TO: Health and Human Services Commission Executive Council
DATE: September 7, 2017
FROM: Calvin Green, Regulatory Services Director

AGENDA ITEM: 3.d

SUBJECT: Wheelchair Self-Release Seat Belts

BACKGROUND: □ Federal  ☑ Legislative  □ Other: Program Initiative

The Health and Human Services Commission (HHSC) proposes new rules in Texas Administrative Code Title 40, Part 1, Chapter 19, Subchapter E, related to Residents Rights; Chapter 90, Subchapter C, related to Standards for Licensure; and Chapter 92, Subchapter G, related to Miscellaneous Provisions. These rules apply to nursing facilities (NFs), intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID), and assisted living facilities (ALFs).

The new rules will implement §322.0515, Texas Health and Safety Code, as added by House Bill (H.B.) 284 of the 85th Legislature, Regular Session, 2017, regarding wheelchair self-release seat belts.

The proposed new rules state when a facility must allow a resident to use a wheelchair self-release seat belt and describe when a facility is not required to comply with a request for a seat belt.

In accordance with the new statutory requirements, the proposed new rules require a facility to allow a resident to use a wheelchair self-release seat belt if the resident or resident’s legal guardian requests that the resident use the seat belt, the resident consistently demonstrates the ability to release and fasten the seat belt without assistance, the use of the wheelchair self-release seat belt complies with the resident's care plan, and the facility receives written authorization signed by the resident or the resident’s legal guardian for the resident to use the wheelchair self-release seat belt.

The proposed new rules specify that a facility is not required to allow a resident to use a wheelchair self-release seat belt if a facility advertises itself as a restraint-free facility, the facility provides current and prospective residents a written disclosure stating the facility is restraint-free and is not...
required to comply with a request to use a wheelchair self-release seat belt, and the facility makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt.

**ISSUES AND ALTERNATIVES:**

There are no outstanding issues or concerns with implementation of the proposed new rules. There are no alternatives to implementing H.B. 284.

**STAKEHOLDER INVOLVEMENT:**

External stakeholders were provided a copy of the draft proposed rules via GovDelivery and email on June 30, 2017. In addition, the Department of Aging and Disability Services (DADS) held a public meeting on July 10, 2017, to provide an opportunity for external stakeholders to comment and ask questions regarding the proposed rules. DADS also accepted comments from stakeholders via email on the draft proposed rules.

The commenters generally approved the draft rules. Stakeholders suggested minor revisions to the draft during the stakeholder meeting on July 10, and all suggested changes were incorporated into the proposed rules.

**FISCAL IMPACT:**

☑ None

**SERVICES IMPACT STATEMENT:**

The anticipated benefit is that residents of NFs, ALFs, and ICF/IIDs are allowed to use wheelchair self-release seat belts under certain circumstances.

**RULE DEVELOPMENT SCHEDULE:**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>September 7, 2017</td>
<td>Present to HHSC Executive Council</td>
</tr>
<tr>
<td>October 2017</td>
<td>Publish proposed rules in <em>Texas Register</em></td>
</tr>
<tr>
<td>December 2017</td>
<td>Publish adopted rules in <em>Texas Register</em></td>
</tr>
<tr>
<td>January 2018</td>
<td>Effective date</td>
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</tbody>
</table>
PROPOSED PREAMBLE


BACKGROUND AND PURPOSE

The purpose of the new section is to implement §322.0515, Texas Health and Safety Code, as added by House Bill 284 of the 85th Legislature, Regular Session, 2017.

The proposal requires a nursing facility to allow a resident to use a wheelchair self-release seat belt if the resident meets certain conditions. The rule also specifies when a facility is not required to allow a resident to use a wheelchair self-release seat belt.

SECTION-BY-SECTION SUMMARY

The proposed new §19.424 requires a nursing facility to allow a resident to use a wheelchair self-release seat belt if the resident or resident's legal guardian requests that the resident use the seat belt, the resident consistently demonstrates the ability to release and fasten the seat belt without assistance, the use of the seat belt complies with the resident's comprehensive care plan, and the facility receives written authorization signed by the resident or the resident's legal guardian for the resident to use the seat belt.

The proposed new section also specifies that a facility is not required to allow a resident to use a wheelchair self-release seat belt if a facility advertises itself as a restraint-free facility, the facility provides current and prospective residents a written disclosure stating the facility is restraint-free and is not required to comply with a request to use a wheelchair self-release seat belt, and the facility makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt.

FISCAL NOTE

David Cook, HHSC Deputy Chief Financial Officer, has determined that, for the first five years the proposed new rule is in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.
SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Cook has determined that the new rule will not have an adverse economic effect on small businesses, micro-businesses, and rural communities, because the rule does not impose any economic requirements on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mary T. Henderson, Associate Commissioner for Long-Term Care Regulation, has determined that, for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit is that a facility and its residents are informed of statutory requirements regarding the use of wheelchair self-release seat belts.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Robert Ochoa at (512) 438-3334 in Long-Term Care Regulation. Written comments on the proposal may be submitted to Rules Coordination Office, P. O. Box 149030, Mail Code H600, Austin, Texas 78714-9030; street address 4900 North Lamar Boulevard, Mail Code H600, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to HHSC before 5:00 p.m. on the last working day of the comment period; or
(3) faxed or e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate “Comments on Proposed Rule 40R057” in the subject line.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.307, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §322.0515, which requires a facility to allow a resident to use a wheelchair self-restraint seat belt under certain circumstances.


This agency hereby certifies that this proposal has been review by legal counsel and found to be a valid exercise of the agency’s legal authority.

(a) For the purposes of this section, a “self-release seat belt” is a seat belt on a resident’s wheelchair that the resident demonstrates the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(b) Except as provided in subsection (c) of this section, a facility must allow a resident to use a self-release seat belt if:

(1) the resident or the resident’s legal guardian requests that the resident use a self-release seat belt;

(2) the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

(3) the use of the self-release seat belt is documented in and complies with the resident’s individual program plan; and

(4) the facility receives written authorization, signed by the resident or the resident’s legal guardian, for the resident to use the self-release seat belt.

(c) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:

(1) provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and

(2) makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with subsection (b) of this section.

(d) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with subsection (b) of this section if:
(1) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;

(2) the use of the self-release seat belt does not comply with the resident’s comprehensive care plan; or

(3) the resident or the resident’s legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.
The Texas Health and Human Services Commission (HHSC) proposes new Title 40, §90.45, concerning Wheelchair Self-Release Seat Belts.

BACKGROUND AND PURPOSE

The purpose of the new section is to implement §322.0515, Texas Health and Safety Code, as added by House Bill 284 of the 85th Legislature, Regular Session, 2017.

The proposal requires an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) to allow a resident to use a wheelchair self-release seat belt if the resident meets certain conditions. The rule also specifies when an ICF/IID is not required to allow a resident to use a wheelchair self-release seat belt.

SECTION-BY-SECTION SUMMARY

The proposed new §90.45 requires an ICF/IID to allow a resident to use a wheelchair self-release seat belt if the resident or resident’s legal guardian requests that the resident use the seat belt, the resident consistently demonstrates the ability to release and fasten the seat belt without assistance, the use of the seat belt complies with the resident's individual program plan, and the ICF/IID receives written authorization signed by the resident or the resident's legal guardian for the resident to use the seat belt.

The proposed new section also specifies that an ICF/IID is not required to allow a resident to use a wheelchair self-release seat belt if an ICF/IID advertises itself as a restraint-free facility, the ICF/IID provides current and prospective residents a written disclosure stating the ICF/IID is restraint-free and is not required to comply with a request to use a wheelchair self-release seat belt, and the ICF/IID makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt.

FISCAL NOTE

David Cook, HHSC Deputy Chief Financial Officer, has determined that, for the first five years the proposed new rule is in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.
SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Cook has determined that the new rule will not have an adverse economic effect on small businesses, micro-businesses, and rural communities, because the rule does not impose any economic requirements on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mary T. Henderson, Associate Commissioner for Long-Term Care Regulation, has determined that, for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit is that ICF/IIDs and their residents are informed of statutory requirements regarding the allowance of wheelchair self-release seat belts.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Robert Ochoa at (512) 438-3334 in the Regulatory Services Division. Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030; street address 4900 North Lamar Boulevard, Mail Code H600, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

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(3) faxed or e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate “Comments on Proposed Rule 40R057” in the subject line.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §252.033, which authorizes HHSC to license ICF/IIDs; Texas Health and Safety Code, §252.008, which requires the HHSC executive commissioner to adopt rules related to the administration and implementation of Chapter 252; and Texas Health and Safety Code, §322.0515, which requires a facility to allow a resident to use a wheelchair self-restraint seat belt under certain circumstances.

The new rule implements Texas Government Code, §531.0055; and Texas Health and Safety Code, §§252.033, 252.008, and 322.0515.

This agency hereby certifies that this proposal has been review by legal counsel and found to be a valid exercise of the agency’s legal authority.
§90.45. Wheelchair Self-Release Seat Belts.

(a) For the purposes of this section, a “self-release seat belt” is a seat belt on a resident’s wheelchair that the resident demonstrates the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(b) Except as provided in subsection (c) of this section, a facility must allow a resident to use a self-release seat belt if:

1. the resident or the resident’s legal guardian requests that the resident use a self-release seat belt;

2. the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

3. the use of the self-release seat belt is documented in and complies with the resident’s individual program plan; and

4. the facility receives written authorization, signed by the resident or the resident’s legal guardian, for the resident to use the self-release seat belt.

(c) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:

1. provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and

2. makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with subsection (b) of this section.

(d) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with subsection (b) of this section if:
(1) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;

(2) the use of the self-release seat belt does not comply with the resident’s individual program plan; or

(3) the resident or the resident’s legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.
The Texas Health and Human Services Commission (HHSC) proposes new Title 40, §92.128, concerning Wheelchair Self-Release Seat Belts.

BACKGROUND AND PURPOSE

The purpose of the new section is to implement §322.0515, Texas Health and Safety Code as added by House Bill 284 of the 85th Legislature, Regular Session, 2017.

The proposal requires an assisted living facility to allow a resident to use a wheelchair self-release seat belt if the resident meets certain conditions. The rule also specifies when an assisted living facility is not required to allow a resident to use a wheelchair self-release seat belt.

SECTION-BY-SECTION SUMMARY

The proposed new §92.128 requires an assisted living facility to allow a resident to use a wheelchair self-release seat belt if the resident or the resident’s legal guardian requires that the resident use the seat belt, the resident consistently demonstrates the ability to release and fasten the seat belt without assistance, the use of the wheelchair self-release seat belt complies with the resident's individual service plan, and the assisted living facility receives written authorization signed by the resident or the resident's legal guardian for the resident to use the seat belt.

The proposed new section also specifies that an assisted living facility is not required to allow a resident to use a wheelchair self-release seat belt if the assisted living facility advertises itself as a restraint-free facility, the assisted living facility provides current and prospective residents a written disclosure stating the facility is restraint-free and is not required to comply with a request to use a wheelchair self-release seat belt, and the assisted living facility makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt.

FISCAL NOTE

David Cook, HHSC Deputy Chief Financial Officer, has determined that, for the first five years the proposed new rule is in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.
SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Cook has determined that the new rule will not have an adverse economic effect on small businesses, micro-businesses, and rural communities, because the rule does not impose any economic requirements on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to person who are required to comply with the rule as proposed.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mary T. Henderson, Associate Commissioner for Long Term Care Regulation, has determined that, for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit is that an assisted living facility and its residents are informed of statutory requirements regarding the allowance of wheelchair self-release seat belts.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Robert Ochoa at (512) 438-3334 in Long Term Care Regulation. Written comments on the proposal may be submitted to Rules Coordination Office, P. O. Box 149030, Mail Code H600, Austin, Texas 78714-9030; street address 4900 North Lamar Boulevard, Mail Code H600, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

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(3) faxed or e-mailed by midnight on the last day of the comment period.
When e-mailing comments, please indicate “Comments on Proposed Rule
40R057” in the subject line.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §531.0055, which
provides that the HHSC executive commissioner shall adopt rules for the
operation and provision of services by the health and human services
agencies; Texas Health and Safety Code, §247.025, which authorizes the
licensing of assisted living facilities; and Texas Health and Safety Code
§322.0515, which requires an assisted living facility to allow residents to use
a wheelchair self-release seat belt under certain circumstances.

The new rule implements Texas Government Code, §531.0055; Texas Health

This agency hereby certifies that this proposal has been review by legal
counsel and found to be a valid exercise of the agency’s legal authority.

(a) For the purposes of this section, a “self-release seat belt” is a seat belt on a resident’s wheelchair that the resident demonstrates the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(b) Except as provided in subsection (c) of this section, a facility must allow a resident to use a self-release seat belt if:

(1) the resident or the resident’s legal guardian requests that the resident use a self-release seat belt;

(2) the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

(3) the use of the self-release seat belt is documented in and complies with the resident’s individual program plan; and

(4) the facility receives written authorization, signed by the resident or the resident’s legal guardian, for the resident to use the self-release seat belt.

(c) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:

(1) provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and

(2) makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with subsection (b) of this section.

(d) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with subsection (b) of this section if:
(1) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;

(2) the use of the self-release seat belt does not comply with the resident’s individual service plan; or

(3) the resident or the resident’s legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.