

(u) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes nursing care to a Medicaid recipient under 26 TAC §554.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee pays the hospital using the same procedures, the same case-mix methodology, and the same PDPM LTC rates that HHSC authorizes for reimbursing nursing facilities receiving the nursing rate component with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(v) Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (b)(8) of this section or to fund carry-over enhancements as per subsection (i) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 2, 2024
For further information, please call: (512) 867-7817



1 TAC §355.309, §355.314

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; 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-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The repeals affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.309. Performance-based Add-on Payment Methodology.

§355.314. Supplemental Payments to Non-State Government-Owned Nursing Facilities.

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

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) proposes amendments to §86.201 (relating to Documentary Fee) in 7 TAC Chapter 86, concerning Retail Creditors.

The rule at §86.201 relates to documentary fees for retail installment transactions under Texas Finance Code, Chapter 345. In general, the purpose of the proposed rule changes to 7 TAC §86.201 is to adjust the maximum documentary fee amount under the rule.

The Office of Consumer Credit Commissioner (OCCC) distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received three written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Texas Finance Code, Chapter 345 governs retail installment transactions to purchase goods other than motor vehicles. Under Texas Finance Code, §345.251(a), a retail seller may charge a documentary fee in a retail installment transaction to purchase a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. Under Texas Finance Code, §345.251(b)(2), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission."

Currently, §86.201 describes the maximum documentary fee in a Chapter 345 retail installment transaction. The rule distinguishes between retail installment transactions for covered land vehicles (i.e., motorcycles, mopeds, all-terrain vehicles, boat trailers, and towable recreational vehicles) and covered watercraft (i.e., boats and boat motors). Current §86.201(c) contains a \$125 maximum documentary fee for the purchase of one or more covered land vehicles. Current §86.201(d) contains a \$125 maximum documentary fee for the purchase of one or more covered watercraft. Current §86.201(e) contains a \$175 maximum documentary fee for the purchase of one or more covered land vehicles and one or more covered watercraft.

In 2013, the commission adopted the \$125 and \$175 amounts in §86.201. The amounts have not been adjusted since then. As the commission explained in its preamble to the 2013 adoption, the rule's fee amounts and terminology are intended to correspond to different sets of titling and registration requirements. Land vehicles are subject to titling and registration requirements administered by the Texas Department of Motor Vehicles (TxDMV) under Texas Transportation Code, Chapters 501 and 502. Watercraft are subject to titling and registration requirements administered by the Texas Parks and Wildlife Department (TPWD) under Texas Parks and Wildlife Code, Chapter 31. As the commission explained, the higher \$175 amount for the purchase of both types of vehicles "is intended to compensate the

retail creditor for the documents and procedures that are necessary to title items with both TxDMV and TPWD." 38 TexReg 5707 (Aug. 30, 2013).

Proposed amendments throughout §86.201 would adjust the maximum documentary fee for a Chapter 345 retail installment transaction. A proposed amendment to §86.201(c) would adjust the documentary fee for a covered land vehicle from \$125 to \$200. A proposed amendment to §86.201(d) would adjust the documentary fee for covered watercraft from \$125 to \$200. A proposed amendment to §86.201(e) would adjust the documentary fee for both a covered land vehicle and covered watercraft from \$175 to \$250.

The commission and the OCCC believe that now is an appropriate time to revisit the maximum documentary fee amounts in §86.201 and to adjust them. The \$75 adjustment corresponds to a similar adjustment recently proposed by the commission in published amendments to 7 TAC §84.205 (relating to Documentary Fee), concerning documentary fees for motor vehicles. See 49 TexReg 1173 (Mar. 1, 2024). The proposed amendments to §84.205 would adjust the motor vehicle documentary fee amount considered reasonable from \$150 to \$225. That proposal was based on the OCCC's ongoing review of documentary fee cost analyses, as well as documentary fee amounts found to be reasonable in a recent contested case.

The commission and the OCCC believe that a corresponding \$75 adjustment is appropriate for covered land vehicles and watercraft under §86.201. The \$200 amount is appropriate because these vehicles are subject to similar document-related requirements that apply to motor vehicles; many, but not all, of the motor vehicle document requirements apply to vehicles under §86.201. For example, vehicles under §86.201 are subject to titling and registration requirements (as described earlier in this preamble) but generally are not subject to the requirements to provide a new car window sticker or a used car buyers guide. See 15 U.S.C. §1232 (requirement to provide new car window sticker applies to automobiles), Federal Trade Commission Used Car Rule, 16 C.F.R. §455.1(d)(2) (requirement to provide used car buyers guide applies to certain motorized vehicles other than motorcycles).

In informal precomments, stakeholders expressed general support for the proposed amendments. Two boating trade associations filed precomments supporting the proposed amendments. A third informal precomment was filed on behalf of a motorcycle trade association, a recreational vehicle association, and two boating trade associations. This precomment stated that the associations support the proposed amendments and stated: "We can confirm that our dealers conduct the same required administrative work to complete transactions as do automobile dealers: vehicle titling (which sometimes requires in-person visits to county offices), vehicle registration, submitting taxes, obtaining and mailing license plates, ensuring liens are correctly recorded and released, verifying a trade-in's value and whether it has open recalls, etc." The precomment also stated: "Costs have increased since 2013 due to general inflation, specific cost increases and heightened state and federal regulatory requirements. We have seen increased costs across multiple categories, including wages (up over 50% in some labor markets), real property leasing rates, technology (with specific new hardware, software and printers now mandated) and postage."

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implica-

tions for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will ensure that retail sellers may charge a documentary fee that reflects costs for handling and processing documents in a retail installment transaction for the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle.

The OCCC does not anticipate that the proposed rule changes will result in economic costs to persons who are required to comply with the proposed rule changes.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rule will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §86.201 by adjusting the maximum documentary fee amount. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The OCCC does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Finance Code, §345.251(b)(2), which authorizes the Finance Commission to adopt a rule establishing a reasonable maximum documentary fee amount, and Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to enforce Texas Finance Code, §345.251. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 345.

§86.201. *Documentary Fee.*

(a) Purpose. The purpose of this section is to specify the maximum documentary fee in a retail installment transaction for the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle, as provided by Texas Finance Code, §345.251.

(b) Definitions.

(1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §551A.001(1).

(2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).

(3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).

(4) Covered land vehicle--A motorcycle, moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.

(5) Covered watercraft--A boat or boat motor.

(6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).

(7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).

(8) Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.

(9) Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).

(c) Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(d) Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(e) Contract for both covered land vehicles and covered watercraft. For a retail installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$250 [~~\$175~~].

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

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Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. ARCHIVES AND HISTORICAL RESOURCES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.51, §2.52

The Texas State Library and Archives Commission (commission) proposes amendments to Title 13, Chapter 2, §2.51, Public Record Fees, and §2.52, Customer Service Policies.

BACKGROUND. The commission proposes to amend §2.51 regarding fees for public records provided through its public services, which include the State Archives and the library services provided to the public, and §2.52 regarding the commission's public services customer service policies. The amendments to both rules are necessary to update and modernize the rules and simplify the language for clarity.

EXPLANATION OF PROPOSED AMENDMENTS. Proposed amendments to §2.51 update and clarify language for readability and consistency with other commission rules and delete language that is unnecessary, either because it is obsolete or because it is repetitive of other portions of the rule or existing law and therefore not necessary in the rule.

References to the commission are changed to "agency" throughout the rule for consistency with the commission's other rules and in accordance with the definitions of "commission" and "agency" in Chapter 2. The proposed update to the legal citation in subsection (a) ensures any changes to that chapter are automatically included in the commission's rule. The requirement to review the fee schedule annually is proposed for deletion as the agency continuously reviews and updates the fee schedule for any applicable changes. The fee schedule restates fees noted in other portions of this rule, in rules of the Office of Attorney General, or in statute. Proposed amendments to subsection (b)(6) simplify the language regarding third party access charges. As of the date of this proposal, the agency does not provide any services with third party access charges. Should such a charge become applicable in the future, the agency would charge a patron for the patron's access to such system or service. The commission proposes to delete subsection (c), as there is no need to restate copyright law in administrative rule. Finally, the commission proposes to delete subsection (d) as it is redundant of subsection (a).

Proposed amendments to §2.52 would change the name of the section to Patron Registration and Customer Service and simplify and clarify the rule language. The proposed amendments to subsection (a) clarify that any individual aged 17 or older who wishes to access materials in the State Archives or access certain library services, including borrowing items from the agency's circulating collections, interlibrary loan, and remote access to TexShare databases, must register in person each year by presenting a current government-issued photo identification, signing a registration agreement, and providing contact information. The proposed amendments also clarify that patrons of the State Archives must also comply with the commission's rule regarding access to archival state records and other historical resources, §10.2. The proposed amendments simplify the language noting that only individuals are eligible for patron registration and deletes subsection (a)(4) as it is unnecessary given the identification of services that require registration in subsection (a)(1).