

authorized by the candidate." The rule, consistent with the statutory language, would exempt from the disclosure statement requirement any political advertising by a person who, without authorization of a candidate or political committee, creates, publishes, or broadcasts a communication on an Internet website without payment. The rule also excludes from the meaning of "payment" the use of goods or equipment acquired for purposes other than political advertising or the consumption of electricity.

Seana Willing, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

The Executive Director has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the requirements for a political advertising disclosure statement. There will not be an effect on small businesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Executive Director has determined that during the first five years that the proposed amendment is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or positively or adversely affect this state's economy. The rule limits an existing regulation by narrowing the disclosure statement requirement for political advertising appearing on an Internet website based on §255.001 of the Election Code.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to [publiccomment@ethics.state.tx.us](mailto:publiccomment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendment to rule §26.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 255 of the Election Code.

The proposed amendment affects §255.001 of the Election Code.

#### *§26.1. Disclosure Statement.*

(a) A disclosure statement that is required by §255.001, Election Code, must contain the words "political advertising" or any recognizable abbreviation, and must:

- (1) appear on one line of text or on successive lines of text on the face of the political advertising; or
- (2) be clearly spoken in the political advertising if the political advertising does not include written text.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

- (1) the person who paid for the political advertising;
- (2) the political committee authorizing the political advertising; or
- (3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical.

(d) A disclosure statement is not required on political advertising appearing on an Internet website if:

- (1) no payment was made to create, publish, or broadcast the political advertising, and
- (2) the political advertising was not authorized by a candidate or political committee.

(e) For purposes of subsection (d) of this section, "payment" does not include the use of goods or equipment acquired for purposes other than political advertising or the consumption of electricity.

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

Filed with the Office of the Secretary of State on April 19, 2018.

TRD-201801706

Seana Willing

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: June 3, 2018

For further information, please call: (512) 463-5800



## PART 4. OFFICE OF THE SECRETARY OF STATE

### CHAPTER 87. NOTARY PUBLIC

The Office of the Secretary of State (hereinafter referred to as "the Office") proposes to reorganize Chapter 87, relating to notaries public, by proposing the repeal of 1 TAC §§87.1 - 87.7, 87.10, 87.11, 87.20 - 87.26, 87.30, 87.40 - 87.44, 87.50, 87.60 - 87.62, and 87.70 and the concurrent proposal of new §§87.1 - 87.4, 87.10 - 87.15, 87.20 - 87.22, 87.30 - 87.35, 87.40 - 87.44, 87.50 - 87.54, 87.60 - 87.63, 87.70, 87.71. The repeal and replacement of Chapter 87 is proposed to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, (hereinafter referred to as "HB 1217").

In addition to the general changes noted above, the following specific changes are proposed:

Section 87.1 of the proposed rules sets forth definitions of key terms used throughout the amended subchapter.

Section 87.2 of the proposed rules sets forth requirements for an applicant to be commissioned as a traditional notary public.

Section 87.3 of the proposed rules sets forth the process for electronic submission of a traditional notary public application.

Section 87.4 of the proposed rules sets forth the requirements for an applicant to be commissioned as an online notary public.

Section 87.10 of the proposed rules provides the eligibility requirements for a notary public.

Section 87.11 of the proposed rules provides the eligibility requirements specific to an online notary public.

Section 87.12 of the proposed rules sets forth the requirements for the commissioning of an escrow officer who resides in an adjacent state.

Section 87.13 of the proposed rules sets forth the process by which a traditional notary public commission is issued by the secretary of state.

Section 87.14 of the proposed rules sets forth the process by which an online notary public commission is issued by the secretary of state.

Section 87.15 of the proposed rules sets forth the process for renewal of commission.

Section 87.20 of the proposed rules sets forth the process by which an employee of a state agency can be commissioned as a notary without bond.

Section 87.21 of the proposed rules sets forth the requirements for notaries without bond who change their employment status.

Section 87.22 of the proposed rules sets forth the requirements for notaries without bond.

Section 87.30 of the proposed rules sets forth the procedures for rejection of an application and for revocation of a notary public commission.

Section 87.31 of the proposed rules sets forth the violations which constitute good cause for the office to take disciplinary action against a notary public.

Section 87.32 of the proposed rules specifies the process for submitting a complaint against a notary.

Section 87.33 of the proposed rules sets forth the procedures followed by the office when a complaint is submitted.

Section 87.34 of the proposed rules sets forth the procedures for and range of disciplinary actions by the office taken against a notary in response to a complaint.

Section 87.35 of the proposed rules sets forth specifies when the office can take disciplinary action against a notary public.

Section 87.40 of the proposed rules sets forth the procedures to be followed when performing a traditional notarization.

Section 87.41 of the proposed rules sets forth the procedures to be followed when performing an online notarization.

Section 87.42 of the proposed rules sets forth the circumstances under which a notary may refuse a request for notarial services.

Section 87.43 of the proposed rules sets forth the circumstances under which an online notary public may refuse a request for notarial services.

Section 87.44 of the proposed rules sets forth the requirements for a notary seal.

Section 87.50 of the proposed rules sets forth the restrictions to be followed when determining which personal information can be recorded in the notary record book.

Section 87.51 of the proposed rules sets forth the requirements for a notary record book.

Section 87.52 of the proposed rules sets forth the requirements of a notary public to respond to requests for copies of their record book.

Section 87.53 of the proposed rules sets forth the consequences for failure to respond to a request for public information.

Section 87.54 of the proposed rules sets forth the requirements for retaining the notary record book.

Section 87.60 of the proposed rules sets forth the requirements for and process to change a notary's official address with the office.

Section 87.61 of the proposed rules sets forth the process by which a notary can update the name under which the notary is commissioned.

Section 87.62 of the proposed rules sets forth the process by which a notary obtains a new commission.

Section 87.63 of the proposed rules sets forth the process for an online notary public to update the notary's electronic signature and seal.

Section 87.70 of the proposed rules sets forth the requirements to be followed by an online notary public to perform identity proofing and credential analysis.

Section 87.71 of the proposed rules sets forth the requirements for the online notarization system used by an online notary public.

#### FISCAL NOTE

Briana Godbey, Legal Manager of the Business and Public Filings Division, has determined that for each year of the first five years that the sections are in effect, the expected fiscal impact on state government is estimated income of approximately \$5,000 per year for the first four years and \$5,000 - 10,000 in subsequent years, depending on the number of online notaries, as a result of enforcing or administering the rules as proposed. There are no expected fiscal implications for local government as a result of enforcing or administering the proposed rules and no anticipated effect on local employment or the local economy.

#### PUBLIC BENEFIT

Ms. Godbey has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to implement the statutory provisions HB 1217 and to clarify the online notarization process. Additionally, the rules reorganize and clarify provisions related to all notaries public which will have the effect of providing clearer guidance to the over 425,000 notaries public commissioned in Texas.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As required by Government Code §2006.002(c), the agency has determined that the proposed chapter may have an adverse economic effect on approximately 100 notaries per year, most of which may work as part of a small or micro business. Notaries fall within the legal industry on the NAICS chart. There are ap-

proximately 12,921 businesses in that industry in Texas and approximately 12,480 are small businesses. There will be a \$50 application fee associated with the cost of compliance which will not vary between large businesses and small or micro businesses.

The application fee of \$50 is associated with the application for appointment as an online notary. The fee is set to defray the costs associated with the development and maintenance of the new online commissioning system, website and educational changes, and staff to answer questions. While there is a cost associated with applying to be commissioned as an online notary public, the choice to become an online notary public is optional and there are not expected to be a high percentage of notaries who will seek to be commissioned as an online notary because of the technological requirements associated with these types of notarizations. Virginia was the first state in the nation to have online notaries and during the first six years after implementation, only .14% of the total notaries opted to also be commissioned as an online notary public. If the same trend follows in Texas, it is expected that by the end of six years, we will have approximately 600 online notaries, which equates to about 100 new online notaries being commissioned each year.

In accord with Government Code §2006.002(c-1), the agency has considered other methods to implement HB 1217 that will also minimize any adverse impact on small and micro businesses. The other methods considered by the agency to minimize any adverse impact on small and micro businesses include: (i) establishing separate commissioning requirements for small businesses and (ii) exempting small and micro businesses from the commissioning requirements.

For the following reasons, both alternate methods have been rejected. HB 1217 requires that all individuals seeking to be commissioned as an online notary public apply through the secretary of state. It would be contrary to HB 1217 to make exceptions or exemptions to the application requirement for individuals who work for small or micro businesses. Additionally, as almost all notary businesses under the legal industry are small businesses, it would negate the collection of any fee to waive or reduce the fee for small or micro businesses and HB 1217 makes no such distinction, nor does it provide for a tiered fee schedule.

The agency, after considering the purpose of the authorizing statute, does not believe it is legal or feasible to waive or modify the statutorily mandated requirements of the proposed chapter for small and micro businesses. There is no anticipated fiscal impact on rural communities.

#### Government Growth Impact Statement

Finally, Ms. Godbey has determined that for each year of the first five years the sections are in effect, the rules will have the following effect on government growth. The proposed changes will not create or eliminate any government programs and will not create or eliminate any employee positions. Additionally, the proposed changes will not have an effect on appropriations to the agency. The new rules do set an application fee of \$50 which will be paid to the agency and deposited in General Revenue. The proposed changes do include new rules; therefore, by definition, the proposed changes create new regulations. The new regulations provide for implementation of the online notary public application and notarization process. The proposed changes do not expand, limit, or repeal any existing regulations, though

the rules are renumbered and modernized. Additionally, the proposed changes neither increase nor decrease the number of individuals subject to the applicability of the rules. The rules implement the online notarization process and require all individuals who want to provide online notarizations to apply for a separate online commission. However, in order to be an online notary one must already be a commissioned notary public and therefore the proposed rules are not expanding or limiting the individuals subject to the rules. The proposed rules are not anticipated to have a significant effect on the state's economy.

#### COMMENTS

Comments on the proposed repeal and replacement of Chapter 87 may be submitted in writing to: Briana Godbey, Office of the Secretary of State, Business and Public Filings Division, P.O. Box 13697, Austin, Texas 78711-3697 or bgodbey@sos.texas.gov. Comments must be received not later than 12:00 noon, Friday, June 1, 2018.

### SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

#### 1 TAC §§87.1 - 87.7

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.1 - 87.7 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.1. *Application for a Commission as a Notary Public.*

§87.2. *Eligibility to Hold the Office of Notary Public.*

§87.3. *Issuance of the Notary Public Commission by the Secretary of State.*

§87.4. *Notary Seal.*

§87.5. *Qualification by an Officer or Employee of a State Agency Who Does Not Furnish a Notary Public Bond.*

§87.6. *Change in Employment Status by an Officer or Employee of a State Agency Who Has Qualified Without a Surety Bond.*

§87.7. *Renewal of Commission.*

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

Filed with the Office of the Secretary of State on April 23, 2018.

TRD-201801792

Carmen Flores

Interim General Counsel

Office of the Secretary of State

Earliest possible date of adoption: June 3, 2018

For further information, please call: (512) 463-5590

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## SUBCHAPTER B. REJECTION AND REVOCATION

### 1 TAC §87.10, §87.11

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.10 and §87.11 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

#### Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.10. *Rejection of Application and Revocation of Commission.*

§87.11. *Good Cause.*

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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Carmen Flores

Interim General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5590

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## SUBCHAPTER C. ADMINISTRATIVE ACTION

### 1 TAC §§87.20 - 87.26

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.20 - 87.26 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

#### Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.20. *Qualification Under New Name.*

§87.21. *Rejection of Change of Name.*

§87.22. *Issuance of Amended Commission.*

§87.23. *Submitting a Complaint.*

§87.24. *Complaint Procedures.*

§87.25. *Disciplinary Action.*

### §87.26. *Time for Action.*

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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Carmen Flores

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Office of the Secretary of State

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For further information, please call: (512) 463-5590

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## SUBCHAPTER D. REFUSAL TO PERFORM NOTARIAL SERVICES

### 1 TAC §87.30

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.30 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

#### Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.30. *Refusal of Requests for Notarial Services.*

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

Filed with the Office of the Secretary of State on April 23, 2018.

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Carmen Flores

Interim General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5590

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## SUBCHAPTER E. NOTARY RECORDS

### 1 TAC §§87.40 - 87.44

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.40 - 87.44 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

#### Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.40. *Prohibition Against Recording Personal Information.*

§87.41. *Form of Record Book.*

§87.42. *Public Information.*

§87.43. *Failure to Provide Public Information.*

§87.44. *Records Retention.*

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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Carmen Flores

Interim General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5590



## SUBCHAPTER F. CHANGE IN ADDRESS

### 1 TAC §87.50

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.50 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.50. *Change of Address.*

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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Carmen Flores

Interim General Counsel

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For further information, please call: (512) 463-5590



## SUBCHAPTER G. ELECTRONIC SUBMISSIONS OF NOTARY APPLICATIONS AND BONDS

### 1 TAC §§87.60 - 87.62

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.60 - 87.62 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.60. *Electronic Submission.*

§87.61. *Records Retention for Electronic Submissions.*

§87.62. *Applications on Behalf of an Applicant with a Criminal Conviction.*

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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Carmen Flores

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Office of the Secretary of State

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For further information, please call: (512) 463-5590



## SUBCHAPTER H. APPOINTMENT OF QUALIFIED ESCROW OFFICER AS NOTARY PUBLIC

### 1 TAC §87.70

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.70 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.70. *Qualification by an Escrow Officer Residing in an Adjacent State.*

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

Filed with the Office of the Secretary of State on April 23, 2018.

TRD-201801799



## SUBCHAPTER A. GENERAL PROVISIONS

### 1 TAC §§87.1 - 87.4

#### STATUTORY AUTHORITY

The new §§87.1 - 87.4 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

#### Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

#### §87.1. Definitions.

Words and terms defined in the Texas Government Code, Chapter 406, shall have the same meaning in this chapter. For the purposes of this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Credential means a valid, unexpired identification card or other document issued by the federal government or any state government, as defined by §311.05 of the Government Code, that contains the photograph and signature of the principal.

(2) Credential Analysis means the process which complies with Subchapter H of this chapter by which the validity of a government-issued identification credential is affirmed by a third party through review of public and proprietary data sources.

(3) Digital Certificate means a computer-based record or electronic file issued to an online notary public for the purpose of creating an official electronic signature in accordance with Subchapter C, Chapter 406 of the Government Code, and this chapter.

(4) Identity Proofing means the process which complies with Subchapter H of this chapter by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources.

(5) Online Notary Public means an individual commissioned by the secretary of state as an online notary. An online notary has authority:

(A) as a traditional notary public; and

(B) to perform an online notarization as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(6) Personal appearance or personally appear means:

(A) when performing a notarization other than an online notarization, the principal for whom the notarization is being performed physically appeared before the notary public at the time of the notarization in a manner permitting the notary public and the principal

to see, hear, communicate and give identification credentials to each other; and

(B) for an online notarization, the principal for whom the notarization is being performed appears by an interactive two-way audio and video communication that meets the online notarization requirements as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(7) Principal means an individual:

(A) whose signature is notarized in a traditional or online notarization; or

(B) taking an oath or affirmation from a notary.

(8) Notary Public means an individual commissioned by the secretary of state under both Subchapters A and C, Chapter 406 of the Government Code.

(9) Traditional Notary Public means an individual commissioned by the secretary of state under Subchapter A, Chapter 406 of the Government Code. A traditional notary public does not have the authority to perform an online notarization unless also commissioned as an online notary public.

#### §87.2. Application for Commission as a Traditional Notary Public.

(a) The secretary of state appoints notaries public under the provisions of article IV, §26 of the Texas Constitution and Chapter 406, Government Code.

(b) An individual applying for a traditional notary public commission shall use the application form prescribed by the secretary of state. The application shall include:

(1) the applicant's name to be used in acting as a traditional notary public;

(2) the applicant's mailing address;

(3) the applicant's county of residence;

(4) the applicant's date of birth;

(5) the applicant's driver's license number or the number of other official state-issued identification; and

(6) the applicant's social security number.

(c) An applicant must secure a bond if required to do so by §406.010 of the Government Code. To evidence the bond, the application shall include the signature of a person authorized by the surety company providing the bond.

(d) The applicant shall execute, in the name under which the commission is sought, the statement of officer as required by article XVI, §1 of the Texas Constitution.

(e) The application form is available on the secretary of state web site or may be obtained by writing the Office of the Secretary of State, Notary Public Unit, P.O. Box 13375, Austin, Texas 78711. See Form 2301. The application form for a notary who is an officer or employee of a state agency is Form 2301-NB, available on the web site maintained by the State Office of Risk Management.

#### §87.3. Electronic Submission of Traditional Notary Public Application.

(a) The secretary of state has developed a system for electronic submission of the application for a traditional notary public commission, the bond required under §406.010 of the Government Code, and the statement of officer. The secretary of state authorizes the submission of these documents electronically on behalf of a traditional notary public under the following terms and conditions:

(1) the submitter must comply with the technical specifications contained in the eNotary Web Service Consumer's Guide available through the Information Technology Division of the Office of the Secretary of State;

(2) the traditional notary public application and the statement of officer signed by the applicant and the surety bond signed by an officer or attorney-in-fact for the surety must be attached to the electronic submission as an image in the format specified in the eNotary Web Service Consumer's Guide; and

(3) all fees must be paid by prepaid account, LegalEase® or credit card.

(b) If the applicant is commissioned, the secretary of state shall cause the commission to be issued and the educational materials to be sent to the traditional notary public. On commission, the applicable fees will be charged to the prepaid account, LegalEase® or the credit card.

(c) If the application is rejected, the secretary of state will return a notice of the rejection to the submitter electronically. On rejection, no fees are charged to the account, LegalEase® or to the credit card.

(d) Status of a traditional notary public application submission may be checked through use of a web service interface.

(e) If the submitter is not able to consistently comply with the technical specifications and the submissions are failing as a result, the secretary of state may revoke the privilege of the submitter to submit electronically until all technical issues are resolved to the satisfaction of the secretary of state.

(f) As part of the electronic submission, the submitter is responsible for accurately entering the data elements related to the application. Repeated and consistent entry errors may result in a revocation of the privilege of the submitter to submit electronically.

(g) The submitter shall retain the original signed application, surety bond and statement of officer until the commission is issued by the secretary of state.

(h) The secretary of state will not accept electronic applications on behalf of an applicant who has been convicted of a felony or a crime of moral turpitude. The application under these circumstances (along with the statement of officer, the bond, the explanation of the criminal conviction and the applicable fees) must be delivered to the secretary of state by mail, courier or personal delivery.

§87.4. Submission of Online Notary Public Application.

(a) An individual applying for an online notary public commission shall use the electronic submission platform developed by the secretary of state.

(b) The application shall include:

(1) the applicant's name to be used in acting as an online notary public, which shall match the name on the applicant's traditional notary public commission;

(2) the applicant's email address;

(3) a copy of applicant's digital certificate;

(4) a copy of applicant's electronic signature in one of the following formats:

(A) JPG;

(B) BMP;

(C) PNG; or

(D) TIF;

(5) a copy of applicant's electronic seal in one of the following formats:

(A) JPG;

(B) BMP;

(C) PNG; or

(D) TIF;

(6) the applicant's notary public identification number, as assigned by the secretary of state; and

(7) an executed statement of officer, as required by article XVI, §1 of the Texas Constitution; and

(8) a statement certifying:

(A) that the applicant will comply with the standards set forth in this chapter relating to identity proofing and credential analysis;

(B) that the applicant will use an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant when attaching or logically associating the notary's electronic signature, seal and digital certificate to an electronic document; and

(C) that the applicant will, upon request by the secretary of state, promptly provide any necessary instructions or techniques supplied by a vendor that allow the online notary public's electronic signature and seal to be read and authenticated.

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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TRD-201801800

Carmen Flores

Interim General Counsel

Office of the Secretary of State

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## SUBCHAPTER B. ELIGIBILITY AND QUALIFICATION

### 1 TAC §§87.10 - 87.15

#### STATUTORY AUTHORITY

The new §§87.10 - 87.15 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.10. Eligibility to Hold the Office of Notary Public.

(a) Subject to the provision in subsection (b) of this section and §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State), a person is eligible to be a notary public if the person is 18 years of age or older and a resident of Texas.

(b) A person is not eligible to be a notary public if the person was convicted of a crime involving moral turpitude or a felony and the conviction has become final, has not been set aside, and no pardon or certificate of restoration of citizenship rights has been granted.

(c) A crime involving moral turpitude includes the commission of a crime involving dishonesty, fraud, deceit, misrepresentation, deliberate violence, moral depravity, or that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a notary public, which may include, but not be limited to:

(1) Class A and B type misdemeanors; and

(2) felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

(d) Class C type misdemeanor convictions shall not be considered in determining eligibility.

(e) If the secretary of state discovers, at any time, that an applicant or commissioned notary public is not eligible, the secretary of state will reject the notary public application or revoke the notary public commission.

§87.11. Eligibility to be Commissioned as an Online Notary Public. In addition to the eligibility requirements in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public), an applicant must hold a commission as a traditional notary public before being eligible for appointment as an online notary public.

§87.12. Qualification by an Escrow Officer Residing in an Adjacent State.

(a) An applicant who is qualified as an escrow officer within the meaning assigned by §2652.051, Insurance Code, is not required to be a resident of Texas if the applicant is a resident of New Mexico, Oklahoma, Arkansas or Louisiana.

(b) The secretary of state shall commission the applicant if, notwithstanding the residency requirements, the applicant satisfies the conditions of subsection (a) of this section and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State).

(c) A notary public, appointed under this section, who ceases to be qualified under this section, must voluntarily surrender the notary public commission.

§87.13. Issuance of the Traditional Notary Public Commission by the Secretary of State.

(a) The secretary of state shall issue a traditional notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the bond as provided in §406.010, Government Code, if required;

(C) the statement of officer and oath of office required by article XVI, §1 Texas Constitution;

(D) payment to the secretary of state of fees required by §406.007, Government Code; and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each traditional notary public who has qualified. A commission is effective as of the date of qualification.

§87.14. Issuance of the Online Notary Public Commission by the Secretary of State.

(a) The secretary of state shall issue an online notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.11 of this title (relating to Eligibility to be Commissioned as an Online Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the statement of officer and oath of office required by article XVI, §1 Texas Constitution;

(C) payment to the secretary of state the application fee of \$50; and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each online notary public who has qualified. A commission is effective as of the date of qualification and shall expire on the same date as applicant's corresponding traditional notary public commission.

§87.15. Renewal of Commission.

(a) A notary public seeking to renew either a traditional commission or both a traditional and online commission shall file an application for renewal in the same manner and on the same form as if filing an original application for commission. The secretary of state will accept applications for renewal not sooner than 90 days before the expiration of the notary public's current commission. The renewal must be received by the secretary of state no later than the expiration date of the notary public's current commission.

(b) The secretary of state shall determine eligibility for renewals according to the same standards as initial applicants, in accordance with this chapter and §406.004, Government Code. The secretary of state is not bound by prior determinations of eligibility.

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

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## SUBCHAPTER C. NOTARIES WITHOUT BOND

### 1 TAC §§87.20 - 87.22

#### STATUTORY AUTHORITY

The new §§87.20 - 87.22 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.20. Qualification by an Officer or Employee of a State Agency.

(a) An applicant who is an officer or employee of a state agency is not required to provide a surety bond. For the purpose of this chapter, "state agency" has the meaning assigned by §2052.101, Government Code.

(b) An applicant who is an officer or employee of a state agency and does not provide a surety bond must complete the traditional notary public application entitled "Application for Appointment as a Notary Public Without Bond" (Form 2301-NB).

(c) The State Agency employing the applicant must submit the completed application to the State Office of Risk Management.

(d) The State Office of Risk Management shall complete the verification certificate on the application and forward the completed application to the Office of the Secretary of State for processing.

(e) The secretary of state shall commission the applicant if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application verified by the State Office of Risk Management;

(B) the statement of officer and oath of office required by article XVI, §1 Texas Constitution;

(C) the payment of fees required by §406.007(a)(2) and §406.007(b), Government Code; and

(3) no good cause exists for rejecting the application.

§87.21. Change in Employment Status by an Officer or Employee of a State Agency Who Has Qualified Without a Surety Bond.

(a) If a notary public who has qualified without a surety bond transfers to another state agency, the agency to which the notary pub-

lic transfers shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.

(b) If a notary public terminates state employment, the notary public shall:

(1) voluntarily surrender the notary public commission;

(2) purchase and provide evidence to the secretary of state of the purchase of a notary public bond for the time period remaining on the notary's current term of office; or

(3) voluntarily surrender the notary public commission and apply for a new term of office, provide a notary public bond, and pay the applicable fees.

(c) Failure to take one of the actions set forth in subsection (b) of this section within 30 days of termination of state employment is good cause for revocation of the notary public's commission.

§87.22. Special Requirements for Notaries Without Bond.

(a) A notary public commissioned as a notary public without bond shall obtain a seal which complies with the requirements of §406.013, Government Code and §87.44 of this title (relating to Notary Seal) and which contains an additional line reading "Notary without Bond".

(b) A state employee is not prohibited from purchasing a notary bond at personal expense. However, an individual commissioned as a notary without bond shall only notarize documents pursuant to their official state duties.

(c) Agencies shall require notaries without bond to attend a notary training class, either provided internally or externally.

(d) Notaries without bond who notarize documents outside of their official state duties or who fail to use the "Notary without Bond" seal shall be subject to disciplinary action by their respective agencies and such action may constitute good cause under §87.31 of this title (relating to Good Cause).

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## SUBCHAPTER D. ADMINISTRATIVE ACTION

### 1 TAC §§87.30 - 87.35

#### STATUTORY AUTHORITY

The new §§87.30 - 87.35 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to im-

plement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.30. Rejection of Application and Revocation of Commission.

The secretary of state shall, for ineligibility or good cause, reject any application, revoke the commission of any notary public, or take other disciplinary action, as outlined in §87.34 of this title (relating to Disciplinary Action), against a notary public as the secretary of state deems appropriate. Rejection, revocation, and suspension proceedings will be held pursuant to the right of notice, hearing, and adjudication as set out in the rules of practice and procedure before the Office of the Secretary of State, the rules of the State Office of Administrative Hearings and the Administrative Procedure Act, Government Code, §§2001.001 - 2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

§87.31. Good Cause.

Good cause may include the following:

(1) a false statement knowingly made in a notary public application;

(2) a final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;

(3) use of the phrase "notario" or "notario publico" in connection with advertising or offering the services of a notary public;

(4) false representation as an attorney as specified in §406.017, Government Code;

(5) a failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public;

(6) the unauthorized practice of law;

(7) a failure to utilize a correct notary seal as described in §406.013 and §406.101(5), Government Code and this chapter;

(8) a failure to administer an oath or affirmation as required by law;

(9) the collection of a fee in excess of the fees authorized by §406.024 and §406.111, Government Code;

(10) the execution of any certificate as a notary public containing a statement known to the notary public to be false;

(11) a failure to complete the notarial certificate at the time the notary public's signature and seal are affixed to the document;

(12) the advertising or holding out in any manner that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;

(13) the use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;

(14) performing a notarization when the purported signer did not personally appear before the notary public at the time the notarization is executed;

(15) previous disciplinary action against the notary public in accordance with these sections;

(16) a failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.34 of this title (relating to Disciplinary Action);

(17) a failure to promptly respond to a request for public information in accordance with §87.52 of this title (relating to Public Information);

(18) a failure to properly identify the individual whose signature is being notarized;

(19) a failure to keep a notary record as described in §406.014 and §406.108, Government Code, and Chapter 87 of this title;

(20) a failure to include in the notarial certificate for an online notarization a notation that the notarization is an online notarization;

(21) a failure to take reasonable steps to ensure that the two-way audio-visual communication used during an online notarization is secure from unauthorized interception;

(22) a failure to safely and securely maintain notary materials;

(23) performing a notarial act that the notary public is not authorized to perform;

(24) a failure to report a new online signature or seal as required by §87.63 of this title (relating to Changes to Electronic Seal and Signature for Online Notary);

(25) notarizing one's own signature;

(26) a failure to pay the filing fee required by §406.007, Government Code, and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State) or when such payment was made by an instrument that was dishonored when presented by the state for payment;

(27) a failure to timely respond to a request for information from the secretary of state; and

(28) a failure to maintain a current address as required by §406.019, Government Code.

§87.32. Submitting a Complaint.

(a) The jurisdiction of the secretary of state to investigate a complaint is limited to individuals that are commissioned or have applied for commission or renewal of a commission as a Texas notary public. The jurisdiction of the secretary of state to investigate a complaint ceases upon the expiration, revocation or surrender of a notary public commission, except as provided in §87.35 of this title (relating to Time for Action).

(b) A person harmed by the actions of a notary public may file a complaint with the secretary of state on a form prescribed by the secretary of state. The complaint shall include:

(1) the name of the notary public that is the subject of the complaint;

(2) the expiration date of the notary public's current commission;

(3) the name, mailing address, and email address of the individual filing the complaint;

(4) a recitation of the facts, within the personal knowledge of the complainant, relating to the alleged misconduct by the notary public; and

(5) copies of the notarized documents that are the subject of the complaint.

(c) The complaint shall be signed and verified by the person alleging misconduct on the part of the notary public.

(d) The secretary of state may, for good cause, as defined in §87.31 of this title (relating to Good Cause), and/or as otherwise referenced in this title, initiate its own complaint against a notary public.

§87.33. Complaint Procedures.

(a) The secretary of state may determine that the allegations in the complaint are not sufficient to warrant formal disciplinary action. In such case, the secretary of state may:

(1) take no action on the complaint;

(2) informally advise the notary public of the appropriate conduct and the applicable statutes and rules governing the conduct; or

(3) request further information from the complainant or the notary public prior to taking action.

(b) If the secretary of state determines that the complaint alleges sufficient facts to constitute good cause for disciplinary action against the notary public, and the complaint complies with §87.32 of this title (relating to Submitting a Complaint), the secretary of state shall send a copy of the complaint, with any attachments the secretary of state deems to be relevant, to the notary public with a request to the notary to respond to the statements in the complaint.

(c) The notary public must respond to the complaint in writing. The response must:

(1) specify any disputed facts and provide such additional information as the notary public shall desire;

(2) be signed and sworn to by the notary public before a person authorized to administer oaths;

(3) include copies of the pages of the notary record book referencing the notarization that is the subject of the complaint; and

(4) be received by the secretary of state within 21 days of the date of the secretary of state's notice of the complaint to the notary public.

(d) The secretary of state shall review the response and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify the notary public and the complainant of the determination in writing.

(e) If the secretary determines that further administrative action is appropriate, the secretary shall follow the procedures set forth in this §87.34 of this title (relating to Disciplinary Action).

§87.34. Disciplinary Action.

(a) The secretary of state has discretion to determine that the conduct that forms the basis of a complaint against a notary public does not warrant disciplinary action against the notary public and take no further action on the complaint. If the secretary of state determines that disciplinary action should be taken, the secretary of state may pursue the following disciplinary actions against individuals commissioned pursuant to Subchapter A or C, Chapter 406, Government Code:

(1) issue a written reprimand to the notary public; or

(2) require the notary public to enter into an agreement to:

(A) not engage in any further misconduct;

(B) agree to voluntarily surrender the notary public commission;

(C) accept a suspension of the notary public commission for a set period of time;

(D) complete a course of study relating to the powers, duties, and responsibilities of a notary public;

(E) not seek renewal of the notary public commission for a specified period of time; or

(F) take such other action as the secretary deems appropriate; or

(3) take action to revoke the notary public commission.

(b) If an individual has been commissioned as a notary public under both Subchapters A and C of Chapter 406, Government Code, the office has the discretion to pursue revocation of either the traditional or online notary public commission alone or both the traditional and online notary public commission.

(c) If no agreement can be reached, before taking action to suspend or revoke the notary public commission, the secretary of state shall give written notice to the notary of a right to a hearing in accordance with the rules of practice and procedure before the secretary of state. If a hearing is timely requested, the secretary of state shall follow the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code governing the initiation and conduct of a contested case proceeding.

(d) It is within the secretary of state's discretion to determine that no action should be taken or to enter into an agreement with the notary public regarding the appropriate action. The secretary of state shall close a complaint file upon a determination that no further action is necessary or conclusion of an agreement with the notary public. After a complaint file is closed, the secretary of state will take no further action on the complaint and will not accept an additional complaint with the same or substantially similar allegations.

§87.35. Time for Action.

The secretary of state may take disciplinary action for an act or omission which occurred during a prior term of office. The secretary may also require any pending complaints against a notary public that remain at the expiration of the notary public's prior commission to be resolved prior to accepting a renewal or new application for appointment as a notary public. Failure to reach a resolution on an unresolved complaint may result in the rejection of an application for appointment or renewal.

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SUBCHAPTER E. NOTARY PROCEDURES

1 TAC §§87.40 - 87.44

## STATUTORY AUTHORITY

The new §§87.40 - 87.44 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

### §87.40. Traditional Notarization Procedures.

(a) A traditional notary public shall not perform a notarization if the document signer does not personally appear before the notary at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(b) The methods by which a traditional notary public identifies a signer are as follows:

(1) Traditional notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who either is personally known to the traditional notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Principal or credible witness is identified by a credential.

(c) The traditional notary public shall attach a notarial certificate to all written notarial acts that names the principal, the date of the notarization, the state and county in which the notarization is performed, and the type of notarial act performed. The notarial certificate shall be signed and include an impression of the notary's seal.

(d) The traditional notary public shall keep a record of all notarial acts in accordance with §406.014, Government Code, and this chapter.

(e) This section shall apply to a traditional notary public who performs notarizations on tangible or electronic records.

### §87.41. Online Notarization Procedures.

(a) An online notarization may only be performed by a notary who is commissioned as an online notary public.

(b) An online notary public shall not perform an online notarization if the online notary public is not physically in Texas at the time of the notarization.

(c) An online notary public shall not perform an online notarization if the document signer does not personally appear before the notary public at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(d) The methods by which an online notary public identifies a signer are as follows:

(1) Online notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who either is personally known to the online notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Principal or credible witness is identified using the identity proofing and credential analysis standards in accordance with subchapter H of this chapter.

(e) The online notary public shall attach an electronic notarial certificate to all written notarial acts that identifies the principal, the date of the notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and the type of the notarial act performed. The notarial certificate shall be signed and include an attachment of the online notary public's seal.

(f) The liability, sanctions, and remedies for the improper performance of online notarial acts are the same as described and provided by law for the improper performance of traditional notarial acts.

(g) An online notary public shall keep a record of all notarial acts in accordance with §406.108, Government Code, and Chapter 87 of this title. The record of the audio-visual communication shall include:

(1) the means by which the online notary public establishes the identity of the principal and any credible witnesses; and

(2) the actual notarial act performed.

(h) The online notary public shall not disclose any access information used to affix the notary's electronic signature and seal except when requested by the secretary of state, law enforcement, the courts, and with reasonable precautions, electronic document preparation and transmission vendors.

### §87.42. Refusal of Requests for Notarial Services.

(a) A notary public is authorized to refuse to perform a notarial act if:

(1) the notary public has reasonable grounds to believe that the signer is acting under coercion or undue influence;

(2) the notary public has reasonable grounds to believe that the document in connection with which the notarial act is requested may be used for an unlawful or improper purpose;

(3) the notary public has reasonable grounds to believe the signing party does not have the capacity to understand the contents of the document;

(4) the notary public is not familiar with the type of notarization requested.

(b) A notary public who is employed by a governmental body shall not perform notarial services that interfere with the notary's discharge of the notary's duties as a public employee.

(c) An employer may limit or prohibit an employee that is a notary public from notarizing during work hours.

(d) A notary public may not refuse a request for notarial services on the basis of the sex, age, religion, race, ethnicity or national origin of the requesting party.

(e) A notary public should refuse a request for notarial services only after careful deliberation.

### §87.43. Reasons to Refuse Online Notarization.

In addition to those in §87.42 of this title (relating to Refusal of Requests for Notarial Services), an online notary is authorized to refuse to perform an online notarization if:

(1) The online notary public is unable to verify the identity of the principal using an acceptable means of identification in accordance with Subchapter H;

(2) The online notary public is unable to verify the security of the two way audio visual transmission;

(3) The signature of the principal cannot be attached to the electronic document; or

(4) The signature or seal of online notary public cannot be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident.

§87.44. Notary Seal.

(a) The name on the notary public seal must match the name, as stated on the application, under which the notary public is commissioned and performs all notarial acts.

(b) For all applicants commissioned or recommissioned on or after January 1, 2016, the notary public seal must contain the identifying number issued by the secretary of state.

(c) For notaries public who were commissioned or recommissioned prior to January 1, 2016, the seal of such notaries is not required to contain the identifying number issued by the secretary of state until the notary is recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title (relating to Renewal of Commission). The seal of notaries who were commissioned or recommissioned prior to January 1, 2016, may, however, contain the identifying number issued by the secretary of state prior to the notary being recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title.

(d) Online notaries public shall attach their seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

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## SUBCHAPTER F. NOTARY RECORDS

### 1 TAC §§87.50 - 87.54

#### STATUTORY AUTHORITY

The new §§87.50 - 87.54 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

## Subchapter C, Chapter 406, Government Code

### §87.50. Prohibition Against Entering Personal Information in a Notary Record Book.

(a) A notary public (other than a court clerk notarizing instruments for the court) shall not record in the notary's record book:

(1) an identification number that was assigned by a governmental agency or by the United States to the signer, grantor or maker and that is set forth on the identification card or passport presented as identification;

(2) any other number that could be used to identify the signer, grantor or maker of the document; or

(3) biometric information, including a thumbprint or fingerprint.

(b) This section does not prohibit a notary public from recording a number related to the residence of the signer, grantor or maker of the document or the instrument.

(c) This section does not apply to an online notary public making an audio visual recording of the means by which the notary establishes the identity of the principal.

(d) A notary public who inadvertently records information prohibited under subsection (a) of this section shall redact such information prior to providing public access to or copies of the notary record book.

### §87.51. Form of Record Book.

(a) Notary records, other than records of online notarizations, may be maintained either in a book or electronically in a computer or other storage device so long as the records are adequately backed-up and are capable of being printed in a tangible medium when requested.

(b) Records of an online notarization shall be maintained electronically in a computer or other storage device that is capable of recording the information required by §406.108, Government Code, including a recording of any video and audio conference that is the basis for identifying the principal. An online notary public may contract with a reputable vendor to provide such storage if the vendor:

(1) has provided reasonable evidence to the online notary public that it is capable of providing such services; and

(2) provides complete access to the online notary public of all the notary's records for an agreed period of time, which at minimum, complies with the retention requirements in §87.54 of this title (relating to Records Retention) even if such a contract is terminated. If the contract between the online notary public and the vendor is terminated, all records must be transferred to the online notary public.

(c) A notary public who performs multiple notarizations for the same signer within a single document may abbreviate the entry of those notarizations in the notary record book, except that a separate entry must be made for each type of notarial act. The abbreviated entry must contain all the information required by §406.014, Government Code, and must include the number of notarizations performed within the specified document.

### §87.52. Public Information.

(a) Subject to subsection (b) of this section, records regarding notarial acts performed are public information. On payment of all fees, the notary public shall promptly provide a certified copy of any entries in the notary public's records to any person requesting the copy. The notary shall provide the certified copy no later than 10 business days from the date of receipt of the fees, unless the notary cannot produce the certified copy within 10 business days from the date of receipt of the fees,

in which case the notary shall certify that fact in writing to the person requesting the copy on or before the 10th business day from the date of receipt of the fees, and set a date and hour within a reasonable time when the certified copy will be provided, and shall provide the information by that date and hour. If the notary has inadvertently included personal identifiable information in the record contrary to §87.40 of this title (relating to Prohibition Against Recording Personal Information), the notary must redact that personal information prior to release of the information.

(b) The portion of an audio and visual recording of an online notarization that is the basis for identifying the principal or any credible witnesses is confidential and shall not be released without consent of the individual(s) whose identity is being established, unless ordered by a court of competent jurisdiction or upon request by the secretary of state.

§87.53. Failure to Provide Public Information.

Failure of a notary public to promptly respond to a request for public information in accordance with §87.42 of this title (relating to Public Information) may be good cause for suspension or revocation of a notary commission or other disciplinary action against the notary.

§87.54. Records Retention.

(a) Records of a notarization other than an online notarization shall be retained, in a safe and secure manner, for the longer of the term of the commission in which the notarization occurred or three years following the date of notarization.

(b) Records of an online notarization shall be retained, in a safe and secure manner, for five years following the date of the notarization. An online notary public must also maintain a back-up of the electronic records for the same period of time. Both the original records and the back-up shall be protected from unauthorized use.

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

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## SUBCHAPTER G. CHANGES AFTER COMMISSIONING

### 1 TAC §§87.60 - 87.63

#### STATUTORY AUTHORITY

The new §§87.60 - 87.63 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.60. Change of Address.

(a) A notary public must notify the secretary of state in writing of a change in address within 10 days of the change. To notify the secretary of state of a change of address, the notary public should complete and submit Form 2302 (Notary Public Change of Address Form). This form is available on the secretary of state web site.

(b) The secretary of state sends all official notices, including notices of complaints and requests to respond to complaints, to the notary public at the address on file with the secretary's office. Failure to change the address may, consequently, result in a revocation of the notary commission if the notary fails to timely respond to a complaint or to a request for public information.

(c) A notary public who removes his or her residence from Texas or no longer qualifies under the residency exceptions provided under §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State) vacates the office of notary public and must surrender the notary commission to the secretary of state.

§87.61. Qualification Under New Name.

(a) During the four-year term of office, a notary public may change the name on the notary commission by submitting the following to the secretary of state:

(1) an Application for Change of Name as a Texas Notary Public (Form 2305 available on the secretary of state web site);

(2) for traditional notaries public, a rider or endorsement to the bond on file with the secretary of state from the surety company or its agent or representative specifying the change of name;

(3) the current certificate of commission or a signed and notarized statement that the notary public will perform all future notarial acts under the name specified on the amended commission; and

(4) the statutory fee equal to the sum of the fee for the issuance of a commission and the fee for filing of a bond.

(b) An online notary public shall check the appropriate box on Form 2305 to update the name on both the traditional and online notary commission and shall pay the fee for issuance of two commissions and the bond.

§87.62. Issuance of Amended Commission.

(a) If the submission of the change of name complies with §87.61 of this title (relating to Qualification Under New Name), the secretary of state shall issue an amended commission to the notary public in the name requested. Upon issuance of the amended commission, the notary public must perform all notarial acts using the name on the amended commission.

(b) Upon qualifying under a new name, a notary public must obtain a new seal that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

(c) If the notary public who qualifies under a new name is commissioned as both a traditional and online notary, the notary shall obtain both a new traditional seal and new electronic seal that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

§87.63. Changes to Electronic Seal and Signature for Online Notary.

(a) An online notary public shall at all times maintain an electronic signature and electronic seal that comply with the provisions of Chapter 406, Government Code, and this chapter.

(b) An online notary public shall replace an electronic signature or electronic seal under the following circumstances:

- (1) the electronic signature or electronic seal has expired;
- (2) the electronic signature or electronic seal has been revoked or terminated by the device's issuing or registering authority; or
- (3) the electronic signature or electronic seal is for any reason no longer valid or capable of authentication.

(c) An online notary public who replaces an electronic signature or electronic seal shall provide the following to the secretary of state within 10 days of the replacement:

- (1) the electronic technology or technologies to be used in attaching or logically associating the new electronic signature, seal or certificate to an electronic document;
- (2) a copy of applicant's new digital certificate, if applicable;
- (3) a copy of applicant's new electronic signature, if applicable;
- (4) a copy of applicant's new electronic seal, if applicable;
- and
- (5) any necessary instructions or techniques supplied by the vendor that allow the notary's electronic signature and seal to be read and authenticated.

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## SUBCHAPTER H. MINIMUM REQUIREMENTS FOR ONLINE NOTARIZATIONS

### 1 TAC §87.70, §87.71

#### STATUTORY AUTHORITY

The new §87.70 and §87.71 are proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.70. Identity Proofing and Credential Analysis Standards.

(a) Identity proofing and credential analysis must be performed by a reputable third party who has provided evidence to the

online notary public of the ability to satisfy the requirements of this chapter.

(b) Identity proofing is performed through dynamic knowledge based authentication which meets the following requirements:

(1) principal must answer a quiz consisting of a minimum of five questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

(2) each question must have a minimum of five possible answer choices;

(3) at least 80% of the questions must be answered correctly;

(4) all questions must be answered within two minutes;

(5) if the principal fails their first attempt, they may retake the quiz one time;

(6) during the retake, a minimum of 40% of the prior questions must be replaced; and

(7) if the principal fails their second attempt, they are not permitted to retry with the same online notary public for 24 hours.

(c) Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal.

(d) Credential analysis shall, at a minimum:

(1) use automated processes which include, but are not limited to:

(A) image correction and edge detection;

(B) credential type classification based on format, style, layout and other identifying features;

(C) data extraction, when possible, using optical character recognition (OCR) for text, and barcode scanning when necessary; or

(D) forensic inspection to identify expected security features based on credential type.

(2) confirm that the data on the credential is valid and matches the principal's claimed identity; and

(3) enable the online notary public to visually compare the following for consistency:

(A) available credential analysis automated process output;

(B) the credential itself; and

(C) the principal.

(e) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.

§87.71. Online notarization system.

An online system used to perform online notarial acts by means of audio-video communication shall:

(1) provide for an uninterrupted audio-visual workflow, including the identity proofing and credential analysis portion;

(2) provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;

(3) provide sufficient captured image resolution for credential analysis to be performed in accordance with subchapter H of this chapter.

(4) include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;

(5) provide some manner of ensuring that the electronic record that is presented for online notarization is the same record electronically signed by the principal;

(6) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the record of identity proofing and credential analysis; and

(7) provide reasonable security measures to prevent unauthorized access to:

(A) the live transmission of the audio-video communication;

(B) a recording of the audio-video communication;

(C) the verification methods and credentials used to verify the identity of the principal; and

(D) the electronic documents presented for electronic notarization.

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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## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

#### 1 TAC §353.1303

The Texas Health and Human Services Commission (HHSC) proposes amendments to §353.1303, concerning the Quality Incentive Payment Program for Nursing Facilities.

#### BACKGROUND AND PURPOSE

The amendment would delete the good cause exception to the geographic proximity criterion in the Quality Incentive Payment Program (QIPP) rule. The rule was drafted to avoid possible deferrals and disallowances by the Centers for Medicare and Medicaid Services (CMS), as it closely monitors state funding arrangements that involve intergovernmental transfers (IGTs), especially in instances when a nursing facility (NF) is outside the effective reach of the owner's location. Use of the good cause exception for the sole purpose of enhancing Federal funding po-

tentially jeopardizes the integrity of the QIPP program. None of the exception requests received to date included sufficient documentation to indicate there would be no risk to Federal funds, therefore HHSC has not granted any such requests. Additionally, this good cause exception appears administratively unworkable.

The amendment would also modify the calculation of the eligibility cut-off point for participation by private NFs. As amended, the private NF QIPP eligibility cut-off point for state fiscal year (SFY) 2019 and beyond will be equal to the mean percentage plus one-quarter of one standard deviation of historical Medicaid NF days of service provided under fee-for service (FFS) and managed care (MC) by all private NFs. Additionally, a private NF that was eligible to participate in QIPP during Eligibility Period One is eligible to participate in the eligibility period for SFY 2019 regardless of its Medicaid NF days of service for the SFY 2019 eligibility period. These modifications will continue to ensure that QIPP funds are focused on the Medicaid population while increasing the number of eligible providers.

The amendment would also clarify the rule in regards to submission of the Quality Assurance Performance Improvement (QAPI) Validation Report. The QAPI Validation Report must be submitted by NFs to HHSC monthly.

Finally, the amendment would delete a reference to audited cost reports. Upon initial adoption, HHSC removed all references to audited cost reports in response to a comment. This specific reference mistakenly remained in the rule language upon adoption.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.1303(b)(10) replaces "an MCO" as the point of submission of the QAPI Validation Report to "HHSC."

The proposed amendment to §353.1303(c)(1)(A)(iii) removes the good cause exception to the geographic proximity criterion. Due to the risk of Federal funds, HHSC is no longer allowing exceptions to the 150 mile radius requirement.

The proposed amendment to §353.1303(c)(2) adds a subparagraph (A) to indicate the revised formula for calculating the eligibility cut-off point for participation by private NFs in future eligibility periods. It also adds a subparagraph (B) to make private NFs that were eligible to participate in QIPP during Eligibility Period One eligible to participate in state fiscal year 2019, regardless of their Medicaid NF days of service for that eligibility period.

The proposed amendment to §353.1303(d)(4)(A) deletes the reference to an "audited" cost report. This reference should have been removed upon adoption.

The proposed amendment to §353.1303(g)(1)(C) replaces "the MCOs" as the point of submission of the QAPI Validation Report to "HHSC."

#### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amendments will be in effect, there may be fiscal implications to local governments as a result of enforcing and administering the amendments as proposed.

The rule may limit a local government NF's ability to increase their revenue by not allowing a good cause exemption to the existing 150 mile rule, thus disqualifying some local government NF's from participation in QIPP. This potential limit would apply only to local government NF's who are not currently participating