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August 10, 2011/11R13

TITLE 40           SOCIAL SERVICES AND ASSISTANCE  
PART 1            DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 18       NURSING FACILITY ADMINISTRATORS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §18.16, concerning examinations, in Chapter 18, Nursing Facility Administrators.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement Senate Bill (SB) 867, 82nd Legislature, Regular Session, 2011. SB 867 requires reasonable examination accommodations for a licensing examinee diagnosed as having dyslexia. The proposal allows an applicant with a disability, including dyslexia, to request reasonable accommodation for examination in accordance with Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia) and the Americans with Disabilities Act.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §18.16 adds new subsection (e) and reformats the remaining subsections. New subsection (e) contains requirements allowing for reasonable accommodations for a licensing examinee with dyslexia or any other disability under the Americans with Disabilities Act.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because DADS contracts with vendors to administer the examinations for nurse aide permits and nursing facility administrator licenses. The vendors currently comply with the Americans with Disabilities Act to provide for reasonable accommodation for a licensing examinee. DADS incurs any costs to allow for reasonable accommodations for medication aide certification. The proposed rule adds the requirements for reasonable accommodation to the regulations in Chapters 18, 94, and 95 to correspond to current practice.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, 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 licensing examinees with dyslexia or another disability

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under the Americans with Disabilities Act will be able to receive reasonable accommodation to take the examination for a medication aide permit, nurse aide certification, or nursing facility administrator license.

Ms. Durden 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 Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R13, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 11R13" in the subject line.

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TITLE 40                    SOCIAL SERVICES AND ASSISTANCE  
PART 1                     DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 18                NURSING FACILITY ADMINISTRATORS  
SUBCHAPTER B             REQUIREMENTS FOR LICENSURE  
RULE                        §18.16

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 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, §161.021.

**§18.16. Examinations.**

(a) Applicants seeking licensure as nursing facility administrators from DADS must pass the following examinations:

(1) state examination on the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification); and

(2) NAB examination.

(b) Applicants register for examination at a designated NAB website by:

(1) submitting an application for approval to test; and

(2) paying the \$155 state examination and \$285 NAB examination fees on-line.

(c) DADS sends e-mails notifying applicants of their eligibility to take the test.

(d) Applicants must not take any examination without DADS approval.

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(e) 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.

(f) [~~e~~] Applicants complete the on-line state and NAB examinations at PES.

(g) [~~f~~] DADS notifies applicants of test scores within two weeks after receiving examination results from the testing agency.

(h) [~~g~~] An applicant who fails an examination and wants to retest must pay the appropriate state or NAB examination fee stated in subsection (b)(2) of this section.

(i) [~~h~~] Applicants failing the state or NAB examination three consecutive times must complete another minimum 1,000-hour AIT internship before retesting.

(j) [~~i~~] Applicants previously licensed as nursing facility administrators by passing the comprehensive examination and who have an expired license for 12 months or longer or voluntarily surrendered their license must pass the NAB and state examinations to obtain a new license.

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

Issued in Austin, Texas, on \_\_\_\_\_.

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TITLE 40           SOCIAL SERVICES AND ASSISTANCE  
PART 1            DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 94       NURSE AIDES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §94.4, concerning competency evaluation program (CEP) requirements, in Chapter 94, Nurse Aides.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement Senate Bill (SB) 867, 82nd Legislature, Regular Session, 2011. SB 867 requires reasonable examination accommodations for a licensing examinee diagnosed as having dyslexia. The proposal allows an applicant with a disability, including dyslexia, to request reasonable accommodation for examination in accordance with Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia) and the Americans with Disabilities Act.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §94.4 revises subsection (g) to specifically include dyslexia, along with any other disability under the Americans with Disabilities Act, as one of the disabilities for which a licensing examinee may request reasonable accommodations for examination. The amendment to (b)(2) replaces "nurse aide" with "eligible trainee" to clarify that an eligible trainee, who is not yet a nurse aide, may take the examination. Additional changes update agency references from DHS to DADS.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because DADS contracts with vendors to administer the examinations for nurse aide permits and nursing facility administrator licenses. The vendors currently comply with the Americans with Disabilities Act to provide for reasonable accommodation for a licensing examinee. DADS incurs any costs to allow for reasonable accommodations for medication aide certification. The proposed rule adds the requirements for reasonable accommodation to the regulations in Chapters 18, 94, and 95 to correspond to current practice.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that,

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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 licensing examinees with dyslexia or another disability under the Americans with Disabilities Act will be able to receive reasonable accommodation to take the examination for a medication aide permit, nurse aide certification, or nursing facility administrator license.

Ms. Durden 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 Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R13, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 11R13" in the subject line.

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PART 1                     DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 94                NURSE AIDES  
RULE                        §94.4

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 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, §161.021.

**§94.4. Competency Evaluation Program (CEP) Requirements.**

(a) All examinations will be administered by a DADS ~~[DHS]~~-designated examiner to individuals who have successfully completed the training portion of a NATCEP or are eligible to take a CEP under §94.9 of this title (relating to Waiver, Reciprocity, and Exemption Requirements).

(b) Requirements for the competency evaluation portion of a NATCEP are:

(1) A trainee is eligible to take the competency evaluation portion of a NATCEP if he or she has successfully completed the training portion of a NATCEP as determined by the program director.

(2) An eligible trainee will take the examination as part of the same NATCEP. If it is not possible to test with the same NATCEP, an eligible trainee ~~[a nurse aide]~~ may take the examination at another approved facility or at a NATCEP that has volunteered to serve as an examination site.

(3) An eligible trainee who does not test with the same NATCEP must obtain from the

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program director of the NATCEP a signed CEP application or a certificate or letter to present to the skills examiner before taking the examination, as described in §94.5(a)(4)(E)-(F) of this title (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(c) An approved facility or NATCEP serving as an examination site is responsible for:

(1) providing the facility where the skills examination will be given and the location where the written or oral examination will be given;

(2) offering the examination to its own trainees promptly after successful completion of the training portion of a NATCEP;

(3) offering the examination to an eligible examinee employed by or who has received an offer of employment from the facility, if the individual desires to be examined at the facility;

(4) offering the examination to other eligible examinees the facility or NATCEP has voluntarily accepted for the examination;

(5) scheduling examinations and retests with DADS [~~DHS~~'s] designated examiner; and

(6) ensuring applications for examination are completed accurately.

(d) The examinee is responsible for:

(1) taking the examination within 24 months of completion of the training portion of the NATCEP:

(A) with the NATCEP where the examinee was trained;

(B) at an approved facility from which the individual has received an offer of employment or is employed; or

(C) at an approved facility or NATCEP that has volunteered to accept the examinee for examination;

(2) verifying the arrangements for examination with the examination site;

(3) presenting the completed application for examination and documentation to the skills examiner before the examination, as required under subsection (b)(3) of this section or §94.9(c) of this title;

(4) requesting a retest if the examinee fails the examination; and

(5) meeting any other procedural requirements specified by DADS [~~DHS~~] or its designated examiner.

(e) DADS [~~DHS~~] or designated examiner is responsible for:

(1) providing instructions and eligibility forms to applicants for a CEP and provide a letter of approval as specified in §94.9(c) of this title;



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(2) assisting an eligible examinee find an approved facility or NATCEP to serve as an examination site;

(3) scheduling examinations and retests for the requesting approved facility or NATCEP; and

(4) administering examinations and report results of examinations as required by DADS [~~DHS~~].

(f) The examination must consist of:

(1) the skills examination, which includes the trainee demonstrating five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) the written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. The written examination questions are printed in a test booklet with a separate answer sheet. The oral examination is a tape-recorded presentation read from a prepared text in a neutral manner that includes additional questions to test reading comprehension.

(g) 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.

~~[(g) A nurse aide with a disability may take the examination to establish competency under this section by requesting a reasonable accommodation pursuant to the Americans with Disabilities Act.]~~

(h) Successful completion of the examination consists of a passing grade on the:

(1) skills examination as determined by DADS [~~DHS~~]; and

(2) written or oral examination as determined by DADS [~~DHS~~].

(i) A person who fails the skills examination or the written or oral examination may retest twice on the failed examination.

(1) The person will be advised of the areas he or she did not pass.

(2) The person must request re-examination through the approved facility, NATCEP, or DADS [~~DHS's~~] designated examiner.

(3) DADS [~~DHS~~] is not required to set special re-examination schedules.

(4) After failing the examination three times, the individual must complete the training portion of a NATCEP before retesting.

(j) The state must advise in advance any individual who takes the examination that a record

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of the successful completion of the examination will be included on the Nurse Aide Registry.

(k) A record of successful completion of the examination must be included on the Nurse Aide Registry within 30 days of the date the examination was passed.

(l) An examination will not be offered by or in a facility if the facility falls within any of the provisions of §94.3(g) of this title (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(m) A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the nurse aide begins a CEP may not be charged for any portion of the CEP.

(n) If an individual does not fall under this subsection, but becomes employed as a nurse aide by, or receives an offer of employment as a nurse aide from, a facility not later than 12 months after completing a CEP, the state must provide for the reimbursement of costs incurred in completing the CEP on a pro rata basis during the period in which the individual is employed as a nurse aide.

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

Issued in Austin, Texas, on \_\_\_\_\_.

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

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §95.111, concerning examination, and §95.128, concerning home health medication aides, in Chapter 95, Medication Aides--Program Requirements.

#### BACKGROUND AND PURPOSE

The purpose of the amendments is to implement Senate Bill (SB) 867, 82nd Legislature, Regular Session, 2011. SB 867 requires reasonable examination accommodations for a licensing examinee diagnosed as having dyslexia. The proposal allows an applicant with a disability, including dyslexia, to request reasonable accommodation for examination in accordance with Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia) and the Americans with Disabilities Act.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §95.111 adds new (a)(4) to specifically include dyslexia, along with any other disability under the Americans with Disabilities Act, as one of the disabilities for which a licensing examinee may request reasonable accommodation for examination.

The proposed amendment to §95.128 adds new (j)(2) to specifically include dyslexia, along with any other disability under the Americans with Disabilities Act, as one of the disabilities for which a licensing examinee may request reasonable accommodation for examination. The amendment also updates section titles, program contact information, and references to the Texas Board of Nursing.

#### FISCAL NOTE

Gordon Taylor, 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 DADS contracts with vendors to administer the examinations for nurse aide permits and nursing facility administrator licenses. The vendors currently comply with the Americans with Disabilities Act to provide for reasonable accommodation for a licensing examinee. DADS incurs any costs to allow for reasonable accommodations for medication aide certification. The proposed rule adds the requirements for reasonable accommodation to the regulations in Chapters 18, 94 and 95 to correspond to current practice.

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## PUBLIC BENEFIT AND COSTS

Veronda Durden, 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 licensing examinees with dyslexia or another disability under the Americans with Disabilities Act will be able to receive reasonable accommodation to take the examination for a medication aide permit, nurse aide certification, or nursing facility administrator license.

Ms. Durden 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 Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R13, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 11R13" in the subject line.

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TITLE 40                    SOCIAL SERVICES AND ASSISTANCE  
PART 1                     DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 95                MEDICATION AIDES--PROGRAM REQUIREMENTS  
RULE                        §95.111 AND §95.128

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 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, §161.021.

**§95.111. Examination.**

(a) DADS gives a written examination to each applicant at a site determined by DADS.

(1) The applicant must meet the requirements of §95.107 of this title (relating to Training Requirements; Nursing Graduates; Reciprocity) and §95.109 of this title (relating to Application Procedures) before taking the written examination.

(2) The applicant is 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 that will be administered to a facility's residents.

(3) The examination must be given after the applicant has successfully completed the training program or met the requirements of §95.107(c)-(e) of this title (relating to Training Requirements; Nursing Graduates; Reciprocity).

(4) 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.

(5) [(4)] Staff of a training program must notify DADS at least four weeks prior to its requested examination date.

(6) [(5)] DADS determines the passing grade on the examination.

(7) [(6)] If DADS grades or reviews the examination, DADS notifies the applicant of the results of the examination not later than the 30th day after the date the applicant took the examination.

(8) [(7)] If a testing service grades or reviews the examination:

(A) DADS notifies the applicant of the results of the examination not later than the 14th day after the date DADS receives the results from the testing service; and

(B) if notice of the examination results will be delayed for longer than 90 days after the examination date, DADS notifies the applicant of the reasons for the delay before the 90th day.

(9) [(8)] DADS may require a testing service to notify an applicant of the results of the applicant's examination.

(10) [(9)] DADS notifies in writing an applicant who fails the examination.

(A) DADS may give an applicant under §95.107(a) of this title 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 in the failure notification. The site of the examination is determined by DADS.

(C) DADS gives no further examinations if the student fails the subsequent examination, unless the student enrolls in and successfully completes another training program.

(D) If requested in writing by an applicant who fails the examination, DADS furnishes the applicant with an analysis of the applicant's performance on the examination.

(b) 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 days from the date of the originally scheduled examination. The rescheduled examination must be at a site determined by DADS.

(c) An applicant whose application for a permit must be denied under §95.113 of this title (relating to Determination of Eligibility) is ineligible to take the examination.

**§95.128. Home Health Medication Aides.**

(a) General.

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

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

(B) holds a current permit issued under this section and acts under the delegated authority of a registered nurse (RN) licensed by the Board of Nurse Examiners which authorizes the licensee to administer medication;

(C) administers a medication to a client of an agency in accordance with rules of the Texas Board of Nursing [~~Board of Nurse Examiners~~] 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 Texas Board of Nursing [~~Board of Nurse Examiners~~] and DADS.

(2) 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 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 Texas Board of Nursing [~~Board of Nurse Examiners~~];

(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 Texas Board of Nursing [~~BNE~~];

(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

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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 home health medication aide services are provided, an agency employs a home health medication aide to provide home health medication aide services, and an RN shall be employed by or under contract with the agency to perform the initial 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 services are provided.

(2) The clinical records of a 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 governing home health medication aides and must assure that the home health medication aide is in compliance with the Health and Safety Code, Chapter 142, Subchapter B.

(4) A permit holder must:

(A) function under the supervision of an RN;

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

(C) comply with DADS rules applicable to personnel used in 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 [~~§97.21(b)(6)~~] of this title (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation [~~Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health or Hospice Services~~]).

(c) Permitted actions. A permit holder is permitted to:

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



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

(3) administer regularly prescribed medication 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;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in emergency. Immediately after the emergency, the 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.

(d) Prohibited actions. Permit holders must not:

(1) administer a medication by any injectable route;

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

(3) administer previously ordered pro re nata (PRN) medication 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 has not been previously administered to 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;

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(6) crush medication 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 §97.298 [~~§97.21(b)(6)~~] of this title;

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

(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, excessive use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Prior to enrollment in a training program and prior to application for a permit under this section, all 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 a high school or have 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.

(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)-(4) of this section.

(2) The application must be accompanied by the permit application 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 [~~DADS~~<sup>2</sup>] 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 [~~DADS~~<sup>2</sup>] 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 [~~DADS~~<sup>2</sup>] curriculum for a home health medication aide training program;

(3) submits a statement that is signed by the nursing school's administrator or other authorized individual 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 [~~DADS~~<sup>2</sup>] 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 permit application 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 (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 [~~DADS~~<sup>2</sup>] 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 [~~DADS~~<sup>2</sup>] open book examination and return it to DADS by the date given in the examination notice.

(7) The applicant must complete DADS [~~DADS~~<sup>2</sup>] 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 prior to the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the

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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 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 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) [(2)] 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) [(3)] A training program must notify DADS at least four weeks prior to its requested examination date.

(5) [(4)] DADS determines the passing grade on the examination.

(6) [(5)] 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) [~~(6)~~] 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) [~~(7)~~] 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 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 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.

(l) 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 permit holder must renew the permit annually.

(3) The renewal date of a permit is the last day of the current permit.

(4) Each 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 permit holder's failure to file for timely renewal.

(5) A permit holder must complete a seven clock-hour continuing education program approved by DADS 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 permit holder must earn approved continuing education hours to have the permit renewed again.

(6) DADS denies renewal of the permit of a permit holder who is in violation of the Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.

(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 permit holder at the address in DADS [~~DADS~~<sup>2</sup>] records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the permit holder must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder.

(C) DADS issues a renewal permit to a permit holder who has met all requirements for renewal.

(D) DADS does not renew a permit if the 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 permit holder fails to timely renew his or her permit because the 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 permit holder may renew the permit pursuant to this subparagraph.

(i) Renewal of the permit may be requested by the permit holder, the permit holder's spouse, or an individual having power of attorney from the 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 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 permit holder must be filed with

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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 permit holder renewing under this subparagraph must pay the applicable renewal fee.

(vi) A permit holder is not authorized to act as a home health medication aide after the expiration of the permit unless and until the permit holder actually renews the permit.

(vii) A permit holder renewing under this subparagraph is not required to submit any continuing education hours.

(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, prior to expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(9) A permit that is not renewed during the two years after expiration may not be renewed.

(10) 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 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 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 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 of 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 [~~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 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

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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 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 a RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom or laboratory hour is 50 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 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 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 [~~director of nursing~~] 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 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% 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 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 commissioner at the address of DADS that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. 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. The 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, 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 permit holder or program fails to comply with any provision of the 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 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 §97.601 of this title (relating to Enforcement Actions). [~~License Denial, Suspension or Revocation.~~]

(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 permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the permit holder or home health medication aide program an opportunity for a hearing.

(A) The permit holder or home health medication aide program must request a hearing within 15 calendar days 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 [~~Permit~~] Program, Mail Code E-416 [~~Y-979~~], P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the permit holder or home health medication aide program does not request a hearing, in writing, within 15 calendar days of receipt of the notice, the 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 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 permit holder to request a hearing.

(6) All hearings are conducted pursuant to Texas Government Code, Chapter 2001, and the formal hearing procedures at 1 TAC §§357.481-357.490.

(7) If the permit holder or program fails to appear or be represented at the scheduled hearing, the 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 prior to making a determination.

(A) During the time of suspension, the suspended permit holder must return his or her permit to DADS.

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(B) If a suspension overlaps a renewal date, the suspended 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 permit holder must immediately return the license or permit to DADS.

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

Issued in Austin, Texas, on \_\_\_\_\_.