

scribed pediatric extended care centers, and intermediate care facilities for persons with an intellectual disability; and Texas Human Resources Code, Chapter 103, which authorizes HHSC to license and regulate day activity and health services facilities.

The repealed rules implement Texas Government Code, §531.0055; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252; and Texas Human Resources Code, Chapter 103.

§99.1. *Definitions.*

§99.2. *Convictions Barring Licensure.*

§99.3. *Adverse Licensing Record.*

§99.4. *Registry Listings Barring Licensure.*

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

Department of Aging and Disability Services

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For further information, please call: (512) 487-3419



40 TAC §99.1

STATUTORY AUTHORITY

The proposed rule is authorized by Texas Government Code, §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252, which authorize HHSC to license and regulate home and community support service agencies, nursing facilities, assisted living facilities, prescribed pediatric extended care centers, and intermediate care facilities for persons with an intellectual disability; and Texas Human Resources Code, Chapter 103, which authorizes HHSC to license and regulate day activity and health services facilities.

The proposed rule implements Texas Government Code, §531.0055; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252; and Texas Human Resources Code, Chapter 103.

§99.1. *Reference to Chapter 99.*

In the Texas Administrative Code:

(1) a reference to this chapter is a reference to Title 26, Chapter 560 (relating to Denial or Refusal of License); and

(2) a reference to a section in this chapter is a reference to the section in Title 26, Chapter 560 with the same number after the decimal (e.g., a reference to Title 40, §99.1 is a reference to Title 26, §560.1).

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

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Karen Ray

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §215.85

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 215, Motor Vehicle Distribution, Subchapter C, Licenses, Generally, §215.85, Brokering, Used Motor Vehicles.

EXPLANATION OF PROPOSED AMENDMENTS

The purpose of the proposed amendments is to clarify how a licensed dealer may pay a referral fee.

Amendments add new subsection (d) to provide that a licensed dealer may pay a referral fee in cash or value to an individual who has purchased a vehicle from the licensed dealer within the five-year period preceding the referral. The payment of the referral fee may be contingent upon the new referred individual purchasing a vehicle from the license dealer, or a fee may be paid for the referral of a new potential customer.

Amendments add new subsection (e) to provide that the referral fees may not be offered or provided to an individual who is employed by the licensed dealer.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Corrie Thompson, Director of the Enforcement Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Thompson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will clarify used motor vehicle referral fees. There are no anticipated economic costs for persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The department has determined that during the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. The proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on August 6, 2018.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, Chapter 503.002 which provides the board may adopt rules for the administration of Chapter 503.

§215.85. *Brokering, Used Motor Vehicles.*

(a) Transportation Code, §503.021 prohibits a person from engaging in business as a dealer, directly or indirectly, including by consignment without a GDN. Except as provided by this section, [The phrase] "directly or indirectly" includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a broker for the purposes of this section.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee for arranging a transaction involving the sale of a used motor vehicle is required to meet the requirements for and obtain a GDN, unless the referral service, program, plan, or club is operated in the following manner.

(1) There is no exclusive market area offered to a dealer by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer in the program is not restricted by conditions, such as limiting the number of line-makes or discrimination by size of dealership or location. The total number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make.

(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(c) All programs must comply with Subchapter H of this chapter (relating to Advertising).

(d) A licensed dealer may pay a referral fee in cash or value to an individual who has purchased a vehicle from the licensed dealer within the five-year period preceding the referral. The fee may be made contingent upon the new referred individual purchasing a vehicle from the licensed dealer, or a fee may be paid for the referral of a new potential purchaser.

(e) A referral fee under subsection (d) of this section may not be offered or provided to an individual who is employed by a licensed dealer.

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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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665

