body. Section 964.054 requires the captive insurance company to use generally accepted accounting principles as an accounting basis, except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant, and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§6.202. Captive Insurance Company Certificate of Authority Application Contents and Process.

(a) An applicant seeking to redomesticate an existing captive insurance company or to form a new captive insurance company must provide the following information to the department:

(1) the name of the entity, the entity's federal employer identification number, and the location and means of contacting the entity;

(2) the physical location of the books and records and means of maintaining the books records;

(3) the registered agent for service;

(4) a list of the service providers that the captive insurance company will use, including qualified accountants, qualified actuaries, and licensed attorneys;

(5) biographical affidavits for the individuals described in §6.303 of this title (relating to Captive Insurance Company Biographical Information) who provide necessary functions to operate and govern the captive insurance company;

(6) the name of the ultimate controlling person;

(7) proposed organizational documents for the captive insurance company;

(8) a description of how the captive insurance company fits into the affiliated group's risk management plan and the group's significant operations in the State of Texas;

(9) if the application is for the redomestication of a captive insurance company, information listed in subsection (b) of this section;

(10) if the applicant proposes to insure controlled unaffiliated business, the information listed in subsection (c) of this section;

(11) a plan of operation, including:

(A) the asset page; liability, capital, and surplus page; income statement page; and cash flow page for the applicant from the Texas Captive Annual Report that are certified by two principal officers who have submitted biographical affidavits and:

(i) four years of financial projections, with a disclosure of the assumptions the applicant is using to develop the projected financial statements; and

(ii) if applicable, the most recent three years of operational results, in United States dollars; however, if the applicant has not been in operation for three or more years, the applicant must submit operational results, in United States dollars, for each year it has been in operation;

(B) a description of the lines of business and perils that the captive insurance company proposes to cover and the limits of coverage;

(C) a list of the affiliates that the applicant proposes to insure;

(D) a description of the reinsurance programs proposed including the lines of business that are affected, limits of reinsurance coverage, and the counterparties that will be involved;

(E) an organizational chart listing all affiliates of the applicant's affiliated group;

(F) agreements with any captive management companies the applicant proposes to use;

(G) a copy of the applicant's investment strategy;

(H) an explanation of how the applicant intends to handle profits, including a statement about how dividends will be evaluated;

(I) an independent actuarial report that evaluates the feasibility of the applicant's plan of operation;

(J) details of how the parent entity will maintain and support the captive insurance company, including ensuring compliance with Texas statutes and rules; and

(K) evidence of the financial wherewithal of the affiliate group, including affiliated persons, to retain the risk using the captive insurance company; and

(12) an affidavit by two principal officers or members of the governing committee who have submitted biographical affidavits that the information provided in paragraphs (1) - (11) of this subsection is true and correct.

(b) An application for a redomestication must include:

(1) the applicant's current domicile jurisdiction;

(2) if the applicant has been examined:

(A) the date of the most recent examination; and

(B) a copy of the most recent examination report;

(3) information required in §6.407 and §6.408 of this title (relating to Loans to Affiliates and Letters of Credit) for existing loans to affiliates; and

(4) a letter of no objection or release from the captive insurance company's current domicile.

(c) If the applicant proposes to insure a controlled unaffiliated business, the following documentation must be provided with the application:

(1) copies of the agreement(s) that evidence an existing contractual relationship between the parties, one of which must be a captive insurance company affiliate;

(2) a description and any supporting documentation that evidences that the captive insurance company affiliate bears the risk of a potential financial loss associated with the contract beyond the affiliate having to pay a fee; and

(3) a description and any supporting policies that document that a captive insurance company affiliate controls the risk management function of the controlled unaffiliated business.

(d) The department may accept similar information prepared in a similar format for a nonaffiliated third party, including a regulator, bank, or similar user, to the extent that the information satisfies one or more of the requirements in subsections (a) - (c) of this section to the satisfaction of the commissioner.

(e) The department will review the information submitted under subsections (a) - (d) of this section. The applicant may submit amended documents and information during the review process.

(1) If the department determines that the documents and information meet the standards required for a certificate of authority under Insurance Code §964.059 and this chapter, the department will issue a certificate of general good to the applicant. The certificate of general good does not bind the Texas Secretary of State to accept any subsequent filing by the applicant, nor does it bind the department to issue a certificate of authority.

(2) If the commissioner determines that the documents and information do not to meet the standards required for a certificate of authority under Insurance Code §964.059 and this chapter, the commissioner will deny the application. Following denial of the application, the applicant may proceed under Insurance Code §964.059(c).

(f) If the applicant receives a certificate of general good, the applicant must submit the following documentation to the department to proceed with the licensing process:

(1) a certificate of filing from the Texas Secretary of State indicating that the entity has been formed or redomesticated to Texas as an entity under the Business Organizations Code, other than a risk retention group or general partnership, for the purpose of providing captive insurance;

(2) an affidavit satisfactory to the commissioner from the incorporators, organizers, or officers of the captive insurance company stating that:

(A) the capital and surplus are the bona fide property of the company; and

(B) the certificate of filing is true and correct; and

(3) if necessary, an affidavit by the incorporators, organizers, or officers of the captive insurance company stating:

(A) the number of shares or other type of equity instrument without par value that are subscribed; and

(B) the actual consideration received by the captive insurance company for those shares or other type of equity instrument.

(g) The applicant may submit a written request for the commissioner to waive or grant a conditional exception to any portion of the application or information required under this section. At the commissioner's sole discretion, the commissioner may grant the waiver in writing, if the commissioner determines the requirement or information is not applicable or provides no additional value in reviewing the application. At the commissioner's sole discretion, the commissioner may grant a conditional exception that will be listed in the certificate of authority issued as described in §6.203(b) of this title (relating to Issuance of Captive Insurance Company Certificate of Authority.)

§6.203. Issuance of Captive Insurance Company Certificate of Authority.

(a) Following submission of the information and documentation described under §6.202 of this title (relating to Captive Insurance Company Certificate of Authority Application Contents and Process) the commissioner will review the certificate of filing and the certificate of general good for compliance with Insurance Code Chapter 964 and this chapter. If requested, the applicant must provide the commissioner with updated information during this review.

(b) If the commissioner determines that the applicant meets the requirements for issuance of a certificate of authority, the commissioner will issue the certificate as described in Insurance Code §964.059(d). If the department has granted conditional exceptions under §6.202(g)

of this title, the certificate of authority will list the exceptions and be issued on a consent basis, requiring the written agreement of the captive insurance company.

(c) If the commissioner determines that the applicant has not met the requirements for issuance of a certificate of authority under Insurance Code §964.059 and this chapter, the commissioner will deny the application. Following denial of the application, the applicant may proceed under Insurance Code §964.059(c).

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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Sara Waitt
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SUBCHAPTER D. MAINTENANCE OF A CAPTIVE INSURANCE COMPANY'S CERTIFICATE OF AUTHORITY

28 TAC §§6.301 - 6.307

STATUTORY AUTHORITY. The department adopts the new sections under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization. Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Section 964.002 provides that a captive insurance company is subject to Insurance Code Chapters 401 and 823. Further, the section provides that Insurance Code Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Section 964.051 provides that a captive insurance company may only insure the operational risks of the company's affiliates and risks of a controlled, unaffiliated business. The section further provides that a captive insurance company is authorized to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Labor Code Chapter 407 or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

Section 964.053 provides that a captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code, except as a risk retention group or general partnership. The section further provides that the captive insurance company must have a board of directors or governing body. Section 964.054 requires the captive insurance company to use generally accepted accounting principles as an accounting basis, except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant,

and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§6.302. Governing Body.

(a) The captive insurance company must designate individuals to form a governing body. Collectively, the members of the governing body must have the ability and experience necessary to oversee the captive insurance company's operations. The ability and experience needed will vary with the size and complexity of the captive insurance company's operations.

(b) The governing body is responsible for the following:

(1) establishing and documenting the internal control procedures used by the captive insurance company. If a captive insurance company uses an affiliate's procedures, the governing body must review the procedures for appropriateness and modify where needed;

(2) documenting a conflict-of-interest policy and procedure, and monitoring it to verify compliance;

(3) overseeing all entities providing captive management services to the captive insurance company;

(4) monitoring counterparty risk, which could include banking institutions and reinsurers;

(5) setting the captive insurance company investment policy; and

(6) managerial control, insurance information, and compliance with the Insurance Code and department rules.

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

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SUBCHAPTER E. FINANCIAL INFORMATION AND REPORTING

28 TAC §§6.401 - 6.410

STATUTORY AUTHORITY. The department adopts the new sections under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization.

Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Section 964.002 provides that a captive insurance company is subject to Insurance Code Chapters 401 and 823. Further, the section provides that Insurance Code Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Section 964.051 provides that a captive insurance company may only insure the operational risks of the company's affiliates and risks of a controlled, unaffiliated business. The section further provides that a captive insurance company is authorized to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Labor Code Chapter 407 or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

Section 964.053 provides that a captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code, except as a risk retention group or general partnership. The section further provides that the captive insurance company must have a board of directors or governing body. Section 964.054 requires the captive insurance company to use generally accepted accounting principles as an accounting basis, except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant, and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive in-

surance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§6.404. Captive Insurance Companies Using Other Than Calendar Year Fiscal Years.

(a) A captive insurance company may submit a written request to the commissioner for permission to use a fiscal year end other than a calendar year end. The commissioner may grant the request in writing at the commissioner's sole discretion. A captive insurance company may not use a fiscal year other than a calendar year without the commissioner's written authorization.

(b) As required under Insurance Code §964.060(c)(3), to support the premium tax return due March 1 of each year, a captive insurance company that is granted a fiscal year end date other than December 31, must submit the asset page and the liability, capital, and surplus page; income statement; and statement of cash flow, as verified by two executive officers, on or before March 1 of each year for the prior calendar year, and in the annual report format established in the Texas Captive Annual Report adopted under §6.401 of this title (relating to Annual Report). The executive officers verifying the report must have submitted biographical affidavits under §6.303 of this title (relating to Captive Insurance Company Biographical Information).

(c) Under Insurance Code §964.060(c), a captive insurance company granted a fiscal year end date other than December 31 must:

(1) not later than the 60th day after the captive insurance company's fiscal year end, submit to the department the captive insurance company's annual report for the prior fiscal year using the Texas Captive Annual Report form and instructions under §6.401 of this title; and

(2) not later than the 150th day after the date the annual report is due, submit to the department the captive insurance company's audited financial statements as required under §6.403 of this title (relating to Audited Financial Statements).

§6.407. Loans to Affiliates.

(a) Except as provided in subsection (d) of this section, the captive insurance company must submit a written request to the commissioner for prior approval of a loan agreement with an affiliate.

(b) Terms of the loan agreement under subsection (a) of this section must:

(1) be fair and equitable;

(2) prohibit advancement of funds by the captive insurance company to the affiliate except as defined in the agreement;

(3) include standards for termination of the agreement with and without cause; and

(4) specify that, if the captive insurance company is placed in receivership or seized by the commissioner under Insurance Code Chapter 443:

(A) all of the rights of the captive insurance company under the agreement extend to the receiver or commissioner; and

(B) all books and records will immediately be made available to the receiver or the commissioner and must be turned over to the receiver or commissioner immediately on the receiver's or the commissioner's request.

(c) The request under subsection (a) of this section must be labeled as "Loans to Affiliates - Captives" and include the following information:

(1) the name of the captive insurance company and affiliate;

(2) the home office address of the affiliate;

(3) the relationship of the affiliate to the captive insurance company, for example, parent entity or affiliate;

(4) a description of the loan, including:

(A) a statement of the nature of the loan and the reasons for entering into or changing the loan;

(B) a statement of how the loan complies with subsection (b) of this section;

(C) the proposed effective date of the loan;

(D) the financial impact of the loan on the captive insurance company;

(E) a description of the maximum amount the captive insurance company will be obligated to make available under the loan, the date on which the loan will terminate, and any provisions for the accrual or deferral of interest; and

(F) a description of the amount and source of funds or any other assets for the loan.

(d) If the captive insurance company is affiliated with an insurer that is part of an insurance holding company system and subject to Insurance Code Chapter 823, the captive insurance company must comply with the requirements under §6.410 of this title (relating to Application of Holding Company Requirements).

§6.408. Letters of Credit.

(a) A letter of credit must comply with this subsection to be reported as an asset of the captive insurance company.

(1) The letter of credit cannot be supported or collateralized by a guaranty of an affiliate.

(2) The beneficiary of the letter of credit must be the commissioner as beneficiary for the security of the captive insurance company's policyholders.

(3) The letter of credit must:

(A) be clean, irrevocable, and unconditional, and issued by a qualified United States financial institution;

(B) contain an issue date and stipulate that the beneficiary (the commissioner) need only draw a draft under the letter of credit and present it to obtain funds and that no other document need be presented;

(C) show only one amount on the letter of credit;

(D) be readily available for viewing by the department on request, including at any time to the department in conducting an examination under Insurance Code Chapter 401;

(E) indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself must not contain reference to any other agreements, documents, or entities;

(F) contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent on reimbursement; and

(G) state that it is subject to and governed by either the laws of the State of Texas, or the laws of the state of domicile of the issuing bank, and in the event of any conflict must specify whether the laws of Texas or the laws of the state in which the issuing bank is domiciled will apply, and all drafts drawn on the letter of credit will be presentable at an office in the United States of a qualified United States financial institution;

(4) The letter of credit must not:

(A) have a schedule of periodic payments;

(B) name any beneficiary other than the commissioner; and

(C) in aggregate of all letters of credit issued to any one captive insurer by one financial institution, exceed 10% of the financial institution's total equity capital, as shown in its most recent report of condition as filed with the appropriate federal or state financial institution regulatory agency.

(5) The term of the letter of credit must be for at least one year and must contain an evergreen clause that prevents the expiration of the letter of credit without written notice from the issuer. The evergreen clause will provide for a period of no less than 30 days' written notice to the commissioner prior to expiry date or nonrenewal.

(6) In the event a letter of credit is not renewed or replaced, the commissioner must not be prevented from withdrawing the balance of the letter of credit and placing such sums in trust to secure continuing obligations until a renewal letter of credit or a substitution in lieu thereof has been received.

(7) In the event that a letter of credit is not renewed, replaced, or is suspended, the captive insurance company and the issuing bank must give immediate notice to the commissioner of such nonrenewal, replacement, or inactive status.

(b) A letter of credit used for reinsurance purposes must meet the requirements of §7.610 of this title (relating to Letter of Credit Qualified under Insurance Code, Article 3.10, §(d)(3), or Article 5.75-1, §(d)(3)).

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

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SUBCHAPTER F. WORKERS' COMPENSATION

28 TAC §6.501

STATUTORY AUTHORITY. The department adopts the new section under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization. Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

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Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

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Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant, and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

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

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SUBCHAPTER G. TAXES

28 TAC §6.601

STATUTORY AUTHORITY. The department adopts the new section under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an

independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization. Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Section 964.002 provides that a captive insurance company is subject to Insurance Code Chapters 401 and 823. Further, the section provides that Insurance Code Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Section 964.051 provides that a captive insurance company may only insure the operational risks of the company's affiliates and risks of a controlled, unaffiliated business. The section further provides that a captive insurance company is authorized to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Labor Code Chapter 407 or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

Section 964.053 provides that a captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code, except as a risk retention group or general partnership. The section further provides that the captive insurance company must have a board of directors or governing body. Section 964.054 requires the captive insurance company to use generally accepted accounting principles as an accounting basis, except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant, and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdic-

tion may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

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 April 7, 2014.

TRD-201401597
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: April 27, 2014
Proposal publication date: November 22, 2013
For further information, please call: (512) 463-6327

SUBCHAPTER H. DISCIPLINARY ACTION

28 TAC §6.701

STATUTORY AUTHORITY. The department adopts the new section under Government Code §§411.083, 411.087, and 411.106, and Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051 - 964.060, 964.062, 964.063, 964.065 - 964.067, 964.069, 964.071, and 36.001. Government Code §411.106 authorizes the department to receive criminal history information from DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the department to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

Section 401.002 provides that the purpose of Insurance Code Chapter 401, Subchapter A is to require an annual audit by an independent certified public accountant of the financial statements, reporting on the financial condition, and the results of operations of each insurer or health maintenance organization. Section 401.006 provides for a procedure to obtain an exemption from the requirement to file an audited financial report if the insurer has less than $1 million in direct premiums written in this state during a calendar year. Section 401.051 establishes the department's duty to examine insurers under Insurances Code Chapter 401, Subchapter B.

Section 803.005 requires the books, records, accounts, or offices of a domestic company to be under the company's direct supervision, management, and control. Section 803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Section 964.002 provides that a captive insurance company is subject to Insurance Code Chapters 401 and 823. Further, the section provides that Insurance Code Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Section 964.051 provides that a captive insurance company may only insure the operational risks of the company's affiliates and risks of a controlled, unaffiliated business. The section further provides that a captive insurance company is authorized to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Labor Code Chapter 407 or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Insurance Code §964.052 provides the types of reinsurance that the captive insurance company may write and establishes requirements concerning employee benefit plans offered by affiliates and workers' compensation insurance and employer liability policies issued to affiliates. The section further allows a credit for reserves on risks or portions of risks ceded to reinsurers under Chapter 492, Subchapter C, and Chapter 493, Subchapter C.

Section 964.053 provides that a captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code, except as a risk retention group or general partnership. The section further provides that the captive insurance company must have a board of directors or governing body. Section 964.054 requires the captive insurance company to use generally accepted accounting principles as an accounting basis, except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

Section 964.055 provides that a captive insurance company may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. The section further provides that the captive insurance company must maintain its principal office and books and records in this state, unless the commissioner grants approval for an application to relocate the entity's books and records under Chapter 803.

Section 964.056 requires the commissioner to determine the amount of the captive insurance company's capital and surplus based on the factors listed in this section and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner. The section further provides the amount of capital and surplus determined by the commissioner may not be less than $250,000.

Section 964.056 also provides that the capital and surplus required by Subsection (a) may be in the form of an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner.

Section 964.057 establishes the requirements for an application to obtain a certificate of authority for a captive insurance company, including a fee of $1,500.

Section 964.058 requires the commissioner to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements of §964.056 are satisfied, the capital and surplus are the bona fide property of the applicant,

and the applicant has fully complied with applicable insurance laws.

Section 964.059 requires the commissioner to determine if the department will issue a certificate of authority. The commissioner may consider the factors listed in the section and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations. The section establishes an appeal process if the application is denied.

Section 964.060 requires a captive insurance company to file with the commissioner, on or before March 1 of each year, a statement of the company's financial condition that is verified by two of its executive officers and filed in a format prescribed by the commissioner; and on or before June 1 of each year, a report of its financial condition at last year end with an independent certified public accountant's opinion on the company's financial condition. The section further allows for the captive insurance company to request filing its annual report required under this section at its fiscal year end. The section provides that a captive insurance company using a fiscal year end must provide its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

Section 964.062 requires the commissioner to approve in advance any amendments to the captive insurance company's certificate of formation.

Section 964.063 requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Section 964.065 provides that the commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company.

Section 964.066 provides that the commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company.

Section 964.067 requires captive management companies to register with the commissioner before providing administrative services to a captive insurance company by providing the required registration information on a form adopted by the commissioner.

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

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 April 7, 2014.

TRD-201401598
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: April 27, 2014
Proposal publication date: November 22, 2013
For further information, please call: (512) 463-6327

CHAPTER 9. TITLE INSURANCE

The commissioner of insurance adopts the repeal of 28 Texas Administrative Code §§9.11, 9.21, 9.30, 9.31, 9.40, and 9.501, regarding the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual).* This repeal is adopted without changes to the proposed text published in the January 24, 2014, issue of the *Texas Register* (39 TexReg 383).

REASONED JUSTIFICATION. The repeal of these sections of the Texas Administrative Code is necessary because the amendments to the *Basic Manual* that were adopted by reference in those sections have been readopted by reference in 28 TAC §9.1, which superseded the sections now being repealed.

In compliance with Government Code §2001.039, which requires TDI to review a rule every four years and to readopt, readopt with amendments, or repeal the rule, a notice of the proposed rule review of Chapter 9, Title Insurance, was published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10259). TDI did not receive any comments on the review. The adopted rule review of Chapter 9 was published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4392).

Repealing the sections is necessary because they have been superseded. Each of these sections adopted or amended title rules or forms, by reference, as part of the Basic Manual. In 2010, and several times before that, the entire Basic Manual was readopted by reference in 28 TAC §9.1. Because the material in these sections was readopted in §9.1, the sections being repealed are no longer necessary. Their removal will help keep the Administrative Code clear, relevant, and current.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §§9.11, 9.21, 9.30, 9.31, 9.40

STATUTORY AUTHORITY. TDI adopts this repeal under Insurance Code §2551.003 and §36.001, and Government Code §2001.039. Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines

are necessary to accomplish the purposes of Title 11, Insurance Code, which regulates the business of title insurance. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state. Government Code §2001.039 requires TDI to review a rule every four years and to readopt, readopt with amendments, or repeal the rule.

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 April 7, 2014.

TRD-201401599
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: April 27, 2014
Proposal publication date: January 24, 2014
For further information, please call: (512) 463-6327

SUBCHAPTER D. PERSONAL PROPERTY TITLE INSURANCE

28 TAC §9.501

STATUTORY AUTHORITY. TDI adopts this repeal under Insurance Code §2551.003 and §36.001, and Government Code §2001.039. Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which regulates the business of title insurance. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state. Government Code §2001.039 requires TDI to review a rule every four years and to readopt, readopt with amendments, or repeal the rule.

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 April 7, 2014.

TRD-201401600
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: April 27, 2014
Proposal publication date: January 24, 2014
For further information, please call: (512) 463-6327

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

37 TAC §380.9337

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.9337, concerning Alleged Sexual Abuse, without changes as published in the January 24, 2014, issue of the *Texas Register* (39 TexReg 385).

The repeal of this section allows for a new section to be published in its place. The new section more accurately represents TJJD's responsibilities to enforce a zero-tolerance policy regarding sexual abuse and to implement federal regulations related to the Prison Rape Elimination Act.

TJJD did not receive any comments regarding the proposed repeal.

The repeal is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions.

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

Filed with the Office of the Secretary of State on March 31, 2014.

TRD-201401440
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: April 21, 2014
Proposal publication date: January 24, 2014
For further information, please call: (512) 490-7014

37 TAC §380.9337

The Texas Juvenile Justice Department (TJJD) adopts new §380.9337, concerning Zero-Tolerance for Sexual Abuse, Sexual Activity, and Sexual Harassment, without changes as published in the January 24, 2014, issue of the *Texas Register* (39 TexReg 385). The rule will not be republished.

The new section establishes TJJD's zero-tolerance policy for any form of sexual abuse, sexual harassment, or sexual activity involving youth in the agency's care. The section also addresses TJJD's obligations under federal Prison Rape Elimination Act standards for preventing, detecting, and responding to sexual abuse and sexual harassment.

The justification for the new section is the protection of youth in TJJD's care from being victimized by sexual abuse, sexual activity, or sexual harassment.

TJJD did not receive any comments regarding the proposal.

The new section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions, and Code

of Federal Regulations, Title 28, Part 115, which establishes national standards for compliance with the Prison Rape Elimination 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 March 31, 2014.

TRD-201401439

Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: April 21, 2014
Proposal publication date: January 24, 2014
For further information, please call: (512) 490-7014

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Department of Motor Vehicles

Title 43, Part 10

TRD-201401521
Filed: April 4, 2014

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for readoption, revision, or repeal Chapter 91, §91.701 (Lending Powers), §91.703 (Interest Rates), §91.704 (Real Estate Lending), §91.705 (Home Improvement Loans), §91.706 (Home Equity Loans), §91.707 (Reverse Mortgages), §91.708 (Real Estate Appraisals or Evaluations), §91.709 (Member Business Loans), §91.710 (Overdraft Protection), §91.711 (Purchase and Sale of Member Loans), §91.712 (Plastic Cards), §91.713 (Indirect Lending), §91.714 (Leasing), §91.715 (Exceptions to the General Lending Policies), §91.716 (Prohibited Fees), §91.717 (More Stringent Restrictions), §91.718 (Charging Off or Setting Up Reserves), §91.719 (Loans to Officials and Senior Management Employees), and §91.720 (Small-Dollar, Short-Term Credit) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will 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.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or electronically to info@cud.texas.gov. The deadline for comments is May 9, 2014.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

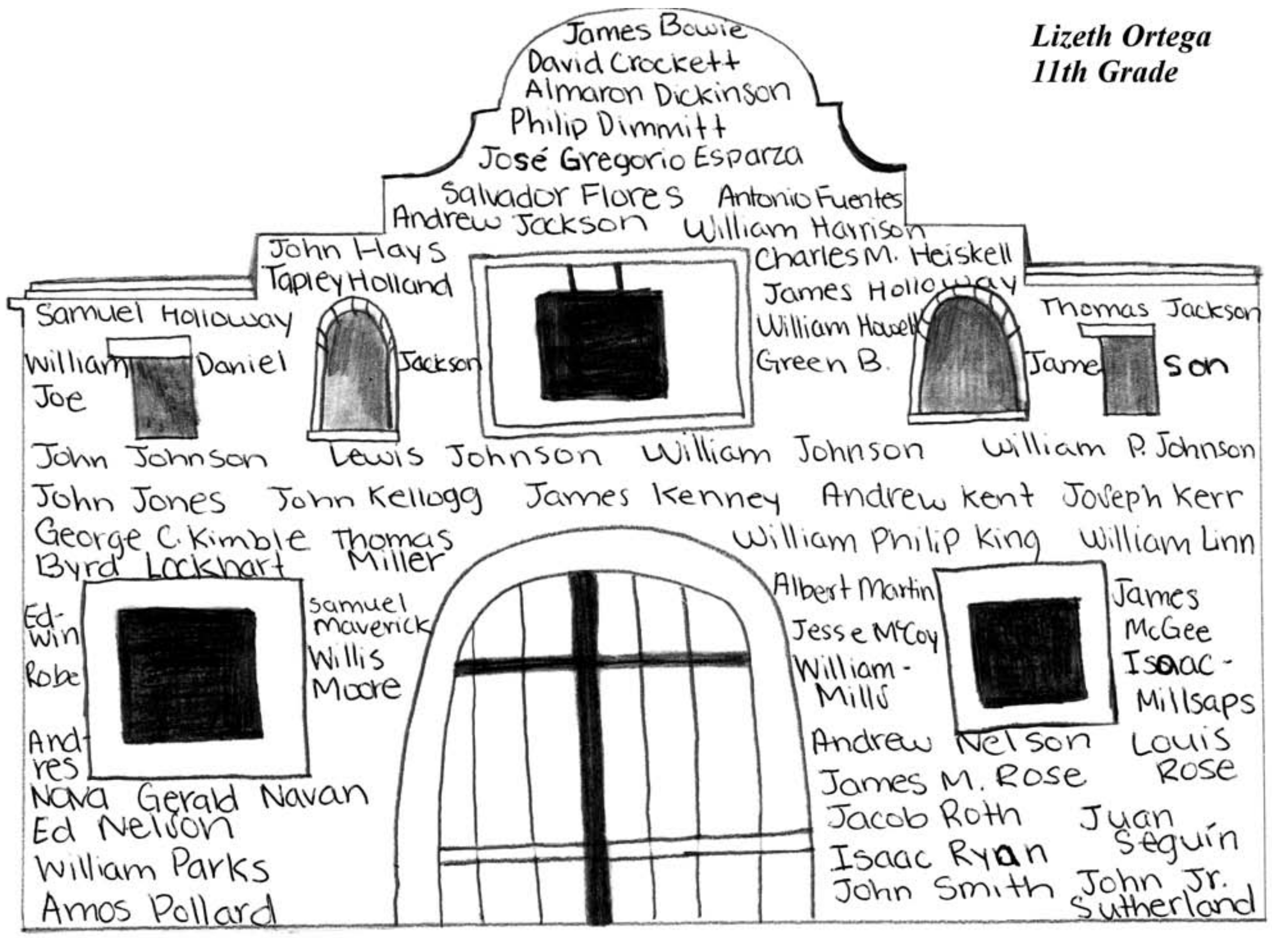
* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201401620
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 8, 2014

Lizeth Ortega
11th Grade



"Remember the Alamo!"

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 Department of Agriculture

Request for Applications: Young Farmer Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant Program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

Submission Dates/Locations. Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov or by emailing TAFA at finance@TexasAgriculture.gov. One hard copy of the application must arrive no later than 5:00 p.m. **May 2, 2014** to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, 1700 N. Congress Ave., 2nd Floor, Austin, Texas 78701.

Mailing Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, P.O. Box 12847, Austin, Texas 78711.

Phone No. (512) 463-9932, Fax No. (888) 216-9867, email: finance@TexasAgriculture.gov.

Proposals must set forth accurate and complete information as required by this Request for Applications (RFA). Oral modifications will not be considered. Applicant will not be allowed to supplement the proposal after the application deadline.

TDA will send a confirmation that the application has been received.

The respondent is solely responsible for ensuring that their complete application, regardless of method of delivery, is sent to, and actually received by, TDA in a timely manner and at the proper destination server. TDA takes no responsibility for electronic bids that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any TDA anti-virus or other security software.

Eligibility. Grant applications will be accepted from any person 18 years or older but younger than 46 years of age as of May 2, 2014, that is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

Application Requirements.

Funding Parameters: The TAFA Board of Directors (board) anticipates funding in an amount of $150,000 for grants not less than $5,000 and not to exceed $10,000 per grant application. Recipients will have up to two years to expend grant funds.

The TAFA board reserves the right to fully or partially fund any particular grant application.

Form Requirements: Applications must be submitted on form RED-300 for consideration. Required forms and instructions are available by accessing TDA's website at www.TexasAgriculture.gov or by emailing TAFA at: finance@TexasAgriculture.gov. An applicant is permitted to submit only one application pursuant to this RFA. Multiple grant applications submitted by the same applicant under the same RFA will be rejected and will not be considered by the board.

For any questions: Please contact Mr. Allen Regehr at (512) 463-9932 or by email at finance@TexasAgriculture.gov.

TRD-201401646
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 9, 2014

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403, §403.11; Chapter 447, §447.006; Chapter 2305, §2305.038; and Chapter 2254, Subchapter A of the Texas Government Code, the Comptroller of Public Accounts ("Comptroller"), State Energy Conservation Office (SECO) announces its Request for Proposals No. 207b ("RFP") and invites proposals from qualified, independent engineers to assist Comptroller in providing energy engineering assistance to Texas school districts and other local governmental entities. The Comptroller reserves the right to award more than one contract under the RFP. If a contract award is made under the terms of this RFP, Contractor will be expected to begin performance of the contract on or about June 2, 2014, or as soon thereafter as practical.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at http://esbd.cpa.state.tx.us on Monday, April 21, 2014, after 10:00 a.m. CT. Parties interested in a hard copy of the RFP should contact Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673.

Questions: All written inquiries must be received at the above-referenced address not later than 2:00 p.m. CT on Monday, April 28, 2014. Questions received after this time and date will not be considered. Prospective proposers are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, May 2, 2014, the Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFP.

Closing Date: Proposals must be delivered in the Issuing Office no later than 2:00 p.m. CT on Friday, May 16, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject

any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - April 21, 2014, after 10:00 a.m. CT; Questions Due - April 28, 2014, 2:00 p.m. CT; Official Responses to Questions posted - May 2, 2014; Proposals Due - May 16, 2014, 2:00 p.m. CT; Contract Execution - June 2, 2014, or as soon thereafter as practical; Commencement of Services - June 2, 2014.

TRD-201401643
Jason C. Frizzell
Assistant General Counsel
Comptroller of Public Accounts
Filed: April 9, 2014

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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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/14/14 - 04/20/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/14/14 - 04/20/14 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201401622
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 8, 2014

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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 **May 19, 2014.** 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 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. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 19, 2014.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: CASTLE WATER, INCORPORATED; DOCKET NUMBER: 2013-1956-PWS-E; IDENTIFIER: RN101283679; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i), Texas Health and Safety Code, §341.0315(c), and TCEQ AO Docket Number 2012-0787-PWS-E, Ordering Provision Number 2.e., by failing to provide a minimum well capacity of at least 0.44 gallons per minute per connection, as required by the alternative capacity requirement approved by the executive director on October 2, 2001; 30 TAC §290.41(c)(3)(P) and TCEQ AO Docket Number 2012-0787-PWS-E, Ordering Provision Number 2.c., by failing to provide an all-weather access road to well sites; 30 TAC §290.46(m)(1)(A) and TCEQ AO Docket Number 2012-0787-PWS-E, Ordering Provision Number 2.a.i., by failing to inspect the ground storage tanks annually; and 30 TAC §290.46(m)(1)(B) and TCEQ AO Docket Number 2012-0787-PWS-E, Ordering Provision Number 2.a.ii., by failing to inspect the pressure tanks annually; PENALTY: $1,395; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Cibolo Creek Municipal Authority; DOCKET NUMBER: 2013-1588-MWD-E; IDENTIFIER: RN101610319; LOCATION: Schertz, Bexar County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011296001, Permit Conditions Number 2(g), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $5,625; Supplemental Environmental Project offset amount of $5,625 applied to National Audubon Society; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Fairfield; DOCKET NUMBER: 2013-1813-MWD-E; IDENTIFIER: RN101607778; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010168002 Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $10,125; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Linden; DOCKET NUMBER: 2013-1775-PWS-E; IDENTIFIER: RN101220986; LOCATION: Linden, Cass County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of the five wells; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference;

30 TAC §290.46(f)(2) and (3)(A)(i)(II), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.44(h)(4), by failing to ensure that all backflow prevention assemblies are tested on an annual basis by a recognized backflow assembly tester who certifies that they are operating within specifications; and 30 TAC §290.43(c)(8), by failing to ensure that the facility's clearwells, ground storage tanks, standpipes and elevated tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; PENALTY: $1,212; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: City of Newark; DOCKET NUMBER: 2012-1838-MWD-E; IDENTIFIER: RN102287984; LOCATION: Newark, Wise County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011626001, Interim I Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17) and §319.1, and TPDES Permit Number WQ0011626001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §§305.125(1), 319.1, and 319.4, and TPDES Permit Number WQ0011626001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze effluent for *Escherichia coli;* PENALTY: $27,625; Supplemental Environmental Project offset amount of $27,625 applied to Derrett Creek Erosion Control; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Robert Lee; DOCKET NUMBER: 2013-1621-MWD-E; IDENTIFIER: RN101920163; LOCATION: Robert Lee, Coke County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17), and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013901001 Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013901001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $13,612; Supplemental Environmental Project offset amount of $13,612 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(7) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2013-2193-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: Federal Operating Permit Number O1606, Special Terms and Conditions Number 15, New Source Review Permit Number 4477, Special Conditions Number 1, 30 TAC §116.115(c) and §122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $15,000; Supplemental Environmental Project offset amount of $6,000 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: ESM Land Group, LLC; DOCKET NUMBER: 2013-2187-MSW-E; IDENTIFIER: RN106966104; LOCATION: Donna, Hidalgo County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent an unauthorized disposal of municipal solid waste; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, (956) 425-6010.

(9) COMPANY: FANNETT, LLC dba Fannett Drive In; DOCKET NUMBER: 2013-0220-PST-E; IDENTIFIER: RN101750834; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $11,000; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Fasken Oil and Ranch, Ltd.; DOCKET NUMBER: 2014-0114-AIR-E; IDENTIFIER: RN107048654; LOCATION: Webb County; TYPE OF FACILITY: oil and gas handling and production plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3553; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: Flying Solo, Incorporated dba Comet Cleaners; DOCKET NUMBER: 2014-0010-MLM-E; IDENTIFIER: RN100706951; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: dry cleaning facility; RULE VIOLATED: 30 TAC §335.152 and 40 Code of Federal Regulations §264.17, by failing to store hazardous waste in a compatible storage container; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater; and 30 TAC §337.70, by failing to maintain dry cleaning waste disposal manifests at the facility; PENALTY: $7,225; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Hochheim Prairie Hermann Sons Hall Association; DOCKET NUMBER: 2014-0232-PWS-E; IDENTIFIER: RN105777411; LOCATION: Dewitt County; TYPE OF FACILITY: transient, noncommunity public water system; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $1,380; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: JX Nippon Chemical Texas Incorporated; DOCKET NUMBER: 2014-0047-AIR-E; IDENTIFIER: RN102887270; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3068, General Terms and Conditions (GTC) and Special Terms and Conditions Number 14, by failing to certify compliance for at least each 12-month period following initial permit issuance; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O3068, GTC, and THSC, §382.085(b), by failing to sub-

mit a semi-annual deviation report within 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3068, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $8,873; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Kenedy County; DOCKET NUMBER: 2013-2083-PWS-E; IDENTIFIER: RN101271542; LOCATION: Kenedy County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the maximum contaminant level for total coliform for the month of September 2013; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to conduct routine distribution water sampling for coliform analysis and failed to provide public notice to the facility's customers of the Respondent's failure to conduct coliform sampling; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $1,016; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: M&L WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0186-PWS-E; IDENTIFIER: RN101268274; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §§290.106(e), 290.107(e) and 290.113(e), by failing to provide the results of the triennial synthetic organic contaminants (SOC), minerals and disinfectant byproducts sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of the annual nitrate sampling to the executive director; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.107(e), by failing to provide the results the sexennial SOC sampling to the executive director; PENALTY: $817; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2014-0123-PWS-E; IDENTIFIER: RN101376085; LOCATION: Henderson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and §290.122(f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the running annual average, and failed to timely provide a copy of the public notification that was provided to the customers of the facility for failing to comply with the MCL for TTHM to the TCEQ; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: $1,402; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: Nagy Mansour dba McCart Mobil; DOCKET NUMBER: 2013-0032-PST-E; IDENTIFIER: RN100534437; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,825; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: North Hunt Special Utility District; DOCKET NUMBER: 2013-2002-PWS-E; IDENTIFIER: RN101189322; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 1 milligram per liter for nitrite; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: OLYMPIA REALTY CORPORATION DBA WHISPERING PINES GOLF CLUB; DOCKET NUMBER: 2013-2218-PWS-E; IDENTIFIER: RN101219319; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: golf club with an associated public water supply; RULE VIOLATED: 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to operate the water system under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; and 30 TAC §290.42(e)(4)(A), by failing to maintain a small bottle of fresh ammonia solution for testing for chlorine leakage, and have it readily accessible outside the chlorination room; PENALTY: $613; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: PARS SERVICE, INCORPORATED dba Valley View Mobil; DOCKET NUMBER: 2012-1855-PST-E; IDENTIFIER: RN102130630; LOCATION: Farmers Branch, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $1,898; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Southwest Convenience Stores, LLC; DOCKET NUMBER: 2013-1310-AIR-E; IDENTIFIER: RN102023058; RN102048048; LOCATION: El Paso (7 Eleven 53327) and Clint (7 Eleven 53318), El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum Reid Vapor Pressure (RVP) requirement of 7.0 pounds per square inch absolute (psia) during the control period of June 1 - September 16; and 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum RVP requirement of 7.0 psia during the control period of June 1 - September 16; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Heather

Podlipny, (512) 239-2603; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(22) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 2013-1285-PST-E; IDENTIFIER: RN102265394; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Town of Quintana; DOCKET NUMBER: 2014-0165-PWS-E; IDENTIFIER: RN101242907; LOCATION: Quintana, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on the running annual average; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; PENALTY: $411; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201401623
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 8, 2014

Enforcement Orders

An agreed order was entered regarding MOIZ 786 INC dba Vista Express, Docket No. 2013-0432-PST-E on March 24, 2014 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Public Safety, Docket No. 2013-0846-PST-E on March 24, 2014 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thurman Black dba Slo Pitch City, Docket No. 2013-0856-PWS-E on March 24, 2014 assessing $1,077 in administrative penalties with $215 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McClain Feed Yard, Inc., Docket No. 2013-1000-AGR-E on March 24, 2014 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOLD LAND INVESTORS, LLC dba FAA Food Mart, Docket No. 2013-1257-PST-E on March 24, 2014 assessing $5,129 in administrative penalties with $1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Moulton Bless Corporation dba Moulton Grocery & Market, Docket No. 2013-1298-PST-E on March 24, 2014 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W. J. Roddy dba Green Tree Estates, Docket No. 2013-1370-PWS-E on March 24, 2014 assessing $2,042 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucky's Redi-Mix Co. LLC, Docket No. 2013-1575-AIR-E on March 24, 2014 assessing $3,575 in administrative penalties with $715 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Adonai Elohai, LLC dba The Ridge, Docket No. 2013-1671-PWS-E on March 24, 2014 assessing $764 in administrative penalties with $152 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Marble Falls, Docket No. 2013-1675-PWS-E on March 24, 2014 assessing $2,197 in administrative penalties with $439 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VVMH, INC dba Texs T, Docket No. 2013-1684-PST-E on March 24, 2014 assessing $2,995 in administrative penalties with $598 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Port Arthur, Docket No. 2013-1685-PST-E on March 24, 2014 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of New Home, Docket No. 2013-1688-PWS-E on March 24, 2014 assessing $315 in administrative penalties with $63 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZK Petroleum Co., L.L.C., Docket No. 2013-1692-AIR-E on March 24, 2014 assessing $5,175 in administrative penalties with $1,035 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R. B. STEWART PETROLEUM PRODUCTS, INC., Docket No. 2013-1725-PST-E on March 24, 2014 assessing $2,606 in administrative penalties with $521 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Irma Gonzalez dba Fiesta's Food Store & Meat Market 1, Docket No. 2013-1749-PST-E on March 24, 2014 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GREAT CONVENIENCE INC dba H & A Food Mart, Docket No. 2013-1825-PST-E on March 24, 2014 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.J. FUEL INVESTMENTS, LLC dba First Choice Convenience Store, Docket No. 2013-1830-PST-E on March 24, 2014 assessing $2,568 in administrative penalties with $513 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bennie Len Gallier, Docket No. 2013-1850-MSW-E on March 24, 2014 assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leonardo Fajardo, Jr., Docket No. 2013-1867-LII-E on March 24, 2014 assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lovelady, Docket No. 2013-1914-PWS-E on March 24, 2014 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alex Deven, Inc. dba RED OAK MART, Docket No. 2013-1931-PST-E on March 24, 2014 assessing $3,693 in administrative penalties with $738 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ETOCO, L.P., Docket No. 2013-1963-AIR-E on March 24, 2014 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding King Homes, Inc., Docket No. 2013-1967-AIR-E on March 24, 2014 assessing $3,075 in administrative penalties with $615 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ORANGEFIELD WATER SUPPLY CORPORATION, Docket No. 2013-1986-PWS-E on March 24, 2014 assessing $270 in administrative penalties with $54 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Region Conference Association of Seventh-day Adventists dba Round Rock Seventh-day Adventist Church, Docket No. 2013-1992-EAQ-E on March 24, 2014 assessing $937 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5406, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mushtaq Khan dba A&A Truck Stop, Docket No. 2013-2011-PST-E on March 24, 2014 assessing $4,363 in administrative penalties with $872 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JATIN ENTERPRISES, INC. dba Kwik N Easy Food Store, Docket No. 2013-2068-PST-E on March 24, 2014 assessing $6,699 in administrative penalties with $1,339 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding NE Construction, LLP, Docket No. 2014-0077-WQ-E on March 24, 2014 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Joseph Cooter Payne, Docket No. 2014-0086-WOC-E on March 24, 2014 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding ONEOK Sterling III Pipeline, LLC, Docket No. 2014-0094-WQ-E on March 24, 2014 assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bullfrog Station, Inc., Docket No. 2012-1729-PST-E on March 28, 2014 assessing $12,905 in administrative penalties with $9,305 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Saul Flores dba Saflo Enterprise, Docket No. 2012-1936-MLM-E on March 28, 2014 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Nathan Lemuel Bruton, Docket No. 2012-2071-MLM-E on March 28, 2014 assessing $36,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Fuad Ahmad Bataineh dba UDAY, INC. dba Reda Food Mart, Docket No. 2013-0409-PST-E on March 28, 2014 assessing $5,548 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2013-0587-AIR-E on March 28, 2014 assessing $13,563 in administrative penalties with $2,712 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding D.C.T.D., INC. dba Boomers, Docket No. 2013-0645-PST-E on March 28, 2014 assessing $5,008 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Burney Enterprises Inc dba Clark Store 1, Docket No. 2013-0763-PST-E on March 28, 2014 assessing $8,504 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald E. Crane dba Westgate Manufactured Townhome Community and Country Village Mobile Home Estates, Docket No. 2013-1011-PWS-E on March 28, 2014 assessing $2,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding CANDELARIA WATER SUPPLY CORPORATION, Docket No. 2013-1013-MLM-E on March 28, 2014 assessing $880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Norma Linda Perez dba Store Real II, Docket No. 2013-1059-PST-E on March 28, 2014 assessing $5,129 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gatesville, Docket No. 2013-1079-MWD-E on March 28, 2014 assessing $15,187 in administrative penalties with $3,037 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Saadia Enterprises LLC dba Gateway 4, Docket No. 2013-1093-PST-E on March 28, 2014 assessing $16,651 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Moutawakil Enterprises, L.L.C. dba Super Food Mart 42, Docket No. 2013-1160-PST-E on March 28, 2014 assessing $9,015 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding CRYSTAL INTERNATIONAL, INC. dba Fuel Stop, Docket No. 2013-1168-PST-E on March 28, 2014 assessing $5,782 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Swift Energy Operating, LLC, Docket No. 2013-1242-AIR-E on March 28, 2014 assessing $14,250 in administrative penalties with $2,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HR&B Services, LLC dba Conoco Express, Docket No. 2013-1258-PST-E on March 28, 2014 assessing $11,651 in administrative penalties with $2,330 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ashok K. Sharma dba A-1 Mart, Docket No. 2013-1305-PST-E on March 28, 2014 assessing $4,687 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marilyn Kay Ott dba Halls Bayou Bait Camp, Docket No. 2013-1378-PWS-E on March 28, 2014 assessing $1,242 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas Housing Authority, Docket No. 2013-1703-PST-E on March 28, 2014 assessing $12,563 in administrative penalties with $2,512 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VARDHMAN INVESTMENT, INC. dba Dickinson Food Mart, Docket No. 2013-1716-PST-E on March 28, 2014 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GAL-TEX HOTEL CORPORATION dba South Shore Harbour Resort, Docket No. 2013-1788-PST-E on March 28, 2014 assessing $8,867 in administrative penalties with $1,772 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAHIL VENTURES, INC. dba Paradise Food Mart, Docket No. 2012-1131-PWS-E on 04/01/2014 assessing $2,292 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KING FUELS, INC. dba TDS Supermarket, Docket No. 2012-1570-PST-E on 04/01/2014 assessing $6,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Petroleum, LP dba Hidden Meadows Shell, Docket No. 2012-2225-PST-E on 04/01/2014 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HNM Enterprises, Inc. dba Wimberley Quick Mart, Docket No. 2012-2389-PST-E on 04/01/2014 assessing $2,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena G. Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Silkot International, Inc. dba Speed Trak, Docket No. 2012-2459-PST-E on 04/01/2014 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bexar County Oil LP dba Texaco Food Mart, Docket No. 2012-2564-PST-E on 04/01/2014 assessing $5,755 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shobhana Patel dba 1 Food Mart, Docket No. 2012-2715-PST-E on 04/01/2014 assessing $6,005 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HEART VENTURES, L.L.C. dba Hearts Delight Travel Center, Docket No. 2013-0084-PST-E on 04/01/2014 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mildred Fowler, Docket No. 2013-0321-MLM-E on 04/01/2014 assessing $2,600 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bunkhouse Land and Cattle, LLC, Docket No. 2013-0716-PWS-E on 04/01/2014 assessing $500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bosque Basin Water Supply Corporation, Docket No. 2013-0717-PWS-E on 04/01/2014 assessing $2,537 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena G. Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Taisseer Al-Aqqad dba Best Food Mart, Docket No. 2013-1019-PST-E on 04/01/2014 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHALIMAR ENTERPRISE INC. dba Fisco Convenience Store # 2, Docket No. 2013-1147-PST-E on 04/01/2014 assessing $2,568 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding, Charles B. Harris dba Fast Stop, Docket No. 2013-1150-PST-E on 04/01/2014 assessing $4,254 in administrative penalties with.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Athens Quick Corporation dba Quick Track 20, Docket No. 2013-1297-PST-E on 04/01/2014 assessing $2,942 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sharif & Associates, Inc. dba Texan Stop 2, Docket No. 2013-1338-PST-E on 04/01/2014 assessing $3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHARLIE HILLARD, INC. dba CHARLIE HILLARD FORD, Docket No. 2013-1713-PST-E on 04/01/2014 assessing $3,516 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201401635
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 9, 2014

Notice of District Petition

Notice issued March 27, 2014.

TCEQ Internal Control No. D-12032013-010; JPH Capital, LTD has filed a petition for creation of Travis County Municipal Utility District No. 22 (the "Petitioner) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is an only one lienholder, Capital Farm Credit, FLCA, on the property to be included in the proposed District and it has consented to the petition; (3) the proposed District will contain approximately 910.923 acres located in Travis County, Texas; and (4) no portion of the proposed District lies within the extraterritorial jurisdiction of any municipality. The petition further states that the proposed District shall be created for the purposes included in Chapter 54, Texas Water Code, including providing water, wastewater and drainage facilities and services, providing park and recreation facilities and services, and road improvements, for the land within the boundaries of the District, and the construction, purchase, acquisition, maintenance, ownership and operation of such facilities and services for residential and related development. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of the project will be approximately $81,050,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Inter-

nal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201401633
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 9, 2014

Notice of Water Quality Applications

The following notices were issued on March 28, 2014 through April 4, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF INDUSTRY has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013897001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located at 1432 Marek Road, New Ulm, approximately 6,500 feet northwest of the intersection of State Highway 159 and Farm-to-Market Road 109 in Austin County, Texas 78950.

CITY OF ROCKPORT has applied for a renewal of TPDES Permit No. WQ0010054001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 200 acres of golf course. The facility is located at 1401 North Pearl Street, Rockport, on the west side of Farm-to-Market Road 2165, approximately 1,200 feet south of the intersection of Farm-to-Market Road 2165 and Enterprise Boulevard in Aransas County, Texas 78382.

PI DOCK FACILITIES LLC P.O. Box 896000, San Antonio, Texas 78269, which proposes to operate PI Dock Facility, has applied for new permit TPDES Permit No. WQ0005004000 to authorize the discharge of stormwater and miscellaneous non-stormwater discharges. The facility is located at 2500 Martin Luther King Drive, Port Arthur, Jefferson County, Texas 77641.

STOLTHAVEN HOUSTON INC which operates Stolthaven Houston Wastewater Treatment Plant (WWTP), a centralized waste treatment and bulk liquid storage facility, has applied for a major amendment to TPDES Permit No. WQ0003129000 to authorize an increase in average daily flow from a volume of 180,000 gallons per day to 201,600 gallons per day via Outfall 005; to increase maximum daily flow via Outfall 005 from a volume of 216,000 gallons per day to 331,200 gallons per day, and the removal of Outfall 103 from the permit. The existing permit authorizes the discharge of contact and non-contact stormwater, steam trap release, hydrostatic test water, and fire fighting equipment test water on an intermittent and flow variable basis via Outfall 001; boiler blowdown, treated domestic wastewater, contact stormwater, and centralized waste treatment wastewater (which includes washwater) at an average daily flow not to exceed 201,600 gallons per day, and a maximum daily flow not to exceed 244,800 gallons per day via Outfall 003 or 103; non-contact stormwater, steam trap release, hydrostatic test water, and fire fighting equipment test water on an intermittent and flow variable basis via Outfalls 004 and 006; and boiler blowdown, treated domestic wastewater, contact stormwater, and centralized waste treatment wastewater (which includes washwater) at an average daily flow not to exceed 180,000 gallons per day, and a maximum daily flow not to exceed 216,000 gallons per day via Outfall 005. The facility is located at 15602 Jacintoport Boulevard, on the north side of the Houston Ship Channel, the south side of Jacintoport Boulevard, and approximately one-mile east of Beltway 8 in the City of Houston, Harris County, Texas 77015. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

MCWANE INC which operates Tyler Pipe, a grey iron foundry, has applied for a renewal of TPDES Permit No. WQ0001793000, which authorizes the discharge of treated process wastewater (mold cooling and casting quench), North Plant cooling tower blowdown, treated domestic wastewater, industrial garage washdown water, stormwater from plant areas and the Tyler Landfill area, and miscellaneous de minimis flows at a daily average flow not to exceed 720,000 gallons per day via Outfall 001; treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via Outfall 002; and stormwater runoff on an intermittent and flow-variable basis via Outfalls 003 and 004. The facility is located north of the intersection of, and between, U.S. Highway 69 and Jim Hogg Highway (old Lindale Highway) in the community of Swan, Smith County, Texas 75706.

OXY VINYLS LP which operates the Pasadena PVC Plant which manufactures polyvinyl chloride resin and is authorized to treat and dispose of wastes from off-site plastic materials, industrial organic chemicals production, and anhydrous ammonia storage, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0000002000, which authorizes the discharge of process wastewater, utility wastewater, domestic wastewater, stormwater (including stormwater from the adjacent BASF and Houston Ammonia Terminal facilities), BASF and Conduit Specialties Inc process wastewater, and utility wastewater from the adjacent BASF, Houston Ammonia Terminal, and Conduit Specialties Inc. at a daily average flow not to exceed 4,000,000 gallons per day via Outfall 001. The facility is located at 4403 Pasadena Freeway, approximately one mile north of the intersection of Beltway 8 and Texas Highway 225, on the west side of Beltway 8, and at the confluence of the Beltway 8 Bridge over the Houston Ship Channel, Harris County, Texas 77503.

NRG TEXAS POWER LLC which operates the Greens Bayou Electric Generating Station, a steam electric generating facility, has applied for a renewal of TPDES Permit No. WQ0001031000, which authorizes the flow-variable but continuous discharge of previously monitored effluents (PMEs; metal cleaning wastewater, Chemical Waste Treatment System wastewater, and stormwater runoff on an intermittent and flow-variable basis via internal Outfall 101; cooling tower blowdown, stormwater, basin cleaning wastes, low volume waste sources, and wastewaters from the Cooling Tower Blowdown Treatment System at a daily average flow not to exceed 3,000,000 gallons per day via internal Outfall 201; low volume waste sources and previously monitored sanitary wastewater from the Chemical Waste Treatment System on an intermittent and flow-variable basis via internal Outfall 301; and sanitary wastewater on an intermittent and flow-variable basis via internal Outfall 401) and stormwater runoff via Outfall 001; and the intermittent and flow-variable discharge of low volume waste sources, process wastewater from Spill Prevention Control and Counter-Measure (SPCC) sources, and stormwater from the Floor Drainage Treatment System and the SPCC Treatment System via Outfall 002. The facility is located at 12070 Beaumont Highway, adjacent to and south of U.S. Highway 90 and east of Greens Bayou, approximately one mile southwest of the intersection of U.S. Highway 90 and Farm-to-Market Road 526 in the City of Houston, Harris County, Texas 77049.

NRG TEXAS POWER LLC NRG TOWER which operates Limestone Electric Generating Station, has applied for a renewal of TPDES Permit No. WQ0002430000, which authorizes low volume waste, cooling tower blowdown, lignite pile runoff, and bottom ash transport water at a daily maximum flow not to exceed 2,304,000 gallons per day via Outfall 001; material handling area runoff, washdown and bottom ash transport water, and low volume waste on an intermittent and flow-variable basis via Outfall 002; bottom ash transport water, low volume waste, and stormwater runoff at a daily maximum flow not to exceed 510,000 gallons per day via Outfall 003; bottom ash transport water, low volume waste, and stormwater at a daily maximum flow not to exceed 432,000 gallons per day via Outfall 004; low volume waste, metal cleaning waste, bottom ash transport water, and utility wastewater at a daily maximum flow not to exceed 216,000 gallons per day via Outfall 005; treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via Outfall 006; treated domestic wastewater at daily average flow not to exceed 3,000 gallons per day via Outfall 007; and bottom ash transport water and low volume waste at a daily maximum flow not to exceed 72,000 gallons per day via Outfall 008. The facility is located at 3964 Farm-to-Market Road 39, adjacent to and west of Farm-to-Market Road 39, approximately 2.5 miles southeast of the City of Farrar, Jewett, Limestone County, Texas 75845.

SOUTH COAST TERMINALS LP which operates a bulk storage, blending and packaging facility for lubricating oils, additives, and specialty chemicals, has applied for a renewal of TPDES Permit No. WQ0003150000, which authorizes the discharge of hydrostatic test water, clean water rinsate, and stormwater on an intermittent and flow-variable basis via Outfall 001; and clean water rinsate and stormwater on an intermittent and flow-variable basis via Outfall 002. The facility is located at 7401 Wallisville Road, two blocks west of the intersection of Wallisville Road and North Wayside in the City of Houston, Harris County, Texas 77020.

MULTI CHEM GROUP LLC which proposes to operate a reverse osmosis water treatment unit to further treat municipal water at the Multi-Chem Group Three Rivers Facility, a chemical blending, storage, and distribution facility, has applied for new TPDES Permit No. WQ0005091000 to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 11,500 gallons per day via Outfall 001. The facility is located at 2630 Highway 72, at the intersection of Highway 72 with Farm-to-Market Road 1545, east of the City of Three Rivers, Live Oak County, Texas 78071.

CITY OF COPPERAS COVE has applied for a renewal of TPDES Permit No. WQ0010045004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located in the northeast corner of the city municipal golf course at the intersection of Golf Course Road and Texas Avenue in the City of Copperas Cove in Coryell County, Texas 76522.

CITY OF EARTH has applied for a renewal of TCEQ Permit No. WQ0010162001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via evaporation on 1.6 acres of pond area, and disposal of treated domestic wastewater effluent at a daily average flow not to exceed 70,000 gallons per day via surface irrigation of 30 acres of non-public access agricultural land on demand for supplemental irrigation only. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in the southeast quarter of the City of Earth at a point 0.25 mile east of the intersection of U.S. Highway 70 and Farm-to-Market Road 1055 and 0.25 mile south of Elm Street in Lamb County, Texas 79031.

CITY OF PORT LAVACA has applied for a major amendment to TPDES Permit No. WQ0010251001 to revise the permitted effluent limits for Total Copper based on an approved water effects ratio study. A water effects ratio of 1.57 for dissolved copper was used to evaluate this application. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The applicant also submitted a request for a temporary variance to the existing water quality standards for Silver. The variance would authorize a three-year period in which to conduct a water quality study of Lynn Bayou, into which the treated domestic wastewater is discharged. The study would show whether a site-specific amendment to water quality standards is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The applicant also requested removal of whole effluent toxicity limits based on five years of data with no demonstrations of significant toxicity. The facility is located at 800 North Commerce Street, Port Lavaca, at the southeast corner of the intersection of Newlin Street and Commerce Street in Calhoun County, Texas 77979. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF KNOX CITY has applied for a renewal of TPDES Permit No. WQ0010416001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.5 mile north of the intersection of Farm-to-Market Road 143 and State Highway 6, on the eastern bank of China Branch in Knox County, Texas 79529.

CITY OF GEORGETOWN has applied for a renewal of TPDES Permit No. WQ0010489005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 3502 Farm-to-Market Road 971, approximately 1.8 miles west of the Town of Weir and 4.2 miles northeast of the intersection of Business Interstate Highway 35 (North Austin Avenue) and Farm-to-Market Road 971 in Williamson County, Texas 78626.

CITY OF ARANSAS PASS has applied for a renewal of TPDES Permit No. WQ0010521002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located at 527 Ransom Island Road, approximately 1/2 mile east of State Highway 361 in the City of Aransas Pass in San Patricio County, Texas 78336.

CLEAR LAKE CITY WATER AUTHORITY has applied for a major amendment to TPDES Permit No. WQ0010539001 to authorize the establishment of two new additional outfalls and the discharge of treated domestic wastewater from Outfall 001 at an annual average flow not to exceed 10,000,000 gallons per day; from Outfall 002 at an annual average flow not to exceed 1,080,000 gallons per day and from Outfall 003 at an annual average flow not to exceed 1,080,000 gallons per day. The draft permit authorizes a combined annual average flow not to exceed 10,000,000 gallons per day from Outfall 001, 002 and 003. The plant site is located at 14210 Middlebrook Drive in Houston, approximately one mile northeast of the intersection of Bay Area Boulevard and Space Center Boulevard, southeast of Horsepen Bayou and adjacent to the northernmost part of the Lyndon B. Johnson Space Center in Harris County, Texas 77058.

CITY OF MINERAL WELLS has applied for a renewal of TPDES Permit No. WQ0010585004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,260,000 gallons per day. TCEQ received this application on September 3, 2013. The facility is located at 7810 U.S. Highway 180 East, Mineral Wells, in Parker County, Texas 76067.

TEXAS A&M UNIVERSITY AT GALVESTON has applied for a renewal of TPDES Permit No. WQ0011085001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 200 Seawolf Parkway, at Texas A&M University at Galveston (Mitchell Campus) on the east side of Seawolf Parkway near the north end of Pelican Island Causeway in the City of Galveston in Galveston County, Texas 77553.

TEXAS NATIONAL MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011715001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 1.5 miles northeast of the intersection of Texas National Boulevard and Farm-to-Market Road 2432 in Montgomery County, Texas 77378.

SPORTSMAN'S WORLD MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TCEQ Permit No. WQ0012330001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 212,000 gallons per day via irrigation of 79 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located off Hell's Gate Loop, approximately six miles due north of the intersection of U.S. Highway 180 and State Highway 16, 1,500 feet west of the intersection of Hell's Gate Loop and Ox View Cove in Palo Pinto County, Texas 76475.

WEST PARK MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0012346001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 990,000 gallons per day. The facility is located at 19310 Katy Freeway, Houston in Harris County, Texas 77094.

MONARCH UTILITIES I LP has applied for a renewal of TPDES Permit No. WQ0014179001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located east and adjacent to U.S. Highway 190 in the Blue Water Cove Subdivision and approximately 6,500 feet northeast of the intersection of U.S. Highway 190 and State Highway 980 in San Jacinto County, Texas 77364.

ACTON MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014211001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 930,000 gallons per day. The facility is located at 4300 Cimmaron Trail, Granbury in Hood County, Texas 76049.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO 5 has applied for a renewal of TPDES Permit No. WQ0014611001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 250 feet north of Sienna Ranch Road and approximately 500 feet East-Northeast of Cow Bayou in Missouri City in Fort Bend County, Texas 77459.

SOUTH CENTRAL WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0014804001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located approximately 300 yards east of the intersection of 29th Street and Avenue S, on the north side of Avenue S in Galveston County, Texas 78072.

DR HORTON TEXAS LTD a home builder, has applied for a new permit, TPDES Permit No. WQ0015089001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 510,000 gallons per day. The facility would be located two miles east-northeast of the intersection of Lake Forest Drive and Old Conroe Road, in Montgomery County, Texas 77384.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015018001 to remove Outfall 001. The existing permit authorizes the discharge of raw river water overflow, treated water overflow and treated filter backwash and water treatment plant sludge lagoon decant water from a water treatment plant at a daily average flow not to exceed 1,250,000 gallons per day from Outfall 001, not to exceed 1,250,000 gallons per day from Outfall 002 and 600,000 gallons per day from Outfall 003. The facility is located at 18015 County Road 329, northeast of the City of Terrell, 1.5 miles south of the intersection of State Highway 34 and County Road 331, at the intersection of County Roads 329 and 330 in Kaufman County, Texas 75161.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201401632
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 9, 2014

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Notice of Water Rights Applications

Notice issued April 3, 2014.

APPLICATION NO. 02-5129; Michael L. Mitchell, 4953 FM 367 W, Iowa Park, Texas 76367, Applicant, has applied to amend Certificate of Adjudication No. 02-5129 to move the diversion point downstream to a point on the Wichita River, Red River Basin, and add a place of use in Wichita County. Certificate of Adjudication No. 02-5129, Certificate, authorizes the owner the diversion and use of not to exceed 404 acre-feet of water per year from a point on Beaver Creek, tributary of the Wichita River, tributary of the Red River, Red River Basin for agricultural purposes to irrigate a maximum of 202.1 acres of land out of a 466-acre tract of land in Wichita County. The time priority of owner's right is September 29, 1969 for the diversion and use of the first 256 acre-feet of water at a diversion rate not to exceed 4.44 cfs (2,000 gpm), and the time priority of owner's right is February 6, 1978 for the diversion and use of the remaining 148 acre-feet of water at a maximum diversion rate of 5.56 cfs (2,500 gpm). The application and a portion of the fees were received on June 20, 2011. Additional information and partial fees were received on September 7, November 16, 2011, and February 14, and March 16, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 10, 2012. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special a condition requiring screens on the proposed diversion structure. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 15 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201401634
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 9, 2014

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: 8-Day Pre-Election Report due February 24, 2014 for Candidates and Officeholders

Sandra Crenshaw, P.O. Box 41541, Dallas, Texas 75241

Susan Delgado, 2284 Jean St., Houston, Texas 77023-5009

Ricardo R. Godinez, 2415 N. 10th St., McAllen, Texas 78501

Fidencio M. Guerra, 705 Maple, McAllen, Texas 78501

Michael R. Martinez, P.O. Box 100523, Fort Worth, Texas 76185

Nigel H. Redmond, 320 S. R.L. Thornton Fwy., Ste. 300, Dallas, Texas 75203

Barbara J. Stalder, 11722 Meadow Trail Ln., Stafford, Texas 77477

30-Day Pre-Election Report due February 3, 2014 for Candidates and Officeholders

D. Shawn Stevens, P.O. Box 795216, Dallas, Texas 75379-5216

Deadline: Semiannual Report due January 15, 2014 for Committees

Jerry T. Wright II, Texas Warehouse Association, 118 Tiger Tail Rd., San Antonio, Texas 78232

Deadline: Semiannual Report due January 15, 2014 for Candidates and Officeholders

David M. Medina, 1420A W. Hopkins St., San Marcos, Texas 78666

D. Shawn Stevens, P.O. Box 795216, Dallas, Texas 75379-5216

Harvey M. Jarvis, 1415 Harroun Ave., McKinney, Texas 78069

Deadline: Semiannual Report due January 15, 2014 for Committees

Jerry T. Wright II, Texas Warehouse Association, 118 Tiger Tail Rd., San Antonio, Texas 78232

Deadline: Lobby Activities Report due November 12, 2013

Jennifer E. Sellers, 700 Mandarin Flyway, Unit 203, Cedar Park, Texas 78613

Deadline: Lobby Activities Report due December 10, 2013

Joe W. Arnold, 1108 Lavaca, Ste. 110 #116, Austin, Texas 78701

Jennifer E. Sellers, 700 Mandarin Flyway, Unit 203, Cedar Park, Texas 78613

TRD-201401523

Natalia Luna Ashley
Interim Executive Director
Texas Ethics Commission
Filed: April 4, 2014

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Texas Facilities Commission

Request for Proposals #303-6-20437

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-6-20437. TFC seeks a five (5) or ten (10) year lease of approximately 18,341 square feet of office space in Brownsville, Texas.

The deadline for questions is April 28, 2014, and the deadline for proposals is May 12, 2014, at 3:00 p.m. The award date is June 18, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=110838.*

TRD-201401619
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 7, 2014

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Texas Health and Human Services Commission

Public Notice of Intent to Submit a State Plan Amendment for Hospital-Specific Limits

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment concerns the Hospital-Specific Limit (HSL) calculation. The amendment is proposed to be effective May 1, 2014.

HHSC proposes to amend the state plan to ensure that to the extent a Medicare payment exceeds the Medicaid allowable cost for a service provided to a recipient who is eligible for both Medicare and Medicaid, the payment is not considered a medical assistance payment. This change is being made to enable HHSC to exclude Medicare payments for dually-eligible recipients from the calculation of the Medicaid hospital-specific limit. The proposed amendment is estimated to result in no change in the amount of federal funds eligible to be received by the state. The source of non-federal funding for the DSH program is public funds from local and state governmental entities.

Interested parties may obtain copies of the proposed amendment by contacting Mance Fine, Rate Analysis Department by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 462-6386; by facsimile at (512) 730-7475; or by e-mail at mance.fine@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201401527
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: April 4, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of DIRECT LIFE INSURANCE COMPANY to BANKERS FIDELITY ASSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Griffin, Georgia.

Application to change the name of VALLEY INSURANCE COMPANY to QUALITAS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Los Angeles, California.

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 Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201401645
Norma Garcia
Chief Clerk
Texas Department of Insurance
Filed: April 9, 2014

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Public Notice

Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

UnitedHealthcare Benefits of Texas, Inc.

The application is available for public inspection at the offices of the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Beam, Staff Attorney, William P. Hobby building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas.

If you wish to comment on the application from UnitedHealthcare Benefits of Texas, Inc. to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or her designee may take action to approve the application to be a risk-assuming carrier.

TRD-201401638

Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 9, 2014

Public Notice

Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

USAble Mutual Insurance Company

The application is available for public inspection at the offices of the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Beam, Staff Attorney, William P. Hobby building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas. If you wish to comment on the application from USAble Mutual Insurance Company to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or her designee may take action to approve the application to be a risk-assuming carrier.

TRD-201401639

Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 9, 2014

Texas Lottery Commission

Instant Game Number 1607 "Texas Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1607 is "TEXAS GOLD". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1607 shall be $10.00 per Ticket.

1.2 Definitions in Instant Game No. 1607.

A. Display Printing - That area of the Instant Game 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 Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant 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: 1, 3, 4, 5, 6, 7, 8, 9, 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, 2X SYMBOL, 10X SYMBOL, GOLD BAR SYMBOL, $10.00, $20.00, $25.00, $50.00, $100, $200, $500, $1,000, $10,000 and $250,000.

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. 1607 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	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
2X SYMBOL	WINX2
10X SYMBOL	WINX10
GOLD BAR SYMBOL	WINALL
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND

$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	10 THOU
$250,000	TFY THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000, $10,000 or $250,000.

I. Bar Code - A 24 (twenty-four) 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 Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1607), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1607-0000001-001.

K. Pack - A Pack of "TEXAS GOLD" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a 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 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS GOLD" Instant Game No. 1607 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "TEXAS GOLD" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If a player reveals a "GOLD BAR" Play Symbol, the player wins ALL 20 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the 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 Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and 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 Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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 Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No more than four matching non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

H. The "GOLD BAR" (win all 20 prizes) Play Symbol will only appear as dictated by the prize structure.

I. The "2X" (win x 2) and "10X" (win x 10) Play Symbols will only appear as dictated by the prize structure.

J. When the "GOLD BAR" (win all 20 prizes) Play Symbol appears, there will be no occurrence of any of YOUR NUMBERS Play Symbols matching to any WINNING NUMBERS Play Symbols.

K. The "2X" (win x 2) and "10X" (win x 10) Play Symbols will never appear on a Ticket with the "GOLD BAR" (win all 20 prizes) Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS GOLD" Instant Game prize of $10.00, $20.00, $25.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning 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 Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $200 or $500 Ticket. 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 "TEXAS GOLD" Instant Game prize of $1,000, $5,000, $10,000 or $250,000, the claimant must sign the winning Ticket and 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 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 "TEXAS GOLD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as 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 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 "TEXAS GOLD" Instant 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 "TEXAS GOLD" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant 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 Ticket, shall be forfeited.

2.8 Disclaimer. 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. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the 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 Ticket in the space designated. If more than one name appears on the back of the 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 Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1607. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1607 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	840,000	7.14
$20	840,000	7.14
$25	60,000	100.00
$50	90,000	66.67
$100	23,750	252.63
$200	12,000	500.00
$500	4,350	1,379.31
$1,000	500	12,000.00
$5,000	100	60,000.00
$10,000	138	43,478.26
$250,000	6	1,000,000.00

*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 3.21. 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 Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1607 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1607, 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 401 and all final decisions of the Executive Director.

TRD-201401501

Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 3, 2014

Instant Game Number 1642 "50X the Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1642 is "50X THE CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1642 shall be $10.00 per Ticket.

1.2 Definitions in Instant Game No. 1642.

A. Display Printing - That area of the Instant Game 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 Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant 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: 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, $10.00, $15.00, $20.00, $30.00, $75.00, $100, $200, $500, $1,000, $10,000, $50,000 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. 1642 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
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
5X SYMBOL	TIMES5
10X SYMBOL	TIMES10
20X SYMBOL	TIMES20
50X SYMBOL	TIMES50
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$75.00	SEVENTY FIV
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	TEN THOU
$50,000	50 THOU
$1,000,000	1 MILLION

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $30.00, $75.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000, $50,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) 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 Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1642), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1642-0000001-001.

K. Pack - A Pack of "50X THE CASH" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a 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 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "50X THE CASH" Instant Game No. 1642 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "50X THE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 56 (fifty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. If a player reveals a "50X" Play Symbol, the player wins 50 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 Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-six) Play Symbols must appear under the Latex Overprint on the front portion of the 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 Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and 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 Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 56 (fifty-six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 56 (fifty-six) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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 Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty-five (25) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by parameters, play action or prize structure.

D. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 15 and $15).

E. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

F. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

G. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

H. Non-winning Prize Symbols will never appear more than three (3) times.

I. The "5X", "10X", "20X", and "50X" Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

J. The "5X", "10X", "20X", and "50X" Play Symbols will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "50X THE CASH" Instant Game prize of $10.00, $15.00, $20.00, $25.00, $30.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning 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 Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $75.00, $100, $200 or $500 Ticket. 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 "50X THE CASH" Instant Game prize of $1,000, $10,000, $50,000 or $1,000,000, the claimant must sign the winning Ticket and 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 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 "50X THE CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as 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 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 "50X THE CASH" Instant 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 "50X THE CASH" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant 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 Ticket, shall be forfeited.

2.8 Disclaimer. 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. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose

signature appears in that area shall be the owner of the 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 Ticket in the space designated. If more than one name appears on the back of the 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 Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1642. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1642 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,209,600	8.33
$15	806,400	12.50
$20	705,600	14.29
$25	201,600	50.00
$30	163,800	61.54
$75	198,744	50.72
$100	5,376	1,875.00
$200	1,764	5,714.29
$500	672	15,000.00
$1,000	672	15,000.00
$10,000	15	672,000.00
$50,000	7	1,440,000.00
$1,000,000	5	2,016,000.00

*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 3.06. 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 Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1642 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1642, 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 401, and all final decisions of the Executive Director.

TRD-201401502
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 3, 2014

♦ ♦ ♦

Texas Department of Motor Vehicles

Major Consulting Services Contract Award - Commercial Vehicle Information Systems and Networks Consulting and Services

In accordance with Government Code, §2254.030, the Texas Department of Motor Vehicles announces the award of the contract pursuant to the Request for Qualifications for Commercial Vehicle Information Systems and Networks Consulting and Services (RFQ# 608-14-00255), which was published in the January 17, 2014, issue of the *Texas Register* (39 TexReg 326).

Description of the Activities that the Consultant will Conduct

The Federal Motor Carrier Safety Administration (FMCSA) operates several additional programs focused on commercial vehicle safety, and may make supporting funds available through state Commercial Vehicle Information Systems and Networks (CVISN) programs. Services as identified in the 2013 FMCSA CVISN grant support the CVISN program in the state. Work includes ongoing Core support and new Augmented Core and Expanded project tasks such as: technical program management and system architect support, hosting and support of Texas Commercial Vehicle Information Exchange Window (TxCVIEW), integrating additional state agency data with TxCVIEW, modifications to TxCVIEW to support changes to the national Safety and Fitness Electronic Records (SAFER) System interface and busi-

ness processes, and other projects as described in the state's Expanded CVISN Program Plan/Top-Level Design (PP/TLD) and the 2013 grant.

Name and Business Address of the Consultant

Southwest Research Institute

6220 Culebra Road, San Antonio, Texas 78238

Total Value and the Beginning and Ending Dates of the Contract

Total Value: $1,386,000.00

Beginning Date: April 1, 2014

Ending Date: January 31, 2016

Dates on which Documents, Films, Recordings, or Reports that the Consultant is Required to Present to the Agency are Due

Task orders will have dates of delivery and those dates are unknown until each task is authorized to begin.

TRD-201401641
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: April 9, 2014

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Land Donation - Palo Pinto County

Palo Pinto Mountains State Park

In a meeting on May 22, 2014, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acceptance of a donation of approximately 120 acres of land in Palo Pinto County as an addition to Palo Pinto Mountains State Park. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201401647
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 9, 2014

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 7, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Properties, Inc. for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42363.

The requested amendment is to delete the unincorporated areas of Harris, Liberty and Montgomery Counties, Texas, and the municipal boundaries of the Cities of Patton Village, Roman Forest and Splendora, Texas from the service area footprint of Northland Cable Properties, Inc.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42363.

TRD-201401636
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2014

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 7, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Ventures LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42364.

The requested amendment is to delete the unincorporated areas of Anderson, Henderson, Kaufman and Smith Counties, Texas, and the municipal boundaries of the Cities of Tyler, Berryville, Noonday, Frankston, Kaufman, Chandler, Oak Grove, Gun Barrel City, Seven Points, Tool City, Malakoff, Trinidad and Mabank, Texas from the service area footprint of Northland Cable Ventures LLC.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42364.

TRD-201401637
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2014

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 3, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Innovative Communication Systems, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 42352.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant seeks to provide service throughout the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, by phone at (512) 936-7120 or toll-free at (888) 782-8477, no later than April 25, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42352.

TRD-201401590
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2014

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on April 7, 2014, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Bexar County, Texas.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary change in Bexar County. Docket Number 42365.

The Application: The minor boundary amendment is being filed to realign the boundary between the Bulverde exchange of GVTC and the San Antonio Metropolitan exchange of AT&T Texas Elm Creek Zone. The proposed new boundary will transfer a portion of AT&T Texas' Elm Creek Zone to GVTC's service area. The amendment will allow GVTC to serve all residents in the Coronado Subdivision. A map of the boundary change is attached to the application. AT&T Texas has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 28, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42365.

TRD-201401640
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2014

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 1, 2014, to implement a minor rate change pursuant to P.U.C. Subst. R. §26.171.

Tariff Control Title and Number: Notice of Blossom Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 42343.

The Application: Blossom Telephone Company, Inc. (Blossom or Applicant) filed an application with the commission for revisions to its Local Exchange Tariff to decrease the rates for certain optional services and to introduce new services which it plans to offer at no charge. Blossom proposed an effective date of May 1, 2014. The estimated decrease in gross annual intrastate revenues to be recognized by the Applicant is $20,292.00. The Applicant has 817 access lines (residence and business) in service.

By this application Blossom is also notifying customers that effective May 1, 2014, it plans to implement the rate change approved in *Application of Blossom Telephone Company, Inc. to Recover Funds from the Texas Universal Service Fund and to Increase Rates Pursuant to PUC Subst. R. §26.406,* Docket No. 41797 (Feb. 27, 2014). Among the authorizations granted in Docket No. 41797 are an increase in the residential and business local access line rates and elimination of the monthly Tone Dialing Service and Rural Mileage Charge.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by April 28, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 28, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 42343.

TRD-201401522
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 4, 2014

Texas State Soil and Water Conservation Board

USDA-Natural Resources Conservation Service State Technical Advisory Committee Meeting

On behalf of the USDA-Natural Resources Conservation Service (NRCS), the Texas State Soil and Water Conservation Board announces a scheduled meeting of the State Technical Advisory Committee Meeting for April 17, 2014, 9:30 a.m. to 3:30 p.m. at the Crowne Plaza Hotel in Austin, Texas.

The address is:

Crowne Plaza Austin

6121 N. Interstate Highway 35

Austin, Texas 78752

(512) 323-5466

State Technical Committee Meeting

April 17, 2014

AGENDA

9:30 a.m. - Welcome, Al Leal/Salvador Salinas, "Roles and Responsibilities of STAC"

9:45 a.m. - Farm Bill Briefing, Mark Habiger

2013 Accomplishments

Statewide Resource Concerns

Agricultural Act of 2014

10:15 a.m. - FSA Update, Judith Canales

10:45 a.m. - Rural Development Update, Paco Valentin

11:15 a.m. - Extension Service Update, Pete Gibbs

11:45 a.m. - Texas Department of Agriculture Update, David Villarreal

12:15 - 12:30 p.m. - Lunch Pick-up Break

12:30 p.m. - Texas Forest Service, Shane Harrington

1:00 p.m. - U.S. Fish and Wildlife, Don Wilhelm

1:30 p.m. - Texas Parks and Wildlife, Ross Melinchuk

2:00 p.m. - Texas Soil and Water Conservation Board, Rex Isom

2:30 p.m. - Texas Water Development Board, Cameron Turner

3:00 p.m. - ACEP Programs, Claude Ross

3:15 p.m. - Clean Water Act, John Mueller

3:30 p.m. - Regional Conservation Programs

Subcommittee Reports

Closing Remarks - Salvador Salinas

TRD-201401606
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: April 7, 2014

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Texas Department of Transportation

Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, May 8, 2014 at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas to receive public comments on the proposed updates to the 2014 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in 43 TAC Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2014 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at: http://www.txdot.gov/public_involvement/utp.htm

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division at (512) 486-5038 not later than Wednesday, May 7, 2014, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2014 UTP to James W. Koch, Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2014 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, May 19, 2014.

TRD-201401526
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 4, 2014

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Texas State University System

Notice of Award - Natural Gas and Electric Energy Consultant

The Texas State University System (TSUS) announces this Notice of Contract Award in connection with the Request for Qualifications/Proposals (RFP #758-14-00021) inviting professional consultants experienced in providing natural gas and electric energy consulting services (particularly institutions of higher education) to the TSUS institutions comprising the System (Lamar Institute of Technology in Beaumont Texas, Lamar University in Beaumont, Texas, Lamar State College-Orange in Orange, Texas, Lamar State College-Port Arthur in Port Arthur, Texas, Sam Houston State University in Huntsville, Texas, Sul Ross State University in Alpine, Texas, Rio Grande College with campuses located in Del Rio, Eagle Pass and Uvalde, Texas and Texas State University with campuses in San Marcos, Texas and Round Rock, Texas.

TSUS announces that two contracts were awarded to Amerex Brokers, LLC, 1 Sugar Creek Center Blvd. #700, Sugar Land, Texas 77478. The activities to be conducted consist of consultation regarding energy procurement and cost reduction strategies. The total value of the contracts is dependent upon energy consumption levels at certain of the component institutions of TSUS during the term of the consulting contracts and any future energy contracts resulting from procurements during the term of the consulting contracts. The contract beginning date is March 27, 2014, and the contract ending date is February 29, 2016, subject to TSUS' option to extend for up to two additional one-year terms.

The Notice of Request for Proposals (RFP #758-14-00021) was published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8970).

TRD-201401500
Peter E. Graves
Vice Chancellor for Contract Administration
Texas State University System
Filed: April 2, 2014

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

How to Use the Texas Register

Information Available: The 14 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.

Secretary of State - opinions based on the election laws.

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.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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.

Review of Agency Rules - notices of state agency rules review.

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 39 (2014) is cited as follows: 39 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 "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 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, Room 245, 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: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) 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 following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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 §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 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
40 TAC §3.704..950 *(P)*

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Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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