



Aging and Disability Services Council

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Aging and Disability Services Council

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Aging and Disability Services Council

Texas Department of Aging and Disability Services
 John H. Winters Building – Public Hearing Room
 701 W. 51st Street, Austin, Texas

Agenda
 June 9, 2016
 8:30 AM

	TAB
1. Welcome and Call to Order	
2. ☞ Approval of the Minutes of the March 10, 2016 Council Meeting	1
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• Activities	
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a. Recommendation to amend Title 1, Texas Administrative Code, Part 15, Chapter 355, Subchapter E, Rule §355.501, Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE).	
6. ☞ DADS Recommendations to Propose:	5
a. Recommendation to propose amendments to §97.2 and §97.527 in 40 Texas Administrative Code (TAC), Chapter 97, Licensing Standards for Home and Community Support Services Agencies.	
b. Recommendation to propose amendments to certain sections in 40 TAC, Chapter 95, Medication Aides – Program Requirements.	
c. Recommendation to propose an amendment to §3.501 in 40 TAC, Chapter 3, Administrative Responsibilities of State Facilities.	
d. Recommendation to propose new sections and amendments to certain sections in 40 TAC, Chapter 18, Nursing Facility Administrators and Chapter 94, Nurse Aides.	
e. Recommendation to propose amendments to certain sections and a new section in 40 TAC, Chapter 15, Licensing Standards for Prescribed Pediatric Extended Care Centers.	
f. Recommendation to propose amendments to 40 TAC, Chapter 98, Adult Day Care and Day Activity and Health Services Requirements.	
g. Recommendation to propose the repeal of 40 TAC, Chapter 6, ICF/ID Programs – Contracting, Subchapter H, Dental Program; Chapter 9, Intellectual Disability Services – Medicaid State Operating Responsibilities, Subchapter G, Medicaid Fair Hearings; and Chapter 39, Community Alzheimer’s Resources and Education (CARE) Program.	
h. Recommendation to propose new §9.230 in 40 TAC Chapter 9, Subchapter E, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program – Contracting, Division 4, Provider Service Requirements; and an amendment to §49.102 and §49.205, and new §49.313, in 40 TAC Chapter 49, Contracting for Community Services.	

6. Adjourn

☞ Denotes item open for action

TAB 1

**Aging and Disability Services Council
MINUTES**

March 10, 2016

The Aging and Disability Services Council convened at the John H. Winters Building, 701 West 51st Street, Austin, Texas. Council Members in attendance were Chair John Cuellar, Glyn Crane, Donna Stauber, Dr. Edward Yosowitz, and Barry L. Anderson. Deputy Commissioner Kristi Jordan and other DADS staff were present. Lawrence Hornsby served as Parliamentarian. Council members Sheri Harmonson and Judy Foster were unable to attend the meeting.

Agenda Item No. 1 – Call to Order

Chair John Cuellar called the meeting to order at 8:37 a.m.

Agenda Item No. 2 – Approval of the minutes of December 3, 2015.

The minutes from the Council meeting of December 3, 2015, were presented.

The DADS Council unanimously approved the minutes of the December 3, 2015, DADS Council meeting.

Agenda Item No. 3 – Commissioner’s Quarterly Update; Community Services Report, State Supported Living Centers Report

Assistant Commissioner for Access and Intake, Elisa Garza, presented the Community Services report to the Council.

Assistance Commissioner for State Supported Living Centers, Scott Schalchlin, presented the State Supported Living Centers report to the Council.

Deputy Commissioner Kristi Jordan informed the council about DADS initiatives.

Agenda Item No. 4 – General Public Comment

Tanya Winters, representing Travis County Constable Precinct 5, presented public comment about accessible parking.

Debbie Kizer, representing Imagine Art, presented public comment about the Austin State Supported Living Center.

Agenda Item No. 5a – Recommendation to propose new §92.21 and amendments to §92.64 and §92.551 in Texas Administrative Code, Title 40, Part 1, Chapter 92, Licensing Standards for Assisted Living Facilities.

Calvin Green, DADS Regulatory, presented this agenda item. Discussion followed.

Diana Martinez, representing the Texas Assisted Living Association, presented comment on this item.

Edward Yosowitz made the motion that the Council recommend for proposal by the Health and Human Services Commission a new rule and the amendment of rules governing the initial assisted facility license for an applicant in good standing, as presented in Agenda Item 5a. Glyn Crane seconded, and the new motion was approved.

Agenda Item 5b – Recommendation to propose an amendment to §97.2 and new §97.202, Texas Administrative Code, Title 40, Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

Christy Parks, DADS Regulatory, presented this agenda item. Discussion followed.

Marina Hench, representing the Texas Association for Home Care and Hospice, presented comment on this agenda item.

Donna Stauber made the motion that the Council recommend for proposal by the Health and Human Services Commission the amendment of a rule and a new rule governing habilitation provided by a home and community support services agency, as presented in Agenda Item 5b. Glynn Crane seconded, and the new motion was approved.

Agenda Item No. 6 – Adjourn

Chair John Cuellar adjourned the meeting at 9:53 a.m.

TAB 2

COMMISSIONER'S
QUARTERLY
UPDATE

TAB 3

PUBLIC
COMMENTS

TAB 4



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose the amendment of Title 1, Texas Administrative Code, Part 15, Chapter 355, Subchapter E, §355.501, Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE)

AGENDA ITEM No.: 5a

BACKGROUND: Federal requirement Legislative requirement Other

Section 355.501 is being amended to reflect a change from a fee-for-service payment system to a managed care payment system by modifying the underlying methodology and data sources for determining PACE reimbursement. The amendment implements new requirements for the PACE reimbursement methodology set forth in House Bill 3823, 84th Legislature, Regular Session, 2015, which adopted Texas Human Resources Code §§32.0532 - 32.0534.

ISSUES AND ALTERNATIVES

The PACE sites and the Texas PACE Association have been given the opportunity to review and suggest changes to the proposed rule. However, based on rate setting methods that are acceptable to the Centers for Medicare and Medicaid (CMS), HHSC is limited as to what can be used in the rate calculations. PACE sites have suggested using value-added services and administrative costs that are not state-incurred (such as marketing costs) in the rate calculations, but these costs are not acceptable in the Upper Payment Limit (UPL) methodology that HHSC employs to derive the rates. The UPL methodology is the most common PACE rating methodology used by other states, and HHSC eventually needs to have CMS's approval of the methodology via an amendment to the Medicaid State Plan.

STAKEHOLDER INVOLVEMENT

HHSC staff met with the PACE sites and the Texas PACE Association and received comments on the draft rule. Stakeholder feedback is expected to be generally favorable because the

proposal implements program changes and legislation that has already passed.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

Yes No N/A

Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

The proposal has a small and unknown fiscal impact.

RULE DEVELOPMENT SCHEDULE

May 12, 2016	Present to Medical Care Advisory Committee
June 9, 2016	Present to Aging and Disability Services Council
July 2016	Publish proposed rules in <i>Texas Register</i>
November 2016	Publish adopted rules in <i>Texas Register</i>
November 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rule.

TITLE 1	ADMINISTRATION
PART 15	TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355	REIMBURSEMENT RATES
SUBCHAPTER E	COMMUNITY CARE FOR AGED AND DISABLED
RULE §355.501	Reimbursement Methodology for Program for All-inclusive Care for the Elderly (PACE)

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to Title 1, Part 15, Chapter 355, Subchapter E, §355.501, concerning Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE).

BACKGROUND AND JUSTIFICATION

Federal law permits a state to operate a PACE program to provide comprehensive health care services to eligible individuals; providers are to be paid a capitated amount that is "less than the amount" the State would otherwise have paid under Medicaid "if the individuals were not" PACE-enrollees. Under 42 U.S.C. §1396u-4. Texas has elected to operate a PACE program since 2003.

The purpose of the proposed amendments is two-fold. First, the proposed amendments align the rule with the shift from a fee-for-service payment system to a managed care payment system. The proposed amendments will thus adjust the underlying methodology and the data sources for determining PACE reimbursement. Second, the proposed amendments implement Texas Human Resources Code §§32.0532 through 32.0534, adopted by House Bill 3823, 84th Legislature, Regular Session, 2015, which outline new requirements for reimbursement methodology. On the whole, the statutes link PACE reimbursement rates to those of the STAR+PLUS Medicaid program, modify the methods for collecting PACE and STAR+PLUS Medicaid program data, and require a comparison of PACE costs and care outcomes to STAR+PLUS Medicaid costs and outcomes.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §355.501 outline the reimbursement methodology for PACE. The rule has minor changes to update the source of data used in determining the reimbursement. The Medicaid program has shifted from a fee-for-service payment basis to primarily a managed care payment basis. The rule makes changes to align with these programmatic changes. The rule also adds language that implements new requirements set out in House Bill 3823, and it states the federal requirement that the PACE payment rate be less than the amount that would otherwise have been paid under the State Plan if the participants were not enrolled under the PACE program.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the amended rule is in effect, there could be a fiscal impact to state government from adoption and implementation of this rule. At this time, HHSC lacks sufficient data to provide an estimate of that impact. Costs and revenues of local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined there could be an adverse economic impact to small businesses or micro-businesses from adoption and implementation of this rule. However, at this time HHSC lacks data to provide an estimate of that impact, or to determine if the impact will be adverse.

Current Texas PACE rates are so close to the maximum level federal rules allow, they approximate that level. Therefore, at this time, HHSC is unable to determine whether the impact to small business or micro-business providers will be positive or negative or to estimate the magnitude of the potential change.

PUBLIC BENEFIT AND COSTS

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be a more accurate reimbursement methodology to align with recent legislation and the changes in the Medicaid program in recent years.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the amended rule.

HHSC has determined that the amended rule will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a “major environmental rule” as defined by §2001.0225 of the Texas Government Code. A “major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to William Warburton at HHSC Rate Analysis Division, P.O. Box 149030, Mail Code H-400, Austin TX 78714-9030; by phone to 512-462-6222; or by e-mail to william.warburton@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

This amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas 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 provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements. The amendment is consistent with Texas Human Resources Code §32.0532, which sets out specific requirements for PACE program reimbursement methodology.

The proposed amendment affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that this proposal has been reviewed and approved by legal counsel and found to be within the agency's legal authority to adopt.

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355 REIMBURSEMENT RATES
SUBCHAPTER E COMMUNITY CARE FOR AGED AND DISABLED
RULE §355.501 Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE)

(a) General specifications. The Texas Health and Human Services Commission (HHSC) determines the upper payment limits and reimbursement rates for each PACE contractor. HHSC applies the general principles of cost determination as specified in §355.101 of this title (related to Introduction).

(b) Frequency of reimbursement determination. The upper payment limits and reimbursement rates are determined coincident with the state's biennium.

(c) Upper payment limit determination. There are three upper payment limits calculated for each PACE contract: one for clients eligible only for Medicaid services (Medicaid-only clients), one for clients eligible for both Medicare and Medicaid services (dual-eligible clients), and one for clients eligible for only Medicare services as Qualified Medicare Beneficiaries (QMBs). An average monthly historical cost per client receiving nursing facility services and Home and Community Based Services (HCBS) [~~Community Based Alternatives (CBA) services~~] under either the fee-for-service payment system or the managed care program is calculated for the counties served by each PACE contract for the upper payment limits for Medicaid-only clients and for dual-eligible clients.

(1) The upper payment limits for Medicaid-only and for dual-eligible clients for the biennium are calculated for the base period using historical [~~fee-for-service~~] claims and encounter data and member-month data from the most recent state fiscal year of complete claims available prior to the state's biennium.

(2) The historical costs are derived from [~~fee-for-service~~] claims data for clients age 55 and older receiving nursing facility services or HCBS [~~CBA services~~] in the counties served by each PACE contract. [~~This applies to clients who:~~

[~~(A) are age 55 and older;~~]

[~~(B) have Medicare coverage and who do not have Medicare coverage; and~~]

[~~(C) are not receiving services under the STAR+PLUS managed care program.~~]

(3) The historical costs include:

(A) acute care services, including inpatient, outpatient, professional, and other acute care services;

(B) prescriptions;

(C) medical transportation;

(D) nursing facility services;

(E) hospice services;

(F) long-term care specialized services, such as physical therapy, occupational therapy, and speech therapy;

(G) HCBS [~~CBA services~~];

(H) Primary Home Care (including Family Care) services; and

(I) Day Activity and Health Services.

(4) Effective on and after January 1, 2006, the historical prescription costs from subparagraph (B) of this paragraph that are used in the calculation of the upper payment limit, and as such the associated payment rate, for dual-eligible clients for each PACE contract will exclude the costs of any drug that is in a category covered by Medicare Part D.

(5) To determine an average monthly historical cost for the counties served by each PACE contract, the total historical [~~fee for service~~] claims data for the counties served by each PACE contract are divided by the number of member months for the counties served by each PACE contract.

(6) An adjustment for administrative costs [~~A per member month amount~~] is added to the average monthly historical cost per client. The per member month amount is added for:

(A) processing claims, based on the state's cost to process claims under the managed care [~~fee for service~~] payment system; and

(B) case management, based on the state's cost to provide case management under the managed care [~~fee for service~~] payment system for HCBS [~~CBA~~] clients.

(7) The sum of the average monthly historical cost per client for each PACE contract and the amounts from paragraph (5) of this subsection are projected from the claims data base period identified in paragraph (1) of this subsection to the rate period to account for anticipated changes in costs for each PACE contract. The methodology used for trending historical costs for calculating PACE Upper Payment Limits (UPLs) and rates is comparable to that used for trending [~~fee for service~~] costs in the managed care program.

(8) HHSC may adjust the [~~The~~] PACE UPL method [~~can be adjusted~~] as determined actuarially appropriate for statistical outliers, small populations, programmatic changes, catastrophic events, or other economic changes. HHSC may consider other [~~Other~~] sources of

data ~~[may be considered]~~ and may use them [used] as HHSC deems [deemed] necessary for the purpose of providing sufficient data for the calculation of an appropriate UPL.

(d) HHSC determines the [The] UPL [upper payment limit] for Qualified Medicaid Beneficiaries (QMBs) [is determined] on a statewide basis using the average cost incurred by Medicaid for Medicare co-insurance and deductibles.

(e) Payment rate determination. HHSC calculates [There are] three reimbursement rates [calculated] for each PACE contract: one for clients eligible for Medicaid services (Medicaid Only rate), one for clients eligible for both Medicare and Medicaid services (Dual Eligible rate), and one for clients eligible for only Medicare services as [Qualified Medicare Beneficiaries (] QMBs [})]. The payment rates for the three client categories for each PACE contract are determined by multiplying the UPLs [upper payment limits] calculated for each PACE contract by a factor less than 1.0 [no greater than 0.95]. HHSC may reduce the [The] factor [may be reduced] as necessary to establish a rate consistent with available funds.

(1) In setting the reimbursement rates under the PACE program, HHSC complies with Texas Human Resources Code §32.0532(b).

(2) The PACE payment rate is less than the amount that would otherwise have been paid under the Texas State Plan if the participants were not enrolled under the PACE program.

(f) Reporting of cost. HHSC may require the PACE contractor to submit financial and statistical information on a cost report or in a survey format designated by HHSC. Cost report completion is governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process). HHSC may also require the PACE contractor to submit audited financial statements.

TAB 5

TAB 5

Item a.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose amendments to §97.2 and §97.527 in Title 40, Texas Administrative Code, Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

AGENDA ITEM No.: 6a

BACKGROUND: Federal requirement Legislative requirement Other

The purpose of the amendments is to make terminology used in Chapter 97 consistent with terminology used in Title 42, Code of Federal Regulations, Part 488, Subparts I and J. Specifically, the proposed amendments replace the term “informal review of deficiencies” (IRoD) with the term “informal dispute resolution” (IDR). Currently, IRoD is available for all violations and deficiencies, but the proposed amendments provide that that IDR is available for violations and only for deficiencies that rise to the condition level, which are deficiencies that substantially limit the capacity of a home and community support services agency to furnish adequate care or that adversely affect the health or safety of patients. Additional amendments provide that DADS does not grant an agency’s request for IDR if DADS cited the violation or deficiency at the agency’s immediately preceding survey and DADS has cited the violation or deficiency again, with no new findings.

ISSUES AND ALTERNATIVES

There are no outstanding issues or concerns with the proposed amendments to Chapter 97.

STAKEHOLDER INVOLVEMENT

On April 5, 2016, DADS shared a draft of the proposed amendments with external stakeholders via email. DADS received two comments. Based on one comment, DADS amended the draft for clarification.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the

individual?

Yes No N/A

Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

DADS has determined that there are no foreseeable implications relating to costs or revenues of state government and local government as a result of administering or enforcing the proposed amendments.

RULE DEVELOPMENT SCHEDULE

June 9, 2016	Present to Aging and Disability Services Council
July 2016	Publish proposed rules in <i>Texas Register</i>
September 2016	Publish adopted rules in <i>Texas Register</i>
October 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rules.

May 2, 2016/13R28

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 97 LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT
 SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §97.2 and §97.527, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

BACKGROUND AND PURPOSE

The purpose of the amendments is to make terminology used in Chapter 97 consistent with terminology used in Title 42, Code of Federal Regulations, Part 488, Subparts I and J. Specifically, the proposed amendments replace the term “informal review of deficiencies” (IRoD) with the term “informal dispute resolution” (IDR). Currently, IRoD is available for all violations and deficiencies, but the proposed amendments provide that that IDR is available for violations and only for deficiencies that rise to the condition level, which are deficiencies that substantially limit the capacity of a home and community support services agency to furnish adequate care or that adversely affect the health or safety of patients. Additional amendments provide that DADS does not grant an agency’s request for IDR if DADS cited the violation or deficiency at the agency’s immediately preceding survey and DADS has cited the violation or deficiency again, with no new findings.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.2 deletes the definition of “IRoD” and adds a definition for “IDR” to conform with 42 CFR §488.745. The amendment also replaces the defined terms “alternate delivery site,” “end stage renal disease,” “legally authorized representatives,” and “registered nurse,” with acronyms and puts the acronyms in alphabetical order.

The proposed amendment to §97.527 replaces the term “IRoD” with “IDR.” The amendment provides that IDR is available to an agency for condition-level deficiencies, violations, or both, and that the agency receives instructions for requesting IDR with written notification of the survey findings. The amendment states that DADS does not grant an agency’s request for IDR if DADS cited the same violation or deficiency at the agency’s immediately preceding survey and DADS has cited the violation or deficiency again, with no new findings. This change is made to ensure that an agency’s and DADS resources for IDR are used in a cost effective and efficient manner. The proposed amendment makes editorial changes for clarity and consistency.

FISCAL NOTE

David Cook, 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 there is no cost to comply with the amendments.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, 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 that agencies will have an opportunity to have an IDR to address serious deficiencies and state resources will be used efficiently.

Ms. Henderson 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 Christy Parks at (512) 438-3791 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R28, 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 13R28" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 97 LICENSING STANDARDS FOR HOME AND COMMUNITY
 SUPPORT SERVICES AGENCIES
SUBCHAPTER A GENERAL PROVISIONS
RULE §97.2

Proposed action:

X Amendment

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, and Texas Health and Safety Code, §142.0011 which authorizes the HHSC executive commissioner to adopt rules relating to the licensing and regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, and Texas Health and Safety Code, Chapter 142.

§97.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative

and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) ADS--Alternate delivery site. A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(6) [~~5~~] Advanced practice nurse--A registered nurse who is approved by the Texas Board of Nursing to practice as an advanced practice nurse and who maintains compliance with the applicable rules of the Texas Board of Nursing. See the Texas Board of Nursing's definition of advanced practice nurse in 22 TAC §221.1.

(7) [~~6~~] Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(8) [~~7~~] Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(9) ~~(8)~~ Agency--A home and community support services agency.

~~(9) Alternate delivery site (ADS) A facility or site, including a residential unit or an inpatient unit:]~~

~~[(A) that is owned or operated by an agency providing hospice services;]~~

~~[(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;]~~

~~[(C) that is located in the geographical area served by the hospice; and]~~

~~[(D) from which the hospice provides hospice services.]~~

(10) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(11) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(12) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(13) Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(14) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(15) Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.

(16) Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(17) Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(18) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(19) Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(20) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(21) Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(22) Certified home health services--Home health services that are provided by a certified agency.

(23) CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(24) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(25) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(26) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not

include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(27) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(28) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(29) Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.

(30) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(31) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(32) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(33) Counselor--An individual qualified under Medicare standards to provide counseling

services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(34) DADS--Department of Aging and Disability Services.

(35) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(36) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(37) Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(38) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(39) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(40) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(41) ESRD--End stage renal disease. [~~(ESRD)~~]For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(42) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(43) Health assessment--A determination of a client's physical and mental status through inventory of systems.

(44) Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(45) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home

Health Aides).

(46) Home health medication aide--An unlicensed person issued a permit by DADS to administer medication to a client under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(47) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(48) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(49) Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(50) Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(51) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(52) IDR--Informal dispute resolution. An informal process that allows an agency to refute a violation or condition-level deficiency cited during a survey.

(53) [(52)] Independent living environment--A client's residence, which may include a group home, foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

(54) [(53)] Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(55) [(54)] Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(56) [(55)] Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

~~[(56) IRoD--Informal review of deficiencies. An informal process that allows an agency to refute a deficiency or violation cited during a survey.]~~

(57) JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(58) Joint training--Training provided by DADS at least semi-annually for home and community support services agencies and DADS surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in DADS annual reports.

(59) LAR--Legally authorized representative. ~~[(LAR)--]~~ A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(60) Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(61) Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(62) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(63) Local emergency management coordinator-- The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(64) Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(65) Medication administration record--A record used to document the administration of a client's medications.

(66) Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(67) Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(68) Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(69) Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(70) Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(71) Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(72) Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(73) Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(74) Original active client record--A record composed first-hand for a client currently receiving services.

(75) Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(76) Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(77) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(78) Person--An individual, corporation, or association.

(79) Person with a disclosable interest--Any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 142. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the agency.

(80) Personal assistance services--Routine ongoing care or services required by an individual

in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with DADS in accordance with Texas Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(81) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(82) Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(83) Pharmacy--A facility defined in the Texas Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(84) Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(85) Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(86) Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(87) Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(88) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(89) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(90) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(91) Preparedness--Actions taken in anticipation of a disaster.

(92) Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(93) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(94) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or

tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(95) Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

~~[(96) Registered nurse (RN) A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.]~~

(96) ~~[(97)]~~ Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(97) ~~[(98)]~~ Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(98) ~~[(99)]~~ Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(99) ~~[(100)]~~ Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(100) ~~[(101)]~~ Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(101) ~~[(102)]~~ Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(102) ~~[(103)]~~ Restraint--A restraint is:

(A) a ~~[A]~~ manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed

device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) a [A] drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(103) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(104) Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(105) Section--A reference to a specific rule in this chapter.

(106) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(107) Skilled services--Services in accordance with a plan of care that require the skills of:

(A) a registered nurse;

(B) a licensed vocational nurse;

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(108) Social worker--A person who is currently licensed as a social worker under Texas

Occupations Code, Chapter 505.

(109) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(110) Statute--The Texas Health and Safety Code, Chapter 142.

(111) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(112) Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(113) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(114) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(115) Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(116) Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(117) Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(118) Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by DADS, and other unlicensed individuals providing personal care or assistance in health services.

(119) Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(120) Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(121) Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(122) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 97	LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
SUBCHAPTER E	LICENSURE SURVEYS
DIVISION 2	THE SURVEY PROCESS
RULE	§97.527

Proposed action:
X Amendment

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, and Texas Health and Safety Code, §142.0011, which authorizes the HHSC executive commissioner to adopt rules relating to the licensing and regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, and Texas Health and Safety Code, Chapter 142.

§97.527. Post-Survey Procedures.

(a) After a survey is completed, the surveyor holds an exit conference with the administrator or alternate administrator to inform the agency of the preliminary findings.

(b) An agency may make an audio recording of the exit conference only if the agency:

- (1) records two tapes simultaneously;
- (2) allows the surveyor to review the tapes; and
- (3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(c) An agency may make a video recording of the exit conference only if the surveyor agrees to allow it and if the agency:

- (1) records two tapes simultaneously;

(2) allows the surveyor to review the tapes; and

(3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(d) An agency may submit additional written documentation and facts after the exit conference only if the agency describes the additional documentation and facts to the surveyor during the exit conference.

(1) The agency must submit the additional written documentation and facts to the designated survey office within two working days after the end of the exit conference.

(2) If an agency properly submits additional written documentation, the surveyor may add the documentation to the record of the survey.

(e) If DADS identifies additional violations or deficiencies after the exit conference, DADS holds an additional face-to-face exit conference with the agency regarding the additional violations or deficiencies.

(f) DADS provides official written notification of the survey findings to the agency within 10 working days after the exit conference.

(g) The official written notification of the survey findings includes a statement of violations, condition-level deficiencies, or both, cited by DADS against the agency as a result of the survey, and instructions for submitting an acceptable plan of correction, and for requesting IDR [~~provides an opportunity for an informal review of deficiencies (IRoD)~~].

(1) If the official written notification of the survey findings declares that an agency is in violation of the statute or this chapter, an agency must follow DADS [~~DADS~~²] instructions included with the statement of violations for submitting an acceptable plan of correction.

(2) An acceptable plan of correction includes the corrective measures and time frame with which the agency must comply to ensure correction of a violation. If an agency fails to correct each violation by the date on the plan of correction, DADS may take enforcement action against the agency. An agency must correct a violation in accordance with the following time frames:

(A) A Severity Level B violation that results in serious harm to or death of a client or constitutes a serious threat to the health or safety of a client must be addressed upon receipt of the official written notice of the violations and corrected within two days.

(B) A Severity Level B violation that substantially limits the agency's capacity to provide care must be corrected within seven days after receipt of the official written notice of the violations.

(C) A Severity Level A violation that has or had minor or no health or safety significance must be corrected within 20 days after receipt of the official written notice of the

violations.

(D) A violation that is not designated as Severity Level A or Severity Level B must be corrected within 60 days after the date the violation was cited.

(3) An agency must submit an acceptable plan of correction for each violation or deficiency no later than 10 days after its receipt of the official written notification of the survey findings.

(4) If DADS finds the plan of correction unacceptable, DADS gives the agency written notice and provides the agency one additional opportunity to submit an acceptable plan of correction. An agency must submit a revised plan of correction no later than 30 days after the agency's receipt of DADS [~~DADS~~²] written notice of an unacceptable plan of correction.

(h) An acceptable plan of correction does not preclude DADS from taking enforcement action against an agency.

(i) An agency must submit a plan of correction in response to an official written notification of survey findings that declares a violation or deficiency even if the agency disagrees with the survey findings.

(j) If an agency disagrees with the survey findings citing a violation or condition-level deficiency, the agency may request IDR [~~an IRoD and submit additional written information~~] to refute the [a] violation or deficiency [~~to demonstrate compliance in an informal setting~~].

~~[(1) An IRoD is available for:]~~

~~[(A) a violation or deficiency cited during a visit;]~~

~~[(B) a violation or deficiency that remains uncorrected from a previous visit and is re-cited with no change in findings, as long as the agency has not already had an IRoD for the violation or deficiency from the original visit; and]~~

~~[(C) a violation or deficiency that remains uncorrected from a previous visit and is re-cited with new findings.]~~

(1) DADS does not grant an agency's request for IDR if:

(A) DADS cited the violation or deficiency at the agency's immediately preceding survey; and

(B) DADS cited the violation or deficiency again, with no new findings.

(2) To request IDR [~~an IRoD~~], an agency must:

(A) mail or fax a complete and accurate IDR [~~IRoD~~] request form to the address or

fax number listed on the form, which must be postmarked or faxed within 10 days after the date of receipt of the official written notification of the survey findings;

(B) mail or fax a rebuttal letter and supporting documentation to the address or fax number listed on the IDR [~~IRoD~~] request form and ensure receipt by the DADS Survey and Certification Enforcement Unit within seven days after the postmark or fax date of the IRoD request form; and

(C) mail or fax a copy of the IDR [~~IRoD~~] request form, rebuttal letter, and supporting documentation to the designated survey office within the same time frames each is submitted to the DADS Survey and Certification Enforcement Unit.

(3) An agency may not submit information after the deadlines established in paragraph (2)(A) and (B) of this subsection unless DADS requests additional information. The agency's response to DADS [~~DADS~~²] request for information must be received within three working days after the request is made.

(4) An agency waives its right to IDR [~~an IRoD~~] if the agency fails to submit the required information to the DADS Survey and Certification Enforcement Unit within the required time frames.

(5) An agency must present sufficient information to the DADS Survey and Certification Enforcement Unit to support the agency's desired IDR [~~IRoD~~] outcome.

(6) The rebuttal letter and supporting documentation must include:

(A) identification of the disputed deficiencies or violations;

(B) the reason the deficiencies or violations are disputed;

(C) the desired outcome for each disputed deficiency or violation; and

(D) copies of [~~attachments from~~] client records, [~~applicable~~] policies and procedures, and [~~or~~] other [~~supporting~~] documentation and [~~or~~] information that directly demonstrate [~~demonstrates~~] that the condition-level deficiency or violation should not have been cited.

(7) The written decision issued by DADS after the completion of its review is the final decision from IDR.

TAB 5

Item b.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose amendments to certain sections in Texas Administrative Code, Title 40, Chapter 95, Medication Aides--Program Requirements.

AGENDA ITEM No.: _____

BACKGROUND: Federal requirement Legislative requirement Other

The proposed amendments and new section in Chapter 95 provide that DADS does not issue or renew a permit if an applicant or a medication aide is listed as unemployable on the Employee Misconduct Registry (EMR), listed as revoked on the Nurse Aide Registry (NAR), or has been convicted of certain offenses. The proposed amendments specify criteria used to determine if a renewal application is late and allow DADS to use an applicant's email address of record as contact information. Certain practices, currently described as exceptions to prohibited practices, are listed as permissible practices. The rule clarifies that any practice not listed in the rule is prohibited. Throughout the chapter, the amendments change the term "permit holder" to "medication aide" to be consistent and to use a defined term.

The proposed amendments and new section also implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed amendments add definitions of terms related to these provisions and the new section addresses several areas that relate to issuing medication aide permits to military service members, military veterans, and military spouses.

Throughout the chapter, grammatical and editorial changes were made for clarity and consistency, and to correct formatting structure.

ISSUES AND ALTERNATIVES

There are no outstanding issues or concerns with implementation of the proposed rules.

STAKEHOLDER INVOLVEMENT

External stakeholders were provided a copy of the proposed rules via email on September 18, 2015. A minor editorial change was recommended and DADS made the change.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

Yes No N/A

Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

DADS has determined that there are no foreseeable implications relating to costs of state government and costs or revenues of local government as a result of administering or enforcing the proposed rules.

RULE DEVELOPMENT SCHEDULE

June 9, 2016	Present to DADS Council
June 2016	Publish proposed rules in <i>Texas Register</i>
August 2016	Publish adopted rules in <i>Texas Register</i>
September 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rules action as discussed in this memorandum, as well as in the draft rules item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rules.

May 23, 2016/15R04

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 95 MEDICATION AIDES--PROGRAM REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§95.101, 95.103, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, and 95.128; and new §95.129, in Chapter 95, Medication Aides--Program Requirements.

BACKGROUND AND PURPOSE

The proposed amendments and new section in Chapter 95 provide that DADS does not issue or renew a permit if an applicant or a medication aide is listed as unemployable on the Employee Misconduct Registry (EMR), listed as revoked on the Nurse Aide Registry (NAR), or has been convicted of certain offenses. The proposed amendments specify criteria used to determine if a renewal application is late and allow DADS to use an applicant's email address of record as contact information. Certain practices, currently described as exceptions to prohibited practices, are listed as permissible practices. The rule clarifies that any practice not listed in the rule is prohibited. Throughout the chapter, the amendments change the term "permit holder" to "medication aide" to be consistent and to use a defined term.

The proposed amendments and new section also implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed amendments add definitions of terms related to these provisions and the new section addresses several areas that relate to issuing medication aide permits to military service members, military veterans, and military spouses.

Throughout the chapter, grammatical and editorial changes were made for clarity and consistency, and to correct formatting structure.

SECTION-BY-SECTION SUMMARY

The proposed amendment in §95.101 adds definitions for "active duty," "armed forces of the United States," "military service member," "military spouse," "military veteran," because those terms are used in proposed new §95.129. The proposed amendment adds definitions for "EMR" (employee misconduct registry) and "NAR" (nurse aide registry) because provisions are added related to those registries. The proposed amendment adds definitions for "HCSSA" (home and community support services agency), "client," "day," and "PRN medication" (pro re nata medication) and amends the definition of "facility" to clarify the meaning of those terms. The proposed amendment uses the acronyms for several terms that are currently defined and puts the terms in alphabetical order based on the acronyms. The proposed amendment also includes editorial and grammatical changes for consistency.

The proposed amendment in §95.103 deletes references to the statutes under which medication aides practice because it duplicates information in §95.101(a), explaining the purpose of the chapter. The proposed amendment clarifies that a medication aide who works in a Medicare skilled nursing facility or a Medicaid nursing facility must also be a nurse aide in accordance with Chapter 94 of Title 40. The proposed amendment also makes minor editorial changes to use terminology that is consistent throughout the chapter.

The proposed amendment in §95.105(a)(3) clarifies that a medication aide may administer regularly prescribed medication if the aide personally sets up the medication from a unit dose pack. Currently, the rule requires an aide to “personally prepare” medication and the amendment clarifies how that requirement applies to dose packs. The proposed amendment moves the requirements that a medication aide must meet to administer previously ordered PRN medication, crush medication, and electronically order refills, from subsection (b)(3), (6), and (9) to subsection (a)(6), (9), and (10). The requirements are more appropriately listed in subsection (a), which describes actions that a medication aide may perform, rather than subsection (b), which describes prohibited actions. Similarly, examples of actions that a medication aide may perform in subsection (b)(5)(A) and (B), which are currently provided as exceptions to the prohibition on calculating a dosage, are moved to subsection (a)(7) and (8). In subsection (b)(8), the phrase “physician, dentist, or podiatrist” is replaced with “healthcare professional” because the prohibition on a medication aide receiving or reducing an order to writing applies to an order from any healthcare professional, not just the three professionals identified in the current rule. The proposed amendment states that any practice not listed in §95.105(a) is a prohibited practice for a medication aide. This provision is added to clarify permissible practices of a medication aide. The proposed amendment makes editorial changes for clarity and to correctly format the section.

The proposed amendment in §95.107 adds a new requirement that an applicant must not have been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a) and not have been convicted of a criminal offense listed in §250.006(b) within the preceding five years. The proposed amendment also states that an applicant must not be listed as unemployable on the EMR or listed with a revoked or suspended status on the NAR. These additional requirements are designed to protect the health and safety of persons to whom medication aides administer medication. Additional editorial changes are made for clarity and to correctly format the section.

The proposed amendment in §95.109 changes the time period allowed for an applicant to submit a permit application and other required documentation from 30 days to 20 days after enrollment in a training program. This shorter time period is designed to give DADS adequate time to review a permit applicant and address any deficiencies, which increases the likelihood that an applicant will meet the application requirements before the exam date. The proposed amendment also allows, in addition to cashier’s check and money order, payment of fees by methods approved by DADS. This provision allows DADS to authorize other forms of payment in the future without amending the rule. The proposed amendment identifies other sections in Chapter 95 that include fee schedules for correctional medication aides and home health medication aides. This information is included for clarification. The proposed amendment states that DADS verifies the accreditation of the high school that issues a diploma or testing service or program

that certifies the general educational development (GED) test. The proposed amendment also states that if DADS is unable to verify the accreditation status of the school, testing service, or program, the applicant must provide documentation to DADS verifying the accreditation status of the school, testing service, or program. Additional editorial changes are made for clarity and to correctly format the section.

The proposed amendment in §95.113 states that DADS denies an application for a permit if the applicant is listed on the NAR in revoked or suspended status; if the applicant has a conviction of a criminal offense listed on THSC §250.006(a), or a conviction of a criminal offense in §250.006(b) within five years before DADS receives the application or if the applicant is listed on the EMR. These changes are consistent with the proposed amendment to §95.107 and are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment makes grammatical and editorial changes for clarity and consistency.

The proposed amendment in §95.115 states that DADS denies renewal of a permit to a medication aide who has a criminal conviction of an offense listed in THSC §250.006(a), or a criminal conviction of an offense listed in THSC §250.006(b) within five years before the date DADS receives the renewal application; is listed as unemployable on the EMR; or is listed with a revoked or suspended status on the NAR. The changes are consistent with the proposed amendments to §95.107 and §95.113 and are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment also states that DADS denies renewal of a permit if the medication aide is in default on a guaranteed student loan as described in Texas Education Code §57.491. This change reflects DADS current practice. The proposed amendment also addresses how DADS determines if an application is late and when DADS denies the late renewal of a permit. The proposed amendment makes grammatical and editorial changes for clarity and consistency.

The proposed amendment in §95.117 specifies that a medication aide must notify DADS within 30 days after changing any contact information, including name, preferred mailing address, and email address.

The proposed amendment in §95.119 adds requirements that a training program must comply with before a student begins the program. These requirements include ensuring the student meets training requirements in §95.107, performing a criminal history check, checking the EMR and NAR, and documenting the program's findings. The proposed amendment allows a pharmacist instructor in a training program to have a minimum of one year of experience as a pharmacist in a correctional facility setting and be employed as a pharmacist in a correctional facility. The rule currently requires the experience to be in a facility, so the proposed amendment also allows pharmacists with experience in a correctional facility to qualify to be training instructors. The proposed amendment allows a continuing education training program to consist of online instruction. This change will allow continuing education to be provided more conveniently and increase access to it. The proposed amendment also changes the time period for a training program to notify DADS that a medication aide has completed a continuing education course from 15 days to 10 days. This change will provide DADS with information about an aide's continuing education status sooner, which allows the medication aide to get appropriate credit for

the continuing education program in a more timely manner. The proposed amendment makes editorial and grammatical changes for clarity and consistency.

The proposed amendment in §95.121 contains editorial changes to correct references and the formatting of the section.

The proposed amendment in §95.123 clarifies that DADS may suspend a permit in an emergency or rescind approval for a training program if requirements of Chapter 95 are not met. Additional grammatical and editorial changes are made for clarity and consistency.

The proposed amendment in §95.125 deletes subsection (m) which was used for implementation of the correctional medication aide program. The program is now operating and, therefore, the implementation requirements are no longer needed. Examples of actions that a correctional medication aide may perform in subsection (c)(2)(C)(i) and (ii), which are currently provided as exceptions to the prohibition on calculating a dosage, are moved to subsection (c)(1)(I) and (J). The actions are more appropriately listed in subsection (c)(1), which describes actions that a correctional medication aide may perform, rather than subsection (c)(2), which describes prohibited actions. Similarly, the amendment moves the requirements that a correctional medication aide must meet to crush medication from subsection (c)(2)(D) to subsection (c)(1)(K). Additional grammatical and editorial changes were made for clarity and consistency and to correct the formatting of the section.

The proposed amendment in §95.127 deletes the term “workdays” and replaces it with “days” throughout the section for consistency. The time periods are also modified to accommodate the change from workdays to days. Additional editorial and grammatical changes are made throughout the section for clarity and consistency.

The proposed amendment in §95.128 moves the examples of actions that a home health medication aide may perform in subsection (d)(5)(A) and (B), which are currently provided as exceptions to the prohibition on calculating a dosage, to subsection (c)(8) and (9). The actions are more appropriately listed in subsection (c), which describes actions that a home health medication aide may perform, rather than subsection (d), which describes prohibited actions. Similarly, the amendment moves the requirements that a home health medication aide must meet to crush medication from subsection (d)(6) to subsection (c)(10). The proposed amendment adds to the list of applicant qualifications that the applicant must not have been convicted of a criminal offense listed in THSC §250.006(a) and not have been convicted of a criminal offense listed in §250.006(b) within the preceding five years. The proposed amendment also states that an applicant must not be listed as unemployable on the EMR or listed with a revoked or suspended status on the NAR. The proposed amendment also states that DADS denies renewal of the permit of a medication aide if the medication aide has been convicted of those offenses, listed as unemployable on the EMR, or listed with a revoked or suspended status on the NAR. These new requirements are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment adds the address to which an applicant sends a request for reimbursement. The proposed amendment also updates references and includes grammatical and editorial changes for clarity and consistency and to correct the formatting structure of the section.

Proposed new §95.129 describes the process that an applicant who is a military service member or a military veteran must follow to request a waiver of the combined permit application and examination fee based on military service, training, or education. The proposed new rule also describes the process that an applicant who is a military service member, a military veteran, or a military spouse, and who holds a permit in good standing in another jurisdiction must follow to request a waiver of the combined permit application and examination fee. In addition, the proposal describes the process that a medication aide who is a military service member must follow to request two additional years to complete permit renewal requirements. Finally, the proposal describes the process that a former medication aide who is a military service member, a military veteran, or a military spouse must follow to request renewal of an expired permit. This section has been added to comply with Texas Occupations Code, Chapter 55, as recently amended by S.B. 807 and S.B. 1307.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments. The new section allows certain fees to be waived, which will decrease revenue to the state, but DADS does not anticipate a large number of fee waivers, so the decrease will likely be minimal.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses because the proposed amendments and new section do not impose new requirements on any persons regulated by the rules.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public will benefit from rules that prohibit applicants with a history of particular convictions or misconduct from obtaining a medication aide permit. The public will also benefit from having rules that reduce financial and administrative barriers for military service members, military veterans, and military spouses to receive and renew a medication aide permit.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section 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 Laura Bagheri at (512) 438-4836 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R04, 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 15R04" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 95	MEDICATION AIDES--PROGRAM REQUIREMENTS
RULE	§§95.101, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, 95.128, AND 95.129

Proposed action:

X Amendment

X New

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 Health and Safety Code, §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the HHSC executive commissioner to adopt rules regulating medication aides in nursing facilities; Texas Human Resources Code, §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The amendments implement Texas Government Code, §531.0055; Texas Health and Safety Code, §142.023 and §242.608; Texas Human Resources Code, §161.083; and Texas Occupations Code, Chapter 55.

§95.101. Introduction.

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Texas Health and Safety Code, Chapter 242, Subchapter N, concerning the administration of medications to facility residents;

(2) Texas Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency; and

(3) Texas Human Resource Code, §161.083, concerning the administration of medication to an inmate in a correctional facility.

(b) Corrections medication aide permit requirements. Section 95.125 of this chapter (relating to Requirements for Corrections Medication Aides) applies to a corrections medication aide or an applicant for a corrections medication aide permit.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(4) [~~2~~] BON--Texas Board of Nursing.

(5) Client--An individual receiving home health, hospice, or personal assistance services from a licensed HCSSA, or the spouse, significant other, or other family member of an individual receiving home health, hospice, or personal assistance services from a licensed HCSSA who is receiving ongoing services from a HCSSA. The term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, a vaccination) in connection with the care of the client.

(6) [~~3~~] Correctional facility--a facility operated by or under contract with the Texas Department of Criminal Justice.

(7) [~~4~~] DADS--Department of Aging and Disability Services.

(8) Day--Any day, including a Saturday, a Sunday, and a holiday.

(7) EMR--Employee misconduct registry. The registry maintained by DADS in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(8) [~~5~~] Examination--A written competency evaluation for medication aides administered by DADS.

(9) [~~6~~] Facility--An institution licensed under ~~the~~ Texas Health and Safety Code, Chapter 242; a state supported living center as defined in ~~the~~ Texas Health and Safety Code, §531.002(19) [~~§531.002(17)]~~; a licensed ~~an~~ intermediate care facility for an individual

~~[persons]~~ with an intellectual disability or related condition as defined in the Texas Health and Safety Code Chapter 252; ~~[operated by]~~ an intermediate care facility for an individual with an intellectual disability or related condition operated by a community center as described in ~~[established under]~~ Texas Health and Safety Code, Chapter 534; or an assisted living facility licensed under ~~[the]~~ Texas Health and Safety Code, Chapter 247.

(10) HCSSA--A home and community support services agency licensed under Texas Health and Safety Code Chapter 142, and Chapter 97 of this title.

(11) ~~[(7)]~~ Licensed nurse--A licensed vocational nurse or an RN ~~[a licensed registered nurse]~~.

(12) ~~[(8)]~~ LVN--Licensed vocational nurse, ~~[—]~~ A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice vocational nursing in Texas.

(13) ~~[(9)]~~ Medication aide--A person who is issued a permit by DADS under Texas Health and Safety Code Chapter 242, Subchapter N, Texas Human Resources Code, Chapter 161, Subchapter D, and Texas Health and Safety Code, Chapter 142, Subchapter B ~~[permitted by DADS]~~ to administer medications to facility residents, correctional facility inmates, or to persons served by home and community support services agencies.

(14) Military service member--A person who is on active duty.

(15) Military spouse--A person who is married to a military service member.

(16) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(17) ~~[(40)]~~ Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

(18) NAR--Nurse aide registry. A state listing of nurse aides maintained by DADS in accordance with Texas Health and Safety Code, Chapter 250 that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(19) ~~[(41)]~~ Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(20) ~~[(42)]~~ Non-licensed direct care staff--Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or active treatment programs.

(21) ~~[(43)]~~ Nurse aide--An individual who has completed a nurse aide training and

competency evaluation program (NATCEP) approved by DADS ~~[the state]~~ as meeting the requirements of 42 Code of Federal Regulations (CFR), §§483.15 - 483.154, or has been determined competent as provided in 42 CFR, §483.150(a) and (b), and is listed as certified on DADS nurse aide registry.

(22) PRN medication--Pro re nata medication. Medication administered as the occasion arises or as needed.

~~[(14) Registered nurse (RN) A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.]~~

(23) [(45)] Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.

(24) RN--Registered nurse. A person who is licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.

(25) [(46)] TDCJ--Texas Department of Criminal Justice.

(26) [(47)] Training program--A program approved by DADS to instruct individuals to act as medication aides.

§95.103. Requirements for Administering Medications.

(a) General. A person may not administer medication to a resident in a facility or a correctional facility unless the person:

(1) holds a current license under state law which authorizes the licensee to administer medication; or

(2) if administering medication in a facility, holds a current permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, or if administering medication in a correctional facility, holds a current permit issued under Texas Human Resources Code, §161.083 or Texas Health and Safety Code, Chapter 242, Subchapter N and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(b) Supervision and applicable law and rules. A medication aide ~~[permit holder]~~ must function under the direct supervision of a licensed nurse on duty or on call by the facility or correctional facility using the medication aide ~~[permit holder]~~. A medication aide ~~[permit holder]~~ must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a facility or a correctional facility; and

(2) comply with DADS rules applicable to personnel used in a facility or TDCJ rules

applicable to personnel in a correctional facility.

(c) Governmental employees. Governmental employees may receive a permit to administer medications under this chapter as authorized by Texas Health and Safety Code, §242.610(f) or Texas Human Resources Code, §161.083:

(1) State supported living center employees and employees of an intermediate care facility for persons with an intellectual disability operated by a community center established under Texas Health and Safety Code, Chapter 534 must comply with subsection (b) of this section and §§95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, and 95.123 of this chapter (relating to Allowable and Prohibited Practices of a Medication Aide [~~Permit Holder~~]; Training Requirements, Nursing Graduates, Reciprocity; Application Procedures; Examination; Determination of Eligibility; Permit Renewal; Changes; Training Program Requirements; Permitting of Persons with Criminal Backgrounds; and Violations, Complaints, and Disciplinary Actions).

(2) Correctional facility employees and employees of medical services contractors for a correctional facility who administer medication as medication aides must comply with §95.125 of this chapter (relating to Requirements for Corrections Medication Aides).

(d) Medication aides in nursing facilities. Persons employed as medication aides in a Medicare skilled nursing facility or a Medicaid nursing facility must comply with the requirements relating to nurse aides as set forth in United States Code, Part 42, §1396r(b)(5) [~~the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §4201-4214, December 22, 1987, as amended,~~] and Chapter 94 of this title (relating to Nurse Aides).

(e) Exemptions.

(1) A person may administer medication to a resident in a facility without the license or permit as required in subsection (a) of this section, if the person is:

(A) a graduate nurse holding a temporary permit issued by the BON;

(B) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(C) a graduate vocational nurse holding a temporary permit issued by the BON;

(D) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(E) a trainee in a medication aide training program approved by DADS under this chapter who is administering medications as part of the trainee's clinical experience.

(2) A student described in paragraph (1)(B), (D), or (E) of this subsection may administer

medication only as part of the student's clinical experience.

(3) A person described in paragraph (1) of this subsection must act under the supervision of an individual as set forth in applicable law and rules.

§95.105. Allowable and Prohibited Practices of a Medication Aide [~~Permit Holder~~].

(a) A medication aide [~~permit holder~~] under Texas Health and Safety Code, Chapter 242, Subchapter N, may:

(1) observe and report to the facility's charge licensed nurse reactions and side effects to medication shown by a resident;

(2) take and record vital signs before [~~prior to~~] the administration of medication that [~~which~~] could affect or change the vital signs;

(3) administer regularly prescribed medication to a resident if the medication aide; [~~which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the resident's clinical record;~~]

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered from a unit dose pack; and

(C) documents the administration of the medication in the resident's clinical record;

(4) administer oxygen per nasal canula or a non-sealing mask only in an emergency, [~~immediately~~] after which [~~the emergency,~~] the medication aide [~~permit holder~~] must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification; [~~and~~]

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;[~~]~~

(6) administer previously ordered PRN medication, if:

(A) the facility's licensed nurse on duty or on call authorizes the medication;

(B) the medication aide documents in the resident's records the symptoms indicating the need for the medication and the time the symptoms occurred;

(C) the medication aide documents in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and the licensed nurse granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication from the facility's licensed nurse on duty or on call each time the symptoms occur; and

(E) the medication aide ensures that the resident's record is co-signed by the licensed nurse who gave authorization by the end of the nurse's shift or, if the nurse was on call, by the end of the nurse's next shift;

(7) measure a prescribed amount of a liquid medication to be administered to a resident;

(8) break a tablet to be administered to a resident, if:

(A) the resident's medication card or its equivalent accurately documents how the tablet must be broken before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(9) crush medication, if the medication aide:

(A) obtains authorization to crush the medication from the licensed nurse on duty or on call; and

(B) documents the authorization on the resident's medication card or its equivalent;
and

(10) electronically order a refill of medication from a pharmacy, if the refill request is signed by the licensed nurse on duty or on call.

(b) A medication aide [~~permit holder~~] under Texas Health and Safety Code, Chapter 242, Subchapter N, may not:

(1) administer medication by the injection route including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing [~~(IPPB)~~] treatments or any form of medication inhalation treatments;

(3) administer previously ordered PRN [~~pro re nata (PRN)~~] medication, except in

accordance with subsection (a)(6) of this section; [~~unless authorization is obtained from the facility's licensed nurse on duty or on call. If authorization is obtained, permit holders must:~~]

~~[(A) document, in the resident's records, symptoms indicating the need for the medication and the time the symptoms occurred;]~~

~~[(B) document in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and permission was granted to administer the medication, including the time of contact;]~~

~~[(C) obtain permission to administer the medication each time the symptoms occur in the resident; and]~~

~~[(D) ensure that the resident's record is co-signed by the licensed nurse who gave permission by the end of the nurse's shift, or if the nurse was on call, by the end of the nurse's next tour of duty;]~~

(4) administer [~~the initial dose of a~~] medication that, according to the resident's clinical records, has not been previously administered to the [a] resident [~~. Whether a medication has been previously administered must be determined by the resident's current clinical records~~];

(5) calculate a resident's medication doses for administration; [~~except that the permit holder may:~~]

~~[(A) measure a prescribed amount of a liquid medication to be administered; and]~~

~~[(B) break a tablet for administration to a resident, provided the licensed nurse on duty or on call has calculated the dosage. The resident's medication card or its equivalent must accurately document how the tablet must be altered prior to administration];~~

(6) crush medication, except in accordance with subsection (a)(9) of this section [~~unless obtained from the licensed nurse on duty or on call. The authorization to crush the specific medication must be documented on the resident's medication card or its equivalent~~];

(7) administer medications or feedings by way of a tube inserted in a cavity of the body;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a healthcare professional [~~physician, dentist, or podiatrist~~];

(9) order a resident's medications from a pharmacy, except in accordance with subsection (a)(10) of this section;

(10) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending physician;

(11) steal, divert, or otherwise misuse medication;

(12) violate any provision of the Texas Health and Safety Code or this chapter;

(13) fraudulently procure or attempt to procure a permit;

(14) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(15) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or [~~and/or~~] excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) If a practice is not described in subsection (a) of this section the practice is prohibited for a medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N.

§95.107. Training Requirements; Nursing Graduates; Reciprocity.

(a) Each applicant for a permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, must complete a training program unless the applicant meets the requirements of subsection (c) or (e) [~~(e) or (d)~~] of this section.

(b) Before submitting an [~~Prior to~~] application for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, an applicant must:

(1) be able to read, write, speak, and understand English;

(2) be at least 18 years of age;

(3) be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) be a graduate of an accredited [~~a~~] high school or have proof of successfully passing a general educational development test [~~equivalency diploma~~];

(5) be [~~currently~~] employed in a facility as a nurse aide or nonlicensed direct care staff person on the first official day of an applicant's medication aide training program; and

(6) have been employed; [~~in a facility for 90 days as a nonlicensed direct care staff person. This employment must have been completed within the 12-month period preceding the first official day of the applicant's medication aide training program. An applicant employed as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility is exempt from the 90-day requirement.~~]

(A) as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility; or

(B) in a facility for 90 days as a nonlicensed direct care staff person during the 12-

month period before the first official day of the applicant's medication aide training program;

(7) not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), and not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives the permit application;

(8) not be listed as unemployable on the EMR; and

(9) not be listed with a revoked or suspended status on the NAR.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter;

(2) successfully completed courses at the nursing school that cover DADS curriculum for a medication aide training program;

(3) submits a statement, with the application for a permit and combined permit application and examination fee as provided in §95.109 of this chapter (relating to Application Procedures), on the form provided by DADS, ~~[that is]~~ signed by the nursing school's administrator or other authorized individual, certifying [and certifies] that the person completed the courses specified in paragraph (2) of this subsection ~~[- The administrator is responsible for determining that the courses he certifies cover DADS curriculum. The statement must be submitted with the person's application for a permit and permit application fee as provided in §95.109 of this chapter (relating to Application Procedures)]~~; and

(4) complies with subsection (e)(5) [(d)(5)] and (6) of this section.

(d) The administrator or other authorized individual referred to in subsection (c)(3) of this section is responsible for determining that the nursing school courses cover DADS curriculum.

~~(e) [(d)]~~ A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, provided the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The graduate must submit an official application form to DADS. The applicant must meet the requirements of subsection (b)(1) - (4) and (7) - (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee as set out in §95.109(c) of this chapter.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice.

(6) The applicant must complete DADS written examination. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open-book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(9) DADS notifies the applicant in writing of the examination results.

(f) [~~e~~] A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, in effect at the time of application, may request a waiver of the training program requirement as follows:

(1) The applicant must submit an official application form to DADS. The applicant must meet the requirements of subsection (b)(1) - (4) and (7) - (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee required in §95.109(c) of this chapter.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal permit is requested.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) DADS may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DADS open-book examination and return it to DADS by the date given in the examination notice.

(7) The applicant must complete DADS written examination. The site of the examination is determined by DADS. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open-book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(10) DADS notifies the applicant in writing of the examination results.

§95.109. Application Procedures.

(a) An applicant for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, who complies with §95.107(a) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) must submit to DADS, no later than 20 [~~30~~] days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(b) DADS considers an application under subsection (a) of this section as officially submitted when DADS receives the permit application and examination fee.

(c) An applicant must pay the combined permit and examination [~~Payment of~~] fees [~~must be~~] by cashier's check or money order made payable to the Department of Aging and Disability Services, or by other DADS-approved payment methods. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(1) The fee schedule is as follows:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15;

(C) late renewal fees for permit renewals made after the permit expires:

(i) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(ii) \$30 for an expired permit renewed from 91 days to one year after expiration;

(iii) \$30 for a former medication aide [~~permit holder~~] who meets the criteria in §95.115(c)(5) of this chapter (relating to Permit Renewal); and

(D) permit replacement fee--\$5.

(2) An initial or a renewal application is considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(3) The fee schedule that applies to the correctional medication aide is in §95.125 of this chapter (relating to Requirements for Corrections Medication Aides), and the fee schedule that applies to the home health medication aide is in §95.128 of this chapter (relating to Home Health Medication Aides).

(d) An applicant [~~All applicants~~] must submit the following application materials: [-]

(1) the [~~The~~] general statement enrollment form, which must contain:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in §95.107(b) of this chapter were met before [~~prior to~~] the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature, which has been dated and notarized; and [-]

(2) a [~~A~~] certified copy or a notarized photocopy of an unaltered, original, high school diploma or transcript [~~which has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript~~] or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test [~~equivalency diploma~~], unless the applicant is applying under §95.107(e) [~~§95.107(d)~~] of this chapter.

(e) DADS verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by subsection (d)(2) of this section. If DADS is unable to verify the accreditation status of the school, testing service, or program, and DADS requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to DADS.

(f) [(e)] DADS sends a notice listing the additional materials required to an applicant who does not submit a complete [the] application. An applicant must submit a complete application by the date of DADS final exam. [An application not completed by the day of the medication aide final exam must be voided.]

(g) [(f)] DADS sends notice of DADS application approval, [~~acceptance or ineligibility, disapproval,~~] or deficiency to an applicant in accordance with §95.127 of this chapter (relating to

Application Processing).

§95.113. Determination of Eligibility.

(a) DADS approves or denies each application for a permit.

(b) Notices of application approval, denial, or deficiency must be in accordance with §95.127 of this chapter (relating to Application Processing).

(c) DADS denies an application for a permit if the person ~~has~~:

(1) does not meet ~~met~~ the requirements in §95.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity); or §95.125 of this chapter (relating to Requirements for Corrections Medication Aides);

(2) fails ~~failed~~ to pass the examination prescribed by DADS, as referenced in §95.111 of this chapter (relating to Examination), or developed by TDCJ, as referenced in §95.125(g) of this chapter;

(3) fails ~~failed to~~ or refuses ~~refused~~ to properly complete or submit an ~~any~~ application form or fee, or submits ~~presented~~ false information on any form or document required by DADS;

(4) violates ~~violated~~ or conspires ~~conspired~~ to violate the Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or any provision of this chapter;~~or~~

(5) has a felony or misdemeanor conviction of a ~~been convicted of a felony or misdemeanor if the~~ crime that directly relates to the duties and responsibilities of a medication aide ~~permit holder~~ as described ~~set out~~ in §95.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);~~[-]~~

(6) is listed with a revoked or suspended status on the DADS NAR;

(7) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the permit application; or

(8) is listed as unemployable on the EMR.

(d) If, after review, DADS determines that the application should be denied ~~not be approved~~, DADS gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §95.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

§95.115. Permit Renewal.

(a) General.

(1) When issued, an initial permit is valid for 12 months from the date of issue.

(2) A medication aide [~~permit holder~~] must renew the permit annually.

(3) Each medication aide [~~permit holder~~] is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS before [~~prior to~~] the expiration date of the permit does not excuse the medication aide's [~~permit holder's~~] failure to file for timely renewal.

(4) A medication aide [~~permit holder~~] must complete a seven hour [~~seven clock hour~~] continuing education program approved by DADS before [~~prior to~~] expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide [~~permit holder~~] must earn approved continuing education hours to have the permit renewed again.

(5) DADS denies renewal of the permit of a medication aide [~~permit holder~~] who: [~~is in violation of Health and Safety Code, Chapter 242, Subchapter N, Human Resources Code, §161.083, or this chapter at the time of application for renewal.~~]

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or this chapter at the time of application for renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the renewal application;

(C) is listed as unemployable on the EMR;

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code, §57.491.

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven hour [~~seven clock hour~~] continuing education requirement, DADS sends [~~to the permit holder, at the address listed in DADS records,~~] notice of the expiration date of the permit, [~~and~~] the amount of the renewal fee due, and a renewal form to the medication aide physical or email address listed in DADS records [~~that the permit holder must complete and return with the required renewal fee. If DADS does not receive proof of the successful completion of the continuing education requirement,~~

~~DADS sends the permit holder a reminder notice about the required continuing education hours].~~

(2) The renewal form, which includes the contact information and preferred mailing address of the medication aide [permit holder] and information on certain misdemeanor and felony convictions, [-It] must be completed and signed by the medication aide [permit holder] and returned to DADS with the required renewal fee.

(3) DADS issues a renewal permit to a medication aide [permit holder] who meets [has met] all requirements for renewal, including payment of the renewal fee.

~~[(4) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to DADS before the expiration date of the permit.]~~

(c) Late renewal procedures.

(1) If a medication aide submits a renewal application to DADS that is late or incomplete, DADS assesses the appropriate late fee described in §95.109(c)(1)(C) of this chapter (relating to Application Procedures). DADS uses the postmark date to determine if a renewal application is late. If there is no postmark or the postmark is not legible, DADS uses the date the renewal application was received and recorded by the DADS Medication Aide Program to determine if the renewal application is late.

~~(2) [(4)]~~ A person whose permit has been expired for less than one year may renew the permit by submitting to DADS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit expired; and

(D) proof of having earned, before [prior to] expiration of the permit, seven hours in an approved continuing education program as required by [in] subsection (a)(4) of this section.

~~(3) [(2)]~~ A person whose permit has been expired for 90 days or less must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(i) of this chapter (relating to Application Procedures) or §95.125(f)(3)(A) of this chapter (relating to Requirements for Corrections Medication Aides).

~~(4) [(3)]~~ A person whose permit has been expired for more than 90 days but less than one year must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(ii) or §95.125(f)(3)(B) of this chapter.

~~[(4) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.]~~

(5) A person who previously held a permit in Texas issued under Texas Health and Safety Code, Chapter 242, Subchapter N, may obtain a new permit without reexamination if the person holds a facility medication aide permit from another state, practiced in that state for at least the two years preceding the application date, and pays to DADS the late renewal fee stated in §95.109(c)(1)(C)(iii) of this chapter.

(6) DADS denies late renewal of the permit if a permit holder:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or this chapter on the date DADS receives the application for late renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the application for late renewal;

(C) is listed as unemployable on the EMR; or

(D) is listed with a revoked or suspended status on the NAR; or

(D) is in default on a guaranteed student loan as described in Texas Education Code, §57.491.

(d) A person whose permit has been expired for one year or more may not renew the permit. To obtain a new permit, the person must apply for a permit in accordance with §95.109 of this chapter (relating to Application Procedures) and in §95.111 of this chapter (relating to Examination).

§95.117. Changes.

(a) A medication aide [permit holder] must notify DADS within 30 days after changing the medication aide's[his or her] required contact information, including name, preferred mailing address, or email address [or name].

(b) DADS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee as set out in §95.109(c) of this chapter (relating to Application Procedures) and §95.125(f) of this chapter (relating to Requirements for Corrections Medication Aides).

§95.119. Training Program Requirements.

(a) Application. An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS form. Programs sponsored by state agencies for the training and preparation of their own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) All signatures on DADS forms and supporting documentation must be originals.

(2) The application must include:

(A) the anticipated dates of the program;

(B) the location(s) of the classroom course(s);

(C) the name of the coordinator of the program;

(D) a list that includes the address and telephone number of each instructor [~~instructors~~] and any other persons responsible for the conduct of the program [~~. The list must include addresses and telephone numbers for each instructor~~]; and

(E) an outline of the program content and curriculum if the curriculum covers more than DADS established curricula.

(3) DADS may conduct an inspection of the classroom site.

(4) DADS sends notice of approval or proposed denial of the application to the program within 30 days after receiving [~~of the receipt of~~] a complete application. If DADS proposes to deny the application due to noncompliance with the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, or this chapter, the reasons for denial are given in the notice.

(5) An applicant may request in writing a hearing on a proposed denial. The applicant must submit a request within 15 [~~40~~] days after the applicant receives [~~of receipt of the~~] notice of the proposed denial. The hearing is governed by Texas Administrative Code, Title 1, [~~conducted in accordance with 1 TAC~~] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act);~~;~~ Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act);~~;~~ and Texas Government Code, Chapter 2001. If no request is made, the applicant has waived the opportunity for a hearing, and the proposed action may be taken.

(b) Basic training program.

(1) A training [~~The~~] program must include [~~, but is not limited to,~~] the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in resident's clinical records, including PRN [~~pre~~ ~~re nata~~ (PRN)] medications;

(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the facility, including facility personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of medication aide [~~permit holders~~] in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to facility residents; and

(K) rules covering the medication aide program.

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training;[~~;~~] 20 hours of return skills demonstration laboratory;[~~;~~] 10 hours of clinical experience, including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility;[~~;~~] and 10 [~~more~~] hours of [~~in the~~] return skills demonstration laboratory. A classroom or laboratory hour must include 50 [~~to~~] minutes of actual classroom or laboratory time.

(A) Class time must not exceed:

(i) four hours in a 24-hour period for a facility training program; or

(ii) eight hours in a 24-hour period for a correctional facility training program.

(B) The completion date of the program must be:

(i) a minimum of 60 days and a maximum of 180 days after [~~from~~] the starting date of the facility training program; or

(ii) a minimum of 30 days and a maximum of 180 days after [~~from~~] the starting date of a correctional facility training program.

(3) Each program must follow the curricula established by DADS.

(4) Before a student begins a training program, the program must:

(A) ensure the student meets training requirements in §95.107(b)(1) - (9) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity);

(B) perform a criminal history check with the Texas Department of Public Safety to verify that the student does not have a conviction of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date the student begins the training program;

(C) check the EMR to verify that the student is not listed as unemployable;

(D) check the NAR to verify if the student is listed in revoked or suspended status;

and

(E) document the findings of the criminal history check and employability check in its records.

(5) [(4)] At least seven days before [prior to] the beginning of a training [each] program, the coordinator must notify DADS in writing of the dates and daily hours of the program, and the projected number of students.

(6) [(5)] A change in any information presented by the program in an approved application, including [but not limited to:] location, instructors [instructorship], and content must be approved by DADS before [prior to] the change is implemented [program's effective date of the change].

(7) [(6)] The program instructors of the classroom hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have:

(i) a minimum of two years of experience in caring for individuals in a long-term care setting or be an instructor in a school of nursing, for a facility training program; or

(ii) a minimum of two years of experience employed in a correctional setting or be an instructor in a school of nursing, for a correctional facility program.

(B) The pharmacist instructor must have: [a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility.]

(i) a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility; or

(ii) a minimum of one year of experience employed as a pharmacist in a correctional setting.

(8) [(7)] The program coordinator must provide clearly defined and written policies

regarding each student's clinical experience to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is performing functions involving medication administration and under the direct ~~[contact]~~ supervision of a licensed nurse.

(B) The program coordinator must be responsible for final evaluation of the student's clinical experience.

(9) ~~[(8)]~~ Each program must issue to each student, upon successful completion of the program, a certificate of completion, which must include the program's name, the student's name, the date of completion, and the signature of the program coordinator or administrative official.

(10) ~~[(9)]~~ Each program must inform DADS on the DADS class roster form of the final grade results for each student within 15 days after the student's completion of the course.

(c) Continuing education training program.

(1) The program must consist of at least seven ~~[eleven]~~ hours of classroom or online instruction.

(2) The instructors must meet the requirements in subsection (b)(7) ~~[(b)(6)]~~ of this section.

(3) Each program must follow the curricula established by DADS or the curriculum established by TDCJ for corrections medication aides, as applicable.

(4) Within 10 ~~[15]~~ days after a medication aide's ~~[permit holder's]~~ completion of the course, each program must inform DADS on the DADS class roster form of the name of each medication aide ~~[permit holder]~~ who has completed the course.

~~[(d) TDCJ must file with DADS an application for approval for a training program and curriculum for corrections medication aides that complies with Government Code, §501.1485 (relating to Corrections Medication Aides)].~~

(d) ~~[(e)]~~ In developing a training program for corrections medication aides that complies with Texas Government Code §501.1485, TDCJ may modify, as appropriate, the content of the training program curriculum originally developed under Texas Health and Safety Code, Chapter 242, to produce content suitable for administering medication in a correctional facility. The training program curriculum must be approved by DADS.

~~[(f) Subsection (c) of this section applies to a training program developed by the TDCJ.]~~

(e) Subsection (c) of this section applies to a training program for medication aides and

correction medication aides.

§95.121. Permitting of Persons with Criminal Backgrounds.

(a) DADS may suspend or revoke an existing permit, ~~deny [disqualify a person from receiving]~~ a permit, or deny ~~[to]~~ a person the opportunity to take the examination ~~[be examined]~~ for a permit if a person ~~[because of a person's]~~ has been convicted ~~[conviction]~~ of a felony or misdemeanor offense that ~~[if]~~ the crime directly relates to the duties and responsibilities of a medication aide.

(b) ~~[(1)]~~ When ~~[It]~~ considering whether a criminal conviction directly relates to the duties and responsibilities ~~[occupation]~~ of a medication aide, DADS considers:

(1) ~~[(A)]~~ the nature and seriousness of the offense ~~[crime]~~;

(2) ~~[(B)]~~ that the following offenses may reflect ~~[the relationship of the crime to the purposes for requiring a permit to be a medication aide. The following felonies and misdemeanors relate to the permit of a medication aide because these criminal offenses indicate]~~ an actual or potential ~~[or a tendency to be unable]~~ inability to perform as a medication aide:

(A) ~~[(i)]~~ the misdemeanor of knowingly or intentionally acting as a medication aide without a permit issued under the Texas Health and Safety Code, Chapter 242;

(B) ~~[(ii)]~~ any conviction for an offense listed in §250.006 of the Texas Health and Safety Code;

(C) ~~[(iii)]~~ any conviction, other than a Class C Misdemeanor, for an offense defined under Texas Penal Code, Chapter 22, as assault; sexual assault; intentional exposure of another to AIDS or HIV; aggravated assault or sexual assault; injury to a child, elderly person, or person with disabilities; or aiding suicide;

(D) ~~[(iv)]~~ any conviction, except Class C Misdemeanors, with a final disposition within the last ten years, for an offense defined in the Texas Penal Code as burglary under Chapter 30; theft under §31.03; sale or display of harmful material to minors; sexual performance by a child; and possession or promotion of child pornography;

(E) ~~[(v)]~~ any conviction for an offense defined in the Texas Penal Code as an attempt, solicitation, conspiracy, or organized criminal activity for any offense listed in subparagraphs (B) - (D) of this paragraph ~~[clauses (ii) - (iv) of this subparagraph]~~; and ~~[and/or]~~

(F) ~~[(vi)]~~ any conviction under United States statutes or jurisdiction other than Texas for any offense equivalent to those listed in subparagraphs (B) - (E) of this paragraph ~~[clauses (ii) - (v) of this subparagraph]~~;

(3) ~~[(C)]~~ the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

[and]

(4) ~~[(D)]~~ the relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of a medication aide; and ~~[-In determining the present fitness of a person, DADS considers the evidence described in the Occupations Code, §53.023.]~~

(5) other factors related to the fitness of a person to perform the duties and discharge the responsibilities of a medication aide, as described in Texas Occupations Code §53.023.

(c) ~~[(2)]~~ DADS gives written notice to the person that DADS proposes to deny the application or suspend or revoke the permit after a hearing, in accordance with the provisions of §95.123(c)(3) of this chapter ~~[title]~~ (relating to Violations, Complaints, and Disciplinary Actions). If DADS denies, suspends, or revokes an application or permit under this chapter, DADS gives the person written notice:

(1) ~~[(A)]~~ of the reasons for the decision;

(2) ~~[(B)]~~ that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to DADS and DADS final action ~~[its decision]~~; and

(3) ~~[(C)]~~ that the person must begin the judicial review by filing a petition with the court within 30 days after DADS ~~[DADS']~~ action is final and appealable.

§95.123. Violations, Complaints, and Disciplinary Actions.

(a) Filing of complaints. Any person may complain to DADS alleging that a person or program has violated the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter.

(1) Persons who want to file a complaint against a permit holder, training program, or another person, must notify DADS by calling 1-800-458-9858 or by writing the Medication Aide Permit Program, Department of Aging and Disability Services, P.O. Box 149030, Mail Code E-416, Austin, Texas 78714-9030.

(2) Anonymous complaints may be investigated by DADS if the complainant provides sufficient information.

(b) Investigation of complaints. If DADS initial investigation determines:

(1) the complaint does not come within DADS jurisdiction, DADS advises the complainant and, if possible, refers the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, DADS dismisses the

complaint and gives written notice of the dismissal to the medication aide [~~permit holder~~] or person against whom the complaint has been filed and the complainant; or

(3) there are sufficient grounds to support the complaint, DADS may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. DADS may revoke, suspend, or refuse [~~revokes, suspends, or refuses~~] to renew a permit, or reprimand [~~reprimands~~] a medication aide [~~permit holder~~] for a violation of Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter. [~~In addition,~~] DADS may suspend a permit in an emergency or rescind DADS approval for an educational institution to offer a training program if the medication aide or educational institution fails to comply with the requirements in this chapter [~~approval~~].

(1) DADS may place on probation a person whose permit is suspended. DADS may require the person on probation:

(A) to report regularly to DADS on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by DADS; or

(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to DADS in those areas that are the basis of the probation.

(2) Before [~~Prior to~~] institution of formal proceedings to revoke or suspend a permit or rescind program approval, DADS gives written notice to the medication aide [~~permit holder~~] or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the medication aide [~~permit holder~~] or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a medication aide [~~permit holder~~] employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, DADS complies with the hearings process as provided in 42 Code of Federal Regulations §488.335.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, DADS gives written notice that the medication aide [~~permit holder~~] or program must request, in writing, a [~~formal~~] hearing within 30 days after [~~of~~] receipt of the notice, or the right to a hearing is waived and the permit is denied, revoked, or suspended or the program approval is rescinded.

(4) A [~~The formal~~] hearing is governed by [~~conducted according to formal hearing procedures at~~] Texas Administrative Code, Title 1, [4-TAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act).

(5) If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 94 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 94, DADS complies with the ~~[formal]~~ hearing process described in paragraph (4) of this subsection. Through the ~~[formal]~~ hearing, determinations will be made on both the permit for medication aide practice and the certification ~~[certificate]~~ for nurse aide practice.

(d) Suspension, revocation, or nonrenewal. If DADS suspends a permit, the suspension remains in effect until DADS determines that the reason for suspension no longer exists or DADS revokes or determines not to renew the permit. DADS investigates before ~~[prior to]~~ making a determination, and:

(1) during the time of suspension, the suspended medication aide ~~[permit holder]~~ must return his permit to DADS;

(2) if a suspension overlaps a permit renewal date, the suspended medication aide ~~[permit holder]~~ may comply with the renewal procedures in §95.115 of this chapter (relating to Permit Renewal); however, DADS does not renew the permit until DADS determines that the reason for suspension no longer exists;

(3) if DADS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. DADS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist; and

(4) if a permit is revoked or not renewed, a medication aide ~~[permit holder]~~ must immediately return the permit to DADS.

(e) Complaints of abuse and neglect by medication aides who are issued a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, and employed in a correctional facility, are investigated as described in §95.125(k) of this chapter (relating to Requirements for Corrections Medication Aides).

§95.125. Requirements for Corrections Medication Aides.

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional facility or employed by a medical services contractor for a correctional facility.

(b) Supervision and applicable law and rules. A medication aide ~~[permit holder]~~ must function under the direct supervision of a licensed nurse on duty or on call by the correctional facility using the medication aide ~~[permit holder]~~. A medication aide ~~[permit holder]~~ must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a correctional facility; and

(2) comply with TDCJ rules applicable to personnel used in a correctional institution.

(c) Allowable and prohibited practices of a medication aide [~~permit holder~~].

(1) A medication aide [~~permit holder~~] may:

(A) observe and report to the correctional facility's charge nurse reactions and side effects to medication shown by an inmate;

(B) take and record vital signs before [~~prior to~~] the administration of medication which could affect or change the vital signs;

(C) administer regularly prescribed medication to an inmate if the medication aide: [~~which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the inmate's clinical record;~~]

(i) is trained to administer the medication;

(ii) personally prepares the medication or sets up the medication to be administered; and

(iii) documents the administration of the medication in the inmate's clinical record;

(D) administer oxygen per nasal cannula or a non-sealing mask only in an emergency, [~~Immediately~~] after which [~~the emergency;~~] the medication aide [~~permit holder~~] must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(E) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(F) administer previously ordered PRN [~~pro re nata (PRN)~~] medication. A medication aide [~~permit holder~~] must document in the inmate's records, symptoms indicating the need for the medication, and the time the symptoms occurred;

(G) administer the initial dose of a medication; [~~and~~]

(H) order an inmate's medications from the correctional institution's pharmacy;[~~]~~

(I) measure a prescribed amount of a liquid medication to be administered;

(J) break a tablet for administration to an inmate if:

(i) the licensed nurse on duty or on call has calculated the dosage; and

(ii) the inmate's medication card or its equivalent accurately documents how the tablet must be altered before administration; and

(K) crush medication if:

(i) authorization is obtained from the licensed nurse on duty or on call; and

(ii) the authorization is documented on the inmate's medication card or its equivalent.

(2) A medication aide [~~permit holder~~] may not:

(A) administer medication by the injection route including:

(i) intramuscular;

(ii) intravenous;

(iii) subcutaneous;

(iv) intradermal; and

(v) hypodermoclysis;

(B) administer medication used for intermittent positive pressure breathing [~~(IPPB)~~] treatments or any form of medication inhalation treatments;

(C) calculate an inmate's medication dose for administration [~~except that the permit holder may:~~]

~~[(i) measure a prescribed amount of a liquid medication to be administered; and]~~

~~[(ii) break a tablet for administration to an inmate provided the licensed nurse on duty or on call has calculated the dosage. The inmate's medication card or its equivalent must accurately document how the tablet must be altered prior to administration;]~~

(D) crush medication, except in accordance with subsection (c)(1)(K) of this section [~~unless authorization is obtained from the licensed nurse on duty or on call. The authorization to crush the specific medication must be documented on the inmate's medication card or its equivalent;~~]

(E) administer medications or feedings by way of a tube inserted in a cavity of the body;

(F) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(G) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;

(H) steal, divert, or otherwise misuse medications;

(I) violate any provision of Texas Human Resources Code, §161.083, or this chapter;

(J) fraudulently procure or attempt to procure a permit;

(K) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(L) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or [~~and/or~~] excessive use of drugs, narcotics, chemicals, or any other type of material.

(d) Background and education requirements. Before [~~Prior to~~] applying for a corrections medication aide permit under Texas Human Resources Code, §161.083, an applicant must be:

(1) able to read, write, speak, and understand English;

(2) at least 18 years of age;

(3) free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) a graduate of a high school or successfully passed [~~have~~] a general educational development test [~~equivalency diploma~~]; and

(5) employed in a correctional facility or by a medical service contractor for a correctional facility on the first day of an applicant's medication aide training program.

(e) Application. An applicant for a corrections medication aide permit under Texas Human Resources Code, §161.083 must submit an official Corrections Medication Aide application form to DADS.

(1) An applicant must submit the general statement enrollment form that contains:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in subsection (d) of this section were met before [~~prior to~~] the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands material submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's dated and notarized signature.

(2) An applicant must submit a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript.

(3) DADS considers a corrections medication aide permit application as officially submitted when DADS receives the permit application.

(4) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed by the day of the TDCJ [~~medication aide~~] final exam is void.

(5) DADS sends notice of application approval [~~acceptance or ineligibility, disapproval~~], or deficiency in accordance with §95.127 of this chapter (relating to Application Processing).

(f) Fees. An applicant must pay [~~The permit~~] application and permit renewal fees for a corrections medication aide permit [~~must be submitted~~] by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005. The fee schedule is as follows:

(1) permit application fee--\$15;

(2) renewal fee--\$15;

(3) late renewal fees for permit renewals made after the permit expires:

(A) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(B) \$30 for an expired permit renewed from 91 days to one year after expiration; and

(4) permit replacement fee--\$5.

(g) Examination procedures. TDCJ gives a written examination to each applicant at a site determined by TDCJ. An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code, §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(1) The applicant must meet the requirements of the TDCJ training program described in

§95.119(d) of this chapter (relating to Training Program Requirements) before taking the written examination.

(2) The applicant must be tested on the subjects taught in the TDCJ training program curriculum and correctional facility clinical experience. The examination must test an applicant's knowledge of accurate and safe drug therapy administered to a correctional facility inmate.

~~[(3) The examination must be taken after the applicant has successfully completed the TDCJ training program.]~~

(3) ~~[(4)]~~ TDCJ administers the examination and determines the passing grade.

(4) ~~[(5)]~~ TDCJ must inform DADS, on the DADS class roster form, of the final exam results for each applicant within 15 days after completion of the exam.

(5) ~~[(6)]~~ An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances must contact TDCJ to reschedule.

(6) ~~[(7)]~~ If an applicant fails the examination, TDCJ notifies DADS and the applicant in writing of the failure to pass the examination. The applicant may take one subsequent examination without having to re-enroll in the training program described in §95.119 of this chapter.

(7) ~~[(8)]~~ An applicant whose application for a permit is denied under §95.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.

(h) Determination of eligibility. DADS determines eligibility for a corrections medication aide permit applicant according to §95.113 of this chapter and subsections (d), (e), (f), and (g) of this section.

(i) Renewal. A permit must be renewed in accordance with §95.115 of this chapter (relating to Permit Renewal).

(j) Changes. Medication aides ~~[Permit holders]~~ must report changes in accordance with §95.117 of this chapter (relating to Changes).

(k) Violations, complaints, and disciplinary actions.

(1) Complaints. Any person may complain to DADS alleging that a person or program has violated Texas Human Resources Code, §161.083, or this chapter. DADS handles complaints in the manner set forth in §95.123 of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

(2) Investigations of abuse and neglect complaints. Allegations of abuse and neglect of inmates by corrections medication aides are investigated by the TDCJ Office of Inspector General. After an investigation, the TDCJ Office of Inspector General issues a report to DADS

with findings of abuse or neglect against the corrections medication aide. After reviewing the report and findings, DADS determines whether to initiate a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit. If DADS determines a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, §95.123(c) and (d) of this chapter apply. If DADS determines that no formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, DADS dismisses the complaint against the corrections medication aide and gives written notice of the dismissal to the corrections medication aide.

(l) Section 95.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) applies to corrections medication aides [~~aide permit holders~~] under this chapter.

~~[(m) Verification of corrections medication aide training.]~~

~~[(1) A person employed as a medication aide in a correctional facility under a permit issued by DADS under Health and Safety Code, Chapter 242, Subchapter N, must submit to DADS a verification document issued by TDCJ. The verification document must certify that the person is employed as a medication aide in a correctional facility in good standing and received training equivalent to the TDCJ training described in §95.119 of this chapter. If the person fails to submit the verification by the person's first permit renewal date after January 1, 2012, the person must:]~~

~~[(A) comply with subsections (e), (f), and (g) of this section to obtain a corrections medication aide permit; or]~~

~~[(B) comply with this chapter to obtain a nursing facility permit under Health and Safety Code, Chapter 242, Subchapter N.]~~

~~[(2) A medication aide who submits the verification described in paragraph (1) of this subsection must comply with the permit renewal procedures of §95.115 of this chapter and report any changes to his name and address as required by §95.117 of this chapter.]~~

§95.127. Application Processing.

(a) Time periods. DADS complies with the following procedures in processing applications for a facility and corrections medication aide permit and renewal.

(1) The following periods of time [~~must~~] apply from the date DADS receives [~~of receipt of~~] an application until the date DADS issues [~~of issuance of~~] a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. DADS may issue a [A] written notice stating that the application has been approved instead [~~may be sent in lieu~~] of a [~~the~~] notice [~~of~~] that the application is complete [~~acceptance of a complete application~~]. The time periods are as follows:

(A) letter of acceptance of application for a permit--21 days [~~14 workdays~~];

(B) letter of application deficiency or [and/or] ineligibility--21 days [14-workdays];

(C) acceptance of renewal permit--21 days [20-workdays]; and

(D) letter of renewal of permit deficiency--21 days [20-workdays].

(2) The following periods of time [~~must~~] apply from the date DADS receives [receipt of] the last item necessary to complete the application until the date DADS issues [of issuance of] written notice approving or denying the application. For the purpose of this section, an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of a [~~the~~] proposed decision and an [of the] opportunity, if required, for the applicant to show compliance with law, and an [of the] opportunity to request [for] a [formal] hearing. The time periods are as follows:

(A) issuance of initial permit--60 days [90-workdays];

(B) letter of denial for a permit or renewal permit--60 days [90-workdays]; and

(C) issuance of renewal permit after receipt of documentation of the completion of all renewal requirements--20 days [workdays].

(b) Reimbursement of fees.

(1) If [In the event] an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement must be made to the program administrator for DADS Medication Aide Permit Program. If the program administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request must be denied.

(2) Good cause for exceeding the time period exists if the number of applications for a permit and permit renewal exceeds by 15 percent [15%] or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by DADS in the application process caused the delay; or any other condition exists giving DADS good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the program administrator, the applicant may appeal in writing to the Texas Health and Human Services Commission's hearings section to request a hearing on the reimbursement denial. A [The] hearing is governed by Texas Administrative Code, Title 1, [will be held pursuant to applicable provisions of the procedures at 1 TAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act).

§95.128 Home Health Medication Aides.

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law that ~~[which]~~ authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of an RN ~~[a registered nurse (RN) licensed by the BON Texas Board of Nursing which authorizes the licensee]~~ to administer medication;

(C) administers a medication to a client ~~[of an agency]~~ in accordance with rules of the BON ~~[Texas Board of Nursing]~~ that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the BON ~~[Texas Board of Nursing]~~ and DADS.

(2) A HCSSA that provides ~~[An agency providing]~~ licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA ~~[home health services agency]~~.

(3) Exemptions are as follows.

(A) A person may administer medication to a client ~~[of an agency]~~ without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the BON ~~[Texas Board of Nursing]~~;

(ii) a student enrolled in an accredited school of nursing or program for the education of RNs who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the BON ~~[Texas Board of Nursing]~~;

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by DADS under this chapter who is administering medications as part of the trainee's clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph

is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If a HCSSA provides home health medication aide services the HCSSA must employ ~~[are provided, an agency employs]~~ a home health medication aide to provide the home health medication aide services.~~;~~ The HCSSA must employ or contract with ~~[and]~~ an RN ~~[shall be employed by or under contract with the agency]~~ to perform the initial health assessment, ~~;~~ prepare the client care plan, ~~;~~ establish the medication list, medication administration record, and medication aide assignment sheet, ~~;~~ and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when home health medication aide services are provided.

(2) The clinical records of a client ~~[patient]~~ using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable of ~~[the rules of]~~ DADS rules governing home health medication aides and must ensure ~~[assure]~~ that the home health medication aide is in compliance with the Texas Health and Safety Code, Chapter 142, Subchapter B.

(4) A home health medication aide ~~[permit holder]~~ must:

(A) function under the supervision of an RN;

(B) comply with ~~[function in accordance with]~~ applicable law and this chapter relating to administration of medication and operation of the HCSSA ~~[agency]~~;

(C) comply with DADS rules applicable to personnel used in a HCSSA ~~[an agency]~~;

and

(D) comply with this section and §97.701 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §97.298 of this title (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

(c) Permitted actions. A home health medication aide [~~permit holder~~] is permitted to:

(1) observe and report to the HCSSA [~~agency's~~] RN and document in the clinical record any [~~note~~] reactions and side effects to medication shown by a client;

(2) take and record vital signs of a client before administering [~~prior to the administration of~~] medication that [~~which~~] could affect or change the vital signs;

(3) administer regularly prescribed medication to a client if the medication aide: [~~which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the client's clinical note;~~]

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered;
and

(C) documents the administration of the medication in the client's clinical record;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in an emergency, ~~[-Immediately]~~ after which [~~the emergency;~~] the medication aide [~~permit holder~~] must verbally notify the supervising RN and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section; [~~and~~]

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy; and [-]

(7) administer previously ordered PRN medication if:

(A) the HCSSA's RN authorizes the medication;

(B) the medication aide documents in the client's clinical notes the symptoms indicating the need for medication and the time the symptoms occurred;

(C) the medication aide documents in the client's clinical notes that the HCSSA's RN

was contacted, symptoms were described, and the HCSSA's RN granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication each time the symptoms occur; and

(E) the medication aide ensures that the client's clinical record is co-signed by the RN who gave permission within seven days after the notes are incorporated into the clinical record

(8) measure a prescribed amount of a liquid medication to be administered;

(9) break a tablet for administration to a client if:

(A) the client's medication administration record accurately documents how the tablet must be altered before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(10) crush medication, if:

(A) authorization has been given in the original physician's order or the medication aide obtains authorization from the HCSSA's RN; and

(B) the medication aide documents the authorization on the client's medication administration record.

(d) Prohibited actions. A home health medication aide ~~[Permit holders]~~ must not:

(1) administer a medication by any injectable route, including:~~;~~

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing ~~[(IPPB)]~~ treatment or any form of medication inhalation treatments;

(3) administer previously ordered PRN ~~[pro re nata (PRN)]~~ medication except in accordance with subsection (c)(7) of this section; ~~[unless authorization is obtained from the agency's RN. If authorization is obtained, the permit holder must;]~~

~~[(A) document in the client's clinical notes symptoms indicating the need for medication and the time the symptoms occurred;]~~

~~[(B) document in the client's clinical notes that the agency's RN was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;]~~

~~[(C) obtain permission to administer the medication each time the symptoms occur in the client; and]~~

~~[(D) insure that the client's clinical record is co-signed by the RN who gave permission within seven calendar days of incorporation of the notes into the clinical record;]~~

(4) administer ~~[the initial dose of a]~~ medication that, according to the client's clinical records, has not been previously administered to the [a] client~~[-. Whether a medication has been previously administered must be determined by the client's current clinical records];~~

(5) calculate a client's medication doses for administration; ~~[except that the permit holder may measure a prescribed amount of a liquid medication to be administered or break a scored tablet for administration to a client provided the RN has calculated the dosage. The client's medication administration record must accurately document how the tablet must be altered prior to administration;]~~

(6) crush medication, except in accordance with subsection (c)(10) of this section ~~[unless authorization has been given in the original physician's order or obtained from the agency's RN. The authorization to crush the specific medication must be documented on the client's medication administration record];~~

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified §97.404(h) ~~[\$97.298]~~ of this title;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, ~~[or]~~ podiatrist or advanced practice nurse;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications;

(13) violate any provision of the statute or of this chapter;

(14) fraudulently procure or attempt to procure a permit;

(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, inappropriate [~~excessive~~] use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under Texas Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Before enrolling [~~Prior to enrollment~~] in a training program and applying [~~prior to application~~] for a permit under this section, all applicants [~~persons~~]:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of an accredited [~~a~~] high school or have proof of successfully passing a general educational development test [~~an equivalent diploma or higher degree~~]; [~~and~~]

(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §97.701 of this title;

(6) must not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives a permit application;

(7) must not be listed as unemployable on the EMR; and

(8) must not be listed with a revoked or suspended status on the NAR.

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) The applicant must submit a DADS application form to DADS. The applicant must meet the requirements of subsection (e)(1) - (6) [~~(e)(1) - (4)~~] of this section.

(2) The application must be accompanied by the combined permit application and examination fee.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice.

(6) The applicant must complete DADS written examination. DADS determines the site of the examination. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(9) DADS notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school that cover DADS curriculum for a home health medication aide training program;

(3) submits a statement with the person's application for a permit under this section, that is signed by the nursing school's administrator or other authorized individual who is responsible for determining that the courses that he or she certifies cover DADS curriculum and certifies that the person completed the courses specified under paragraph (2) of this subsection [~~The administrator is responsible for determining that the courses that he or she certifies cover DADS curriculum. The statement must be submitted with the person's application for a permit under this section~~]; and

(4) complies with subsection (f)(1) - (2) and (4) - (9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows:

(1) The applicant must submit a DADS application form to DADS. The applicant must

meet the requirements of subsection (e)(1) - (4) of this section.

(2) The application must be accompanied by the combined permit application and exam fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority, including the law, act, code, or section, [~~law, act, code, section, or otherwise~~] for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and of DADS open book examination.

(5) DADS may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DADS open book examination and return it to DADS by the date given in the examination notice.

(7) The applicant must complete DADS written examination. The site of the examination is determined by DADS. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(10) DADS notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to DADS, no later than 30 [~~calendar~~] days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(1) DADS considers an application as officially submitted when DADS receives the nonrefundable combined permit application and examination fee payable to the Department of Aging and Disability Services. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met

before [~~prior to~~] the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature that has been dated and notarized.

(3) The applicant must submit a certified copy or notarized [a] photocopy [~~that has been notarized as a true and exact copy~~] of an unaltered original of the applicant's high school graduation diploma or transcript, or an equivalent document demonstrating that the applicant successfully passed a general educational development test, [GED diploma or higher degree] unless the applicant is applying under subsection (f) of this section.

(4) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 30 [~~calendar~~] days after the date of the notice will be void.

(5) DADS sends notice of application acceptance, disapproval, or deficiency in accordance with subsection (q) of this section.

(j) Examination. DADS gives a written examination to each applicant at a site DADS determines.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(3) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to [~~an agency's~~] clients.

(4) A training program must notify DADS at least four weeks before [~~prior~~] to its requested examination date.

(5) DADS determines the passing grade on the examination.

(6) DADS notifies in writing an applicant who fails the examination.

(A) DADS may give an applicant under subsection (e) of this section one subsequent examination, without additional payment of a fee, upon the applicant's written request to DADS.

(B) A subsequent examination must be completed by the date given on the failure notification. DADS determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(7) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DADS. The examination must be completed within 45 ~~calendar~~ days from the date of the originally scheduled examination. DADS determines the site for the rescheduled examination.

(8) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. DADS approves or disapproves all applications. DADS sends notices of application approval, disapproval, or deficiency in accordance with subsection (q) of this section.

(1) DADS denies an application for a permit if the person has:

(A) not met the requirements of subsections (e) - (i) of this section, if applicable;

(B) failed to pass the examination prescribed by DADS as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by DADS;

(D) violated or conspired to violate the Texas Health and Safety Code, Chapter 142, Subchapter B, or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide ~~[permit holder]~~ as set out in subsection (r) of this section.

(2) If, after review, DADS determines that the application should not be approved, DADS gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(1) Medication aide [~~Permit renewal~~]. Home health medication aides must comply with the following permit renewal requirements.

(1) When issued, a permit is valid for one year.

(2) A medication aide [~~permit holder~~] must renew the permit annually.

(3) The renewal date of a permit is the last day of the current permit.

(4) Each medication aide [~~permit holder~~] is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS before the expiration date of the permit does not excuse the medication aide's [~~permit holder's~~] failure to file for timely renewal.

(5) A medication aide [~~permit holder~~] must complete a seven hour [~~clock-hour~~] continuing education program approved by DADS before [~~prior to~~] expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide [~~permit holder~~] must earn approved continuing education hours to have the permit renewed again.

(6) DADS denies renewal of the permit of a medication aide [~~permit holder~~] who is in violation of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.

(7) DADS denies renewal of the permit of a medication aide who has been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives the renewal application.

(8) DADS denies renewal of the permit of a medication aide who is listed as unemployable on the EMR.

(9) [(7)] Home health medication aide permit renewal procedures are as follows.

(A) At least 30 [~~calendar~~] days before the expiration date of a permit, DADS sends to the medication aide [~~permit holder~~] at the address in DADS records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the medication aide [~~permit holder~~] must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the medication aide [~~permit holder~~] and information on certain misdemeanor and felony convictions. It must be signed by the medication aide [~~permit holder~~].

(C) DADS issues a renewal permit to a medication aide [~~permit holder~~] who has met all requirements for renewal.

(D) DADS does not renew a permit if the medication aide [~~permit holder~~] does not

complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) DADS does not renew a permit if renewal is prohibited by the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(F) If a medication aide [~~permit holder~~] fails to timely renew his or her permit because the medication aide [~~permit holder~~] is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the medication aide [~~permit holder~~] may renew the permit pursuant to this subparagraph.

(i) Renewal of the permit may be requested by the medication aide [~~permit holder~~], the medication aide's [~~permit holder's~~] spouse, or an individual having power of attorney from the medication aide [~~permit holder~~]. The renewal form must include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the medication aide [~~permit holder~~] is or was on active military duty serving outside the State of Texas must be filed with DADS along with the renewal form.

(iv) A copy of the power of attorney from the medication aide [~~permit holder~~] must be filed with DADS along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph.

(v) A medication aide [~~permit holder~~] renewing under this subparagraph must pay the applicable renewal fee.

(vi) A medication aide [~~permit holder~~] is not authorized to act as a home health medication aide after the expiration of the permit unless and until the medication aide [~~permit holder~~] actually renews the permit.

(vii) A medication aide [~~permit holder~~] renewing under this subparagraph is not required to submit any continuing education hours.

(10) [~~(8)~~] A person whose permit has expired for not more than two years may renew the permit by submitting to DADS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved

continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, before [~~prior to~~] expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(11) [~~9~~] A permit that is not renewed during the two years after expiration may not be renewed.

(12) [~~10~~] DADS issues notices [~~Notices~~] of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section [~~(relating to Processing Procedures)~~].

(m) Changes.

(1) A medication aide [~~permit holder~~] must notify DADS within 30 [~~calendar~~] days after changing his or her address or name.

(2) DADS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15; and

(C) permit replacement fee--\$5.00.

(2) All fees are nonrefundable.

(3) An applicant or home health medication aide [~~permit holder~~] must pay the required fee by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on DADS forms and supporting documentation must be originals.

(B) The application includes:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list that includes the address and telephone number of each instructor [instructors] and any other person responsible for the conduct of the program [~~The list must include addresses and telephone numbers for each instructor~~]; and

(v) an outline of the program content and curriculum if the curriculum covers more than DADS established curricula.

(C) DADS may conduct an inspection of the classroom site.

(D) DADS sends notice of approval or proposed disapproval of the application to the program within 30 [calendar] days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Texas Health and Safety Code, Chapter 142, Subchapter B, or of this chapter, the reasons for disapproval are given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten [calendar] days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security

Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of a medication aide [~~permit holders~~] in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of an RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom or laboratory hour is 50 minutes [~~clock minutes~~] of actual classroom or laboratory time.

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 [~~calendar~~] days and a maximum of 180 [~~calendar~~] days from the starting date of the program.

(C) Each program must follow the curricula established by DADS.

(4) At least seven [~~calendar~~] days before [~~prior to~~] the commencement of each program, the coordinator must notify DADS in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DADS before [~~prior~~] to the program's effective date of the change.

(6) The program instructors of the classroom hours must be an RN and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An

instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the supervising nurse of the agency used for the clinical experience.

(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

(B) The coordinator is responsible for final evaluation of the student's clinical experience.

(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Within 15 [~~calendar~~] days after completion of the course, each program must inform DADS on the DADS class roster form of the satisfactory completion for each student.

(p) Continuing education. The continuing education training program is as follows.

(1) The program must consist of at least seven clock hours of classroom instruction.

(2) The instructor must meet the requirements in subsection (o)(6) of this section.

(3) Each program must follow the curricula established by DADS.

(4) Within 15 days after completion of the course, each program must inform DADS on the DADS class roster form of the name of each medication aide [~~permit holder~~] who has completed the course.

(q) Processing procedures. DADS complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:

(A) letter of acceptance of an application for a home health medication aide permit-- 14 [~~working~~] days; and

(B) letter of application or renewal deficiency--14 [~~working~~] days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 [~~calendar~~] days;

(B) the letter of denial for a permit--90 [~~calendar~~] days; and

(C) the issuance of a renewal permit--20 [~~calendar~~] days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the [~~director of the~~] Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period exists if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15 percent [~~15%~~] or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by DADS in the application process caused the delay; or any other condition exists giving DADS good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the DADS commissioner [~~of DADS~~] for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the DADS commissioner [~~at the address of DADS~~] that the applicant [~~he or she~~] requests full reimbursement of all fees paid because [~~his or her~~] the application was not processed within the applicable time period. The applicant must mail the reimbursement request to Texas Department of Aging and Disability Services, John H. Winters Human Services Complex, 701 W. 51st St. P.O. Box 149030 Austin, Texas 78714-9030. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the DADS commissioner. The DADS commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, DADS reimburses, in full [~~reimbursement of~~] all fees paid in that particular application process are made.

(r) Denial, suspension, or revocation.

(1) DADS may deny, suspend, emergency suspend, or revoke a permit or program approval if the medication aide ~~[permit holder]~~ or program fails to comply with any provision of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter.

(2) DADS may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to DADS or required to be maintained or complied by the medication aide ~~[permit holder]~~ or program pursuant to this chapter.

(3) DADS may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, DADS considers the elements set forth in Texas Occupations Code §55.022 and §55.023 ~~§97.601 of this title (relating to Enforcement Actions)~~.

(4) If DADS proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, DADS notifies the medication aide ~~[permit holder]~~ or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the medication aide ~~[permit holder]~~ or home health medication aide program an opportunity for a hearing.

(A) The medication aide ~~[permit holder]~~ or home health medication aide program must request a hearing within 15 ~~[calendar]~~ days after ~~[of]~~ receipt of the notice. Receipt of notice is presumed to occur on the tenth ~~[calendar]~~ day after the notice is mailed to the last address known to DADS unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Department of Aging and Disability Services, Medication Aide Program, Mail Code E-416, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the medication aide ~~[permit holder]~~ or home health medication aide program does not request a hearing, in writing, ~~[within]~~ 15 ~~[calendar]~~ days after ~~[of]~~ receipt of the notice, the medication aide ~~[permit holder]~~ or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) DADS may suspend a permit to be effective immediately when the health and safety of persons are threatened. DADS notifies the medication aide ~~[permit holder]~~ of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the medication aide ~~[permit holder]~~ to request a hearing.

(6) All hearings are governed by ~~[conducted pursuant]~~ to Texas Government Code, Chapter 2001, and ~~[the formal hearing procedures at]~~ Texas Administrative Code, Title 1, [1-TAC] §§357.481 - 357.490.

(7) If the medication aide [~~permit holder~~] or program fails to appear or be represented at the scheduled hearing, the medication aide [~~permit holder~~] or program has waived the right to a hearing and the proposed action is taken.

(8) If DADS suspends a home health medication aide permit, the suspension remains in effect until DADS determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. DADS investigates before [~~prior~~] to making a determination.

(A) During the time of suspension, the suspended medication aide [~~permit holder~~] must return the [~~his or her~~] permit to DADS.

(B) If a suspension overlaps a renewal date, the suspended medication aide [~~permit holder~~] may comply with the renewal procedures in this chapter; however, DADS does not renew the permit until DADS determines that the reason for suspension no longer exists.

(9) If DADS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) DADS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) When a permit is revoked or not renewed, a medication aide [~~permit holder~~] must immediately return the [~~license or~~] permit to DADS.

§95.129. Alternate Licensing Requirements for Military Service

(a) Fee waiver based on military experience.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter (relating to Application Procedures) and §95.128(n)(1)(A) of this chapter (relating to Home Health Medication Aides) and the permit application fee described in §95.125(f)(1) (relating to Requirements for Corrections Medication Aides) for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to DADS in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to DADS; and

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training or education substantially meets all of the requirements for a permit under this chapter.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of fees submitted in accordance with this subsection if DADS determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter and §95.128(n)(1)(A) of this chapter and the permit application fee described in §95.125(f)(1) of this chapter for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to DADS in accordance with §95.128(h) of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of the fee submitted in accordance with this subsection if DADS determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) DADS gives a medication aide an additional two years to complete the permit renewal requirements described in §95.115 of this chapter (relating to Permit Renewal), if DADS receives and approves a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must submit a written request for additional time to DADS before the expiration date of the medication aide's permit. The medication aide must include with the request documentation of the medication aide's status as a military service member that is acceptable to DADS. Documentation as a military service member that is acceptable to DADS includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If DADS requests additional documentation, the medication aide must submit the requested documentation.

(4) DADS approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if DADS determines that the medication aide is a military service member, except DADS does not approve a request if DADS granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, DADS will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of DADS that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as military service member at the time the request was due.

(d) Renewal of expired permit.

(1) DADS renews an expired permit if DADS receives and approves a request for renewal from a former medication aide in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former medication aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the former medication aide must submit the requested documentation.

(5) DADS approves a request for renewal of an expired permit submitted in accordance with this subsection if DADS determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the EMR; and

(D) the former medication aide is not listed on the NAR.

TAB 5

Item c.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose an amendment to §3.501 in Title 40, Texas Administrative Code, Chapter 3, Administrative Responsibilities of State Facilities.

AGENDA ITEM No.: 6c

BACKGROUND: Federal requirement Legislative requirement Other

The purpose of the amendment is to allow a physician assistant (PA) or an advanced practice registered nurse (APRN) to determine and pronounce the death of an individual at a facility under certain circumstances, as permitted by Texas Health and Safety Code, §671.001(d). Specifically, §671.001(d) provides that a PA or APRN may determine and pronounce death if permitted to do so by written policies of the facility providing services, unless an artificial means of life support precludes a determination that a person's spontaneous respiratory and circulatory functions have ceased. If a determination is precluded as described in §671.001(d), a physician must determine and pronounce death. Section 671.001(d) also requires the executive commissioner of the Health and Human Services Commission to adopt rules governing the policies for physician assistants and advanced practice registered nurses determining and pronouncing death at certain facilities. The proposal authorizes an APRN, but not a registered nurse, to determine and pronounce death because additional education and experience are required to be an APRN.

ISSUES AND ALTERNATIVES

There are no outstanding concerns with implementation of the proposed rule.

STAKEHOLDER INVOLVEMENT

A draft of the proposed rule was sent to external stakeholders for review and comment from March 9, 2016, to March 21, 2016. DADS received comments from several organizations and individuals. DADS determined that no further revisions were needed to the draft rule. Disability Rights Texas submitted a comment in support of the proposal.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

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Yes _____ No _____ N/A X

Does this proposed policy provide every opportunity for individual choices?

Yes _____ No _____ N/A X

FISCAL IMPACT

DADS has determined that there are no foreseeable implications relating to costs or revenues of state government and local government as a result of administering or enforcing the proposed rules.

RULE DEVELOPMENT SCHEDULE

June 9, 2016	Present to Aging and Disability Services Council
June 2016	Publish proposed rules in <i>Texas Register</i>
September 2016	Publish adopted rules in <i>Texas Register</i>
October 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rule.

May 9, 2016/16R06

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 3 ADMINISTRATIVE RESPONSIBILITIES OF STATE FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §3.501, in Chapter 3, Administrative Responsibilities of State Facilities.

BACKGROUND AND PURPOSE

The purpose of the amendment is to allow a physician assistant (PA) or an advanced practice registered nurse (APRN) to determine and pronounce the death of an individual at a facility under certain circumstances, as permitted by Texas Health and Safety Code, §671.001(d). Specifically, §671.001(d) provides that a PA or APRN may determine and pronounce death if permitted to do so by written policies of the facility providing services, unless an artificial means of life support precludes a determination that a person's spontaneous respiratory and circulatory functions have ceased. If a determination is precluded as described in §671.001(d), a physician must determine and pronounce death. Section 671.001(d) also requires the executive commissioner of HHSC to adopt rules governing the policies for physician assistants and advanced practice registered nurses determining and pronouncing death at certain facilities. The proposal authorizes an APRN, but not a registered nurse, to determine and pronounce death because additional education and experience are required to be an APRN.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §3.501 clarifies that the section applies to witnessing a death or discovering a deceased individual only at a facility, which is defined in §3.101 as a state supported living center or the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center. The proposed amendment provides that, unless an individual is the subject of an out-of-hospital do-not-resuscitate order, an employee must initiate and continue cardio-pulmonary resuscitation (CPR) until emergency services personnel arrive and take over the care of the individual or a primary care provider (PCP) pronounces death or directs the CPR to cease. The proposed amendment requires a registered nurse who is notified that a person has witnessed the death of an individual or has discovered a deceased individual must notify a PCP, which is defined in §3.101 as a physician, an APRN, or a PA. The proposed amendment allows a PA or APRN to determine and pronounce the death of an individual unless an artificial means of life support precludes a determination that the individual's spontaneous respiratory and circulatory functions have ceased. If a determination is precluded as described, a physician must determine and pronounce death. The proposed amendment describes the information a registered nurse and PCP must document regarding a death witnessed or discovered at a facility. If the PCP who determines and pronounces death is not a physician, the amendment requires a physician to review and sign a form related to the death. The proposed amendment also makes minor grammatical clarifications.

FISCAL NOTE

David Cook, 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. The proposed amendments will not require additional resources and facilities are not small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Scott Schalchlin, DADS Assistant Commissioner for State Supported Living Centers, 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 that the amendment will allow a PA or an APRN to pronounce the death of an individual at a facility under certain circumstances.

Mr. Schalchlin 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 Eric Moorad at (512) 438-3169 in DADS SSLC/Quality Improvement. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-16R06, 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 16R06" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 3 ADMINISTRATIVE RESPONSIBILITIES OF STATE FACILITIES
SUBCHAPTER E DEATH OF AN INDIVIDUAL
RULE §3.501

Proposed action:

X Amendment

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; and Texas Health and Safety Code, §671.001, which provides that the HHSC executive commissioner shall adopt rules governing the policies for physician assistants and advanced practice registered nurses determining and pronouncing death at certain facilities.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §671.001.

§3.501. Discovery.

(a) A person witnessing the death of an individual or discovering a deceased individual at a facility must immediately notify a registered nurse. An employee must take steps to preserve any evidence relating to the death or cause of death in accordance with DADS policy.

(b) Unless the individual is the subject of an out-of-hospital do-not-resuscitate order, an employee must initiate and continue cardiopulmonary resuscitation ~~[must be initiated and continued]~~ until: ~~[a physician pronounces death or directs such treatment to cease.]~~

(1) emergency medical services (EMS) personnel arrive and take over the care of the individual; or

(2) a primary care provider (PCP) determines and pronounces death or directs the

cardiopulmonary resuscitation to cease.

(c) A registered nurse must notify a PCP [~~the attending physician or physician on duty~~] and document the following information in the individual's record and on the appropriate form:

(1) the identity of the individual;

(2) [(4)] the date, time, and location of death or discovery of the deceased individual;

(3) [(2)] the name of the PCP [physician] notified, the time and date of notification, and the name of the registered nurse [staff member] who notified the PCP [physician];

(4) [(3)] the name of any person who witnessed the death or discovered the deceased individual; [and any information relating to the death or cause of death provided by that person; and]

(5) any information relating to the death provided by a person who witnessed the death or discovered the deceased individual; and

(6) [(4)] a detailed description of any treatment given or emergency procedures initiated immediately by the registered nurse, the EMS personnel, or an employee before death or upon discovery of the deceased individual and the individual's response to the treatment or procedures.

(d) A physician assistant or advance practice registered nurse may determine and pronounce the death of an individual unless an artificial means of life support precludes a determination that an individual's spontaneous respiratory and circulatory functions have ceased. If an artificial means of life support precludes a determination that functions have ceased, a physician must determine and pronounce death.

(e) [(e)] The PCP [notified physician] who determines and pronounces the death of the individual must document the following information in the individual's record and on the appropriate form:

[(1) the identity of the individual;]

(1) [(2)] the PCP's [physician's] findings upon examination and [;] pronouncement of death;

(2) [(3)] the [date, time, and] probable cause of death (if known);

(3) [(4)] whether the death occurred under unusual circumstances, the cause of death is unknown, or death occurred pursuant to treatment; and

(4) [(5)] a detailed description of any treatment given or emergency procedures initiated by the PCP or EMS personnel immediately before death or upon discovery of the deceased individual and the individual's response to the treatment or procedures.

(f) If the PCP who determines and pronounces death is not a physician, a physician must review and sign the appropriate form.

(g) [~~e~~] If the death was related to an injury, staff must complete required documentation in accordance with DADS policy.

(h) [~~f~~] Each death is investigated in accordance with state and federal law and DADS policy on incident management.

TAB 5

Item d.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose new sections and amendments to certain sections in Title 40, Texas Administrative Code, Chapter 18, Nursing Facility Administrators; Chapter 94, Nurse Aides.

AGENDA ITEM NO.: 6d

BACKGROUND: Federal requirement Legislative requirement Other

The purpose of the proposed rules is to implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed rules address several areas that relate to licensure of military service members, military veterans, and military spouses. The proposed rules describe processes for these persons to request fee waivers, to request additional time to complete renewal requirements, to request credit for internship requirements, and to request renewal of an expired license or nurse aide registry listing. The proposed rules add definitions related to the military provisions. The proposed rules also delete provisions related to military members in existing rule because they are included in the new sections.

ISSUES AND ALTERNATIVES

There are no outstanding issues or concerns with implementation of the proposed amendment.

STAKEHOLDER INVOLVEMENT

External stakeholders were provided a copy of the proposed rule amendment via email on November 24, 2015, and were asked to review and comment.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

Yes No N/A

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June 9, 2016

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Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

DADS has determined that there are no foreseeable implications relating to costs of state government and costs or revenues of local government as a result of administering or enforcing the proposed amendments.

RULE DEVELOPMENT SCHEDULE

June 9, 2016	Present to Aging and Disability Services Council
July 2016	Publish proposed rules in <i>Texas Register</i>
August 2016	Publish adopted rules in <i>Texas Register</i>
September 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rule.

April 12, 2016/15R13

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 18 NURSING FACILITY ADMINISTRATORS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §18.2 and §18.35, and new §18.42, in Chapter 18, Nursing Facility Administrators.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments and new section is to implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed new section addresses several areas that relate to licensure of military service members, military veterans, and military spouses. First, the proposed new section describes the process that a license applicant who is a military service member or a military veteran must follow to request a waiver of the application and initial license fees. Second, the proposed rule describes the process that a license applicant or a nursing facility administrator who is a military service member, a military veteran, or a military spouse, and who holds a license in good standing in another jurisdiction must follow to request a waiver of the application and initial license fees. Third, the proposal describes the process that a nursing facility administrator who is a military service member must follow to request two additional years to complete license renewal requirements. Fourth, the proposal describes the process that a license applicant must follow to request credit based on military service, training, or education toward the internship requirements for an administrator-in-training. Finally, the proposal describes the process a former administrator who is a military service member, a military veteran, or a military spouse must follow to request renewal of an expired license.

The proposed amendments add definitions related to the military provisions and replace several defined terms with acronyms. The proposed amendments also delete a provision related to a military member having additional time to meet continuing education requirements for license renewal because the information is included in the new section.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §18.2 adds definitions for “active duty,” “armed forces of the United States,” “military service member,” “military spouse,” and “military veteran,” which are terms that are used in new §18.42. The definition of NFAAC (Nursing Facility Administrators Advisory Committee) references Texas Administrative Code, Title 40, §89.6, a recently added section in which the NFAAC is described. The amendment also uses the acronyms for several terms that are currently defined and puts the terms in alphabetical order based on the acronyms.

The proposed amendment to §18.35 deletes subsection (g) regarding continuing education

requirements for military members because this information is addressed in new §18.42(c) by providing a process by which administrator who is a military service member may request two additional years to complete license renewal requirements.

The proposed new §18.42 describes the process that a license applicant who is a military service member or a military veteran must follow to request a waiver of the application and initial license fees. The proposed new section also describes the process that a license applicant or a nursing facility administrator who is a military service member, a military veteran, or a military spouse, and who holds a license in good standing in another jurisdiction must follow to request a waiver of the application and initial license fees. In addition, the proposed new section describes the process that a nursing facility administrator who is a military service member must follow to request two additional years to complete license renewal requirements. The proposed new section describes the process that a license applicant must follow to request credit based on military service, training, or education toward the internship requirements for an administrator-in-training. Finally, the proposed new section describes the process a former administrator who is a military service member, a military veteran, or a military spouse must follow to request renewal of an expired license.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of local governments. The new section allows certain fees to be waived, which will decrease revenue to the state, but DADS does not anticipate a large number of fee waivers, so the decrease will likely be minimal.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments and new section do not impose new requirements on nursing facility administrators.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for DADS Regulatory Services, has determined that, for each year of the first five years the proposed amendments and new section are in effect, the public benefit expected as a result of enforcing the proposed amendments and new section is a reduction in financial and administrative barriers for military service members, military veterans, and military spouses to receive and renew a nursing facility administrator license.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section 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 Laura Bagheri at (512) 438-4836 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R13, 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 15R13" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 18	NURSING FACILITY ADMINISTRATORS
SUBCHAPTER A	GENERAL INFORMATION
RULE	§18.2

Proposed action:

X Amendment

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 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; Texas Health and Safety Code, Chapter 242, which authorizes the executive commissioner to adopt rules regarding the licensing of nursing facility administrators; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; 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; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, Chapter 242; Texas Human Resources Code, §161.021 and §32.021; and Texas Occupations Code, Chapter 55.

§18.2. Definitions.

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

- (1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or

recklessly through words or physical action that causes or could cause mental or physical injury or harm or death to a nursing facility resident. Abuse includes verbal, sexual, mental, psychological, or physical abuse; corporal punishment; involuntary seclusion; or any other actions within this definition.

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

~~[(2) Administrative law judge (ALJ)--A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.]~~

(3) Administrator--A licensed nursing facility administrator.

~~[(4) Administrator in training (AIT)--A person undergoing a minimum 1,000-hour internship under a DADS-approved certified preceptor.]~~

(4) ~~[(5)]~~ Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the DADS ~~[DADS²]~~ Licensing and Credentialing Section.

(5) AIT--Administrator-in-training. A person undergoing a minimum 1,000-hour internship under a DADS-approved certified preceptor.

(6) ALJ--Administrative law judge. A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.

(7) ~~[(6)]~~ Applicant--A person applying for a Texas nursing facility administrator license.

(8) ~~[(7)]~~ Application--The notarized DADS application for licensure as a nursing facility administrator, as well as all required forms, fees, and supporting documentation.

(9) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(10) ~~[(8)]~~ Complaint--An allegation that a licensed nursing facility administrator violated one or more of the licensure rules or statutory requirements.

(11) ~~[(9)]~~ DADS--The Department of Aging and Disability Services.

(12) ~~[(10)]~~ Deficiency--Violation of a federal participation requirement in a nursing facility.

(13) ~~[(11)]~~ Domains of the NAB--The five categories for education and continuing education of the National Association of Long Term Care Administrator Boards, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(14) [(12)] Equivalent--A level of achievement that is equal in amount and quality to completion of an educational or training program.

(15) [(13)] Formal hearing--A hearing held by SOAH to adjudicate a sanction taken by DADS against a licensed nursing facility administrator.

(16) [(14)] Good standing--The licensure status of a nursing facility administrator who is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by DADS.

(17) [(15)] Informal review--The opportunity for a licensee to dispute the allegations made by DADS. The informal review includes the opportunity to show compliance.

(18) [(16)] Internship--The 1,000-hour training period in a nursing facility for an AIT.

(19) [(17)] License--A nursing facility administrator license or provisional license.

(20) [(18)] Licensee--A person licensed by DADS as a nursing facility administrator.

(21) Military service member--A person who is on active duty.

(22) Military spouse--A person who is married to a military service member.

(23) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(24) [(19)] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a nursing facility resident's belongings or money without the resident's consent.

(25) [(20)] NAB--The National Association of Long Term Care Administrator Boards, which is composed of state boards or agencies responsible for the licensure of nursing facility administrators.

(26) [(21)] NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas.

(27) [(22)] NCERS--The National Continuing Education Review Service, which is the part of NAB that approves and monitors continuing education activities for nursing facility administrators.

(28) NFAAC--Nursing Facility Administrators Advisory Committee. The advisory committee described in §89.6 of this title (relating to Nursing Facility Administrator Advisory Committee).

(29) [~~(23)~~] Neglect--A deprivation of life's necessities of food, water, or shelter; or a failure of an individual to provide services, treatment, or care to a nursing facility resident that causes or could cause mental or physical injury, harm, or death to the nursing facility resident.

(30) [~~(24)~~] Nursing facility--An institution or facility licensed by DADS as a nursing home, nursing facility, or skilled nursing facility.

(31) [~~(25)~~] Nursing facility administrator--A person who is licensed to engage in the practice of nursing facility administration, regardless of whether the person has ownership interest in the facility.

~~[(26) Nursing Facility Administrators Advisory Committee (NFAAC) The nine member governor appointed advisory committee that makes recommendations to DADS about the practice and regulation of nursing facility administration.]~~

(32) [~~(27)~~] Opportunity to show compliance--An informal meeting between DADS and a licensee that allows the licensee an opportunity to show compliance with the requirements of law for the retention of the license. The opportunity to show compliance is part of an informal review.

(33) [~~(28)~~] Preceptor--A licensed nursing facility administrator certified by DADS to provide supervision to an AIT.

(34) [~~(29)~~] PES--Professional examination services. The testing agency that administers the NAB and state examinations to applicants seeking licensure as nursing facility administrators.

(35) [~~(30)~~] Referral--A recommendation made by Regulatory Services Division staff to investigate an administrator's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations.

(36) [~~(31)~~] Regulatory Services Division--The division of DADS responsible for long term care regulation, including determining nursing facility compliance with licensure and certification requirements and licensing nursing facility administrators.

(37) [~~(32)~~] Sanctions--Any adverse licensure actions DADS imposes against a licensee, including letter of reprimand, suspension, revocation, denial of license, and monetary penalties.

(38) [~~(33)~~] Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(39) [~~(34)~~] State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas. This examination covers the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification).

(40) [(35)] State of Texas Administrator-In-Training Internship Manual--The DADS program guide used by an AIT and preceptor during the AIT's internship for nursing facility administrator licensure.

(41) [(36)] Substandard quality of care--Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that is immediate jeopardy to nursing facility resident health or safety; or a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(42) [(37)] Survey--A resident-focused complaint/incident investigation or annual licensure or certification inspection of a nursing facility by DADS.

(43) [(38)] Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 18	NURSING FACILITY ADMINISTRATORS
SUBCHAPTER C	LICENSES
RULE	§18.35

Proposed action:
X Amendment

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 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; Texas Health and Safety Code, Chapter 242, which authorizes the executive commissioner to adopt rules regarding the licensing of nursing facility administrators; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; 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; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and

Safety Code, Chapter 242; Texas Human Resources Code, §161.021 and §32.021; and Texas Occupations Code, Chapter 55.

§18.35. Continuing Education Requirements for License Renewal.

(a) The 40 clock hours of continuing education required for license renewal must:

(1) be completed during the previous two-year licensure period;

(2) include one or more of the five domains of the NAB listed in §18.11 of this chapter (relating to Academic Requirements);

(3) include at least six clock hours in ethics; and

(4) be:

(A) approved by the National Continuing Education Review Service;

(B) a DADS-sponsored event; or

(C) an upper-division semester credit course taken or taught at a post-secondary institution of higher education accredited by an association recognized by the Texas Higher Education Coordinating Board.

(b) DADS accepts no more than 34 clock hours of NAB-approved self-study courses toward the required 40 clock hours of continuing education.

(c) DADS waives, at a maximum, 20 of the 40 clock hours of continuing education to a licensee who completes one three-semester hour upper-division course taken at a post-secondary institution of higher education.

(d) DADS approves continuing education hours once per licensure renewal period for the same course, seminar, workshop, or program.

(e) DADS waives 20 of the required 40 clock hours of continuing education for preceptors who sponsor an AIT.

(f) DADS may perform an audit of continuing education courses, seminars, or workshops that the licensee has reported by requesting certificates of attendance.

~~[(g) If a licensee is on deployed military duty, the deadline to meet continuing education requirements is extended based on the actual duration of the deployment up to two years.]~~

~~[(1) A licensee must submit a copy of the military orders to DADS within 60 days of completion of deployed duty.]~~

~~[(2) If continuing education requirements for licensure renewal are not met by the extension deadline, the licensee must:]~~

~~[(A) meet the licensure application and examination requirements for an initial license as listed in §18.15 of this chapter (relating to Application Requirements), §18.16 of this chapter (relating to Examinations), and §18.31 of this subchapter (relating to Initial License); or]~~

~~[(B) prior to the extension deadline, place the license in a formal inactive status in accordance with §18.38 of this subchapter (relating to Inactive Status).]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 18 NURSING FACILITY ADMINISTRATORS
SUBCHAPTER C LICENSES
RULE §18.42

Proposed action:

X New

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 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; Texas Health and Safety Code, Chapter 242, which authorizes the executive commissioner to adopt rules regarding the licensing of nursing facility administrators; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; 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; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The new section affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, Chapter 242; Texas Human Resources Code, §161.021 and §32.021; and Texas Occupations Code, Chapter 55.

§18.42 Alternate Licensing Requirements for Military Service Personnel.

(a) Fee waiver based on military experience.

(1) DADS waives the application fee described in §18.15(a)(2) of this chapter (relating to Application Requirements) and the initial license fee described in §18.31(a)(2) of this chapter (relating to Initial License) for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's initial license application submitted to DADS in accordance with §18.31 of this chapter. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to DADS; and

(B) documentation of the type and dates of the service, training, and education the applicant received, and an explanation as to why the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of fees submitted in accordance with this subsection if DADS determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on license issued by another jurisdiction.

(1) DADS waives the application fee described in §18.15(a)(2) of this chapter and the initial license fee described in §18.32(c)(2) of this chapter (relating to Provisional License) for an applicant if DADS receives and approves a request for a waiver of fees in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must include a written request for a waiver of fees with the applicant's provisional license application that is submitted to DADS in accordance with §18.32 of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of fees submitted in accordance with this subsection if DADS determines that:

(A) the applicant holds a license in good standing in another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for license renewal.

(1) DADS gives an administrator an additional two years to complete the license renewal requirements described in §18.34 of this subchapter (relating to License Renewal) and §18.35 of this subchapter (relating to Continuing Education Requirements for License Renewal), if DADS receives and approves a request for additional time to complete the licensing renewal requirements from an administrator in accordance with this subsection.

(2) To request additional time to complete license renewal requirements, an administrator must submit a written request for additional time to DADS before the expiration date of the administrator's license. The administrator must include with the request documentation of the administrator's status as a military service member that is acceptable to DADS. Documentation as a military service member that is acceptable to DADS includes a copy of a current military service order issued to the administrator by the armed forces of the United States, the State of Texas, or another state.

(3) If DADS requests additional documentation, the administrator must submit the requested documentation.

(4) DADS approves a request for two additional years to complete license renewal requirements submitted in accordance with this subsection if DADS determines that the administrator is a military service member, except DADS does not approve a request if DADS granted the administrator a previous extension and the administrator has not completed the license renewal requirements during the two-year extension period.

(5) If an administrator does not submit the written request described by paragraph (2) of this subsection before the expiration date of the administrator's license, DADS will consider a request after the expiration date of the license if the administrator establishes to the satisfaction of DADS that the request was not submitted before the expiration date of the administrator's license because the administrator was serving as military service member at the time the request was due.

(d) Credit toward internship requirements.

(1) DADS gives an applicant credit toward the internship requirements for an AIT described in §18.12 of this chapter (relating to Internship Requirements) based on the applicant's military service, training, or education if DADS receives and approves a request for credit from an applicant in accordance with this subsection.

(2) To request credit for military service, training, or education, the applicant must submit a written request for credit to DADS with the applicant's initial license application. The applicant must include with the request documentation of the type and dates of the service, training, and education the applicant received and an explanation as to how the applicant's military service, training, or education is substantially similar to the training or education requirements described in §18.12 of this chapter.

(3) If DADS requests additional documentation, the applicant must submit the requested documentation.

(4) DADS approves a request for credit submitted in accordance with this subsection if DADS determines that the military service, training, or education that the applicant received is substantially similar to the training or education requirements described in §18.12 of this chapter.

(e) Renewal of expired license.

(1) DADS renews an expired license if DADS receives and approves a request for renewal from a former administrator in accordance with this subsection.

(2) To request renewal of an expired license, a former administrator must submit a written request with a license renewal application within five years after the former administrator's license expired. The former administrator must include with the request documentation of the former administrator's status as a military service member, military

veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the former administrator by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former administrator by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former administrator by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former administrator's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the former administrator must submit the requested documentation.

(5) DADS approves a request for renewal of an expired license submitted in accordance with this subsection if DADS determines that:

(A) the former administrator is a military service member, military veteran, or military spouse;

(B) the former administrator has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former administrator submitted the initial license application; and

(C) the former administrator is not listed on the employee misconduct registry described in THSC Chapter 253.

April 12, 2016/15R13

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 94 NURSE AIDES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §94.2 and §94.11; and new §94.13, in Chapter 94, Nurse Aides.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments and new section is to implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposal describes the process a nurse aide who is a military service member must follow to request an additional two years to complete in-service education requirements to maintain a listing on the nurse aide registry (NAR). The proposal also describes the process a former nurse aide who is a military service member, a military veteran, or a military spouse must follow to request that the status of a listing on the NAR be changed from expired to active during the five years after expiration.

The proposed amendments add definitions related to the military provisions and replace several defined terms with acronyms. The proposed amendments also delete a provision related to a military spouse being listed on the NAR with active status for up to five years after the listing expires.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §94.2 adds definitions for “active duty,” “armed forces of the United States,” “military service member,” “military spouse,” and “military veteran.” The amendment also uses the acronyms for several terms that are currently defined and puts the terms in alphabetical order based on the acronyms.

The proposed amendment to §94.11 deletes subsection (d) regarding the spouse of a military service member being listed on the nurse aide registry as having active status because Texas Occupations Code, §55.004, the statutory basis for current §94.11(d), has been amended. The requirement in §55.004(a)(1) to issue a license to a military service member, military veteran, or military spouse who holds a current license issued in another jurisdiction is addressed by the general reciprocity provisions of §94.11. The requirement in §55.004(a)(2) to issue a license to a military service member, military veteran, or military spouse who held a license in this state during the preceding five years is addressed in new §94.13(b).

Proposed new §94.13 describes the process a nurse aide who is a military service member must follow to request an additional two years to complete in-service education requirements to

maintain a listing on the NAR. The proposal also describes the process a former nurse aide who is a military service member, a military veteran, or a military spouse must follow to request that the status of a listing on the NAR be changed from expired to active during the five years after expiration.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section 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 new section will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments do not impose any new requirements on persons required to comply with the rules.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for DADS Regulatory Services, has determined that, for each year of the first five years the proposed amendments and new section are in effect, the public benefit expected as a result of enforcing the proposed amendments and new section is a reduction in financial and administrative barriers for military service members, military veterans, and military spouses to receive and renew a listing on the NAR.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section 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 Laura Bagheri at (512) 438-4836 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R13, 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 15R13" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 94 NURSE AIDES
RULE §§94.2, 94.11, AND 94.13

Proposed action:

X New

X Amendment

STATUTORY AUTHORITY

The amendments and new section 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; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code, Chapter 250, which requires DADS to maintain a Nurse Aide Registry; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The amendments and new section affect Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, Chapter 242; Texas Human Resources Code, §161.021 and §32.021; and Texas Occupations Code, Chapter 55.

§94.2. Definitions.

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

- (1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or

punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) [(3)] Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) [(4)] Competency evaluation--A written [or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(7) [(5)] Competency evaluation application--A DADS form used to request DADS approval to take a competency evaluation.

(8) [(6)] Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by DADS.

(9) [(7)] DADS--The Texas Department of Aging and Disability Services.

(10) [(8)] Direct supervision--Observation of a trainee performing skills in a NATCEP.

(11) [(9)] EMR--Employee misconduct registry. [(EMR)--]The registry maintained by DADS in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(12) [(10)] Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(13) [(11)] Facility-based NATCEP--A NATCEP offered by or in a facility.

(14) [(12)] General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(15) [(13)] IR--Informal review. [(IR)--]An opportunity for a nurse aide to dispute a finding of misconduct made by DADS by providing testimony and supporting documentation to an impartial DADS staff person.

(16) [(14)] Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

- (A) a physician;
- (B) a physician assistant;
- (C) a physical, speech, or occupational therapist;
- (D) a physical or occupational therapy assistant;
- (E) a registered nurse;
- (F) a licensed vocational nurse; or
- (G) a licensed social worker.

(17) [(45)] Licensed nurse--A registered nurse or licensed vocational nurse.

(18) [(46)] LVN--Licensed vocational nurse. [(LVN)--]An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(19) Military service member--A person who is on active duty.

(20) Military spouse--A person who is married to a military service member.

(21) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(22) [(49)] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(23) NAR--Nurse Aide Registry. A listing of nurse aides, maintained by DADS, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(24) NATCEP--Nurse aide training and competency evaluation program. A program approved by DADS to train and evaluate an individual's ability to work as a nurse aide in a facility.

(25) [(48)] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(26) [(49)] Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(27) [(20)] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term

does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

~~[(21) Nurse Aide Registry (NAR)—A state listing of nurse aides that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.]~~

~~[(22) Nurse aide training and competency evaluation program (NATCEP)—A program approved by DADS to train and evaluate an individual's ability to work as a nurse aide in a facility.]~~

(28) ~~[(23)]~~ Nurse aide training and competency evaluation program (NATCEP) application-- A DADS form used to request DADS initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request DADS approval of changed information in an approved NATCEP application.

(29) ~~[(24)]~~ Nursing services--Services provided by nursing personnel that include, but are not limited to:

- (A) promotion and maintenance of health;
- (B) prevention of illness and disability;
- (C) management of health care during acute and chronic phases of illness;
- (D) guidance and counseling of individuals and families; and
- (E) referral to other health care providers and community resources when appropriate.

(30) ~~[(25)]~~ Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(31) ~~[(26)]~~ Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(32) ~~[(27)]~~ Program director--An individual who is approved by DADS and meets the requirements in §94.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(33) ~~[(28)]~~ Program instructor--An individual who is approved by DADS to conduct the training in a NATCEP and who meets the requirements in §94.5(b) of this chapter.

~~[(29) Registered nurse (RN)—An individual licensed by the Texas Board of Nursing to practice professional nursing.]~~

(34) ~~[(30)]~~ Resident--An individual accepted for care or residing in a facility.

(35) RN--Registered nurse. An individual licensed by the Texas Board of Nursing to practice professional nursing.

(36) [(31)] Skills examiner--An individual who is approved by DADS and meets the requirements in §94.5(d) of this chapter.

(37) [(32)] Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§94.11. Waiver, Reciprocity, and Exemption Requirements.

(a) DADS may waive the requirement for a nurse aide to take the NATCEP specified in §94.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and place a nurse aide on the NAR on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989;

(2) submits a DADS Employment Verification form to DADS to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the EMR;

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) completes the DADS Waiver of Nurse Aide Training and Competency Evaluation Program form.

(b) DADS places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the EMR;

(4) the nurse aide has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) the nurse aide completes a DADS Reciprocity form and submits it to DADS.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §94.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §94.9 of this chapter (relating to Nurse Aide Registry and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months, and:

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked;
or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years;

(4) submits documentation to verify at least one of the requirements in subsection (c)(1) of this section;

(5) arranges for a facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from DADS authorizing the person to take the competency evaluation.

~~[(d) In accordance with Texas Occupations Code §55.004, the spouse of a person serving on active duty as a member of the United States armed forces may be listed on the NAR as having active status if:]~~

~~[(1) the spouse was listed on the NAR as having active status during the preceding five years;]~~

~~[(2) the spouse's listing on the NAR expired while the spouse lived in another state for at least six months;]~~

~~[(3) the spouse is not listed as unemployable on the EMR;]~~

~~[(4) the spouse is not listed as having revoked or suspended status on the NAR;]~~

~~[(5) the spouse has not been convicted of a criminal offense listed in THSC, §250.006(a), or a criminal offense listed in THSC, §250.006(b) within the preceding five years; and]~~

~~[(6) there has not been a period of 24 consecutive months in which the spouse did not provide nursing or nursing-related services for monetary compensation.]~~

§94.13. Alternate Licensing Requirements for Military Service Personnel.

(a) Additional time for in-service education.

(1) DADS gives a nurse aide an additional two years to complete in-service education required for a nurse aide to maintain an active listing on the NAR, as described in §94.9(d)(3) of this chapter (relating to Nurse Aide Registry and Renewal), if DADS receives and approves a request for additional time to complete in-service training from a nurse aide in accordance with this subsection.

(2) To request additional time to complete in-service education, a nurse aide must submit a written request for additional time to DADS before the expiration date of the nurse aide's certification. The nurse aide must include with the request documentation of the nurse aide's status as a military service member that is acceptable to DADS. Documentation as a military service member that is acceptable to DADS includes a copy of a military service order issued by the United States Armed Forces, the State of Texas, or another state.

(3) If DADS requests additional documentation, the nurse aide must submit the requested documentation.

(4) DADS approves a request for two additional years to complete in-service education submitted in accordance with this subsection if DADS determines that the nurse aide is a military service member, except DADS does not approve a request if DADS granted the nurse aide a previous extension and the nurse aide did not complete the in-service education requirements during the previous extension period.

(b) Renewal of expired listing.

(1) DADS changes the status of a listing from expired to active if DADS receives and approves a request for an active status listing from a former nurse aide in accordance with this subsection.

(2) To request an active status listing, a former nurse aide must submit a written request

with the documents required for renewal in accordance with §94.9(d) of this chapter within five years after the former nurse aide's listing expired. The former nurse aide must include with the request documentation of the former nurse aide's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former nurse aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former nurse aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the former nurse aide must submit the requested documentation.

(5) DADS approves a request for an active status listing submitted in accordance with this subsection if DADS determines that:

(A) the former nurse aide meets the requirements for renewal described in §94.9(d) (1) - (4) of this chapter;

(B) the former nurse aide is a military service member, military veteran, or military spouse;

(B) the former nurse aide has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former nurse aide submitted the initial license application; and

(C) the former nurse aide is not listed on the EMR.

TAB 5

Item e.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose amendments to certain sections and a new section in Title 40, Texas Administrative Code (40 TAC), Chapter 15, Licensing Standards for Prescribed Pediatric Extended Care Centers.

AGENDA ITEM No.: 6e

BACKGROUND: Federal requirement Legislative requirement Other

The proposed amendments and new section implement House Bill (H.B.) 2340, 84th Legislature, Regular Session, 2015, which amended Texas Health and Safety Code (THSC), Chapter 248A, governing prescribed pediatric extended care centers (PPECCs). The proposal allows an applicant for a license to operate a PPECC to obtain a temporary license. DADS grants a temporary license if an applicant meets the requirements of a Life Safety Code inspection and DADS approves the applicant's written policies and procedures. With a temporary license, a PPECC may admit up to six minors before requesting an initial onsite health inspection. A temporary license expires six months after the date the license is granted unless DADS grants a one-time, 90-day extension. The proposal also implements amendments made by H.B. 2340 to THSC §248A.051, clarifying that an applicant for a PPECC license may not provide services until DADS issues a license, and THSC §248A.151, providing that a parent is not required to accompany a minor during the provision of services or during transportation of a minor to and from the PPECC. The proposal also adds the definitions of "license."

ISSUES AND ALTERNATIVES

There are no current issues related to the proposed amendments and new rule.

STAKEHOLDER INVOLVEMENT

DADS held a public stakeholder meeting on February 17, 2016, to allow stakeholders to comment on the proposed rules. A representative from Health and Human Services Commission (HHSC) Medicaid/Children's Health Insurance Program Division attended the meeting and provided a brief update related to the PPECC Medicaid policy. DADS incorporated stakeholder feedback into the proposed rules.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

Yes No N/A

Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

There is no fiscal impact to the agency related to the proposed rule amendments and new section.

RULE DEVELOPMENT SCHEDULE

June 9, 2016	Present to Aging and Disability Services Council
June 2016	Publish proposed rules in <i>Texas Register</i>
August 2016	Publish adopted rules in <i>Texas Register</i>
September 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rules.

May 23, 2016/15R15

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 15 LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED
CARE CENTERS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§15.1, 15.5, 15.501, 15.1101, and 15.1302; and new §15.123, in Chapter 15, Licensing Standards for Prescribed Pediatric Extended Care Centers.

BACKGROUND AND PURPOSE

The proposed amendments and new section implement House Bill (H.B.) 2340, 84th Legislature, Regular Session, 2015, which amended Texas Health and Safety Code (THSC), Chapter 248A, governing prescribed pediatric extended care centers (PPECCs). The proposal allows an applicant for a license to operate a PPECC to obtain a temporary license. DADS grants a temporary license if an applicant meets the requirements of a Life Safety Code inspection and DADS approves the applicant's written policies and procedures. With a temporary license, a PPECC may admit up to six minors before requesting an initial onsite health inspection. A temporary license expires six months after the date the license is granted unless DADS grants a one-time, 90-day extension. The proposal also implements amendments made by H.B. 2340 to THSC §248A.051, clarifying that an applicant for a PPECC license may not provide services until DADS issues a license, and THSC §248A.151, providing that a parent is not required to accompany a minor during the provision of services or during transportation of a minor to and from the PPECC. The proposal also adds the definitions of "license."

SECTION-BY-SECTION SUMMARY

The proposed amendment to §15.1 prohibits an applicant from providing services under the license for which an application has been filed until DADS issues the license. This clarification is consistent with amendments to THSC Chapter 248A made by H.B. 2340.

The proposed amendment to §15.5 adds a definition of "license" to clarify that the term includes the three types of licenses DADS may grant: an initial, a temporary, and a renewal license.

The proposed new §15.123 sets forth the process a license applicant must follow to obtain a temporary license. An applicant may request that DADS issue a temporary license while DADS reviews an application for an initial license. The applicant must submit a temporary license request in writing to the DADS, meet the requirements of a Life Safety Code inspection, and obtain approval from DADS of the applicant's written policies and procedures for the PPECC. If the applicant meets the requirements of §15.123, DADS issues a 90-day temporary license. DADS may grant one 90-day extension of the temporary license. After an applicant receives the temporary license, the license holder may admit no more than six minors to the PPECC until the temporary license expires or terminates. A temporary license holder must comply with all of the

requirements of THSC Chapter 248A for maintaining a PPECC license. The new section implements amendments to THSC Chapter 248A made by H.B. 2340.

The proposed amendment to §15.501 clarifies that a minor's parent is not required to accompany the minor when the minor receives services in a PPECC. This clarification is consistent with amendments to THSC Chapter 248A made by H.B. 2340.

The proposed amendment to §15.1101 clarifies that a minor's parent is not required to accompany the minor when a PPECC transports or provides for the transport of a minor. This clarification is consistent with amendments to THSC Chapter 248A made by H.B. 2340.

The proposed amendment to §15.1302 corrects a statutory reference to reflect the authority under which abuse, neglect, and exploitation in a PPECC are investigated.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments 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 amendments and new section will not have an adverse economic effect on small business and micro-business because there is no cost to comply with the amendments and new section.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is minors will have access to PPECC services while DADS reviews a license application.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section 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 Josie Esparza at (512) 438-4077 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R15, 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 15R15" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 15 LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC
 EXTENDED CARE CENTERS
SUBCHAPTER A PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND
 DEFINITIONS
RULE §15.1, §15.5

Proposed action:

X Amendment

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; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The amendments implement Texas Government Code, §531.0055 and Texas Health and Safety Code, §248A.101.

§15.1. Purpose.

(a) The purpose of this chapter is to implement THSC Chapter 248A, which directs the executive commissioner of the Texas Health and Human Services Commission to adopt minimum standards that a person must meet to be licensed as a center.

(b) Except as provided by THSC §248A.002, a person may not own or operate a center unless the person holds a license issued by DADS under THSC Chapter 248A and this chapter.

(c) An applicant may not provide services under a license for which an application has been filed until DADS issues the license.

§15.5. Definitions.

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

(1) Active Play--Any physical activity from which a minor derives amusement, entertainment, enjoyment, or satisfaction by taking a participatory rather than a passive role. Active play includes various forms of activities, from the exploration of objects and toys to the structured play of formal games, sports, and hobbies.

(2) Actual census--The number of minors at a center at any given time.

(3) Administration of medication--The direct application of a medication to the body of a minor by any route. This includes removing an individual or unit dose from a previously dispensed, correctly labeled container, verifying it with the medication order, giving the correct medication and the correct dose to the correct minor at the correct time by the correct route, and accurately recording the time and dose given.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a center and for administratively supervising the provision of services to minors and their parents on a day-to-day basis.

(5) Adult minor--A minor who is 18 years of age or older or is emancipated, and has not been adjudged incompetent.

(6) Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means an officer, director, or stockholder with direct ownership or disclosable interest of at least five percent, a subsidiary, or a parent company;

(B) a limited liability company--means an officer, member, or parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which an individual or any affiliate of an individual is a partner; and

(iii) each corporation in which an individual is an officer, director, or stockholder with a direct ownership of at least five percent;

(D) a partnership--means a partner or a parent company of the partnership; and

(E) a group of co-owners under any other business arrangement means an officer, director, or the equivalent under the specific business arrangement or a parent company.

(7) Applicant--A person who applies for a license under THSC Chapter 248A and this

chapter. The applicant is the person in whose name DADS issues the license.

(8) Audiologist--A person who has a valid license under Texas Occupations Code, Chapter 401, as an audiologist.

(9) Basic services--Include:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's parent; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor; and

(B) the caregiver training needs of a medically dependent or technologically dependent minor's parent.

(10) Behavioral emergency--A situation that occurs after which preventative, or de-escalating techniques are attempted and determined to be ineffective and it is immediately necessary to restrain a minor to prevent immediate probable death or substantial bodily harm to the minor or to others because the minor is attempting serious bodily harm or immediate physical harm to the minor or to others.

(11) Business day--Any day except a national or state holiday listed in Texas Government Code §662.003(a) or (b). The term includes Saturday or Sunday if the center is open on that day.

(12) Center--A prescribed pediatric extended care center. A facility operated for profit or on a nonprofit basis that provides nonresidential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

(13) Chemical restraint--The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, to restrict the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior and which is not a standard treatment for a minor's medical or psychosocial condition.

(14) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a center.

(15) Clinical note--A notation of a contact with a minor or a minor's family member that is written and dated by any staff providing services on behalf of a center and that describes signs and symptoms of the minor, and treatments and medications administered to the minor, including the minor's reaction or response, and any changes in physical, emotional, psychosocial, or

spiritual condition of the minor during a given period of time.

(16) Commission--The Texas Health and Human Services Commission.

(17) Commissioner--The commissioner of the Department of Aging and Disability Services (DADS).

(18) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(19) Complaint--An allegation against a center or involving services provided at a center that involves a violation of this chapter or THSC Chapter 248A.

(20) Continuous face-to-face observation--Maintaining an in-person line of sight of a minor that is uninterrupted and free from distraction.

(21) Contractor--An individual providing services ordered by a prescribing physician on behalf of a center that the center would otherwise provide by its employees.

(22) Controlling person--A person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a center or other person.

(A) A controlling person includes:

(i) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

(ii) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(iii) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(B) Notwithstanding any other provision of this paragraph, a controlling person of a center or of a management company or other business entity described by subparagraph (A)(i) of this paragraph that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(C) A controlling person described by subparagraph (A)(iii) of this paragraph does not

include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of the center.

(23) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(24) DADS--Department of Aging and Disability Services.

(25) Daily census--The number of minors served at a center during a center's hours of operation for a 24-hour period, starting at midnight.

(26) Day--A calendar day, unless otherwise specified in the text. A calendar day includes Saturday, Sunday, and a holiday.

(27) Dietitian--A person who has a valid license under the Licensed Dietitian Act, Texas Occupations Code, Chapter 701, as a licensed dietitian or provisional licensed dietitian, or who is registered as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association.

(28) Emergency situation--An impending or actual situation that:

(A) interferes with normal activities of a center or minors at a center;

(B) may:

(i) cause injury or death to a minor or individual at the center; or

(ii) cause damage to the center's property;

(C) requires the center to respond immediately to mitigate or avoid injury, death, damage, or interference; and

(D) does not include a situation that arises from the medical condition of a minor such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(29) Executive commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(30) Functional assessment--An evaluation of a minor's abilities, wants, interests, and needs related to self-care, communication skills, social skills, motor skills, play with toys or objects, growth, and development appropriate for age.

(31) Health care provider--An individual or facility licensed, certified, or otherwise authorized to administer health care in the ordinary course of business or professional practice.

(32) Health care setting--A location at which licensed, certified, or otherwise regulated health

care is administered.

(33) IDT--Interdisciplinary team. Individuals who work together to meet the medical, nursing, psychosocial, and developmental needs of a minor and a minor's parent's training needs.

(34) Inactive medical record--A record for a minor who was admitted by a center to receive services and was subsequently discharged by the center.

(35) Inspection--An on-site examination or audit of a center by DADS to determine compliance with THSC Chapter 248A and this chapter.

(36) Isolation--The involuntary confinement of a minor in a room of a center for the purposes of infection control, assessment, and observation away from other minors in a room at the center. When in isolation, a minor is physically prevented from contact with other minors.

(37) Joint training--Training provided by DADS to service providers and DADS inspectors on subjects that address the 10 most commonly cited violations of state law governing centers, as published in DADS annual reports. DADS determines the frequency of joint training.

(38) License--A license to operate a center issued by DADS under THSC Chapter 248A and this chapter. The term includes initial, renewal, and temporary licenses unless specifically stated otherwise.

(39) [(38)] Licensed assistant in speech-language pathology--A person who has a valid license under Texas Occupations Code, Chapter 401, as a licensed assistant in speech-language pathology and who provides speech language support services under the supervision of a licensed speech-language pathologist.

(40) [(39)] Licensed vocational nurse--LVN. A person who has a valid license under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(41) [(40)] Life Safety Code--A publication of the National Fire Protection Association (NFPA), also known as NFPA 101, 2000 edition.

(42) [(41)] Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(43) [(42)] Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge for the geographical area in which a center is located.

(44) [(43)] Mechanical restraint--The use of any mechanical device, material, or equipment to restrict the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior.

(45) [(44)] Medical director--A physician who has the qualifications described in §15.307 of

this chapter (relating to Medical Director Qualifications and Conditions) and has the responsibilities described in §15.308 of this chapter (relating to Medical Director Responsibilities).

(46) [~~(45)~~] Medical record--A record composed first-hand for a minor who has or is receiving services at a center.

(47) [~~(46)~~] Medically dependent or technologically dependent--The condition of an individual who, because of an acute, chronic, or intermittent medically complex or fragile condition or disability, requires ongoing, technology-based skilled nursing care prescribed by a physician to avert death or further disability, or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include a controlled or occasional medical condition that does not require continuous nursing care, including asthma or diabetes, or a condition that requires an epinephrine injection.

(48) [~~(47)~~] Medication administration record--A record used to document the administration of a minor's medications and pharmaceuticals.

(49) [~~(48)~~] Medication list--A list that includes all prescriptions, over-the-counter pharmaceuticals, and supplements that a minor is prescribed or taking, including the dosage, preparation, frequency, and the method of administration.

(50) [~~(49)~~] Minor--An individual younger than 21 years of age who is medically dependent or technologically dependent.

(51) [~~(50)~~] Mitigation--An action taken to eliminate or reduce the probability of an emergency or public health emergency, or reduce an emergency's severity or consequences.

(52) [~~(51)~~] Nursing director--The individual responsible for supervising skilled services provided at a center and who has the qualifications described in §15.309 of this chapter (relating to the Nursing Director and Alternate Nursing Director Qualifications and Conditions).

(53) [~~(52)~~] Nutritional counseling--Advising and assisting an adult minor or a minor's parent or family on appropriate nutritional intake by integrating information from a nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. The term includes:

(A) dialogue with an adult minor or a minor's parent to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help an adult minor or the minor's parent understand why certain foods should be included or excluded from the minor's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the minor's physician, to include

instructions for implementation;

(D) providing the adult minor or the minor's parent with motivation to help them understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the adult minor or the minor's parent by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(54) [~~(53)~~] Occupational therapist--A person who has a valid license under Texas Occupations Code, Chapter 454, as an occupational therapist.

(55) [~~(54)~~] Occupational therapy assistant--A person who has a valid license under Texas Occupations Code, Chapter 454, as an occupational therapy assistant who assists in the practice of occupational therapy under the general supervision of an occupational therapist.

(56) [~~(55)~~] Operating hours--The days of the week and the hours of day a center is open for services to a minor as identified in a center's written policy as required by §15.201 of this chapter (relating to Operating Hours).

(57) [~~(56)~~] Overnight--The hours between 9:00 p.m. and 5:00 a.m. during the days of the week a center operates.

(58) [~~(57)~~] Over-the-counter pharmaceuticals--A drug or formulary for which a physician's prescription is not needed for purchase or administration.

(59) [~~(58)~~] Parent--A person authorized by law to act on behalf of a minor with regard to a matter described in this chapter. The term includes:

(A) a biological, adoptive, or foster parent;

(B) a guardian;

(C) a managing conservator; and

(D) a non-parent decision-maker as authorized by Texas Family Code §32.001.

(60) [~~(59)~~] Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of a center.

(61) [~~(60)~~] Person--An individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(62) [~~(61)~~] Person with a disclosable interest--A person who owns at least a five percent interest in any corporation, partnership, or other business entity that is required to be licensed under THSC Chapter 248A. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual

loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the center.

(63) [~~(62)~~] Personal care services--Services required by a minor, including:

- (A) bathing;
- (B) maintaining personal hygiene;
- (C) routine hair and skin care;
- (D) grooming;
- (E) dressing;
- (F) feeding;
- (G) eating;
- (H) toileting;
- (I) maintaining continence;
- (J) positioning;
- (K) mobility and bed mobility;
- (L) transfer and ambulation;
- (M) range of motion;
- (N) exercise; and
- (O) use of durable medical equipment.

(64) [~~(63)~~] Pharmaceuticals--Of or pertaining to drugs, including over-the-counter drugs and those requiring a physician's prescription for purchase or administration.

(65) [~~(64)~~] Pharmacist--A person who is licensed to practice pharmacy under Texas Occupations Code, Chapter 558.

(66) [~~(65)~~] Pharmacy--A facility at which a prescription drug or medication order is received, processed, or dispensed as defined in Texas Occupations Code §551.003.

(67) [~~(66)~~] Physical restraint--The use of physical force, except for physical guidance or prompting of brief duration, that restricts the free movement of all or a portion of a minor's body

for the purpose of modifying or controlling the minor's behavior.

(68) [~~(67)~~] Physical therapist--A person who has a valid license under Texas Occupations Code, Chapter 453, as a physical therapist.

(69) [~~(68)~~] Physical therapist assistant--A person who has a valid license under Texas Occupations Code, Chapter 453, as a physical therapist assistant and:

(A) who assists and is supervised by a physical therapist in the practice of physical therapy; and

(B) whose activities require an understanding of physical therapy.

(70) [~~(69)~~] Physician--A person who:

(A) has a valid license in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) has a valid license in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a minor, and orders services for the minor, in accordance with Texas Occupations Code, Chapter 151; or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with Texas Occupations Code, Chapter 151.

(71) [~~(70)~~] Place of business--An office of a center where medical records are maintained and from which services are directed.

(72) [~~(71)~~] Plan of care--A protocol of care.

(73) [~~(72)~~] Positive intervention--An intervention that is based on or uses a minor's preferences as positive reinforcement, and focuses on positive outcomes and wellness for the minor.

(74) [~~(73)~~] Pre-licensing program training--Computer-based training, available on DADS website, designed to acquaint center staff with licensure standards.

(75) [~~(74)~~] Preparedness--Actions taken in anticipation of a disaster including a public health disaster.

(76) [~~(75)~~] Prescribing physician--A physician who is authorized to write and issue orders for services at a center.

(77) [~~(76)~~] Progress note--A dated and signed written notation summarizing facts about services provided to a minor and the minor's response during a given period of time.

(78) [~~(77)~~] Protective device--A mechanism or treatment, including sedation, that is:

(A) used:

- (i) for body positioning;
- (ii) to immobilize a minor during a medical, dental, diagnostic, or nursing procedure;
- (iii) to permit wounds to heal; or
- (iv) for a medical condition diagnosed by a physician; and

(B) not used as a restraint to modify or control behavior.

(79) [~~(78)~~] Protocol of care--A comprehensive, interdisciplinary plan of care that includes the medical physician's plan of care, nursing care plan and protocols, psychosocial needs, and therapeutic and developmental service needs required by a minor and family served.

(80) [~~(79)~~] Psychologist--A person who has a valid license under Texas Occupations Code, Chapter 501, as a psychologist.

(81) [~~(80)~~] Psychosocial treatment--The provision of skilled services to a minor under the direction of a physician that includes one or more of the following:

- (A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;
- (B) teaching coping mechanisms or skills;
- (C) counseling activities; or
- (D) evaluation of a plan of care.

(82) [~~(81)~~] Public health disaster declaration--A governor's announcement based on a determination by the Department of State Health Services that there exists an immediate threat from a communicable disease that:

(A) poses a high risk of death or serious long-term disability to a large number of people;
and

(B) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(83) [~~(82)~~] Quiet time--A behavior management technique used to provide a minor with an opportunity to regain self-control, where the minor enters and remains for a limited period of time in a designated area from which egress is not prevented.

(84) [~~(83)~~] Recovery--Activities implemented during and after a disaster response, including a public health disaster response, designed to return a center to its normal operations as quickly as possible.

(85) [~~(84)~~] Registered nurse--RN. A person who has a valid license under Texas Occupations Code, Chapter 301, to practice professional nursing.

(86) [~~(85)~~] Relocation--The closing of a center and the movement of its business operations to another location.

(87) [~~(86)~~] Respiratory therapist--A person who has a valid license under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(88) [~~(87)~~] Response--Actions taken immediately before an impending disaster or during and after a disaster, including a public health disaster, to address the immediate and short-term effects of the disaster.

(89) [~~(88)~~] Restraint--Physical restraint, chemical restraint, or mechanical restraint.

(90) [~~(89)~~] RN delegation--Delegation of tasks by an RN in accordance with 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).

(91) [~~(90)~~] Sedation--The act of allaying nervous excitement by administering medication that commonly induces the nervous system to calm. Sedation is a protective device.

(92) [~~(91)~~] Social worker--A person who has a valid license under Texas Occupations Code, Chapter 505, as a social worker.

(93) [~~(92)~~] Speech-language pathologist--A person who has a valid license under Texas Occupations Code, Chapter 401, as a speech-language pathologist.

(94) [~~(93)~~] Substantial compliance--A finding in which a center receives no recommendation for enforcement action after an inspection.

(95) [~~(94)~~] Supervision--Authoritative procedural guidance by a qualified person that instructs another person and assists in accomplishing a function or activity. Supervision includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(96) [~~(95)~~] Support services--Social, spiritual, and emotional care provided to a minor and a minor's parent by a center.

(97) [~~(96)~~] THSC--Texas Health and Safety Code.

(98) [~~(97)~~] Total census--The total number of minors with active plans of care at a center.

(99) [(98)] Transition support--Planning, coordination, and assistance to move the location of services provided to a minor from a center to the least restrictive setting appropriate.

(100) [(99)] Violation--A finding of noncompliance with this chapter or THSC Chapter 248A resulting from an inspection.

(101) [(100)] Volunteer--An individual who provides assistance to a center without compensation other than reimbursement for actual expenses.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 15 LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC
 EXTENDED CARE CENTERS
SUBCHAPTER B LICENSING APPLICATION, MAINTENANCE, AND FEES
RULE §15.123

Proposed action:

X New

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; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new section implements Texas Government Code, §531.0055 and Texas Health and Safety Code, §248A.101.

§15.123 Request and Issuance of Temporary License

(a) An applicant for an initial license under §15.105 of this subchapter (relating to Initial License Application Procedures and Issuance) may request that DADS issue a temporary license pending DADS review of the applicant's application for an initial license.

(b) To request a temporary license, the applicant must submit to DADS Provider Licensure and Certification Unit a written request for a temporary license and a copy of the applicant's policies, procedures and staffing plans that demonstrate compliance with the licensing standards of this chapter.

(c) DADS issues a temporary license to an applicant who has requested a temporary license if DADS:

(1) determines that the applicant has submitted an application for an initial license in accordance with §15.105 of this subchapter (relating to Initial License Application Procedures and Issuance);

(2) determines that the applicant meets the building requirements of Subchapter E of this chapter; and

(3) approves the applicant's policies, procedures and staffing plans submitted in accordance with subsection (b) of this section.

(d) If DADS issues a temporary license, the center may admit no more than six minors to the center until the temporary license expires or terminates.

(e) The issuance of a temporary license constitutes DADS notice to the applicant of the approval of the temporary license request.

(f) A temporary license expires on the earlier of:

(1) 90 days after DADS issues the temporary license or the last day of any extension DADS grants in accordance with subsection (g) of this section; or

(2) the date DADS issues an initial license.

(g) A temporary license holder may request that DADS extend the term of a temporary license by 90 days. To request an extension, the license holder must submit to DADS Provider License and Certification Unit, a written request for an extension. If DADS receives the request at least 30 days before the date the temporary license expires, DADS extends the term of the license for 90 days and notifies the temporary license holder of the extension in writing. DADS grants an applicant only one temporary license extension for a center.

(h) A temporary license holder must comply with the requirements of THSC Chapter 248A and the licensing standards of this chapter for the term of the temporary license. DADS may take the enforcement action described in Subchapter G of this chapter (relating to Enforcement) if the temporary license holder does not comply with THSC Chapter 248A or this chapter.

(i) DADS may visit or conduct an investigation or inspection of a center owned or operated by a temporary license holder, as described in Subchapter F of this chapter (relating to Inspections and Visits).

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 15	LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS
SUBCHAPTER C	GENERAL PROVISIONS
DIVISION 4	GENERAL SERVICES
RULE	§15.501

Proposed action:
X Amendment

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; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The amendment implements Texas Government Code, §531.0055 and Texas Health and Safety Code, §248A.101.

§15.501. Basic Services.

(a) A center must ensure the provision of all basic services based on the needs of a minor and a minor's family in accordance with the plan of care.

(b) A minor's parent is not required to accompany the minor when the minor receives services in the center, including therapeutic services provided in the center but billed separately.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 15	LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS
SUBCHAPTER D	TRANSPORTATION
RULE	§15.1101

Proposed action:
X Amendment

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; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The amendment implements Texas Government Code, §531.0055 and Texas Health and Safety

Code, §248A.101.

§15.1101. Transportation Services.

(a) A center must ensure transportation services are provided for a minor, as authorized by an adult minor, the minor's parent, and the minor's prescribing physician:

- (1) from the minor's home to the center;
- (2) from the center to the minor's home; and
- (3) to and from the center for services coordinated by the center.

(b) A minor's parent is not required to accompany the minor when the center transports or provides for the transport of the minor.

(c) [(b)] A center must ensure that vehicles are accessible for a minor with disabilities and equipped to meet the needs of a minor during transport.

(d) [(e)] A minor's parent may decline a center's transportation services.

(e) [(d)] A center must adopt and enforce written policies and procedures describing the staff and equipment that will accompany a minor during transportation. The staff must include a driver and a nurse.

(f) [(e)] A center must ensure that:

(1) a person transporting a minor on behalf of a center has a valid and appropriate Texas driver's license, a copy of which the center must keep on file;

(2) a vehicle used to transport a minor has a current Texas safety inspection sticker and vehicle registration decal properly affixed to a vehicle;

(3) the center maintains commercial insurance for the operation of a center's vehicles, including coverage for minors and staff in a center's vehicle in the event of accident or injury;

(4) documentation of the insurance is maintained and includes:

- (A) the name of the insurance company;
- (B) the insurance policy number;
- (C) the period of coverage; and
- (D) an explanation of the coverage;

(5) the center provides a driver and the center's nurse with an up-to-date master transportation list that includes a minor's name, pick up and drop off locations, and authorized persons to whom a minor may be released;

(6) the master transportation list is on file at the center;

(7) the driver and the center's nurse riding in the vehicle maintain a daily attendance record for each trip that includes the driver's name, the date, names of all passengers in the vehicle, the name of the person to whom a minor was released, and the time of release; and

(8) the number of people in a vehicle used to transport minors does not exceed the manufacturer's recommended capacity for the vehicle.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 15	LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS
SUBCHAPTER F	INSPECTIONS AND VISITS
RULE	§15.1302

Proposed action:
 Amendment

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; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The amendment implements Texas Government Code, §531.0055 and Texas Health and Safety Code, §248A.101.

§15.1302. Investigation of Complaints and Self-Reported Incidents.

(a) DADS investigates complaints of abuse, neglect, or exploitation if:

- (1) the act occurs at the center;
- (2) the center is responsible for the supervision of a minor at the time the act occurs;
- (3) the alleged perpetrator is associated with the center; or

(4) the alleged perpetrator is present at the center.

(b) DADS refers complaints of abuse, neglect, or exploitation not meeting the criteria in subsection (a) of this section to the Department of Family and Protective Services.

(c) DADS conducts an investigation under this section in accordance with THSC §260A.007 [~~§260.007~~].

(d) A center's investigation of complaints and self-reported incidents does not preclude DADS from taking action in accordance with Subchapter G of this chapter (relating to Enforcement).

(e) DADS notifies the following individuals of the results of a DADS investigation:

(1) the individual who reported the allegation or complaint;

(2) an adult minor;

(3) a minor's parent;

(4) any person designated by an adult minor or minor's parent to receive information concerning a minor; and

(5) a center.

TAB 5

Item f.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose amendments to Title 40, Texas Administrative Code (40 TAC), Chapter 98, Adult Day Care and Day Activity and Health Services Requirements.

AGENDA ITEM No.: 6f

BACKGROUND: Federal requirement Legislative requirement Other

The purpose of the proposed amendments and new section is to implement changes made by Senate Bill (S.B.) 1999, 84th Legislature, Regular Session, 2015. Senate Bill 1999 amended the title of Texas Human Resources Code (THRC), Chapter 103, from Adult Day Care to Day Activity and Health Services, and made additional conforming amendments to the chapter. The proposed amendments change the title of Chapter 98 and change terminology throughout the chapter to conform to S.B. 1999. In addition, the proposed amendments restate the purpose of the chapter more succinctly, delete unnecessary definitions, and amend definitions for consistency and clarity. The term “DAHS facility” is redefined to be consistent with the type of facility that must be licensed under THRC Chapter 103. The term “DAHS facility,” as currently used in Chapter 98, refers to an entity that contracts with DADS to provide DAHS in accordance with Subchapter H. For that reason, a new section, §98.200, is proposed to clarify that Subchapter H applies only to a licensed DAHS facility that contracts with DADS to provide DAHS. At a later date, the rules in Subchapter H will be amended to change “DAHS facility” to another term that reflects that the entities referenced in Subchapter H are those that contract with DADS to provide DAHS. Other proposed amendments update terminology, including replacing “client” with “individual,” and referring to the Texas Board of Nursing. The proposed amendments clarify the meaning of the rules by restructuring provisions, deleting passive voice, and using consistent terminology.

ISSUES AND ALTERNATIVES

There are no outstanding issues or concerns with implementation of the proposed amendments and new section.

STAKEHOLDER INVOLVEMENT

A public meeting was held on February 24, 2016, at the John H. Winters Building for external stakeholders to provide comment and ask questions regarding the proposal. In addition, external stakeholders were provided a copy of the proposal through Gov-delivery and email on February 22, 2016.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

Yes No N/A

Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

DADS has determined that there are no foreseeable implications relating to costs or revenues of state government or local government as a result of administering or enforcing the proposed amendments and new section.

RULE DEVELOPMENT SCHEDULE

June 9, 2016	Present to Aging and Disability Services Council
July 2016	Publish proposed rules in <i>Texas Register</i>
September 2016	Publish adopted rules in <i>Texas Register</i>
October 1, 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rule.

May 18, 2016/15R19

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 98 DAY ACTIVITY AND HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§98.1, 98.2, 98.11, 98.62, and new §98.200, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments and new section is to implement changes made by Senate Bill (S.B.) 1999, 84th Legislature, Regular Session, 2015. Senate Bill 1999 amended the title of Texas Human Resources Code (THRC), Chapter 103, from Adult Day Care to Day Activity and Health Services, and made additional conforming amendments to the chapter. The proposed amendments change the title of Chapter 98 and change terminology throughout the chapter to conform to S.B. 1999. In addition, the proposed amendments restate the purpose of the chapter more succinctly, delete unnecessary definitions, and amend definitions for consistency and clarity. The term “DAHS facility” is redefined to be consistent with the type of facility that must be licensed under THRC Chapter 103. The term “DAHS facility,” as currently used in Chapter 98, refers to an entity that contracts with DADS to provide DAHS in accordance with Subchapter H. For that reason, a new section, §98.200, is proposed to clarify that Subchapter H applies only to a licensed DAHS facility that contracts with DADS to provide DAHS. At a later date, the rules in Subchapter H will be amended to change “DAHS facility” to another term that reflects that the entities referenced in Subchapter H are those that contract with DADS to provide DAHS. Other proposed amendments update terminology, including replacing “client” with “individual,” and referring to the Texas Board of Nursing. The proposed amendments clarify the meaning of the rules by restructuring provisions, deleting passive voice, and using consistent terminology.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §98.1 more succinctly states the purpose of the chapter, which is to provide licensing procedures and standards, as well as contracting requirements for DAHS facilities.

The proposed amendment to §98.2 deletes the definitions of “adult day care facility” and adds definitions of “DAHS,” “DAHS facility,” and “DAHS program” that are consistent with THRC, Chapter 103. The amendment deletes definitions of “contract manager,” “DHS,” and “handicapped person” because the terms are not used in Chapter 98. The term “individual plan of care” is deleted because the term “plan of care” is defined. The term “facility” is used throughout Chapter 98 to refer to a licensed DAHS facility, so that term remains in the definitions. In addition, the definitions of “registered nurse” and “licensed vocational nurse” are amended to

refer to the Texas Board of Nursing. Editorial changes are made to other definitions to clarify their meanings.

The proposed amendment to §98.11 updates terminology to comply with THRC, Chapter 103. Other changes clarify the meaning of the rules by restructuring provisions, deleting passive voice, and using consistent terminology.

The proposed amendment to §98.62 updates terminology to comply with THRC, Chapter 103. The amendment refers to the Texas Board of Nursing instead of the Board of Nurse Examiners. The amendment also deletes references to the Texas Board of Licensure for Nursing Facility Administrators. A person receiving services from a DAHS facility is referred to as “individual,” rather than a “client.” Other changes clarify the meaning of the rules by restructuring provisions, deleting passive voice, and using consistent terminology.

Proposed new §98.200 clarifies that Subchapter H applies only to DAHS facilities that contract with DADS to provide DAHS.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section 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 new section may have an adverse economic effect on small businesses or micro-businesses that operate DAHS facilities, if they must update terminology in business materials, such as signage and business cards. The changes in terminology are required by statute so no alternatives were considered. DADS is unable to estimate the potential cost to small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is that the terminology in rules will be consistent with the governing statute and more respectful to persons receiving services in a DAHS facility.

Ms. Henderson anticipates that there may be an economic cost to persons who are required to comply with the amendments to reflect the new terminology in business materials, such as signage and business cards, but the cost is expected to be minimal. The amendments and new section 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 Lorraine Brady at (512) 438-2235 in DADS Policy, Rules and Curriculum, Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R19, 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 15R19" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 98	[ADULT DAY CARE AND] DAY ACTIVITY AND HEALTH SERVICES
SUBCHAPTER A	INTRODUCTION
RULE	§§98.1, 98.2

Proposed action:

X Amendment

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation of and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §103.004 and §103.006, which provide that the HHSC executive commissioner shall adopt rules governing licensure of day activity and health services facilities; and 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.

The amendments implement Texas Government Code, §531.0055; and Texas Human Resources Code, §§103.004, 103.006, and 161.021.

§98.1. Purpose.

The purpose of this chapter is to:

~~[implement the provisions of the Human Resources Code, Chapter 103, by providing licensing procedures, establishing standards for quality adult day care, and a safe and sanitary environment for clients of adult day care facilities; and to implement 45 Code of Federal Regulations (CFR), Part 96, Title XX of the Social Security Act, and 42 CFR §440.130(d), Title XIX of the Social Security Act to provide for the care, treatment, health, safety, and welfare of Medicaid clients' day activity and health services in adult day care facilities. Day Activity and Health Services must comply with the following additional requirements found in Chapter 20 of this title (relating to Cost Determination Process), Chapter 12, Subchapter A of this title (relating to Child and Adult Care Food Program), Chapter 48 of this title (relating to Community Care for the~~

~~Aged and Disabled), Chapter 49 of this title (relating to Contracting for Community Care Services), Chapter 69 of this title (relating to Contracted Services), and Chapter 79 of this title (relating to Legal Services).]~~

(1) implement Texas Human Resources Code, Chapter 103, by establishing licensing procedures and standards for a DAHS facility; and

(2) establish requirements for a DAHS facility contracting with DADS to provide DAHS under Title XX or Title XIX of the Social Security Act.

§98.2. Definitions.

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

(1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code, §21.08, [Penal Code] (indecent exposure) or Texas Penal Code, Chapter 22, [Penal Code] (assaultive offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Adult--A person 18 years of age or older, or an emancipated minor.

~~[(3) Adult day care facility—A facility that provides services under an Adult Day Care Program on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.]~~

~~[(4) Adult day care program—A structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.]~~

(3) [(5)] Affiliate--With respect to a:

(A) partnership, each partner of the partnership [thereof];

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which the ~~said~~ person is an officer, director, principal stockholder, or person with a disclosable interest.

(4) ~~(6)~~ Ambulatory--Mobility not relying on walker, crutch, cane, other physical object, or use of wheelchair.

(5) ~~(7)~~ Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.

(6) ~~(8)~~ Authorization--A case manager's decision, before DAHS begins ~~services begin~~ and before payment can be made, that DAHS may be provided to an individual.

(7) ~~(9)~~ Case manager--A DADS employee who is responsible for DAHS case management activities. Activities include eligibility determination, individual enrollment, assessment and reassessment of an individual's need, service plan development, and intercession on the individual's behalf.

(8) ~~(10)~~ Caseworker--Case manager.

(9) ~~(11)~~ Client--Individual.

(10) ~~(12)~~ Construction, existing--See definition of existing building.

(11) ~~(13)~~ Construction, new--Construction begun after April 1, 2007.

(12) ~~(14)~~ Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

~~[(15) Contract manager--A DADS employee, designated as the primary contact point between the facility and DADS, who is responsible for the overall management of the DAHS contract.]~~

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

(14) DAHS--Day activity and health services. Health, social, and related support services.

(15) ~~(17)~~ DAHS facility-- A facility that provides services under a day activity and health services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related by blood, marriage or adoption to the owner of the facility. [An entity that contracts with DADS to provide day activity and health services.]

(16) ~~(18)~~ DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing

DAHS in accordance with individual plans of care in a protective setting. [~~Day activity and health services (DAHS)–Structured program services designed to meet the needs of an adult by providing health, social, and related services in a DAHS facility.~~]

(17) [(19)] Days--Calendar days, [~~not workdays,~~] unless otherwise specified. [~~noted in the text.~~]

(18) [(20)] Department--Department of Aging and Disability Services.

[(21) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.]

(19) [(22)] Dietitian consultant--A registered dietitian; a person licensed by the Texas State Board of Examiners of Dietitians; or a person with a bachelor's [~~baccalaureate~~] degree with major studies in food and nutrition, dietetics, or food service management.

(20) [(23)] Direct service staff--An employee or contractor of a facility who directly provides [~~direct~~] services to individuals, [~~clients,~~] including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a [~~is a person who may provide direct services to clients of the facility such as a facility bus~~] driver, food service worker, aide, janitor, porter, maid, and laundry worker. A dietitian consultant is not a member of the direct service staff.

(21) [(24)] Director--The person responsible for the overall operation of a facility.

(22) [(25)] Elderly person--A person 65 years of age or older.

(23) [(26)] Existing building-- A building or portion thereof that, at the time of initial inspection by DADS, is used as an adult day care occupancy, as defined by Life Safety Code, NFPA 101, 2000 edition, Chapter 17 for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies. [~~In these standards, except where defined otherwise, a] building either occupied as an adult day care facility at the time of initial inspection by DADS or converted to occupancy as an adult day care facility.~~]

(24) [(27)] Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual, who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(25) [(28)] Facility--A licensed DAHS facility. [~~An adult day care facility, unless otherwise specified.~~]

(26) [(29)] Fence--A barrier to prevent elopement of an individual [~~a client~~] or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(27) [(30)] FM [approval]-- FM Global. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to DADS. [A third party certification of a product by FM (formerly known as Factory Mutual Insurance Company). FM approval provides third party certification and testing of products acceptable to DADS.]

(28) [(31)] Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(29) [(32)] Functional impairment--A condition that requires assistance with one or more personal care services [including bathing, dressing, preparing meals, feeding, grooming, taking self-administered medication, toileting, and ambulation].

[(33) Handicapped person--As used in this chapter, the term "person with disabilities" is used in place of the term "handicapped person" as that term is used in Texas Human Resources Code, Chapter 103.]

(30) [(34)] Health assessment--An assessment of an individual by a facility used to develop the individual's plan of care. [A plan of care that identifies the specific needs of a client and how those needs will be addressed by a facility.]

(31) [(35)] Health services--[Health services] Services that include personal care, nursing, and therapy services. [Personal care services include services listed under the definition of functional impairment in this section. Nursing services may include the administration of medications; physician ordered treatments, such as dressing changes; and monitoring the health condition of the individual. Therapy services may include physical, occupational, or speech therapy.]

(A) Personal care services include: [services listed under the definition of functional impairment in this section.]

(i) bathing;

(ii) dressing;

(iii) preparing meals;

(iv) feeding;

(v) grooming;

(vi) taking self-administered medication;

(vii) toileting;

(viii) ambulation; and

(ix) assistance with other personal needs or maintenance.

(B) Nursing services may include:

(i) the administration of medications;

(ii) physician-ordered treatments, such as dressing changes; and

(iii) monitoring the health condition of the individual.

(C) Therapy services may include:

(i) physical;

(ii) occupational; and

(iii) speech therapy.

~~(32) [(36)] Human services--Include the following services: [All of the following major areas constitute human services:~~

~~(A) personal social services (day care, counseling, in-home care, protective services);~~

~~(B) health services (home health, family planning, preventive health programs, nursing home, hospice);~~

~~(C) education services (all levels of school, Head Start, vocational programs);~~

~~(D) housing and urban environment services (Section 8, public housing);~~

~~(E) income transfer services (Temporary Assistance for Needy Families, Food Stamps);~~
and

~~(F) justice and public safety services (parole and probation, rehabilitation).]~~

(A) personal social services, including:

(i) DAHS;

(ii) counseling;

(iii) in-home care; and

(iv) protective services;

(B) health services, including:

(i) home health;

(ii) family planning;

(iii) preventive health programs;

(iv) nursing facility; and

(v) hospice;

(C) education services, meaning:

(i) all levels of school;

(ii) Head Start; and

(iii) vocational programs;

(D) housing and urban environment services, including public housing;

(E) income transfer services, including:

(i) Temporary Assistance for Needy Families; and

(ii) Supplemental Nutrition Assistance Program; and

(F) justice and public safety services, including:

(i) parole and probation; and

(ii) rehabilitation.

(33) [(37)] Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program [~~programs are that they~~] are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and

(C) used to aid, rehabilitate, or treat people [~~those~~] in difficulty or need.

(34) [(38)] Individual--A person who applies for or is receiving services [~~provided~~] at a [~~an adult day care or DAHS~~] facility.

~~[(35) Individual plan of care--A written plan developed by a DAHS facility that documents functional impairment of and the health, social, and related support needed by an individual. The plan is developed jointly with and approved by the individual responsible party.]~~

(35) [(40)] Licensed vocational nurse (LVN)--A person [currently] licensed by the Texas Board of Nursing [~~Nurse Examiners for the State of Texas~~] who works under the supervision of a registered nurse (RN) or a physician.

(36) [(41)] Life Safety Code, NFPA 101--The Code for Safety to Life from Fire in Buildings and Structures, NFPA 101, a publication of the National Fire Protection Association, Inc. that: [~~The Life Safety Code, NFPA 101, addresses those construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic. The Life Safety Code, NFPA 101, establishes minimum criteria for the design of egress features so as to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.~~]

(A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and

(B) establishes minimum criteria for the design of egress features so as to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(37) [(42)] Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including: [~~a nursing facility, an assisted living facility, and a facility serving persons with mental retardation and related conditions.~~]

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) an assisted living facility licensed under Texas Health and Safety Code, Chapter 247;
and

(C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code, Chapter 252.

(38) [(43)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, and [ø] delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.

(39) [(44)] Manager--A person having a contractual relationship to provide management services to a facility.

(40) [(45)] Medicaid-eligible--An individual who is eligible for Medicaid.

(41) [(46)] Medically related [~~Medically related~~] program--A human services program under the human services-health services category in the definition of human services in this section.

(42) [(47)] Neglect--The failure to provide for one's self [~~oneself~~] the goods or services, including medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

(43) [(48)] NFPA--The National Fire Protection Association. NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(44) [(49)] NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by NFPA for the selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(45) [(50)] NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by NFPA for the minimum requirements for the design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and the selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(46) [(51)] NFPA 70--National Electrical Code. A code developed by NFPA for the installation of electric conductors and equipment.

(47) [(52)] NFPA 72--National Fire Alarm Code. A code developed by NFPA for the application, installation, performance, and maintenance of fire alarm systems and their components.

(48) [(53)] NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(49) [(54)] NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for the movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(50) [(55)] NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by NFPA that provides the minimum fire safety requirements related to the design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(51) [(56)] Nurse--A registered nurse (RN) or a licensed vocational nurse (LVN) licensed in the state of Texas.

(52) [(57)] Nursing services--Services provided by a licensed nurse, including: ~~nursing personnel, which include observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness;~~

~~guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.]~~

(A) observation;

(B) promotion and maintenance of health;

(C) prevention of illness and disability;

(D) management of health care during acute and chronic phases of illness;

(E) guidance and counseling of individuals and families; and

(F) referral to physicians, other health care providers, and community resources when appropriate.

(53) [(58)] Person--An individual, corporation, or association.

(54) [(59)] Person with a disclosable interest--~~[A person with a disclosable interest is any]~~ A ~~[Any]~~ person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Human Resources Code, Chapter 103. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(55) [(60)] Person with a disability ~~[disabilities]~~--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(56) [(61)] Physician's orders--An order ~~[for DAHS]~~ that is signed and dated by a medical doctor (MD) or doctor of osteopathy (DO) who is licensed to practice medicine in the state of Texas. The DADS physician's order form used by a DAHS facility that contracts with DADS must include the MD's or DO's ~~[physician's]~~ license number.

(57) [(62)] Plan of care-- A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual's responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual. ~~[See definition of health assessment.]~~

(58) [(63)] Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff ~~[or personnel (staff)]~~.

(59) [(64)] Registered nurse (RN)--A person ~~[currently]~~ licensed by the Texas Board of Nursing ~~[Nurse Examiners for the State of Texas]~~ to practice professional nursing.

(60) [(65)] Related support services--Services [Provision of services] to an [the] individual, family member, or [other] caregiver [caregivers] that may improve the person's [their] ability to assist with an individual's independence and functioning. Services include: [information and referral, transportation, teaching caregiver skills, respite, counseling, instruction and training, and support groups.]

(A) information and referral;

(B) transportation;

(C) teaching caregiver skills;

(D) respite;

(E) counseling;

(F) instruction and training; and

(G) support groups.

(61) [(66)] Responsible party--A person designated by an [Anyone the] individual as the individual's [designates as his] representative.

(62) [(67)] Safety--Protection [Action taken to protect] from injury or loss of life due to [such] conditions such as fire, electrical hazard, unsafe building or site conditions, and the presence of hazardous materials.

(63) [(68)] Sanitation--Protection [Action taken to protect] from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal belongings.

(64) [(69)] Semi-ambulatory--Mobility relying on a walker, crutch, cane, other physical object, or independent use of wheelchair.

(65) [(70)] Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(66) [(71)] Social activities--Therapeutic, educational, cultural enrichment, recreational, and other [social] activities in a facility [on-site] or in the community provided as part of [in] a planned program to meet the social needs and interests of an [the] individual.

(67) [(72)] UL--Underwriters Laboratories, Inc. A corporation whose approval of a product indicates a level of testing and certification that is [UL approval provides third party certification and testing of products] acceptable to DADS.

(68) [(73)] Working with people--Responsible for the delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity. [~~A person serving as a minister receiving an expense allowance in money plus free housing qualifies for experience in working with people.~~]

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 98 ~~[ADULT DAY CARE AND]~~ DAY ACTIVITY AND HEALTH
 SERVICES
SUBCHAPTER B APPLICATION PROCEDURES
RULE §98.11

Proposed action:

X Amendment

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation of and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §103.004 and §103.006, which provide that the HHSC executive commissioner shall adopt rules governing licensure of day activity and health services facilities; and 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.

The amendment implements Texas Government Code, §531.0055; and Texas Human Resources Code, §§103.004, 103.006, and 161.021.

§98.11. Criteria for Licensing

(a) A person must not establish or operate a DAHS facility in Texas without a license issued by DADS in accordance with Texas Human Resources Code, Chapter 103, and this chapter ~~[be licensed to establish or operate an adult day care facility in Texas]~~.

(b) An applicant for a license must submit a complete application form and license fee to DADS.

(c) An applicant for a license must affirmatively demonstrate ~~[show]~~ that the DAHS facility meets:

(1) ~~[the facility meets]~~ the standards of the Life Safety Code, NFPA 101, 2000 edition;

(2) ~~[the facility meets]~~ the construction standards in Subchapter C of this chapter (relating to Facility Construction Procedures); and

(3) ~~[the facility meets]~~ the requirements for operation based on an on-site survey.

(d) DADS may deny an application that remains incomplete after 120 days.

(e) Before issuing a license, DADS considers the background and qualifications of:

(1) the applicant or license holder:

(2) a person with a disclosable interest;

(3) an affiliate of the applicant or license holder;

(4) a director; and

(5) a manager.

(f) DADS issues a license if it finds that the DAHS facility, and any person described in subsection (e) of this section meet all requirements of this chapter. The license is valid for two years, except as provided by §98.15(b)(1) of this subchapter (relating to Renewal Procedures and Qualifications). ~~[The maximum allowable number of clients specified on the license must not be exceeded.]~~

(g) A facility must not provide services to more individuals than the number of individuals specified on its license.

(h) ~~(g)~~ A facility must prominently and conspicuously post its license for display in a public area of the facility that is readily accessible to individuals, employees, and visitors. ~~[The license must be posted in the area where clients are admitted and be viewable by clients and their legal guardians.]~~

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 98 ~~[ADULT DAY CARE AND]~~ DAY ACTIVITY AND HEALTH
 SERVICES
SUBCHAPTER D LICENSURE AND PROGRAM REQUIREMENTS
RULE §98.62

Proposed action:

X Amendment

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation of and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §103.004 and §103.006, which provide that the HHSC executive commissioner shall adopt rules governing licensure of day activity and health services facilities; and 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.

The amendment implements Texas Government Code, §531.0055; and Texas Human Resources Code, §§103.004, 103.006, and 161.021.

§98.62. Program Requirements.

(a) Staff qualifications.

(1) Director. A facility must employ a director.

(A) The director must:

(i) have graduated from an accredited four-year college or university and have no less than one year of experience in working with people in a human service or medically related ~~[medically related]~~ program, or have an associate degree or 60 semester hours from an accredited college or university with three years of experience ~~[in]~~ working with people in a human service or medically related ~~[medically related]~~ program; ~~[or]~~

(ii) be an RN [~~a registered nurse~~] with one year of experience in a human service or medically related [~~medically-related~~] program; ~~or~~

(iii) meet the training and experience requirements for a license as a nursing facility administrator under Texas Administrative Code (TAC), Title 40, Chapter 18, [~~the rules of the Texas Board of Licensure for~~] Nursing Facility Administrators; or

(iv) have met, on July 16, 1989, the qualifications for a director required [~~the position under the requirements in effect~~] at that time and have served continuously in the capacity of director [~~of a Texas Department of Human Services-certified facility~~] since that date.

(B) The director must show evidence of 12 [~~contact~~] hours of annual continuing education in at least two of the following areas:

(i) individual and provider rights and responsibilities, abuse, neglect, exploitation and confidentiality;

(ii) basic principles of supervision;

(iii) skills for working with individuals, families, and other professional service providers;

(iv) individual characteristics and needs;

(v) community resources;

(vi) basic emergency first aid, such as cardiopulmonary resuscitation (CPR) [~~CPR~~] or choking; or

(vii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, and the Family and Medical Leave Act of 1993.

(C) The activities director may fulfill the function of [~~facility~~] director if the activities director [~~he~~] meets the qualifications for facility director.

(D) One person may not serve as facility nurse, activities director, and [~~facility~~] director, regardless of qualifications.

(E) The facility must have a policy regarding the delegation of responsibility in the director's [~~administrator's~~] absence from the facility [~~, not to exceed 10 working days~~].

(F) The facility must [~~request a waiver from Long Term Care Regulatory (LTC R)~~] notify the DADS regional office in which the facility is located if the director is absent from the facility for more than 10 working days [~~Regional Office for exceptional circumstances. Exceptional circumstances include, but are not limited to, hospitalization, death, etc~~].

(2) Nurse. A ~~[The]~~ facility must employ a nurse ~~[must be a registered nurse (RN) or a licensed vocational nurse (LVN)].~~

(A) An ~~[The]~~ RN must have a ~~[current]~~ license from the Texas Board of Nursing ~~[Nurse Examiners for the State of Texas]~~ and ~~[must]~~ practice in compliance with the Nurse Practice Act and rules and regulations of the Texas Board of Nursing ~~[Nurse Examiners]~~.

(B) An ~~[The]~~ LVN must have a ~~[current]~~ license from the Texas Board of ~~[Vocational] Nursing~~ ~~[Nurse Examiners of Texas]~~ and ~~[must]~~ practice in compliance with the Nurse Practice Act ~~[Vocational Nurse Act]~~ and rules and regulations of the Texas Board of Nursing ~~[Board of Vocational Nurse Examiners]~~.

(C) If a nurse serving as director leaves the facility to perform other duties related to ~~[the provisions of]~~ the DAHS ~~[day care]~~ program, an LVN or another RN must fulfill the duties of the facility nurse.

(D) A facility ~~[Licensed facilities]~~ that does ~~[do]~~ not have a DAHS ~~[Day Activity and Health Services (DAHS)]~~ contract, but has ~~[have]~~ a Special Services to Persons with Disabilities contract, is ~~[are]~~ not required to have an RN ~~[a registered nurse]~~ on duty, if ~~[as long as]~~ the individual ~~[client]~~ receiving services has no medical needs and is able to self-administer medication ~~[self medicate]~~.

(3) Activities director. A facility must employ an activities director.

(A) Except as provided in subparagraph (B) of this paragraph, an ~~[The]~~ activities director must have graduated from ~~[be]~~ a high school or have a certificate recognized by a state of the United States as the equivalent of a high-school diploma ~~[graduate (or equivalent)]~~ and have:

(i) a bachelor's degree from an accredited college or university, and ~~[plus]~~ one year of full-time experience ~~[in]~~ working with ~~[the]~~ elderly people or people with disabilities in a human service or medically related ~~[medically related]~~ program; ~~[or]~~

(ii) 60 semester hours from an accredited college or university, and ~~[plus]~~ two years of full-time experience ~~[in]~~ working with ~~[the]~~ elderly people or people with disabilities in a human service or medically related ~~[medically related]~~ program; or

(iii) completed ~~[a state approved]~~ an activities director's course, and ~~[plus]~~ two years of full-time experience ~~[in]~~ working with ~~[the]~~ elderly people or people with disabilities in a human service or medically related ~~[medically related]~~ program.

(B) An activities director ~~[Anyone]~~ hired before ~~[prior to]~~ May 1, 1999, ~~[as an activities director]~~ with four years of full-time experience ~~[in]~~ working with elderly people or people with disabilities in a human service or medically related ~~[medically related]~~ program is not subject to the requirements of subparagraph (A) of this paragraph ~~[, will be considered a qualified activities director]~~.

(4) Attendants. An attendant [Attendants] must be at least 18 years of age [~~old or older~~] and may be employed as a driver, aide, cook, janitor, porter, housekeeper, or laundry worker [~~include, but are not limited to, bus drivers, aides, cooks, janitors, porters, maids, and laundry workers~~].

(A) If a [~~the~~] facility employs a [~~bus~~] driver, the driver must have a current operator's license, issued by the Texas Department of Public Safety, which is appropriate for the class of vehicle used to transport individuals [~~clients~~].

(B) If an attendant handles food in the facility, the attendant [~~he~~] must meet [~~the~~] requirements of [~~described in~~] the [~~Texas~~] Department of State Health Services rules on food service sanitation as described in [~~under~~] 25 TAC, Chapter 228, Subchapters A-J [~~§§229.161-229.171 and §§229.173-175~~] (relating to Texas Food Establishments).

(5) Food service personnel. If a [~~the~~] facility prepares meals on site, the facility must have sufficient food service personnel to prepare meals and snacks. Food service personnel must meet the requirements of [~~described in~~] the [~~Texas~~] Department of State Health Services rules on food service sanitation as described in [~~under~~] 25 TAC, Chapter 228, Subchapters A-J [~~§§229.161-229.171 and §§229.173-229.175~~] (relating to Texas Food Establishments).

(6) Additional requirements for a facility that contracts with DADS [~~Day Activity and Health Services (DAHS) employees~~].

(A) Housekeeper. A [~~DAHS~~] facility that contracts with DADS may employ a part-time or full-time housekeeper.

(B) Driver. If a facility that contracts with DADS [~~DAHS facility~~] employs a [~~part-time or full-time~~] driver, the driver must:

(i) operate the facility's vehicles in a safe manner; and

(ii) maintain adult cardiopulmonary resuscitation (CPR) certification.

(b) Staffing [~~ratio~~]. A [~~The~~] facility must ensure that:

(1) the ratio of direct service staff to individuals [~~clients~~] is at least one to eight, which must be maintained during provision of all DAHS [~~covered services~~] except during facility-provided transportation;

(2) at least one RN or LVN is working at the facility for at least eight hours per day and sufficient nurses are at the facility to meet the nursing needs of the individuals at all times [~~at a minimum, one registered nurse or licensed vocational nurse must be working on site, eight hours per day. The facility may schedule nursing hours according to client needs. Sufficient licensed nursing staff must be on site to meet the nursing needs of the clients~~];

(3) the facility director routinely works at least ~~[a minimum of]~~ 40 hours per week performing duties relating to the provision of the DAHS program; ~~[adult day care services; and]~~

(4) the activities director routinely works at least 40 hours a week; [-]

(5) individuals ~~[clients]~~ whose needs cannot be met by the facility are not admitted or retained; and [-]

(6) sufficient staff are on duty at all times to meet the needs of the individuals who are served by the facility.

~~[Sufficient staff must be on duty at all times to meet the needs of the clients. The facility is responsible for all care provided at the facility.]~~

(c) Staff health. All direct service staff must be free of communicable diseases.

(1) A ~~[The]~~ facility must screen all employees for tuberculosis within two weeks of employment and annually, according to Center for Disease Control and Prevention (CDC) screening guidelines. All persons providing services under an outside resource contract must also screen all employees for tuberculosis within two weeks of employment and annually according to CDC ~~[Center for Disease Control]~~ screening guidelines. ~~[When requested to do so by the facility, persons providing services under an outside resource contract must provide evidence of compliance with this requirement.]~~

(2) If an employee contracts ~~[employees contract]~~ a communicable disease that is transmissible to individuals through food handling or direct individual care, the facility must exclude the employee ~~[must be excluded]~~ from providing these services while the employee is infectious ~~[as long as a period of communicability is present]~~.

(d) Staff responsibilities.

(1) ~~[Facility director.]~~ The facility director ~~[is responsible for]~~:

(A) manages the DAHS program and ~~[managing the adult day care program and/or]~~ the facility;

(B) trains and supervises ~~[training and supervising]~~ facility staff;

(C) monitors ~~[monitoring]~~ the facility building and grounds to ensure compliance;

(D) maintains ~~[maintaining]~~ all financial and individual ~~[client]~~ records;

(E) develops ~~[developing]~~ relationships with community groups and agencies for identification and referral of individuals ~~[clients]~~;

(F) maintains [~~maintaining~~] communication with an individual's [~~the client's~~] family members or responsible parties;

(G) assures [~~assuring~~] the development and maintenance of the individual's [~~individual~~] plan of care; and

(H) ensures [~~ensuring~~] that, if the facility director [~~he~~] serves as the RN [~~nurse~~] consultant, [~~during the same eight hours per day period,~~] the facility director fulfills [~~he is fulfilling his~~] the responsibility as director.

(2) [~~Facility nurse.~~] The facility nurse [~~is responsible for~~]:

(A) assesses an individual's [~~assessing the client's~~] nursing and medical needs;

(B) develops an individual's [~~developing a client's individual~~] plan of care;

(C) obtains [~~obtaining~~] physician's orders for medication and treatments to be administered;

(D) determines [~~determining~~] whether self-administered medications have been appropriately taken, applied, or used;

(E) enters, dates, and signs [~~entering, dating, and signing~~] monthly progress notes on medical care provided;

(F) administers [~~administering~~] medication and treatments;

(G) provides [~~providing~~] health education; and

(H) maintains [~~maintaining~~] medical records.

(3) [~~Activities director.~~] The activities director [~~is responsible for~~]:

(A) plans and directs [~~planning and directing~~] the daily program of activities, including physical fitness exercises or other recreational activities;

(B) records the individual's [~~recording the client's~~] social history;

(C) assists the individual's [~~assisting the client's~~] related support needs;

(D) assures [~~assuring~~] that the identified related support services are included in the individual's [~~client's individual~~] plan of care; and

(E) signs and dates [~~signing and dating~~] monthly progress notes about social and related support services activities provided.

(4) ~~[Attendant.]~~ An ~~[The]~~ attendant ~~[is responsible for]:~~

(A) provides ~~[providing]~~ personal care services to assist with activities of daily living ~~[(assistance with activities of daily living)];~~

(B) assists ~~[assisting]~~ the activities director with recreational activities; and

(C) provides ~~[providing]~~ protective supervision through observation and monitoring ~~[(observation and monitoring)].~~

(5) Food service personnel ~~[Food service personnel are responsible for]:~~

(A) prepare ~~[preparing]~~ meals and snacks; and

(B) maintain ~~[maintaining]~~ the kitchen area and utensils in a safe and sanitary condition.

(6) A facility must obtain consultation at least four hours per month from a dietitian consultant ~~[Dietitian consultant].~~

~~(A) [The facility must receive consultation at least four hours each month from a dietitian.]~~ The dietitian consultant plans and ~~[and/or]~~ reviews menus and must:

(i) ~~[prior]~~ approve and sign ~~[each]~~ snack and luncheon menus ~~[menu];~~

(ii) review menus monthly to ensure that substitutions were appropriate; and

(iii) develop a special diet for an individual, if [diets] ordered by a physician. ~~[physicians for individual clients.]~~

(B) A facility must obtain consultation from a ~~[The]~~ dietitian consultant ~~[is required for all facilities], even if the facility has [those that have their] meals delivered from another facility with a [its own] dietitian consultant or the facility contracts for the preparation and delivery of meals with a contractor that employs a registered dietician. A consultant who [may] provides [provide] consultation to several facilities [as long as each facility receives] must provide at least four hours of consultation per [a] month to each facility. [The four hours cannot be "shared" by several facilities.]~~

~~[(C) Facilities that contract for the preparation and delivery of meals with management companies employing their own registered dietitians are required to have the four hours of consultation from a dietitian consultant.]~~

(7) If a facility employs an LVN as the facility nurse, the facility must ensure that an RN consultant provides consultation at the facility at least four hours per week. ~~[Registered nurse consultant. In facilities where the nurse is a licensed vocational nurse, a registered nurse consultant must provide on-site consultation four hours per week.]~~ The RN consultant must

document the consultation provided. The RN consultant must provide the consultation [~~during the time~~] when individuals [~~clients~~] are present in the facility. The RN consultant may provide the following types of assistance:

- (A) review [~~reviewing~~] plans of care and suggest [~~suggesting~~] changes, if appropriate;
- (B) assess individuals' [~~assessing clients'~~] health conditions;
- (C) consult [~~consulting~~] with the LVN in solving problems involving [~~client~~] care and service planning;
- (D) counsel individuals [~~counseling clients~~] on [~~their~~] health needs;
- (E) train, consult, and assist [~~training, consulting, and assisting~~] the LVN to maintain [~~in maintaining~~] proper medical records; and
- (F) provide [~~providing~~] in-service training for direct service staff.

(e) Training.

(1) Initial training.

(A) A [~~The~~] facility must:

(i) provide [~~all~~] direct service staff with training in the fire, disaster, and evacuation procedures within three workdays after the start of employment and document the training in the facility records; and [~~The training must be documented in the facility records.~~]

(ii) provide direct service [~~delivery~~] staff a minimum of 18 hours of training during the first three months after the start of employment and document the training in the facility records. [~~Training must be documented in the facility records. Training must include:~~]

~~[(I) any nationally or locally recognized adult cardiopulmonary resuscitation (CPR) course/certification;]~~

~~[(II) first aid; or]~~

~~[(III) orientation to health care delivery including the following components:]~~

~~[(a) safe body function and mechanics;]~~

~~[(b) personal care techniques and procedures; and]~~

~~[(c) overview of client population served at the facility; and]~~

~~[(IV) identification and reporting of abuse, neglect, or exploitation.]~~

(B) ~~[Staff employed as substitutes on an infrequent and irregular basis are not required to have 18 hours of initial training. Substitute and consultant staff must receive a minimum of three hours of orientation. Substitutes for direct service staff used by a facility on a regular basis must meet all training requirements as specified under this subsection.]~~ The training provided in accordance with subparagraph (A)(ii) of this paragraph must include:

(i) any nationally or locally recognized adult CPR course or certification;

(ii) first aid; or

(iii) orientation to health care delivery, including the following topics:

(I) safe body function and mechanics;

(II) personal care techniques and procedures; and

(III) overview of the population served at the facility; and

(iv) identification and reporting of abuse, neglect, or exploitation.

(2) Ongoing training.

(A) A ~~[The]~~ facility must provide at least ~~[a minimum of]~~ three hours of ongoing training to direct service staff quarterly. The facility must ensure that direct delivery staff maintain current certification in CPR.

(B) A ~~[The]~~ facility must practice evacuation procedures with staff and individuals at least ~~[clients not less than]~~ once a month. The facility must document evacuation results ~~[must be documented]~~ in the facility records.

(f) Medications.

(1) Administration.

(A) A facility must ensure that a person who holds a current license under state law that authorizes the licensee to administer medications administers medications to individuals ~~[Clients]~~ who choose not to or cannot self-administer their medications ~~[must have their medications administered by a person who holds a current license under state law which authorizes the licensee to administer medications].~~

(B) A facility must ensure that all ~~[All]~~ medication prescribed to an individual that is administered at the facility is ~~[clients must be]~~ dispensed through a pharmacy or by a prescribing healthcare professional ~~[the client's treating physician or dentist].~~

(C) A facility may administer physician [Physician] sample medications at the facility if [may be given to a client by the facility provided] the medication has specific dosage instructions for the individual client.

(D) A facility must record an individual's [Each client's] medications [must be listed] on the individual's [an individual client's] medication profile record. The recorded information must be obtained from the prescription label and must include [-but is not limited to,] the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) Assistance with self-administration [self administration]. A nurse may assist [Assistance] with self-administration [self administration] of an individual's [client's] medication if the individual is unable to administer the medication [regimen by licensed nursing staff may be provided to clients who are incapable of self-administering] without assistance. Assistance with self-administration of medication [self medication includes, and] is limited to the following activities:

(A) reminding an individual [reminders] to take [their] medications at the prescribed time;

(B) opening and closing containers or packages [and replacing lids];

(C) pouring prescribed dosage according to the individual's medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual's [individual client's] medication profile record the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) A nurse must counsel an individual who self-administers medication or treatment at least once per month to ascertain if the individual continues to be able to self-administer the medication or treatment. The facility must keep a written record of the counseling. [Clients who self-administer their own medications must be counseled at least once a month by licensed nursing staff to ascertain if the clients continue to be capable of self-administering their medications and/or treatments. A written record of counseling must be kept by the facility.]

(B) A facility may permit an individual who chooses to keep the individual's medication locked in the facility's central medication storage area to enter or have access to the area for the purpose of self-administering medication or treatment. A facility staff member must remain in or at the storage area the entire time the individual is present. [Clients who choose to

~~keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication and/or treatment regimen. A facility staff member must remain in or at the storage area the entire time any client is present.]~~

(4) General.

(A) A [The] facility director, an [the] activities director, or a facility nurse must immediately report to an individual's prescribing healthcare professional [the client's physician] and responsible party any unusual reactions to a medication or treatment [medications or treatments].

(B) When a [the] facility supervises or administers [the] medications, the facility must document in writing if an individual [a written record must be kept when the client] does not receive or take the medication and treatment as prescribed. [his medications and/or treatments as prescribed.] The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed.

(5) Storage.

(A) A [The] facility must provide a locked area for all medications, which may include: [-Examples of areas include, but are not limited to:]

(i) a central storage area; and

(ii) a medication cart.

(B) A facility must store an individual's medication separately from other individuals' medications within the storage area. [Each client's medication must be stored separately from other clients' medications within the storage area.]

(C) A facility must store medication requiring refrigeration in a locked refrigerator that is used only for medication storage or in a separate, permanently attached, locked medication storage box in a refrigerator. [A refrigerator must have a designated and locked storage for medications requiring refrigeration. Medications requiring refrigeration must be stored in a refrigerator used only for medicine storage or in a separate, permanently attached, and locked medication storage box in a refrigerator.]

(D) A facility must store poisonous [Poisonous] substances and medications labeled for "external use only" [must be stored] separately within the locked [medical] area.

(E) A facility must [The medication room or cabinet medication storage area must have a separate, permanently attached cabinet, box, or drawer with a lock to] store drugs covered by Schedule II of the Controlled Substances Act of 1970 in a locked, permanently attached cabinet, box, or drawer that is separate from the locked storage area for other medications.

(6) Disposal.

(A) A facility must keep medication that is ~~[Medications]~~ no longer being used by an individual ~~[the client]~~ for the following reasons ~~[must be kept]~~ separate from current medications and ensure the medication is ~~[and are to be]~~ disposed of by a registered pharmacist licensed in the State of Texas:

(i) the medication has been ~~[medications]~~ discontinued by order of the prescribing professional ~~[physician]~~;

(ii) the individual ~~[medications which remain after a client]~~ is deceased; or

(iii) the expiration date of the medications has ~~[which have]~~ passed ~~[the expiration date]~~.

(B) A facility must dispose of needles ~~[Needles]~~ and hypodermic syringes with needles attached ~~[must be disposed]~~ as required by 25 TAC ~~[4]~~, Chapter 1, Subchapter K (relating to the Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(C) A facility must release medication kept by the facility to an individual who is no longer receiving services from the facility and must ensure that the individual ~~[Medications kept in a central storage area are released to discharged clients when a receipt has been signed by the client]~~ or responsible party signs a receipt for the medication upon request or the individual is discharged by the facility.

(g) Accident, injury, or acute illness.

(1) A ~~[The]~~ facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(2) In the event of accident or injury to an individual requiring emergency medical, dental, or nursing care, or in the event of ~~[apparent]~~ death of an individual, ~~[the adult day care]~~ a facility must:

(A) make arrangements for emergency care or ~~[and/or]~~ transfer to an appropriate place for treatment, including: ~~[(including, but not limited to, physician's office, clinic, or hospital);]~~

(i) a physician's office;

(ii) a clinic; or

(iii) a hospital;

(B) immediately notify an individual's ~~[the client's]~~ physician and ~~[next of kin,]~~ responsible party, or agency who admitted the individual to ~~[placed the client in]~~ the facility; and

(C) describe and document the accident, injury, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(h) Menus.

(1) A facility must plan, date, and post a menu ~~[Menus must be planned]~~ at least two weeks in advance and maintain a copy of the menu. ~~[- dated, maintained on file, and posted in the facility. Meals]~~ A facility must serve meals ~~[be served]~~ according to approved menus.

(2) A facility must ensure that a special diet meal ~~[Special diet meals]~~ ordered by an individual's healthcare professional ~~[the client's physician]~~ and developed by the dietician consultant is ~~[must be]~~ labeled with the individual's ~~[client's]~~ name and type of diet.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 98 ~~[ADULT DAY CARE AND]~~ DAY ACTIVITY AND HEALTH
 SERVICES
SUBCHAPTER H DAY ACTIVITY AND HEALTH SERVICES (DAHS)
 CONTRACTURAL REQUIREMENTS
RULE §98.200

Proposed action:

X New

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation of and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §103.004 and §103.006, which provide that the HHSC executive commissioner shall adopt rules governing licensure of day activity and health services facilities; and 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.

The new section implements Texas Government Code, §531.0055; and Texas Human Resources Code, §§103.004, 103.006, and 161.021.

§98.200. Applicability.

Subchapter H of this chapter applies only to a DAHS facility that contracts with DADS to provide DAHS under Title XIX or Title XX of the Social Security Act.

TAB 5

Item g.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Recommendation to propose the repeal of Title 40, Texas Administrative Code, Chapter 6, ICF/ID Programs--Contracting, Subchapter H, Dental Program; Chapter 9, Intellectual Disability Services--Medicaid State Operating Responsibilities, Subchapter G, Medicaid Fair Hearings; and Chapter 39, Community Alzheimer's Resources and Education (CARE) Program

AGENDA ITEM No.: 6g

BACKGROUND: Federal requirement Legislative requirement Other

Chapter 6, Subchapter H, Dental Program, is being repealed because DADS has no responsibility for administering dental benefits for individuals enrolled in the intermediate care facilities for individuals with an intellectual disability and related conditions (ICF/IID) Program; therefore, these rules are not needed.

Chapter 9, Intellectual Disability Services--Medicaid State Operating Responsibilities, Subchapter G, Medicaid Fair Hearings, is being repealed because Medicaid fair hearings are addressed in Health and Human Services Commission rules in 1 TAC Chapter 357, Subchapter A; therefore, these rules are not needed.

Chapter 39, Community Alzheimer's Resources and Education (CARE) Program, is being repealed because the program is no longer being administered; therefore, these rules are not needed.

ISSUES AND ALTERNATIVES

There are no issues or controversies concerning the proposal.

STAKEHOLDER INVOLVEMENT

Stakeholder feedback is expected to be favorable because the proposal removes rules that are no longer necessary.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

Yes No N/A

Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

The proposal has no fiscal impact.

RULE DEVELOPMENT SCHEDULE

May 12, 2016	Present to Medical Care Advisory Committee
June 9, 2016	Present to Aging and Disability Services Council
July 2016	Publish proposed rules in <i>Texas Register</i>
September 2016	Publish adopted rules in <i>Texas Register</i>
October 2016	Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rule.

April 7, 2016/15R21

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 6 ICF/ID PROGRAMS--CONTRACTING

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter H, Dental Program, consisting of §§6.351, 6.352, 6.357, and 6.370, in Chapter 6, ICF/ID Programs--Contracting.

BACKGROUND AND PURPOSE

Chapter 6, Subchapter H, Dental Program is being repealed because DADS has no responsibility for administering dental benefits for individuals enrolled in the Intermediate Care Facilities for Individuals with an Intellectual Disability and Related Conditions (ICF/IID) Program; therefore, these rules are not needed.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §6.351 deletes a rule relating to program basis.

The proposed repeal of §6.352 deletes a rule relating to eligibility.

The proposed repeal of §6.357 deletes a rule relating to emergency services.

The proposed repeal of §6.370 deletes a rule relating to change to another provider.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years after the repeals, 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 repeals will have no adverse economic effect on small businesses or micro-businesses because there are no costs imposed on small businesses or micro-businesses by the repeals.

PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years after the repeals, the public benefit expected as a result of repealing the sections is the removal of unnecessary rules from the DADS rule base.

Ms. Jordan anticipates that there will not be an economic cost to persons who are affected by the repeals. The 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 Corliss Powell at (512) 438-2430 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R21, 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 15R21" in the subject line.

Legend:

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TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 6 ICF/ID PROGRAMS--CONTRACTING
SUBCHAPTER H DENTAL PLAN
RULES §§6.351, 6.352, 6.357, and 6.370

Proposed Action:

X Repeal

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, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program; and 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.

The repeals implement Texas Government Code, §531.0055 and Texas Human Resources Code, §32.021 and §161.021.

~~§6.351. Program Basis.~~

~~—(a) For the purpose of this subchapter, the term "department" means the Texas Department of Mental Health and Mental Retardation.~~

~~—(b) Intermediate Care Facilities for the Mentally Retarded (ICF/MR) must ensure that individuals receiving Medicaid services in their facilities receive comprehensive dental services, as specified in 42 Code of Federal Regulations (CFR) §483.460. The Texas Department of Mental Health and Mental Retardation reimburses participating dental providers for services to individuals who are 21 years old or older and who are covered by the ICF/MR Medicaid program through the department's ICF/MR dental program. The rates are derived from the state's Early Periodic Screening, Diagnosis, and Treatment (EPSDT) dental fee schedule. Services to persons under age 21 who are receiving ICF/MR services are reimbursed through the EPSDT Dental Program.~~

§6.352. Eligibility.

To be eligible for the ICF/MR dental program, a person must:

- (1) be a current Texas recipient of Title XIX ICF/MR services;
- (2) have a current Texas Medical Care Identification Card that indicates eligibility with a "Y" or an "R" in the ICF/MR dental blank, or have a Medicaid Verification Letter;
- (3) be 21 years old or older; and
- (4) reside in a community based ICF/MR.

§6.357. Emergency Services.

—(a) Emergency dental services are those procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures. Prior authorization is not required for emergency dental services. Emergency claims exceeding \$80 are subject to review and reduction of payment if the nature of the emergency is not clearly documented. Only one emergency claim a day may be submitted for each individual.

—(b) Based on the definition of emergency services approved by the Council of Dental Health of the American Dental Association, routine restorative procedures are not considered emergency procedures.

—(c) The Texas Department of Mental Health and Mental Retardation may increase the maximum fee by publishing a new maximum in the Texas Register.

§6.370. Change to Another Provider.

—(a) A change of provider may be made for one or more of the following reasons:

—(1) Treatment by a specialist, such as a pedodontist, oral surgeon, or endodontist, is indicated.

—(2) The provider does not want to continue treatment with a particular recipient because of missed appointments, a lack of appointment time, or a personality conflict.

—(3) The individual prefers a provider nearer to his home or place of employment.

—(4) The individual does not want to continue treatment with the provider because of conflicts with the provider.

—(b) A provider may initiate a change of provider for the two reasons specified in subsection (a)(1) and (2) of this section. If arrangements have been made with another provider or a specific

specialist, the referring provider notes the name of the provider and a brief reason for the referral when the claim for the initial exam is submitted for payment.

~~—(c) The provider receiving the referral examines the individual and notes on his claim form the referring dentist's name, address, or Medicaid number. The provider checks the individual's eligibility for ICF/MR dental services and completes the treatment unless prior authorization is necessary.~~

~~—(d) A recipient may initiate a change of provider for the two reasons specified in subsection (a)(3) and (4) of this section. The individual or the facility notifies the initial provider, and the initial provider then submits his claim for payment of services.~~

~~—(e) If the combined total payment allowed by Medicaid for both providers is less than \$300 and if none of the services requires x-rays for prior authorization, the second provider is not required to obtain prior authorization. This requirement applies whether the provider or the individual initiated the change to another provider.~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE
OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter G, Medicaid Fair Hearings, consisting of §9.301, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the repeal is to remove rules from the DADS rule base because Medicaid fair hearings are addressed in HHSC rule at 1 TAC Chapter 357, Subchapter A, Uniform Fair Hearing Rules.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §9.301 deletes a rule relating to Medicaid fair hearings.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for 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 there are no costs imposed on small businesses or micro-businesses by the repeal.

PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is the removal of an unnecessary rule from the DADS rule base.

Ms. Jordan 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 Corliss Powell at (512) 438-2430 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R21, 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 15R21" in the subject line.

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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 G MEDICAID FAIR HEARINGS
RULES §9.301

Proposed Action:

X Repeal

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, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program; and 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.

The repeals implement Texas Government Code, §531.0055 and Texas Human Resources Code, §32.021 and §161.021.

~~§9.301. Medicaid Fair Hearings.~~

~~—(a) The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference rules of the Health and Human Services Commission contained in 1 TAC §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, and 357.29 of Chapter 357 (relating to Medicaid Fair Hearings).~~

~~—(b) As used in 1 TAC §357.1(b)(2), the term "authorized representative" means the parent, guardian, or managing conservator of an individual who is a minor or the guardian of the person of an individual who is an adult.~~

~~—(c) Copies of the Health and Human Services Commission rules are available by contacting the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78751.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 39 COMMUNITY ALZHEIMER'S RESOURCES AND EDUCATION (CARE)
PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal §§39.1, 39.2, 39.4, 39.6, 39.8, 39.10, 39.12, 39.14, and 39.16, in Chapter 39, Community Alzheimer's Resources and Education (CARE) Program.

BACKGROUND AND PURPOSE

The purpose of the repeals is to remove rules governing a program that is no longer being administered and, therefore, are not needed.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §39.1 deletes a rule relating to definitions.

The proposed repeal of §39.2 deletes a rule relating to eligibility.

The proposed repeal of §39.4 deletes a rule relating to contracted services.

The proposed repeal of §39.6 deletes a rule relating to procedure if no funds are available.

The proposed repeal of §39.8 deletes a rule relating to termination of benefits.

The proposed repeal of §39.10 deletes a rule relating to funding restrictions.

The proposed repeal of §39.12 deletes a rule relating to CARE program information.

The proposed repeal of §39.14 deletes a rule relating to right to appeal.

The proposed repeal of §39.16 deletes a rule relating to provider claims payment.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for 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 repeals will have no adverse economic effect on small businesses or micro-businesses because there are no costs imposed on small businesses or micro-businesses by the repeals.

PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years after the repeals, the public benefit expected as a result of repealing the sections is the removal of unnecessary rules from the DADS rule base.

Ms. Jordan anticipates that there will not be an economic cost to persons who are affected by the repeals. The 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 Corliss Powell at (512) 438-2430 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R21, 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 15R21" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 39 COMMUNITY ALZHEIMER'S RESOURCES AND EDUCATION
 (CARE) PROGRAM
RULES §§39.1, 39.2, 39.4, 39.6, 39.8, 39.10, 39.12, 39.14, and 39.16

Proposed Action:

X Repeal

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; and 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.

The repeals implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

~~§39.1. Definitions.~~

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

~~—(1) AD—Alzheimer’s disease.~~

~~—(2) CARE Program—The Community Alzheimer’s Resources and Education Program that serves persons with AD and related dementia and their caregivers.~~

~~—(3) CARE group—Representatives of participating state agencies and community entities concerned with caring for persons with AD who help secure access or available services, develop service plans, and educate and advocate for persons with AD and their caregivers. The number of members in a CARE group is not limited.~~

~~—(4) CARE site—A location where CARE services are coordinated under the supervision of CARE staff.~~

~~—(5) CARE staff—The persons who manage and operate the CARE Program at each site.~~

~~—(6) Caregiver—The person who provides or supervises the care of a person with AD or related dementia.~~

~~—(7) Client—The person with AD or a related dementia. A diagnosis of AD is not needed for information and referral or an in-home assessment. A diagnosis of AD or a related dementia is required before receiving CARE contracted services.~~

~~—(8) Contracted services—Services provided to a client who has been diagnosed with AD or a related dementia, or provided to the client's caregiver to enable the client to live in the home for a longer period of time. Services may include:~~

~~——(A) respite (adult day, in-home, out-of-home);~~

~~——(B) transportation;~~

~~——(C) minor home safety modification;~~

~~——(D) supplies;~~

~~——(E) personal companion and homemaker services;~~

~~——(F) home health;~~

~~——(G) emergency needs; and~~

~~——(H) identification registration.~~

~~—(9) DHS—The Texas Department of Human Services.~~

~~—(10) Emergency circumstances—Temporary situations where:~~

~~——(A) the client needs supervision and/or care and is without any support services; or~~

~~——(B) the usual caregiver is unable to care for the client and the client will be without assistance if CARE services are not put into place.~~

~~—(11) In-home assessment—A CARE staff member (or employee of a home health agency) visits the client's home to assess the living situation and identify client needs.~~

~~—(12) Information and referral—CARE staff give AD education and information to clients, such as information concerning the symptoms, diagnosis, and current research of AD, with referral to possible assistance available in the community.~~

~~—(13) Interest list—A list, in chronological order, of persons who have applied for and may qualify for assistance through the CARE Program.~~

~~—(14) PRUCOL—Permanently residing under color of law. Applies to individuals who entered the United States before January 1, 1972, and who may be eligible for permanent residence at the discretion of the attorney general, and any alien who is living in the United States indefinitely with the knowledge and permission of the Immigration and Naturalization Service.~~

~~—(15) Service plan—The description of services for a client, including the agency or organization responsible for providing each service.~~

§39.2. Eligibility.

~~—(a) Program access. Persons must contact CARE staff to access the CARE Program.~~

~~—(b) Information and referral. Any client or caregiver is eligible for information and referral services.~~

~~—(c) In-home assessment. To obtain an in-home assessment, a client must:~~

~~———(1) be a U.S. citizen, a legal alien, or PRUCOL;~~

~~———(2) live in the designated CARE area; and~~

~~———(3) have symptoms of AD or a related dementia.~~

~~—(d) Contracted services.~~

~~———(1) To be considered for contracted services, the client must:~~

~~———(A) have had an in-home assessment; and~~

~~———(B) have a medical diagnosis of AD or related dementia.~~

~~———(2) Clients in emergency circumstances are not required to have had an in-home assessment to obtain a physician statement of diagnosis to use contracted emergency services immediately.~~

~~———(3) The financial eligibility requirements for contracted services are:~~

~~———(A) income of no more than four times the current Poverty Income Guidelines for the Continental United States as reported by the U.S. Department of Health and Human Services;~~

~~———(B) liquid resources not to exceed \$10,000 for an individual or \$15,000 for a couple. Resources, which do not include the client's car or house, include any accessible income, such as:~~

~~———(i) cash;~~

~~———(ii) checking and savings accounts;~~

- ~~_____ (iii) retirement accounts;~~
- ~~_____ (iv) money market accounts;~~
- ~~_____ (v) stocks;~~
- ~~_____ (vi) bonds;~~
- ~~_____ (vii) certificates of deposit; and~~
- ~~_____ (viii) mutual funds.~~

~~§39.4. Contracted Services.~~

~~— (a) The CARE staff, or for complex cases, the CARE group, determine the client's and caregiver's needs. If CARE staff approve contracted services, CARE staff send a notice of eligibility to the client or caregiver indicating the approved contracted service and dates of eligibility.~~

~~— (b) Contracted services are provided in accordance with the following requirements:~~

~~_____ (1) First time applicants receive priority treatment; repeat applicants may be placed on an interest list and considered for services as funding becomes available.~~

~~_____ (2) The CARE Program may provide contracted CARE services while the client or caregiver is on an interest list or waiting for other services to begin.~~

~~_____ (3) The client or caregiver must apply for other programs for which the client or caregiver may be eligible within 30 days of receiving services from the CARE program.~~

~~_____ (4) If the client or caregiver is eligible for another program but is not receiving services, the client or caregiver must inform CARE staff why the services are not being provided from the other program.~~

~~_____ (5) The client or caregiver will not receive CARE services if the client or caregiver is receiving the same services for the same time period from another program.~~

~~_____ (6) Each CARE group determines which services to offer in its community.~~

~~— (c) Emergency contracted services are provided for such needs as short term nursing care, home health care, respite care, adult day care, medications, medical or personal hygiene supplies, transportation, and other expenses related to care for a person with AD.~~

~~_____ (1) The person with AD, the caregiver, Adult Protective Services, local law enforcement, hospital social workers or case managers, or other persons or agencies may refer clients in emergency situations to the CARE Program.~~

~~———— (2) Emergency services are immediately available at any time, but for no more than 14 days.~~

~~———— (3) If eligible, the client and/or caregiver begins receiving available nonemergency contracted services on or before the 15th day. Services may be provided at a lower level than were provided during the emergency situation.~~

§39.6. Procedure if No Funds Are Available.

~~———— (a) If no funds are available to serve an eligible client or caregiver, CARE staff:~~

~~———— (1) place the client's or caregiver's name on a CARE interest list; and~~

~~———— (2) notify the client or caregiver in writing that the client's or caregiver's name has been placed on the interest list.~~

~~———— (b) If funds become available to provide services, CARE staff notify the client or caregiver in writing. If the client or caregiver fails to contact CARE staff within 14 days after receiving the notice, the client's or caregiver's name is removed from the interest list.~~

§39.8. Termination of Benefits.

~~———— (a) CARE contracted services are terminated when the client or caregiver:~~

~~———— (1) moves out of the service area;~~

~~———— (2) is admitted to an institution;~~

~~———— (3) refuses services on three or more occasions;~~

~~———— (4) cannot be located;~~

~~———— (5) refuses to comply with the service plan;~~

~~———— (6) exhibits behavior that makes it impossible to deliver services;~~

~~———— (7) is unable to participate in the service delivery for one month or more;~~

~~———— (8) allows behavior by someone in the home that prevents the delivery of services, including determining eligibility and monitoring services on more than three occasions; or~~

~~———— (9) no longer meets the financial eligibility requirements to receive contracted services.~~

~~———— (b) CARE staff notify the client in writing that services will be terminated if:~~

~~———— (1) behavior that prevents delivery of services continues; or~~

~~———— (2) services are stopped before the scheduled ending date.~~

~~§39.10. Funding Restrictions.~~

~~CARE program funds must be used only for allowable goods, supplies, or services that specifically and directly relate to the care of the client.~~

~~§39.12. CARE Program Information.~~

~~Information collected, whether by CARE staff or provider agencies, is confidential. The client, caregiver, or legal guardian must sign a consent form before release of information for discussion by CARE staff or a community CARE group according to 42 Code of Federal Regulations, §431.306.~~

~~§39.14. Right to Appeal.~~

~~Any individual who is denied CARE services is entitled to a fair hearing conducted by DHS, according to DHS's fair hearing sections in Chapter 79 of this title (relating to Legal Services).~~

~~§39.16. Provider Claims Payment.~~

~~Providers of CARE contracted services are reimbursed on a fee for service reimbursement methodology. The following conditions must be met for payment:~~

- ~~—(1) services must be delivered to an eligible client or caregiver based on the client or caregiver service plan;~~
- ~~—(2) units of service provided must be documented according to the individual service plan;~~
~~and~~
- ~~—(3) the organizations contracted to provide CARE services must accept the payment from DHS as payment in full for CARE services.]~~

TAB 5

Item h.



TEXAS

Department of Aging
and Disability Services

TO: Aging and Disability Services Council Members

DATE: June 9, 2016

FROM: Jon Weizenbaum
Commissioner

SUBJECT: Day Habilitation Locations

AGENDA ITEM No.: 6h

Recommendation to propose new §9.230 in Title 40, Texas Administrative Code (40 TAC) Chapter 9, Subchapter E, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program--Contracting, Division 4, Provider Service Requirements; and an amendment to §49.102 and §49.205, and new §49.313, in 40 TAC Chapter 49, Contracting for Community Services.

BACKGROUND: Federal requirement Legislative requirement Other: DADS Initiative

The purpose of the proposed rules is to implement recommendations in the Sunset Advisory Commission's July 2015 report regarding "day habilitation facilities" in the following community programs for persons with an intellectual disability or related conditions: the Home and Community-based Services (HCS) Program; the Texas Home Living (TxHmL) Program; the Deaf-Blind with Multiple Disabilities (DBMD) Program; the Community Living Assistance and Support Services (CLASS) Program; and the ICF/IID Program. Specifically, the Sunset Advisory Commission recommended that contractors in these programs, to help ensure the safety of individuals enrolled in the programs, be required to include in a contract with a day habilitation facility requirements to conduct background checks on employees and volunteers, have an emergency response plan, conduct fire drills, post abuse hotline information, and follow an individual's service plan. A contractor in one of these programs that directly provides services in a setting that meets the criteria in rule must have an emergency response plan, conduct fire drills, and post abuse hotline information.

The proposed rules also implement Senate Bill (S.B.) 1999, 84th Texas Legislature, Regular Session, 2015, which amended the Texas Human Resources Code, Chapter 103, to change "adult day care" to "day activity and health services." Also, in accordance with DADS current policy and S.B. 202, 84th Texas Legislature, Regular Session, 2015, which repealed Texas Health and Safety Code, Chapter 781 regarding personal emergency response systems, the proposed rules delete the requirement for a contractor that provides Title XX emergency response services to

have a license as a personal emergency response system provider issued by the Department of State Health Services or a license as an alarm systems company issued by the Texas Private Security Board.

ISSUES AND ALTERNATIVES

Some stakeholders and advocates may be concerned that the rules are limited in their scope and do not impose sufficient requirements to ensure the safety of day habilitation services. However, DAD considers the proposed rules to be reasonable requirements that will help ensure the safety of individuals receiving those services.

Some stakeholders may be concerned about new requirements for program providers and their contractors without an increase in the reimbursement rate for these services.

STAKEHOLDER INVOLVEMENT

A draft of the proposed rules was sent to stakeholders for review and comment from March 3, 2016, to March 8, 2016. DADS received written comments from Disability Rights Texas, The Arc of Texas, the Private Providers Association of Texas, and two individuals. One commenter supported the proposed rules as written. Other commenters suggested additional requirements or requirements currently addressed in other rules.

DADS did not make changes in response to the comments. The stakeholders' suggestions for additional requirements will be considered in future projects.

SERVICES IMPACT STATEMENT

Does this proposed policy promote the most integrated setting appropriate to the needs of the individual?

Yes No N/A

Does this proposed policy provide every opportunity for individual choices?

Yes No N/A

FISCAL IMPACT

DADS does not foresee any fiscal impact to state or local governments. However, DADS has determined that the proposed amendments and new section will have costs to persons who must comply associated with developing an emergency plan, conducting fire drills, and modifying written agreements with subcontractors. Subcontractors of program providers and ICF/IID program providers will incur some cost obtaining criminal history reports, estimated to be \$1 - \$2 per report. DADS is unable to estimate the cost of compliance, but the cost is expected to be minimal.

RULE DEVELOPMENT SCHEDULE

May 12, 2016 Present to the Medical Care Advisory Committee

June 9, 2016 Present to DADS Council

July 2016 Publish proposed rules in *Texas Register*

September 2016 Publish adopted rules in *Texas Register*

September 2016 Effective date

RECOMMENDATION

It is recommended that the Council consider the proposed rule action as discussed in this memorandum, as well as in the draft rule item and preamble attached to this memorandum, and that the Council vote to recommend the proposal, with or without changes to the attached rule.

April 13, 2016/16R04

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE
OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §9.230, in Subchapter E, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program--Contracting, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposed rule is to implement recommendations in the Sunset Advisory Commission's July 2015 report regarding "day habilitation facilities" in the ICF/IID Program. Specifically, the Sunset Advisory Commission recommended that an ICF/IID program provider, to help ensure the safety of individuals enrolled in the ICF/IID Program, include in a contract with a day habilitation facility requirements to conduct background checks on employees and volunteers, to have an emergency response plan, to conduct fire drills, to post abuse hotline information, and to follow an individual's service plan. The proposed rule states that it does not apply to an ICF/IID program provider that operates a campus-based facility, which means it does not apply to a state supported living center or the ICF/IID component of Rio Grande State Center. In addition, the proposed rule defines and uses the term "day habilitation center" instead of "day habilitation facility" because that is the term currently used by ICF/IID program providers for these settings.

The proposed rule also requires an ICF/IID program provider that directly operates a day habilitation center to conduct fire drills, post abuse hotline information, and have an emergency preparedness and response plan. An ICF/IID program provider is required by other rules to conduct background checks on its own employees and to provide active treatment in accordance with an individual's IPP, so those requirements are not included in the proposed rule.

SECTION-BY-SECTION SUMMARY

Proposed new §9.230 establishes that the section does not apply to an ICF/IID program provider that operates a campus-based facility. The proposed new rule defines the terms "day habilitation center" and "emergency preparedness and response plan." If a program provider operates a day habilitation center, the proposed rule requires the program provider (1) to conduct, at least once every 90 days, a fire drill during which individuals evacuate the day habilitation center; (2) to prominently post a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS toll free telephone number; and (3) to have an emergency preparedness and response plan. If a subcontractor of a program provider operates a day habilitation center, the proposed rule requires the program

provider to have a written agreement with the subcontractor that requires the subcontractor (1) to conduct, at least once every 90 days, a fire drill during which individuals evacuate the day habilitation center; (2) to have an emergency preparedness and response plan; (3) to prominently post a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS toll free telephone number; (4) to search the nurse aide registry (NAR) and the employee misconduct registry (EMR) for an unlicensed applicant for employment, an unlicensed independent contractor, or an unlicensed volunteer who will have direct contact with an individual receiving active treatment in the day habilitation center to confirm that the person is not listed in either registry as unemployable; (5) to provide written information to the unlicensed applicant, independent contractor, or volunteer about the EMR; (6) to search the NAR and the EMR at least once every twelve months to confirm that the unlicensed employee, independent contractor, or volunteer is not listed in either registry as unemployable; (7) to conduct a criminal history check and verify that an unlicensed applicant's, independent contractor's, or volunteer's criminal history information does not include a conviction that bars employment; and (8) to provide active treatment to the individual in accordance with the individual's IPP and keep a copy of the IPP in the day habilitation center. The proposed new rule also requires a program provider to monitor the subcontractor's compliance with the written agreement and maintain records of its monitoring of the subcontractor.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section is in effect, enforcing or administering the new section 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 new section will have an adverse economic effect on small businesses and micro-businesses, because contractors of an ICF/IID program provider will be required to obtain a criminal history report, at a cost of \$1 - \$2 per report, for an unlicensed applicant, independent contractor, or volunteer. There may also be costs associated with developing an emergency plan, conducting fire drills, and modifying written agreements with subcontractors. DADS estimates the number of small businesses and micro-businesses is less than 822, the approximate number of non-state operated ICF/IID program providers. DADS is unable to estimate the cost of compliance, but the cost is expected to be minimal.

The rules implement specific recommendations of the Sunset Advisory Commission and no alternatives were considered to minimize the effect on small and micro-businesses.

PUBLIC BENEFIT AND COSTS

Kristi Jordan, DADS Deputy Commissioner, has determined that, for each year of the first five years the new section is in effect, the public benefit expected as a result of enforcing the new section is to establish requirements to help ensure the safety of individuals in the ICF/IID

Program who are receiving services in a day habilitation center.

Ms. Jordan anticipates that there will be an economic cost to persons who are required to comply with the new section to obtain criminal history reports, develop an emergency plan, conduct fire drills, and modify written agreements with subcontractors to add new requirements. DADS is unable to estimate these costs, but they are expected to be minimal. The new section 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 Sheryl Loera at (512) 438-3693 in DADS Long-Term Services and Support unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-16R04, 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 16R04" in the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

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 E INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN
 INTELLECTUAL DISABILITY OR RELATED CONDITIONS
 (ICF/IID) PROGRAM--CONTRACTING
DIVISION 4 PROVIDER SERVICE REQUIREMENTS
RULE §9.230

Proposed action:

X New

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.

§9.230 Requirements for a Day Habilitation Center.

(a) In this section, the term “program provider” does not include a program provider that operates a campus-based facility.

(b) In this section, the following terms have the following meanings.

(1) Day habilitation center--A building or a portion of a building:

(A) that is not located within a program provider's facility;

(B) that the program provider or a subcontractor of the program provider owns or leases; and

(C) in which active treatment is provided to an individual by the program provider or a subcontractor of the program provider.

(2) Emergency preparedness and response plan--A written plan that describes the actions that will be taken to protect individuals, including evacuation or sheltering-in-place, in the event of an emergency in a day habilitation center, such as a fire or other man-made or natural disaster.

(c) If a program provider operates a day habilitation center, the program provider must:

(1) conduct, at least once every 90 days, a fire drill during which individuals evacuate the day habilitation center;

(2) prominently post, in an area of the day habilitation center that is readily accessible to individuals, employees, contractors, volunteers, and visitors, a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the Department of Family and Protective Services (DFPS) toll free telephone number at 1-800-647-7418; and

(3) have an emergency preparedness and response plan.

(d) If a subcontractor of a program provider operates a day habilitation center, the program provider must:

(1) have a written agreement with the subcontractor that requires the subcontractor:

(A) to conduct, at least once every 90 days, a fire drill during which individuals evacuate the day habilitation center;

(B) to have an emergency preparedness and response plan;

(C) to prominently post, in an area of the day habilitation center that is readily accessible to individuals, employees, contractors, volunteers, and visitors, a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS toll free telephone number at 1-800-647-7418;

(D) to search the nurse aide registry (NAR) and the employee misconduct registry (EMR), before the subcontractor hires an unlicensed applicant for employment, contracts with an unlicensed independent contractor, or uses an unlicensed volunteer who will have direct contact with an individual receiving active treatment in the day habilitation center, using the DADS

Internet website to confirm that the unlicensed applicant, independent contractor, or volunteer is not listed in either registry as unemployable;

(E) to provide written information to the unlicensed applicant, independent contractor, or volunteer about the EMR that complies with the requirements of §93.3(c) of this title (relating to Employment and Registry Information);

(F) to search the NAR and the EMR at least once every twelve months using the DADS Internet website to confirm that the unlicensed employee, independent contractor, or volunteer is not listed in either registry as unemployable;

(G) to conduct a criminal history check and verify that the unlicensed applicant's, independent contractor's, or volunteer's criminal history information does not include a conviction that bars employment under the Texas Health and Safety Code §250.006, before the unlicensed applicant, independent contractor, or volunteer has direct contact with an individual receiving active treatment in the day habilitation center; and

(H) to provide active treatment to the individual in accordance with the individual's IPP and keep a copy of the IPP in the day habilitation center;

(2) monitor the subcontractor to ensure that the subcontractor is in compliance with the written agreement described in paragraph (1) of this subsection; and

(3) maintain records of its monitoring of the subcontractor.

April 13, 2016/16R04

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §49.102, in Subchapter A, Application and Definitions; and §49.205, in Subchapter B, Contractor Enrollment; and new §49.313, in Subchapter C, Requirements of a Contractor, in Chapter 49, Contracting for Community Services.

BACKGROUND AND PURPOSE

The purpose of the proposed rules is to implement recommendations in the Sunset Advisory Commission’s July 2015 report regarding “day habilitation facilities” in the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, Deaf-Blind with Multiple Disabilities (DBMD) Program, and Community Living Assistance and Support Services (CLASS) Program. Specifically, the Sunset Advisory Commission recommended that an HCS, TxHmL, DBMD, or CLASS provider, to help ensure the safety of individuals enrolled in those programs, include in a contract with a day habilitation facility requirements to conduct background checks on employees and volunteers, have an emergency response plan, conduct fire drills, post abuse hotline information, and follow an individual’s service plan. The proposed rules do not use the term “day habilitation facility,” but instead refer to a contractor or subcontractor that provides day habilitation in the HCS Program, the TxHmL Program, or the DBMD Program, or that provides prevocational services in the CLASS Program.

The proposed rules also require a contractor of HCS, TxHmL, DBMD, or CLASS Program services that directly provides day habilitation or prevocational services to have an emergency response plan, conduct fire drills, and post abuse hotline information. These requirements ensure consistency with the requirements of subcontractors.

The proposed rules also implement Senate Bill (S.B.) 1999, 84th Texas Legislature, Regular Session, 2015, which amended the Texas Human Resources Code, Chapter 103, to change “adult day care” to “day activity and health services.” Also, in accordance with DADS current policy and S.B. 202, 84th Texas Legislature, Regular Session, 2015, which repealed Texas Health and Safety Code, Chapter 781 regarding personal emergency response systems, the proposed rules delete the requirement for a contractor that provides Title XX emergency response services (ERS) to have a license as a personal emergency response system provider issued by the Department of State Health Services (DSHS) or a license as an alarm systems company issued by the Texas Private Security Board.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §49.102 adds a definition of “emergency response plan,” makes a

minor editorial change to the definition of “HCS Program,” and moves the definition of “exploitation” to its correct alphabetical order.

The proposed amendment to §49.205 replaces “adult day care license” with “day activity and health services facility license.” The proposed amendment updates the title of Chapter 98, which will be changed in response to S.B. 1999. The proposed amendment deletes the requirement for a contractor who provides Title XX ERS to have a license as a personal emergency response system provider issued by the DSHS or a license as an alarm systems company issued by the Texas Private Security Board.

Proposed new §49.313 requires a contractor that has a contract for the HCS Program, the TxHmL Program, the CLASS Program, or the DBMD Program, in a building or a portion of a building that is owned or leased by the contractor and in which the contractor provides day habilitation in the HCS Program, the TxHmL Program, or the DBMD Program, or provides prevocational services in the CLASS Program, to (1) conduct, at least once every 90 days, a fire drill during which individuals evacuate the building; and (2) prominently post, in an area of the building that is readily accessible to individuals, employees, subcontractors, volunteers, and visitors, a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS toll free telephone number. The proposed new rule also requires these contractors to have an emergency response plan for individuals while receiving day habilitation or prevocational services in the building. If a contractor has a written agreement with a subcontractor to provide day habilitation in the HCS Program, the TxHmL Program, or the DBMD Program or provide prevocational services in the CLASS Program, and the day habilitation or prevocational services are provided in a building or a portion of a building the subcontractor owns or leases, the proposed new rule requires the written agreement to include the following provisions: (1) that the subcontractor must conduct, at least once every 90 days, a fire drill during which individuals evacuate the building; (2) that the subcontractor must prominently post, in an area of the building that is readily accessible to individuals, employees, subcontractors, volunteers, and visitors, a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS toll free telephone number ; (3) that the subcontractor, in accordance with §49.304, must conduct background checks on the subcontractor’s employees, subcontractors, and volunteers who provide day habilitation or prevocational services; and (4) that the subcontractor must, for an individual in the HCS Program or TxHmL Program, provide day habilitation in accordance with the individual’s implementation plan or for an individual in the CLASS Program or DBMD Program, provide prevocational services or day habilitation in accordance with the individual’s individual program plan. The proposed new rule also requires a subcontractor to keep a copy of an individual’s plan in the building.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section 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 new section will have an adverse economic effect on small businesses and micro-businesses, because there may be costs associated with developing an emergency plan, conducting fire drills, and modifying written agreements with subcontractors. DADS estimates the number of small businesses and micro-businesses is less than 2523, the approximate number of contractors in the HCS, TxHmL, DBMD, and CLASS Programs. DADS is unable to estimate the cost of compliance, but the cost is expected to be minimal.

The rules implement specific recommendations of the Sunset Advisory Commission and no alternatives were considered to minimize the effect on small and micro-businesses.

PUBLIC BENEFIT AND COSTS

Kristi Jordan, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is to implement recent changes in Texas law and establish requirements to help ensure the safety of individuals receiving day habilitation services or prevocational services through the HCS, TxHmL, DBMD, and CLASS Programs.

Ms. Jordan anticipates that there may be an economic cost to persons who are required to comply with the amendments and new section to develop an emergency plan, conduct fire drills, and modify written agreements with subcontractors to add new requirements. DADS is unable to estimate these costs, but they are expected to be minimal. The amendments and new section 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 Sheryl Loera at (512) 438-3693 in DADS Long-Term Services and Support unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-16R04, 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 16R04" in

the subject line.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49	CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER A	APPLICATION AND DEFINITIONS
RULE	§49.102

Proposed action:

X Amendment

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.

§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) CFC PAS/HAB--A Medicaid state plan service provided through the Community First Choice (CFC) Option, described in 1 Texas Administrative Code [~~(TAC)~~] Chapter 354, Subchapter A, Division 27 (relating to Community First Choice), under a contract for:

(A) the HCS Program;

(B) the TxHmL Program;

(C) a DSA in the CLASS Program; or

(D) the DBMD program.

(9) CFS--Continued family services.

(10) Change of legal entity--An event that occurs when a contractor is required to obtain a new federal tax identification number.

(11) 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.

(12) 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.

(13) CLASS Program--Community Living Assistance and Support Services Program.

(14) 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.

(15) CMA--Case management agency.

(16) CMPAS--Consumer managed personal attendant services.

(17) Contract--A written agreement between DADS and another person that obligates the other person to provide a service to an individual in exchange for payment from DADS. The term includes standard and provisional contracts.

(18) Contractor--The person other than DADS who is a party to a contract.

(19) Contractual agreement--A written, legally binding agreement that is not a contract as defined in this section.

(20) 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.

(21) 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.

(22) 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).

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

(24) 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.

(25) DAHS--Day activity and health services.

(26) Day--A calendar day, including weekends and holidays.

(27) DBMD Program--Deaf Blind with Multiple Disabilities Program.

(28) 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.

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

(30) 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, $0.1 \times 0.6 = 0.06$).

(31) DSA--Direct service agency.

~~[(32) Exploitation--Exploitation as defined in Texas Human Resources Code, §48.002.]~~

~~(32) [(33)]~~ Electronic record--Information that is stored in a medium having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, and is retrievable in perceivable form.

(33) Emergency response plan--A written plan that describes the actions that will be taken to protect individuals, including evacuation or sheltering-in-place, in the event of an emergency such as a fire or other man-made or natural disaster.

(34) Exploitation--Exploitation as defined in Texas Human Resources Code, §48.002.

~~(35) [(34)]~~ FC--Family care.

~~(36) [(35)]~~ 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).

~~(37) [(36)]~~ Governmental entity--An agency or other entity of federal, state, or local government.

~~(38) [(37)]~~ HCS Program--Home and Community-based ~~[Community Based]~~ Services Program.

~~(39) [(38)]~~ HCSSA--Home and community support services agency.

~~(40) [(39)]~~ HDM--Home delivered meals.

~~(41) [(40)]~~ HHSC--The Texas Health and Human Services Commission.

~~(42) [(41)]~~ 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, $0.1 \times 0.8 = 0.08$); 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, $0.5 \times 0.1 \times 0.8 = 0.04$).

(43) [~~(42)~~] Individual--A person who is enrolled in a program or service described in §49.101(a) of this subchapter.

(44) [~~(43)~~] 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.

(45) [~~(44)~~] LEIE--List of excluded individuals and entities. In this context, "individual" does not have the meaning as defined in this section.

(46) [~~(45)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC in accordance with Texas Health and Safety Code, §533A.035.

(47) [~~(46)~~] Managing employee--A person who exercises operational or managerial control over, or who conducts the day-to-day operation of, an applicant or contractor.

(48) [~~(47)~~] MDCP--Medically Dependent Children Program.

(49) [~~(48)~~] Neglect--Neglect as defined in Texas Human Resources Code, §48.002 or, in reference to children, Texas Family Code, §261.001.

(50) [~~(49)~~] OHR--Out of home respite.

(51) [~~(50)~~] Paper record--Information that is stored on paper.

(52) [~~(51)~~] 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.

(53) [~~(52)~~] 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 or CFC PAS/HAB in the CLASS Program;
- (J) residential habilitation or CFC PAS/HAB in the DBMD Program;
- (K) chore services in the DBMD Program;
- (L) day habilitation in the DBMD Program;
- (M) supported home living or CFC PAS/HAB in the HCS Program; or
- (N) community support or CFC PAS/HAB in the TxHmL Program.

(54) [~~(53)~~] PHC--Primary home care.

(55) [~~(54)~~] 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.

(56) [~~(55)~~] RC--Residential care.

(57) [~~(56)~~] Records--Paper records and electronic records.

(58) [~~(57)~~] 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.

(59) [~~(58)~~] 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.

(60) [~~(59)~~] SFS--Support family services.

(61) [~~(60)~~] SSPD--Special Services to Persons with Disabilities (SSPD) Program.

(62) [~~(61)~~] 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.

(63) [~~(62)~~] 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.

(64) [~~(63)~~] Subcontractor--The person other than a contractor who is a party to a subcontract.

(65) [~~(64)~~] TAS--Transition assistance services.

(66) [~~(65)~~] TxHmL Program--Texas Home Living Program.

(67) [~~(66)~~] Vendor hold--A temporary suspension of payments that are due to a contractor under a contract.

(68) [~~(67)~~] Volunteer--A person who works for a contractor without compensation, other than reimbursement for actual expenses.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49	CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER B	CONTRACTOR ENROLLMENT
RULE	§49.205

Proposed action:
X Amendment

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.

§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 permit to operate a child-placing agency issued by DFPS in accordance with Chapter 745 of this title (relating to Licensing); or

(B) 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 (relating to Minimum Standards for Child-Placing Agencies);

(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 a day activity and health services facility [~~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; and

~~[(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]~~

(17) ~~[(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.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49	CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER C	REQUIREMENTS OF A CONTRACTOR
RULE	§49.313

Proposed action:
X New

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.

§49.313. Day Habilitation Requirements in the HCS Program, the TxHmL Program, and the DBMD Program and Prevocational Services Requirements in the CLASS Program.

(a) A contractor that has a contract for the HCS Program, the TxHmL Program, the CLASS Program, or the DBMD Program must:

(1) in a building or a portion of a building that is owned or leased by the contractor and in which the contractor provides day habilitation in the HCS Program, the TxHmL Program, or the DBMD Program or provides prevocational services in the CLASS Program:

(A) conduct, at least once every 90 days, a fire drill during which individuals evacuate the building; and

(B) prominently post, in an area of the building that is readily accessible to individuals, employees, subcontractors, volunteers, and visitors, a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS toll free telephone number at 1-800-647-7418; and

(2) have an emergency response plan for individuals while receiving day habilitation or prevocational services in the building.

(b) If a contractor described in subsection (a) of this section has a written agreement required by §49.308 of this subchapter (relating to Subcontracts) with a subcontractor to provide day habilitation in the HCS Program, the TxHmL Program, or the DBMD Program or provide prevocational services in the CLASS Program and the day habilitation or prevocational services are provided in a building or a portion of a building the subcontractor owns or leases, the written agreement must include the following provisions:

(1) that the subcontractor must conduct, at least once every 90 days, a fire drill during which individuals evacuate the building;

(2) that the subcontractor must have an emergency response plan for individuals while receiving day habilitation or prevocational services in the building;

(3) that the subcontractor must prominently post, in an area of the building that is readily accessible to individuals, employees, subcontractors, volunteers, and visitors, a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS toll free telephone number at 1-800-647-7418;

(4) that the subcontractor, in accordance with §49.304 of this subchapter (relating to Background Checks), must conduct background checks on the subcontractor's employees, subcontractors, and volunteers who provide day habilitation or prevocational services; and

(5) that the subcontractor must:

(A) for an individual in the HCS Program, provide day habilitation in accordance with the individual's implementation plan as defined in §9.153 of this title (relating to Definitions) and keep a copy of the plan in the building;

(B) for an individual in the TxHmL Program, provide day habilitation in accordance with the individual's implementation plan as defined in §9.553 of this title (relating to Definitions) and keep a copy of the plan in the building;

(C) for an individual in the CLASS Program, provide prevocational services in accordance with the individual's IPP as defined in §45.103 of this title (relating to Definitions) and keep a copy of the IPP in the building; and

(D) for an individual in the DBMD Program, provide day habilitation in accordance with the individual's IPP as defined in §42.103 of this title (relating to Definitions) and keep a copy of the IPP in the building.