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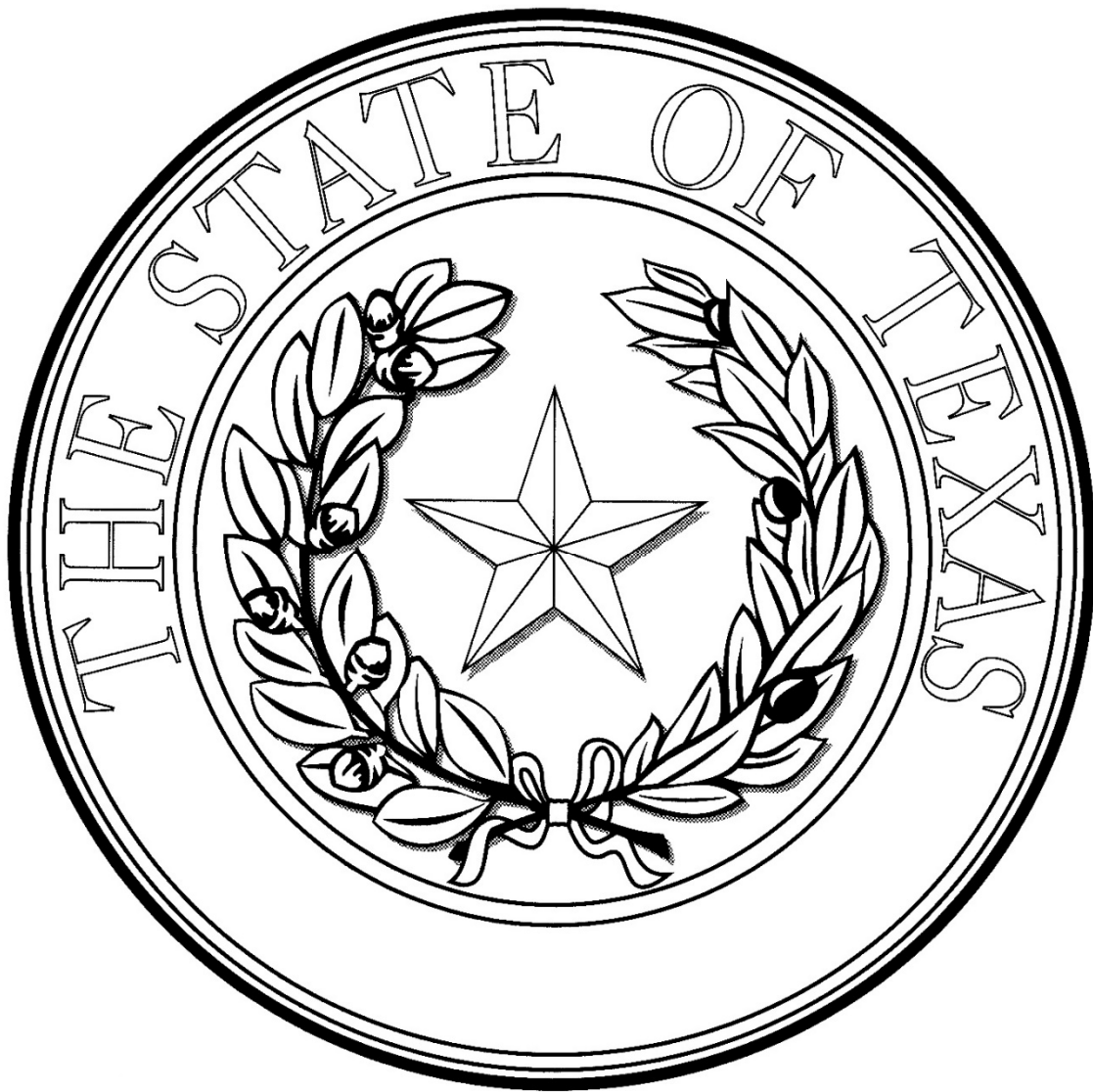
# TEXAS REGISTER

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(512) 463-5561  
FAX (512) 463-5569

<https://www.sos.texas.gov>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

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***Secretary of State*** - Ruth R. Hughs

***Director*** - Robert Summers

***Editor-in-Chief*** - Jill S. Ledbetter

***Editors***

Liz Cordell

Eddie Feng

Belinda Kirk

Cecilia Mena

Joy L. Morgan

Breanna Mutschler

Barbara Strickland

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Executive Order GA-28

Relating to the targeted response to the COVID-19 disaster as part of the reopening of Texas.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to Open Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from DSHS; and

WHEREAS, due to recent substantial increases in COVID-19 positive cases, and increases in the COVID-19 positivity rate and hospitalizations resulting from COVID-19, targeted and temporary adjustments to the reopening plan are needed to achieve the least restrictive means for reducing the growing spread of COVID-19 and the resulting imminent threat to public health, and to avoid a need for more extreme measures; and

WHEREAS, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but

can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from DSHS Commissioner Dr. Hellerstedt and other medical advisors, the Governor's Strike Force to Open Texas, the White House, and the CDC, do hereby order the following on a statewide basis effective at noon on June 26, 2020:

Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment; *provided, however, that:*

1. There is no occupancy limit for the following:

a. any services listed by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.1 or any subsequent version;

b. religious services, including those conducted in churches, congregations, and houses of worship;

c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;

d. child-care services;

e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths; and

f. recreational sports programs for youths and adults;

2. Except as provided below by paragraph number 5, this 50 percent occupancy limit does not apply to outdoor areas, events, or establishments, except that the following outdoor areas or outdoor venues shall operate at no more than 50 percent of the normal operating limits as determined by the owner:

a. professional, collegiate, or similar sporting events;

b. swimming pools;

c. water parks;

d. museums and libraries;

- e. zoos, aquariums, natural caverns, and similar facilities; and
  - f. rodeos and equestrian events;
3. This 50 percent occupancy limit does not apply to the following establishments that operate with at least six feet of social distancing between work stations:
- a. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;
  - b. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and
  - c. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services;
4. Amusement parks shall operate at no more than 50 percent of the normal operating limits as determined by the owner;
5. For any outdoor gathering in excess of 100 people, other than those set forth above in paragraph numbers 1, 2, or 4, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order;
6. For dine-in services by restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, the occupancy limit shall remain at 75 percent until 12:01 a.m. on June 29, 2020, at which time such restaurants may only operate at up to 50 percent of the total listed occupancy of the restaurant, subject to paragraph number 9 below;
7. People shall not visit bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC) and are not restaurants as defined above in paragraph number 6; provided, however, that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC;
8. People shall not use commercial rafting or tubing services, including rental of rafts or tubes and transportation of people for the purpose of rafting or tubing;
9. For any business establishment that is subject to a 50 percent "total listed occupancy" limit or "normal operating limit," and that is in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, the business establishment may operate at up to 75 percent of the total listed occupancy or normal operating limit of the establishment;
10. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed;
11. Staff members are not included in determining operating levels, except for manufacturing services and office workers;
12. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at [www.dshs.texas.gov/coronavirus](http://www.dshs.texas.gov/coronavirus), people should not be in groups larger than ten and should maintain six feet of social distancing from those not in their group;
13. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member

of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation;

14. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS;

15. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering;

16. People shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible; and

17. For the remainder of the 2019-2020 school year, public schools may resume operations for the summer as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards. Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by TEA.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-26, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, or GA-27. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 26th day of June, 2020.

Greg Abbott, Governor  
TRD-202002568



Proclamation 41-3744

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2020, certifying under Section 418.014 of the Texas Government Code that the threats and incidents of violence starting on May 29, 2020, which have endangered public safety, constitute and pose an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, these events have caused or imminently threatened widespread or severe damage, injury, and property loss, among other harms, at a time when the State of Texas is responding to the novel coronavirus (COVID-19) disaster; and

WHEREAS, while all Americans are entitled to exercise their First Amendment rights, it is imperative that order is maintained, all persons are kept safe and healthy, and property is protected; and

WHEREAS, peaceful protesters, many of whom are responding to the senseless taking of life by the reprehensible actions of a few, should themselves be protected from harm; and

WHEREAS, the declaration of a state of disaster has facilitated and expedited the use and deployment of resources to enhance preparedness and response to the ongoing threats, including by ensuring that federal law enforcement officers can fully assist with the efforts; and

WHEREAS, a state of disaster continues to exist in all counties due to threats of widespread or severe damage, injury, and property loss, among other harms;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016(a), I hereby continue the suspension of all relevant provisions within Chapter 1701 of the Texas Occupations Code, as well as Title 37, Chapters 211-229 of the Texas Administrative Code, to the extent necessary for the Texas Commission on Law Enforcement to allow federal law enforcement officers to perform peace officer duties in Texas. Additionally, pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or ad-

ministrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 30th day of June, 2020.

Greg Abbott, Governor  
TRD-202002682



Proclamation 41-3745

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, I issued Executive Order GA-27 on June 25, 2020, relating to the need for increased hospital capacity during the COVID-19 disaster; and

WHEREAS, Executive Order GA-27 provided that its list of covered counties could be adjusted by proclamation thereafter;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby add the following counties, effective at 11:59 p.m. on Wednesday, July 1, 2020, to the list set forth in Executive Order GA-27:

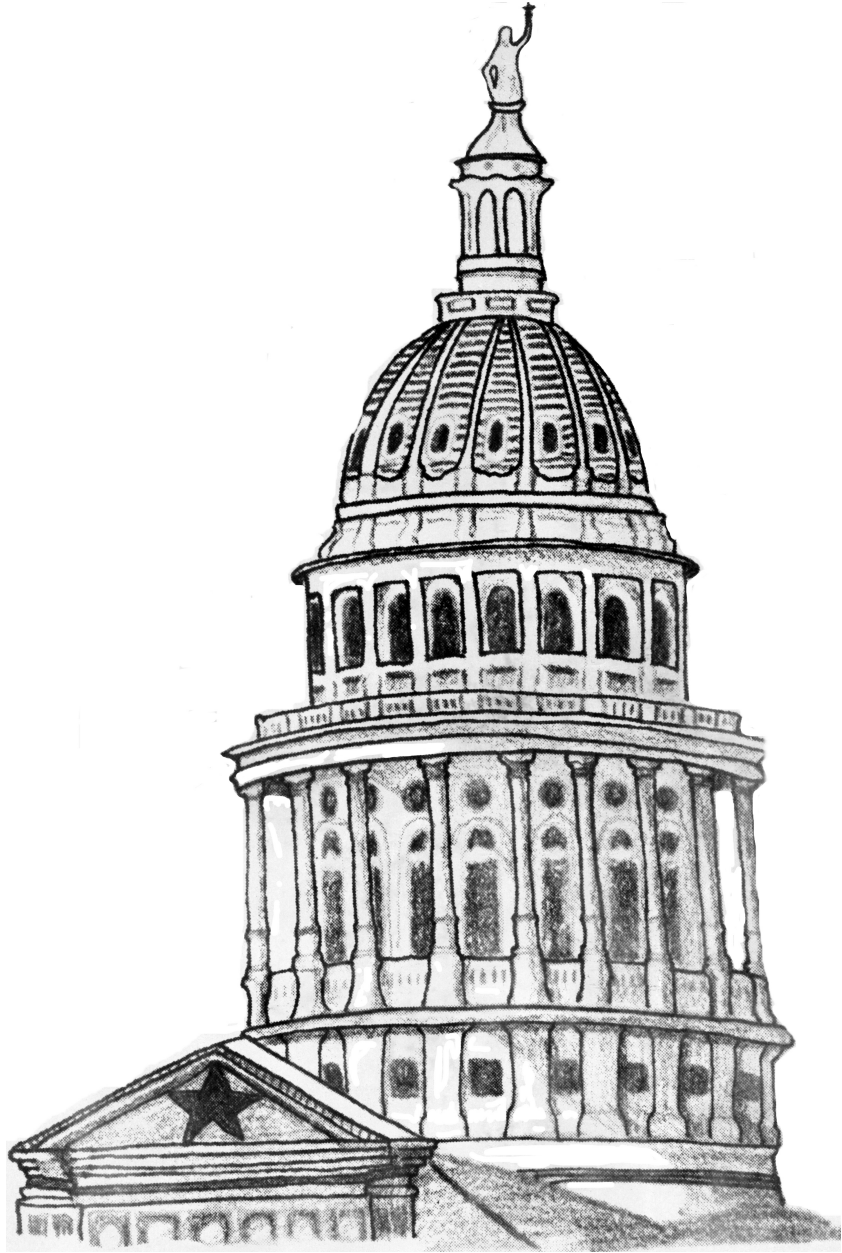
Cameron County; Hidalgo County; Nueces County; and Webb County.

This proclamation shall remain in effect and in full force for as long as Executive Order GA-27 is in effect and in full force, unless otherwise modified, amended, rescinded, or superseded by the governor.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 30th day of June, 2020.

Greg Abbott, Governor  
TRD-202002680





# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

**RQ-0359-KP**

**Requestor:**

The Honorable Scott R. Peal

Chambers County Attorney

Post Office Box 1200

Anahuac, Texas 77514

Re: Authority to remove a county auditor and procedure to do so (RQ-0359-KP)

**Briefs requested by July 24, 2020**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202002672

Lesley French

General Counsel

Office of the Attorney General

Filed: June 30, 2020



Opinions

**Opinion No. KP-0318**

The Honorable Dana Norris Young

Cherokee County Attorney

Post Office Box 320

Rusk, Texas 75785

Re: Authority of a judge of a court of record to appoint an official court recorder in lieu of an official court reporter (RQ-0327-KP)

## S U M M A R Y

Government Code 52.041 expressly requires each judge of a court of record to appoint an official court reporter. Accordingly, a court is unlikely to conclude that a judge of a court of record may appoint an official court recorder in lieu of an official court reporter.

Government Code section 52.051 and Local Government Code section 152.905 provide for the setting of salaries of court reporters. Neither apply to the position of court recorder, and nothing in either provision provides a basis to conclude that they may apply to other judicial positions. Thus, as a practical matter, a court should hire and remunerate a court recorder as it does its other staff not covered by these provisions.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202002673

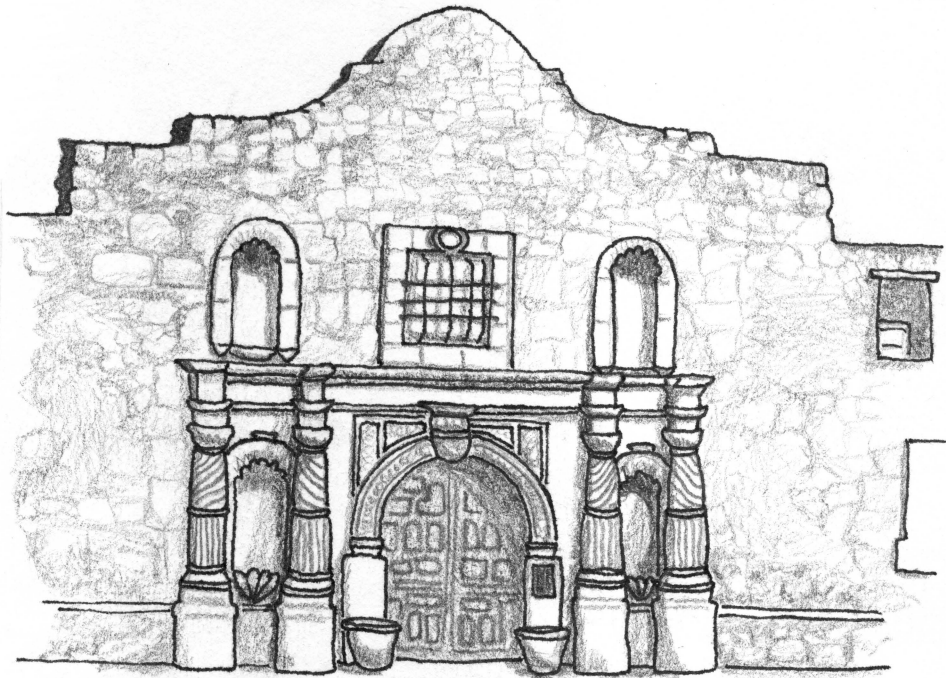
Lesley French

General Counsel

Office of the Attorney General

Filed: June 30, 2020







# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 83. COSMETOLOGISTS

##### 16 TAC §83.72

The Texas Commission of Licensing and Regulation (Commission) adopts emergency rulemaking amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 83, §83.72, Responsibilities of Beauty Culture Schools, regarding the Cosmetology Program. This emergency adoption is necessary to correct errors in the previously-amended (and adopted) rule text in order to protect the public health, safety, and welfare. The effective date for these amendments is June 30, 2020.

The emergency rule amendment is referred to as the "emergency rule."

##### EXPLANATION OF AND JUSTIFICATION FOR THE EMERGENCY RULE

The rules under 16 TAC Chapter 83, Cosmetologists, implement Texas Occupations Code, Chapter 1602, Cosmetologists, and Chapter 1603, Regulation of Barbering and Cosmetology.

On February 18, 2020, the Commission adopted amendments to Chapter 83 to implement necessary changes as required by House Bill (HB) 2847, 86th Legislature, Regular Session (2019), and recommendations from the Cosmetology Advisory Board's workgroups to reduce regulatory burdens and provide more clarity to the industry by using updated and standardized terminology. Section 83.72 was one of the rules amended by this rulemaking, and the section was amended effective March 15, 2020.

Due to a clerical error, the amended text of §83.72 incorporated into the Texas Administrative Code is not the text that was published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 42) and adopted by the Commission on February 18, 2020. As a result, incorrect requirements are present in the currently published text of §83.72.

The errors in the text of §83.72(w)(9) - (10) present imminent peril to the public health, safety, or welfare requiring adoption of the emergency rule on fewer than 30 days' notice. The errors include changing the required equipment for Beauty Culture Schools offering the esthetician and manicurist curriculum standards. These errors remove requirements for some sanitation equipment such as autoclaves, posing a risk to public health and safety. Additionally, the errors include requirements for unnecessary equipment which should not be involved in the instruction for the esthetician or manicurist curricula, representing unnecessary costs and presenting a risk of confusion for instructors and students. This emergency rule reverts the requirements back to those that were intended to be changed as a result of the adop-

tion on February 18, 2020, ensuring the correct standards are in place.

##### FUTURE RULEMAKING

Under Texas Government Code §2001.034, the emergency rule may be effective for 120 days, and may be renewed once for an additional 60 days. The Commission intends to propose this or a similar rule under the normal rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted section.

##### STATUTORY AUTHORITY

The emergency rule is adopted with abbreviated notice and with an expedited effective date under Texas Government Code §§2001.034(a), 2001.036(a)(2).

The emergency rule is adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the emergency rule are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the emergency rule.

##### §83.72. *Responsibilities of Beauty Culture Schools.*

- (a) Each establishment must have a copy of the current law and rules book.
- (b) Each establishment is responsible for compliance with the health and safety standards of this chapter.
- (c) Notify the department of any alterations of a cosmetology establishment's floor plan.
- (d) The certificate of curriculum approval shall be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course shall be maintained by the school and be available for inspection.
- (e) Unless the context clearly indicates otherwise, when used in this section the term "student-instructor" shall mean a student permit holder who is enrolled in an instructor course of a beauty culture school.
- (f) Schools must have at least one licensed instructor on duty for each 25 students in attendance, including evening classes. A school may not enroll more than three student-instructors for each licensed instructor teaching in the school. The student-instructor shall at all times work under the direct supervision of the licensed instructor and may not service clients, but will concentrate on teaching skills. A licensed instructor must be physically present during all curriculum standard activities. No credit for instructional hours can be granted to a cosmetology student unless such hours are accrued under the supervision of a licensed instructor.

(g) Schools offering distance education must:

- (1) obtain department approval before offering a course;
- (2) provide students with the educational materials necessary to fulfill course requirements; and
- (3) comply with the curriculum standards in §83.120(d) by limiting distance education to instruction in theory.

(h) Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits shall be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

(i) Schools may use a time clock to track student hours and maintain a daily record of attendance or schools may use credit hours.

(j) Schools using time clocks shall post a sign at the time clock that states the following department requirements:

- (1) Each student must personally clock in/out for himself/herself.
- (2) No credit shall be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.
- (3) If a student is in or out of the facility for lunch, he/she must clock out.

(4) Students leaving the facility for any reason, including smoking breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of a licensed instructor.

(k) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents however only school owners and school designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(l) A school must properly account for the hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit that is not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum standards, withdraws, or is terminated:

- (1) daily record of attendance;
- (2) the following documents if a time clock is used:
  - (A) time clock record(s);
  - (B) time clock failure and repair record(s); and
  - (C) field trip records in accordance with §83.120(e)(5);

(3) all other relevant documents that account for a student's credit under this chapter.

(m) Schools using time clocks shall, at least one time per month submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours shall include all hours accrued at the school. Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission

of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(n) Schools using credit hours shall, at the end of the course or module or if the student drops or withdraws, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(o) Schools changing from clock hours to credit hours or from credit hours to clock hours must apply with the department for approval, on a department approved form, prior to making any changes.

(p) Successful completion of 1 credit hour is equal to 37.5 clock hours. This equivalency will be used for conversion between clock hours to credit hours or credit hours to clock hours and the department must periodically assess this equivalency conversion to ensure it is an acceptable industry standard.

(q) Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend class for 30 consecutive days.

(r) Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

(s) All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula required under §83.120.

(t) A private cosmetology school or post-secondary school may provide cosmetology instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department rules.

(u) Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(v) Schools must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum standard topic and that a licensed instructor is present during the guest presenter's classroom teaching.

(w) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct students enrolled at the school:

- (1) if using a time clock to track student hours, one day/date formatted computer time clock;
- (2) desks and chairs or table space for each student in attendance;
- (3) multi-media equipment;
- (4) a dispensary containing a sink with hot and cold running water and space for storage and dispensing of supplies and equipment;
- (5) a suitable receptacle for used towels/linens;
- (6) covered trash cans in lab area; and

(7) wet disinfectant soaking container, large enough to fully immerse tools and implements.

(8) If offering the operator curriculum standards the following equipment must be available in adequate number for student use:

- (A) shampoo bowl and shampoo chair;
- (B) hair drying equipment or professional hand-held hair dryers;
- (C) cold wave rods;
- (D) thermal iron (electric or non-electric);
- (E) styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic);
- (F) mannequin with sufficient hair, with table or attached to styling station;
- (G) professional hand clippers;
- (H) manicure table and stool;
- (I) facial chair or bed;
- (J) lighted magnifying glass;
- (K) dry sanitizer; and
- (L) wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(9) If offering the esthetician curriculum standards the following equipment must be available in adequate number for student use:

- (A) facial chair or bed;
- (B) lighted magnifying glass [~~heat processor, hand-held hair dryer, heat cap, or therapeutic light~~];
- (C) woods lamp [~~cold wave rods~~];
- (D) dry sanitizer [~~thermal iron (electric or non-electric)~~];
- (E) steamer machine [~~styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic)~~];
- (F) brush machine for cleaning [~~mannequin with sufficient hair, with table or attached to styling station~~];
- (G) vacuum machine [~~professional hand clippers~~];
- (H) high frequency machine for disinfection, product penetration, stimulation [~~professional hand held dryer~~];
- (I) galvanic machine for eliminating encrustations, product penetration [~~manicure table and stool~~];
- (J) paraffin bath and paraffin wax [~~facial chair or bed~~];
- (K) mannequin head; and
- (L) wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(10) If offering the manicure curriculum standards the following equipment must be available in adequate number for student use:

- (A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer [~~facial chair~~];

(B) complete manicure table with light [~~lighted magnifying glass~~];

- (C) client chair [~~woods lamp~~];
- (D) student stool or chair [~~dry sanitizer~~];
- (E) whirlpool foot spa or foot basin [~~steamer machine~~];
- (F) electric nail file [~~brush machine for cleaning~~];
- (G) UV light curing system [~~vacuum machine~~];
- (H) paraffin bath and paraffin wax [~~high frequency machine for disinfection, product penetration, stimulation~~];
- (I) air brush system; and [~~galvanic machine for eliminating encrustations, product penetration~~];
- (J) wet disinfectant soaking containers. [~~paraffin bath and paraffin wax~~];

(11) If offering the esthetician/manicure curriculum standards, the equipment required for the esthetician curriculum standards as listed in paragraph (9); and the equipment required for the manicure curriculum standards as listed in paragraph (10); including a wax warmer and paraffin warmer for each service, in adequate number for student use.

(12) If offering the eyelash extension curriculum standards; the following equipment must be available in adequate number for student use:

- (A) facial bed or massage table that allows the consumer to lie completely flat;
- (B) stool or chair;
- (C) lamp;
- (D) mannequin head;
- (E) wet disinfectant soaking containers; and
- (F) dry sanitizer.

(x) Cosmetology schools shall display in the school, in a conspicuous place clearly visible to the public:

- (1) a copy of the school's most recent inspection report issued by the department; and
- (2) a sign, acceptable to the department, regarding human trafficking information as required by Texas Occupations Code, Chapter 1602, §1602.408.

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

Filed with the Office of the Secretary of State on June 30, 2020.

TRD-202002690

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: June 30, 2020

Expiration date: October 27, 2020

For further information, please call: (512) 463-3671



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

## CHAPTER 174. TELEMEDICINE

### SUBCHAPTER A. TELEMEDICINE

#### 22 TAC §174.5

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §174.5, effective July 5, 2020, at 12:00 a.m.

On March 13, the Governor of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 19, 2020, the Texas Governor issued a waiver suspending the strict enforcement of §174.5(e)(2)(A) which generally prohibits the utilization of telemedicine to prescribe scheduled drugs for the treatment of chronic pain. The waiver was issued in order to protect public health and curb the spread of COVID-19 by providing patients access to schedule drugs needed to ensure on-going treatment of chronic pain and avoid potential adverse consequences associated with the abrupt cessation of pain medication. The waiver was extended on April 9, 2020, and again on May 8, 2020. The waiver expired at 11:59 p.m. on June 5, 2020. Upon expiration of the waiver, the Board adopted, on an emergency basis, amendments to 22 TAC §174.5, which is set to expire at 11:59 p.m. on July 4, 2020.

Therefore, the emergency amendment to §174.5(e) is immediately necessary to help the state's physicians, physician assistants and other health care professionals continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services to related to chronic pain management with controlled substances for patients. Pursuant to the Governor's declaration of disaster issued on March 13, 2020, related to COVID-19, physicians determining whether to utilize telemedicine medical services for the treatment of chronic pain with scheduled medications, must give due consideration to additional important parameters to ensure the safety of the patient.

The emergency amendment would allow physicians to utilize telemedicine to issue refill prescriptions for scheduled medications to established chronic pain patients if the physician determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

Pursuant to Section 2001.034 and 2001.036(a)(2) of the Texas Government Code, the amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendment shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter, pursuant to Section 2001.034 of the Texas Government Code.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Another statute affected by this rule is Chapter 111 of the Texas Occupations Code.

§174.5. *Issuance of Prescriptions.*

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions).

(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless:

(i) a patient is an established chronic pain patient of the physician and is seeking telephone refill of an existing prescription, and the physician determines that such telemedicine treatment is needed due to the COVID-19 pandemic; or

(ii) the treatment is otherwise allowed under federal and state law.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by subsection (A)(i) or (ii) above, the patient's medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) A physician, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with scheduled drugs as permitted by subsection (A)(i) or (ii) above, shall give due consideration to factors that include: date of the patient's last in-person visit, patient co-morbidities, and occupational-related COVID risks. These are not the sole, exclusive, or exhaustive factors a physician should consider under this rule.

(D) The emergency amendment of this rule effective July 5, 2020, at 12:00 a.m. shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) Treatment for Acute Pain. For purposes of this rule, acute pain has the same definition as used in §170.2(2) of this title. Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.

~~[(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law.]~~

~~[(B) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.]~~

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

Filed with the Office of the Secretary of State on July 1, 2020.

TRD-202002699

Scott Freshour

General Counsel

Texas Medical Board

Effective date: July 5, 2020

Expiration date: September 2, 2020

For further information, please call: (512) 305-7016



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 303. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code (TAC), Chapter 303, Preadmission Screening and Resident Review (PASRR), amended §§303.303(c), 303.502(a), and 303.703(b) in response to COVID-19. These amended sections ensure local intellectual and developmental disability authorities (LIDDAs), local mental health authorities (LMHAs), and local behavioral health authorities (LBHAs) who hire new staff can continue providing essential services to eligible residents of nursing facilities. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

#### BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses continue providing essential services. The Commission accordingly finds that an imminent peril

to the public health, safety, and welfare of the state requires immediate adoption of emergency amendments in 26 TAC Chapter 303, Subchapters C, E, and G.

To protect designated residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency amendments to allow new employees at a LIDDA, LMHA, or LBHA to meet revised training requirements before conducting PASRR evaluations and resident reviews, providing habilitation coordination, or providing service coordination for transition planning. Rather than attend HHSC in-person PASRR trainings, which are suspended during the COVID-19 pandemic to comply with social distancing requirements, new employees must complete HHSC computer-based training and local training from the LIDDA, LMHA, or LBHA. LIDDAs also currently do not have access to HHSC-approved person-centered thinking trainings. For new employees who have not attended HHSC-developed in-person PASRR trainings or HHSC-approved person-centered thinking training, the LIDDA, LMHA, or LBHA must ensure a supervisor, team lead, or quality monitoring staff person who has successfully completed the training reviews and signs off on the employee's work.

## SUBCHAPTER C. RESPONSIBILITIES

### 26 TAC §303.303

#### STATUTORY AUTHORITY

These emergency rule amendments are adopted under Government Code §2001.034; §531.0055; and §531.021 and under Human Resources Code §32.021. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new amendments implement Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§303.303. *Qualifications and Requirements for Staff Person Conducting a PE or Resident Review.*

(a) A LIDDA must ensure a PE or resident review is conducted by a person who:

(1) is a QIDP; or

(2) has one of the following qualifications and at least one year of experience working directly with persons with intellectual disability or other developmental disabilities:

(A) RN;

(B) LCSW;

(C) LPC;

(D) LMFT;

(E) Licensed Psychologist;

(F) APRN; or

(G) Physician.

(b) An LMHA or LBHA must ensure a PE or resident review is conducted by a person who is a:

- (1) QMHP-CS;
- (2) RN;
- (3) LCSW;
- (4) LPC;
- (5) LMFT;
- (6) Licensed Psychologist;
- (7) APRN;
- (8) Physician; or
- (9) PA.

(c) A LIDDA, LMHA, and LBHA must:

(1) before a staff person conducts a PE or resident review, ensure the staff person:

(A) successfully completes: [receives HHSC-developed training about how to conduct a PE and resident review; and]

(i) the HHSC computer-based training, An Overview of the PASRR Process; and

(ii) job-related training from the LIDDA, LMHA, or LBHA; and

(B) demonstrates competency in completing a PE and resident review; ~~and~~

(2) maintain documentation of the training received by a staff person who conducts a PE or resident review; ~~and~~ [.]

(3) ensure a supervisor, team lead, or quality monitoring staff person who has successfully completed the HHSC in-person training regarding PEs reviews and signs off on PEs and resident reviews completed by an employee hired on or after February 1, 2020.

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

Filed with the Office of the Secretary of State on June 29, 2020.

TRD-202002616

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 29, 2020

Expiration date: October 26, 2020

For further information, please call: (512) 438-3135



## SUBCHAPTER E. HABILITATION COORDINATION

### 26 TAC §303.502

#### STATUTORY AUTHORITY

These emergency rule amendments are adopted under Government Code §2001.034; §531.0055; and §531.021 and under Human Resources Code §32.021. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice

and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new amendments implement Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

#### §303.502. Required Training for a Habilitation Coordinator.

(a) A LIDDA must ensure ~~[a habilitation coordinator completes the following training before providing habilitation coordination]~~:

(1) a habilitation coordinator, before providing habilitation coordination, successfully completes [training that addresses]:

(A) local training that addresses:

(i) [(A)] appropriate LIDDA policies, procedures, and standards;

(ii) [(B)] this chapter and other HHSC rules relating to the provision of specialized services;

(iii) [(C)] HHSC's IDD PASRR Handbook;

(iv) [(D)] developing and implementing an HSP;

(v) [(E)] conducting assessments, service planning, coordination, and monitoring;

(vi) [(F)] providing crisis prevention and management;

(vii) [(G)] presenting community living options using HHSC-developed materials and forms, and offering educational opportunities and informational activities about community living options;

(viii) [(H)] arranging visits to community providers;

(ix) [(I)] accessing specialized services for a designated resident;

(x) [(J)] the rights of a person with an intellectual disability, including the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, as described in the Persons with an Intellectual Disability Act, Texas Health and Safety Code, Chapter 592 and the *Your Rights in Local Authority Services* booklet; and

(xi) [(K)] advocacy for individuals with ID or DD; and

(B) the HHSC computer-based training, An Overview of the PASRR Process;

(2) a supervisor, team lead, or quality monitoring staff person who has successfully completed the HHSC in-person training regarding habilitation coordination reviews and signs off on work completed by a habilitation coordinator hired on or after February 1, 2020 [person-centered thinking training approved by HHSC]; and

(3) a supervisor, team lead, or quality monitoring staff person who has successfully completed a person-centered thinking training approved by HHSC reviews and signs off on HSPs completed by a habilitation coordinator hired on or after February 1, 2020, if the habilitation coordinator has not previously completed the person-centered thinking training approved by HHSC [all HHSC-developed training related to PASRR].

(b) A LIDDA must:

(1) ensure a habilitation coordinator demonstrates competency in providing habilitation coordination; and

(2) maintain documentation of the training received by habilitation coordinators.

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

Filed with the Office of the Secretary of State on June 29, 2020.

TRD-202002619

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 29, 2020

Expiration date: October 26, 2020

For further information, please call: (512) 438-3135



## SUBCHAPTER G. TRANSITION PLANNING

### 26 TAC §303.703

#### STATUTORY AUTHORITY

These emergency rule amendments are adopted under Government Code §2001.034; §531.0055; and §531.021 and under Human Resources Code §32.021. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new amendments implement Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

*§303.703. Requirements for Service Coordinators Conducting Transition Planning.*

(a) A LIDDA must ensure that a service coordinator complies with 40 TAC Chapter 2, Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability), including documenting in the transition plan the frequency and duration of service coordination while the designated resident is in the nursing facility.

(b) A LIDDA must ensure [that a service coordinator who conducts transition planning completes the following training before providing service coordination to a designated resident]:

(1) a service coordinator who conducts transition planning successfully completes the following training before providing service coordination [training that addresses]:

(A) local training that addresses:

(i) [~~(A)~~] this chapter;

(ii) [~~(B)~~] HHSC's IDD PASRR Handbook;

(iii) [~~(C)~~] the process for making a referral for relocation services, the role of a relocation specialist, and housing options;

(iv) [~~(D)~~] the role of the MCO service coordinator for a nursing facility resident who wants to transition to the community;

(v) [~~(E)~~] services available through Texas Medicaid State Plan and all home and community based services programs for individuals with ID or DD, including but not limited to, access to nursing, durable medical equipment and supplies, and transition assistance supports;

(vi) [~~(F)~~] developing and implementing a transition plan for a designated resident;

(vii) [~~(G)~~] presenting community living options using HHSC-developed materials and forms, and offering educational opportunities and informational activities about community living options; and

(viii) [~~(H)~~] the rights of a person with an intellectual disability, including the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, as described in the Persons with an Intellectual Disability Act, Texas Health and Safety Code, Chapter 592 and the *Your Rights in Local Authority Services* booklet; and

(B) the HHSC computer-based training, An Overview of the PASRR Process;

(2) a supervisor, team lead, or quality monitoring staff person who has successfully completed the HHSC in-person training regarding service coordination for transition planning reviews and signs off on work completed by a service coordinator hired on or after February 1, 2020 [person-centered thinking training approved by HHSC]; and

(3) a supervisor, team lead, or quality monitoring staff person who has successfully completed a person-centered thinking training approved by HHSC reviews and signs off on transition plans completed by a service coordinator hired on or after February 1, 2020, if the service coordinator has not previously completed the person-centered thinking training approved by HHSC [all HHSC-developed training related to PASRR].

(c) A LIDDA must:

(1) ensure a service coordinator who conducts transition planning demonstrates competency in conducting transition planning; and

(2) maintain documentation of the training received by service coordinators who conduct transition planning.

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

Filed with the Office of the Secretary of State on June 29, 2020.

TRD-202002621

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Effective date: June 29, 2020  
Expiration date: October 26, 2020  
For further information, please call: (512) 438-3135





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 54. SPECIAL PROGRAMS

##### SUBCHAPTER D. REPORTS CONCERNING HUMAN TRAFFICKING CASES

###### 1 TAC §54.90, §54.91

The Office of the Attorney General (OAG) proposes a new Subchapter D of Chapter 54, consisting of two new sections of rule, §54.90 and §54.91. These new sections will implement House Bill 3800, 86th Legislature, Regular Session (2019), concerning required reporting of human trafficking cases by certain law enforcement entities and prosecutors. Section 54.90 applies to the Department of Public Safety and certain entities in counties with a population of more than 500,000. Section 54.91 applies to certain entities in counties with a population of 500,000 or less.

Angela Goodwin, Associate Deputy for Criminal Justice, has determined that for each of the first five years the proposed rules are in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering the rules.

Ms. Goodwin has determined that for each of the first five years the proposed rules are in effect, the anticipated public benefit will be to provide the State of Texas with more information to fight human trafficking. Ms. Goodwin has determined: there is no probable economic cost to persons required to comply with the proposed rules; the proposed rules will not impact local economies; and the proposed rules will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

In compliance with Government Code §2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the proposed rules are in effect, the proposed rules: 1) will not create or eliminate a government program; 2) will not require the creation of new employee positions or the elimination of existing employee positions; 3) will not require an increase or decrease in future legislative appropriations to the OAG; 4) will not require an increase or decrease in fees paid to the OAG; 5) will create the new regulation that Code of Criminal Procedure Article 2.305(e) requires the OAG to adopt; 6) will not expand, limit, or repeal an existing regulation; 7) will not increase or decrease the number of individuals subject to Code of Criminal Procedure Article 2.305(e); and 8) will not positively or adversely affect the state's economy.

Written comments on the proposed rules may be submitted for 30 days following the publication of this notice to Angela Goodwin, Associate Deputy for Criminal Justice, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Angela.Goodwin@oag.texas.gov.

Sections 54.90 and 54.91 are proposed in accordance with Code of Criminal Procedure Article 2.305(e), which requires the OAG to adopt rules concerning required reporting of human trafficking cases by certain law enforcement entities and prosecutors.

No other code, article, or statute is affected by this proposal.

§54.90. Department of Public Safety; Counties Larger than 500,000.

(a) This section applies to:

(1) the Department of Public Safety; and

(2) an entity, other than the Department of Public Safety, described by Code of Criminal Procedure Article 2.305(a) and located in a county with a population of more than 500,000.

(b) Under this section, the submission of a report concerning a human trafficking case is:

(1) required for an offense described in Code of Criminal Procedure Article 2.305(b) or (c) that is alleged to have occurred on or after August 1, 2020; and

(2) voluntary for an offense described in Code of Criminal Procedure Article 2.305(b) or (c) that is alleged to have occurred before August 1, 2020.

(c) Effective August 1, 2020, the Department of Public Safety and an entity described by subsection (a)(2) of this section shall submit reports concerning human trafficking cases using the reporting system designated by the Office of the Attorney General on its website.

§54.91. Counties of 500,000 or Less.

(a) This section applies to an entity, other than the Department of Public Safety, described by Code of Criminal Procedure Article 2.305(a) and located in a county with a population of 500,000 or less.

(b) Under this section, the submission of a report concerning a human trafficking case is:

(1) required for an offense described in Code of Criminal Procedure Article 2.305(b) or (c) that is alleged to have occurred on or after August 1, 2021; and

(2) voluntary for an offense described in Code of Criminal Procedure Article 2.305(b) or (c) that is alleged to have occurred before August 1, 2021.

(c) Effective August 1, 2021, an entity described by subsection (a) of this section shall submit reports concerning human trafficking cases using the reporting system designated by the Office of the Attorney General on its website.

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 June 22, 2020.

TRD-202002489

Lesley French

General Counsel

Office of the Attorney General

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 475-3210



## TITLE 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 40. CHRONIC WASTING DISEASE

##### 4 TAC §40.6

The Texas Animal Health Commission proposes amendments to §40.6, concerning CWD Movement Restriction Zones. The proposed amendments are intended to replace Executive Director Order Declaring a Chronic Wasting Disease High Risk Area Containment Zone for Portion of Val Verde County dated December 20, 2019, *Texas Register* (45 TexReg 425), and to establish surveillance and containment zones in response to CWD confirmations in Kimble, Medina and Val Verde counties.

##### BACKGROUND:

Chronic Wasting Disease (CWD) is a transmissible spongiform encephalopathy (TSE). CWD is a progressive, fatal, degenerative neurological disease of farmed and free-ranging deer, elk, and moose. TSEs include a number of different diseases affecting animals or humans including bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats, and Creutzfeldt-Jacob disease (CJD) in humans. Although CWD shares certain features with other TSEs, it is a distinct disease affecting only deer, elk, and moose. The species known to be susceptible to CWD are North American elk or wapiti, red deer, mule deer, sika deer, black-tailed deer, and white-tailed deer and their associated subspecies and hybrids.

The agent that causes CWD and other TSEs has not been completely characterized; however, the theory supported by most scientists is that TSE diseases are caused by proteins called prions. The exact mechanism of transmission is unclear; however, evidence suggests CWD is transmitted directly from one animal to another through saliva, feces, and urine containing abnormal prions shed in those body fluids and tissues. Because the disease has a long incubation period, animals infected with CWD may not show any visible signs of the disease for a number of months to years after they become infected. The disease can be passed through contaminated environmental conditions and has been known to persist for a long period of time.

Clinical signs of CWD may include weight loss, salivation, incoordination, behavior changes, and pneumonia. CWD primarily affects the nervous system in cervids but accumulation of the prion also occurs in other body systems including the lymphatic system. Therefore, the official tests (i.e. ELISA and IHC) designated by USDA target the identification of prions in the ner-

vous and lymphatic systems. Presently, the only confirmatory diagnostic test for CWD is the Immunohistochemistry (IHC) test performed on the obex tissue of the brain and specific lymphoid tissues. There is no known treatment or vaccine for CWD.

The commission works in coordination and collaboration with the Texas Parks and Wildlife Department (TPWD) to address CWD issues and concerns. All mule deer, white-tailed deer, and native species are under the jurisdiction of TPWD. They are classified as property of the state of Texas and TPWD manages them as a resource of the state. TPWD through specific statutory authorization does allow for individuals to breed, trade, sell, and move white-tailed or mule deer that meet certain legal requirements.

Elk, sika deer, red deer, reindeer and moose are also classified as CWD susceptible species, but are not indigenous to the state and therefore, not subject to the jurisdiction of TPWD. They are classified as exotic livestock that are privately owned and are subject to the disease requirements of the commission. Texas has an unknown number of exotic cervid species that are free-ranging and also maintained on high fence premises. Many of these premises are hunting ranches, which are not subject to the seasonal and regulatory hunting restrictions of TPWD for non-native species.

The commission has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to establish containment and surveillance zones in areas where CWD has been confirmed or is most likely to be detected. The purpose of the restriction zones is to both reduce the risk of CWD being spread from areas where it might exist and to increase detection of CWD by increased surveillance.

Section 40.6(c) sets forth requirements for animals within the Containment Zone (CZ). It provides that for movement from a CZ, no non-native CWD susceptible species may be transported outside the CZ unless from a herd with a certified status. This prevents unmonitored animals from being transported outside the zone and potentially posing a risk of exposing or spreading CWD to another part of the state. It also addresses that non-native CWD susceptible species may not be released within the CZ unless released to a high fence premises. It provides test requirements for these species, as well as carcass movement restrictions. Any escaped non-native CWD susceptible species which originated or resided in a CZ shall be captured and returned to the high fence premise of origin. Herd plans will have primacy for facilities within the zone and all non-native CWD susceptible species released in a CZ shall be officially identified.

Section 40.6(d) sets forth requirements for animals within the Surveillance Zone (SZ). It provides that prior to movement of a non-native CWD susceptible species, the premise of origin shall have an epidemiological risk assessment conducted by the commission. This will allow the agency to individually evaluate the risk of movement from a facility based on that facility's testing history, current status, and other epidemiological factors. It provides test requirements for these species, as well as carcass movement restrictions. Any escaped non-native CWD susceptible species which originated or resided in an SZ shall be captured and returned to the high fence premise of origin. Herd plans will have primacy for facilities within the zone and all non-native CWD susceptible species released in an SZ shall be officially identified.

Section 40.6(e) provides for Carcass Movement Restrictions, which states that no person shall transport or cause the trans-

port of any part of a susceptible species from a property within a CZ or SZ unless it meets certain requirements.

In 2016, those rules were modified in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional surveillance zones and an additional containment zone in West Texas.

On December 18, 2019, the commission received confirmation that a free ranging 5.5-year-old female white-tailed deer killed in Val Verde County tested positive for CWD. Accordingly, the Executive Director issued an order declaring a high risk containment zone for portions of Val Verde County on December 20, 2019. This proposed rulemaking would replace the Executive Order and establish a Containment Zone 4 in §40.6(b)(1)(D) and Surveillance Zone 4 in §40.6(b)(2)(D) for Val Verde County.

On January 28, 2020, the commission received confirmation that a 4.5-year-old male white-tailed deer and a 3.5-year-old female white-tailed deer killed in Medina County tested positive for CWD. The proposed amendment takes the location of these mortalities into consideration and establishes Containment Zone 3 boundaries in §40.6(b)(1)(C) for Medina and Uvalde counties. The proposed change to §40.6(b)(2)(C) extends the surveillance zone boundaries from F.M. 187 to the Sabinal River in Uvalde County.

On February 26, 2020, the commission received confirmation that a 5.5-year-old female white-tailed deer held in a deer breeding facility in Kimble County tested positive for CWD. The proposed amendment would establish Surveillance Zone 5 in Kimble County in §40.6(b)(2)(E). This proposal does not create a CZ in Kimble County for two reasons. First, the discovery occurred in a breeder deer facility, which is required by law to be designed and built to both prevent the free movement of deer and contact with free-ranging deer. Second, the facility where CWD was discovered is operating under a commission herd plan, which restricts deer movement and requires CWD testing at an equal or higher level to what is required in a CZ.

With respect to the containment zones that would be established by this rulemaking, commission staff worked collaboratively with the Texas Parks and Wildlife Department and together tailored the CZs and SZs proposed boundaries to, as much as possible, follow recognizable features such as roadways and power line rights-of-way, and county boundaries, and the commission notes that any designation of a CZ or SZ is accompanied by a public awareness effort.

#### FISCAL NOTE:

Ms. Myra Sines, Chief of Staff, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the proposed rules, as commission personnel currently allocated to the administration and enforcement of regulatory diseases and activities will administer and enforce the rules as part of their current job duties and resources.

#### REGULATORY ANALYSIS:

Public Benefit: Ms. Sines has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of enforcing or administering the rules will be the protection of CWD susceptible species by increasing the probability of detecting CWD in areas of the state where it is confirmed or likely to be detected and by reducing the inadvertent movement of the disease from these areas.

Local Employment Impact Statement: In accordance with Texas Government Code §2001.022, the Commission has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

Major Environmental Rule: The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

Takings Assessment: The Commission has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with Title 4 TAC, §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007. This rule does not authorize physical seizure or occupation of private real property. The regulation could affect activities occurring on private real property, if and only if, the owner/caretaker of such property is located in a restriction zone, possesses CWD susceptible species, and requests to move the animals. Further, if someone wanted to take any susceptible species into the zones to be released, then similar limitations or restrictions would apply to those animals, but that is based on the animal and not the property. This rule does not diminish or destroy the right to exclude others or affect their ability to possess or dispose of their property. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of disease and the rule has no negative effect on real property as it is focused on disease response and mitigation of risk.

Economic Impact Statement: Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement for a rule that may have an adverse economic effect on small businesses, micro-businesses or rural communities. The commission has determined that the animal agricultural industries meets the statutory definition of a small or microbusiness, and that the proposed rule may affect rural communities. The Commission also has determined that the rule as proposed will not result in adverse economic impacts to small and micro-businesses or rural communities because the rule applies to non-native CWD susceptible species located in geographic areas where CWD has been detected, or there is a high probability of detection. As such, the movement and testing requirements are intended to reduce exposure to other susceptible species in the same rural community, where the disease risk is greatest, and other communities and small businesses across the state. As a result, application of the rule will help prevent adverse economic impacts.

Although the commission does not believe there would be an adverse economic impact to those directly regulated by the commission, the commission considered the businesses that may be impacted and regulatory alternatives as part of its rule proposal process. The commission is not aware of any properties or businesses with non-native CWD susceptible species in proposed CZ 4, SZ 4 and SZ 5. The commission is aware of properties containing non-native CWD susceptible species in CZ 3 and SZ 3 proposals, however, the agency cannot determine the exact number of businesses that may be affected by the expanded

zone. The premises known to be in CZ 4 are confirmed CWD positive facilities with testing and movement requirements that are equal to or more stringent than the zone testing and movement requirements proposed by these rules.

Alternatives for all zones, especially zone 3 where there are known non-native CWD susceptible species, included voluntary surveillance and alternative zone boundaries that followed more recognizable features. With the upcoming hunting season and the potential for increased animal movement from the affected zones, the commission determined that voluntary testing would not protect the health of other susceptible CWD species in the affected area and across the state. This is especially relevant for the zone 3 and 4 proposals, where CWD has been detected in free ranging deer.

The commission also considered alternatives to the proposed CZ 3, to follow more recognizable features such as roads. However, expanding the size of the zone to follow those recognizable features was overly burdensome. Furthermore, the commission determined that the regulated community would benefit from consistent zone boundaries for both native and non-native CWD susceptible species and, therefore, proposed zone boundaries consistent with those established by the Texas Parks and Wildlife Department.

**Regulatory Flexibility Analysis:** The commission has determined that because the proposed rules will not result in any direct economic effect on any small businesses, micro-businesses, or rural community, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

**Government Growth Impact Statement:** In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement (GGIS). Except as provided below, the rule:

- (1) will not create a government program;
- (2) will not create new employee positions or eliminate existing employee positions;
- (3) will not require an increase or decrease in future legislative appropriations to the agency;
- (4) will not require an increase or decrease in fees paid to the agency;
- (5) will not create a new regulation;
- (6) will expand an existing rule by establishing new areas subject to the rules governing containment and surveillance zones, but will not otherwise limit, or repeal an existing regulation;
- (7) may increase the number of individuals subject to regulation by imposing movement, testing and identification requirements in an area where such restrictions are not currently in effect; and
- (8) will not adversely affect this state's economy.

**Cost to Regulated Persons (Cost-in/Cost-out):** The commission has determined that the rule as proposed is necessary to implement the legislative requirement that the commission protect exotic livestock from communicable disease. The proposed rules do not impose a direct cost on regulated persons, including a state agency, a special district, or a local government, within the state. Therefore, it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail at [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

#### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.0541, entitled "Elk Disease Surveillance Program", the commission by rule may establish a disease surveillance program for elk.

Pursuant to §161.0545, entitled "Movement of Animal Products", the commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The commission by rule may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), entitled "Animal Identification Program", the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to by a two-thirds vote adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, entitled "Classification of Areas", the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

No other statutes, articles or codes are affected by the proposal.

§40.6. *CWD Movement Restriction Zones.*

(a) (No change.)

(b) Declaration of area restricted for CWD. CWD has been detected in susceptible species in different locations in Texas. This creates a high risk for CWD exposure or infection in susceptible species in these geographic areas. In order to protect other areas of the state from the risk of exposure and spread of CWD, restricted areas are created to protect against the spread of and exposure to CWD and have necessary surveillance to epidemiologically assess the risk. The high risk areas are delineated as follows:

(1) Containment Zone Boundaries:

(A) - (B) (No change.)

(C) Containment Zone 3. That portion of the state lying within Bandera, Medina and Uvalde counties and depicted in the following figure and more specifically described by the following latitude-longitude coordinate pairs: -99.29398096800, 29.63444908360; -99.29332773120, 29.63427752770; -99.29197515170, 29.63439690090; -99.28980120500, 29.63446380410; -99.28762690610, 29.63440631430; -99.28546157340, 29.63422467720; -99.28331448540, 29.63391967310; -99.28119484540, 29.63349260780; -99.27911173640, 29.63294531180; -99.27707408560, 29.63228013080; -99.27509062400, 29.63149991510; -99.27316985040, 29.63060800860; -99.27131999510, 29.62960823290; -99.26954898230, 29.62850487190; -99.26786439810, 29.62730265490; -99.26627345800, 29.62600673210; -99.26478297540, 29.62462265680; -99.26339933220, 29.62315635870; -99.26212845190, 29.62161412050; -99.26097577450, 29.62000254920; -99.25994623180, 29.61832854980; -99.25904422740, 29.61659929130; -99.25852031490, 29.61543045890; -99.25566836700, 29.60863858110; -99.25542530450, 29.60803948970; -99.25435713440, 29.60531221090; -99.24894385420, 29.59224370810; -99.24874612880, 29.59175258830; -99.24811052520, 29.58993518740; -99.24761230000, 29.58808534140; -99.24725358040, 29.58621097370; -99.24703589450, 29.58432011200; -99.24698172710, 29.58296158430; -99.24696016750, 29.58242085350; -99.24702671480, 29.58052133190; -99.24723524430, 29.57862968080; -99.24758485430, 29.57675399920; -99.24807404080, 29.57490231860; -99.24870070190,

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 29.63314394540; -99.31530194160, 29.63317949240;  
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 29.63518074540; -99.29610068160, 29.63487594560;  
 -99.29398096800, 29.63444908360.

[Boundaries consist of properties under the same ownership or management for facilities operating under a herd plan due to a positive result in a CWD susceptible species in Medina and Uvalde counties.]

Figure: 4 TAC §40.6(b)(1)(C)

(D) Containment Zone 4. That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International Boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239.

(2) Surveillance Zone Boundaries:

(A) - (B) (No change.)

(C) Surveillance Zone 3. That portion of the state within the boundaries of a line beginning at U.S. 90 in Hondo in Medina County; thence west along U.S. 90 to the Sabinal River [F.M. 187] in Uvalde County; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to U.S. 90 in Hondo.

(D) Surveillance Zone 4. That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

(E) Surveillance Zone 5. That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along on I.H. 10 to F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83.

(c) - (g) (No change.)

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 June 25, 2020.

TRD-202002534

Mary Luedeker

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 719-0718



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER AA. COMMISSIONER'S

##### RULES ON SCHOOL FINANCE

#### 19 TAC §61.1006

The Texas Education Agency (TEA) proposes new §61.1006, concerning Foundation School Program (FSP) funding for reimbursement of disaster remediation costs. The proposed new rule would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by establishing the criteria, funding sources, and procedures that a school district or an open-enrollment charter school, all or part of which is located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418, must meet in order to receive disaster remediation expense reimbursement.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, added Texas Education Code (TEC), §48.261, Reimbursement for Disaster Remediation Costs. The new statute establishes the criteria, a timeline for application, and funding sources for school districts affected by and within an area declared a disaster area by the governor under Texas Government Code, Chapter 418.

Proposed new §61.1006 would implement TEC, §48.261, by establishing guidelines and requirements that school districts and open-enrollment charter schools must meet in order to qualify for disaster cost reimbursement from appropriated funds and/or the Foundation School Program.

The proposed new section would apply to disasters that occur on or after September 1, 2019. For disasters that occurred prior to September 1, 2019, school districts and open-enrollment char-

ter schools may apply for reimbursement of disaster remediation costs under 19 TAC §61.1013, Foundation School Program Funding for Reimbursement of Disaster Remediation Costs, or 19 TAC §61.1014, Credit Against Recapture for Reimbursement of Disaster Remediation Costs. Because 19 TAC §61.1013 and §61.1014 were adopted in relation to the methods of school finance in place prior to the passage of HB 3, 86th Texas Legislature, 2019, the rules treat school districts that are subject to recapture and those that are not differently. Proposed new §61.1006 is necessary to provide one common rule under the new method of school finance implemented by HB 3.

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what the authorizing statute requires.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by creating a new rule to implement TEC, §48.261. The new rule would allow the commissioner to provide funding from amounts appropriated for disaster remediation to the disaster contingency fund and/or FSP funds available for disaster remediation costs if determined that costs exceed the amount to which school districts are entitled. The statute eliminates the varying treatment for school districts that are subject to recapture and those that are not.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be establishing the provisions, process, and mandatory requirements that school districts and open-enrollment charter schools must meet in order to qualify for disaster remediation cost reimbursement. There is no anticipated

economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins July 10, 2020, and ends August 24, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 10, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

**STATUTORY AUTHORITY.** The new section is proposed under Texas Education Code (TEC), §48.261, as transferred, redesigned, and amended by House Bill 3, 86th Texas Legislature, 2019, which establishes reimbursement for disaster remediation cost guidelines and applies only to a school district or an open-enrollment charter school located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418, that incurs disaster remediation expenses as a result of the disaster. TEC, §48.261(e), requires that the commissioner of education adopt rules necessary to implement the provisions of the statute.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §48.261.

§61.1006. Foundation School Program Funding for Reimbursement of Disaster Remediation Costs.

(a) General provisions. This section implements Texas Education Code (TEC), §48.261 (Reimbursement for Disaster Remediation Costs). The commissioner of education may provide disaster remediation cost reimbursement under this section only if funds are available for that purpose from:

(1) amounts appropriated for that purpose, including amounts appropriated for school districts or open-enrollment charter schools for that purpose to the disaster contingency fund established under Texas Government Code, §418.073; or

(2) Foundation School Program (FSP) funds available for that purpose based on a determination by the commissioner that the amount appropriated for the FSP, including the facilities component as provided by TEC, Chapter 46, exceeds the amount to which school districts and open-enrollment charter schools are entitled under this subchapter and TEC, Chapter 46.

(b) Eligibility. A school district or an open-enrollment charter school that meets the following criteria is eligible to apply:

(1) all or part of the school district or open-enrollment charter school must be located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418;

(2) the school district or open-enrollment charter school must have incurred and paid disaster remediation costs during the two-year period following the date of the governor's initial proclamation or

executive order declaring a state of disaster that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source for reimbursement; and

(3) in accordance with TEC, §48.261, the school district or open-enrollment charter school must apply for reimbursement during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster. The school district or open-enrollment charter school must submit a completed application by the application deadline. A school district or an open-enrollment charter school that submits an incomplete application or submits an application after the application deadline may be deemed ineligible for funds.

(c) Definitions. The following terms have the following meanings when used in this section.

(1) Disaster remediation costs--Costs incurred by a school district or an open-enrollment charter school for replacing school facilities; equipment, including, but not limited to, the cost to repair or replace vehicles or computers damaged in the disaster; and supplies needed to provide instruction at a location where students eligible for FSP funding regularly attend classes.

(2) Paid disaster remediation costs--Disaster remediation costs that are paid or remitted resulting in an outflow of cash in exchange for goods or services evidenced by an invoice, receipt, voucher, or other such document, and in accordance with standards found in the Financial Accountability System Resource Guide adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide) and TEC, §48.261, that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payment, or another similar source of reimbursement in accordance with TEC, §48.261, and that were paid during the two-year period following the governor's initial proclamation or executive order declaring a state of disaster.

(d) Application process. A school district or an open-enrollment charter school seeking disaster reimbursement must submit a new application each time Texas Education Agency (TEA) opens a disaster reimbursement application process on a form prescribed by TEA. The application shall contain, at a minimum, the following:

(1) identification of the governor's initial proclamation or executive order declaring a state of disaster and evidence that all or part of the school district or open-enrollment charter school is in the area subject to the disaster declaration;

(2) the total dollar amount of paid disaster remediation costs during the two-year period following the governor's proclamation or executive order declaring a state of disaster;

(3) the total dollar amount of paid disaster remediation costs paid during the two-year period following the governor's proclamation or executive order declaring a state of disaster that the school district or open-enrollment charter school anticipates to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement;

(4) the total difference between the amounts of paid disaster remediation costs specified in paragraphs (2) and (3) of this subsection and, of the total difference, the specific paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under TEC, §48.261;

(5) an explanation as to why the school district or open-enrollment charter school does not anticipate being reimbursed from insurance proceeds, federal disaster relief payments, or another similar

source of reimbursement for each paid disaster remediation cost identified in paragraph (4) of this subsection;

(6) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer that all paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection qualify as paid disaster remediation costs and that the school district or open-enrollment charter school board and superintendent or chief executive officer do not anticipate recovering these payments through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement; and

(7) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer that the school district or open-enrollment charter school, for any paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection, has made and will continue to make efforts to seek reimbursement from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement as allowable or appropriate.

(e) Updates for new payments. If a school district or open-enrollment charter school makes more paid disaster remediation cost payments after submission of its initial application to the TEA and prior to the deadline announced for disaster reimbursement application submission, the TEA will prescribe a form allowing the school district or open-enrollment charter school to submit additional paid disaster remediation cost payments and information consistent with the application process in subsection (d) of this section and will increase the amount of reimbursement as available and appropriate.

(f) Reporting requirement. Annually after the date of the award under this disaster reimbursement program, the awarded school district or open-enrollment charter school board and superintendent or chief executive officer shall provide a certified report on a form prescribed by TEA until all insurance proceeds, federal disaster relief, or other similar sources of reimbursements related to the disaster are finalized. On the report, the school district or open-enrollment charter school shall identify any insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school received for which the school district or open-enrollment charter school previously received reimbursement payment from TEA. TEA will adjust funding for any overpayments made to the school district or open-enrollment charter school based on the final report made under this subsection of the school district or open-enrollment charter school out of the school district's or open-enrollment charter school's future FSP payments or will require a refund from the school district or open-enrollment charter school.

(g) Finality of award. Awards of assistance under this section will be made based only on paid disaster remediation costs. Prior to making an award, TEA may request additional documentation, including, but not limited to, evidence described in subsection (c)(2) of this section and evidence supporting the certifications required by subsection (d)(6) and (7) of this section. A school district or an open-enrollment charter school is not entitled to any requested reimbursement, and a decision by the commissioner is final and may not be appealed.

(h) Deadlines. The commissioner will announce a deadline for disaster reimbursement applications in conjunction with making a determination of the amount of funds available for the disaster reimbursement program cycle. All applications received by the announced deadline will be reviewed. Applications will be funded if sufficient funds are available to fully fund each application. If sufficient funds

are not available to fully fund each application, funding will be prorated proportionately so that every funded application receives the same percentage of requested funding.

(i) Distribution of funds. Funds will be allocated through the FSP and will appear on the school district or open-enrollment charter school payment ledger and be delivered as soon as is practicable after award amounts have been determined.

(j) Finalization of award. When the school district or open-enrollment charter school determines that all insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school anticipates receiving are finalized and there are no pending claims, the school district or open-enrollment charter school board and superintendent or chief executive officer shall certify to TEA in writing that the annual report required by subsection (f) of this section is no longer necessary and disaster reporting is finalized.

(k) Record retention and audit. The school district or open-enrollment charter school shall maintain all documents necessary to substantiate payment and certifications made in subsections (c)(2), (d), (g), and (h) of this section, and the school district or open-enrollment charter school is subject to audit by TEA until two years after the school district or open-enrollment charter school certifies to TEA in writing that the disaster is finalized and closed in accordance with subsection (j) of this section.

(l) Replacement of school facilities damaged in the disaster. In accordance with TEC, §48.261, a school district or an open-enrollment charter school is permitted to elect to replace a facility damaged in a disaster instead of repairing that facility, provided that the state funds provided under this section do not exceed the lesser of the amount that would be provided to the district or charter school if the facility were repaired or the amount necessary to replace the facility.

(1) Construction plans and budgeted costs to rebuild the facility must be reasonable and appropriate, as follows.

(A) Construction plans should follow current TEA facility guidelines and physical plant requirements as prescribed in applicable provisions of Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities) without significant add-ons or upgrades, noting that:

(i) pre-disaster square footage in temporary buildings may be replaced with square footage in permanent buildings; and

(ii) pre-disaster square footage amounts may be adjusted to account for additional square footage specifically required by TEA guidelines, if applicable.

(B) Budgeted cost per square foot may not be significantly higher than recent comparable construction costs within the region where the facility will be constructed.

(C) Enrollment capacity of the facility may not vary significantly from current common practice for new facilities of a like purpose.

(D) The facility's square footage per unit of enrollment capacity may not significantly exceed current best practice guidelines for new facilities of like purpose.

(E) The requesting school district or open-enrollment charter school is responsible for demonstrating that construction plans and budgeted costs conform to the requirements in this paragraph.

(2) The cost to replace a facility shall be based on the average of the following two methodologies:

(A) replacement cost based on square footage, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the square footage of the pre-disaster facility and the square footage of the planned facility, where the replacement cost may not exceed the budgeted cost; and

(B) replacement cost based on enrollment capacity, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the pre-disaster facility enrollment capacity and the planned facility enrollment capacity, where the replacement cost may not exceed the budgeted cost.

(3) The commissioner may grant a waiver of one or more of the requirements in paragraph (1) of this subsection if the school district or open-enrollment charter school provides sufficient justification why the requirement should not apply in a particular instance.

(4) The school district or open-enrollment charter school may request an initial reimbursement based on anticipated insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements. When this occurs, TEA will determine at a later date the appropriate reimbursement when actual insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements are known.

(m) Applicability. This section applies to disasters that occur on or after September 1, 2019. Reimbursement requests for disaster remediation costs for disasters that occurred prior to September 1, 2019, are governed by §61.1013 of this title (relating to Foundation School Program Funding for Reimbursement of Disaster Remediation Costs) and §61.1014 of this title (relating to Credit Against Recapture for Reimbursement of Disaster Remediation Costs).

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 June 29, 2020.

TRD-202002642

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 475-1497



## CHAPTER 101. ASSESSMENT SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE STATEWIDE TESTING CALENDAR AND UIL PARTICIPATION

### 19 TAC §101.5001

The Texas Education Agency (TEA) proposes an amendment to §101.5001, concerning the statewide testing calendar. The proposed amendment would modify the rule to provide additional flexibility for local education agencies (LEAs) that choose to test online.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.5001(a) allows the commissioner of education to determine the school week during the school year in which the primary administrations of assessment instruments are administered.

The proposed amendment would modify the rule to provide clarification to indicate that the primary administration is the school

week in which both paper and online tests are scheduled for the state. As such, TEA will not schedule the State of Texas Assessments of Academic Readiness (STAAR®) testing on Monday, the first instructional day of the week, in accordance with Texas Education Code (TEC), §39.023(c-3). The proposed amendment would modify the rule to provide flexibility for an LEA that chooses to test online. This flexibility is based on individual LEAs registering to test online and thereby requesting the option of testing any day during the extended online testing window, including Mondays.

**FISCAL IMPACT:** Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would expand an existing regulation by providing LEAs with scheduling flexibility when providing online testing beyond the primary administration period for administration of assessments.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing LEAs with optional flexibility for testing online. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins July 10, 2020, and ends August 24, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 10, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §33.0812, which provides the commissioner the authority to establish the testing calendar; and TEC, §39.023(c-3), which limits the days in which testing may be scheduled during the primary administration for assessments under TEC, §39.023(a) and (c), by prohibiting testing on the first instructional day of a week.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §33.0812 and §39.023(c-3).

*§101.5001. Testing Calendar.*

(a) In accordance with Texas Education Code (TEC), §33.0812, the commissioner of education shall determine the school week during the school year in which the primary administrations of assessment instruments are administered. The primary administrations of assessments occur during the school week when both the paper and online assessments are scheduled for the state. For the purpose of scheduling assessment instruments during the primary administration week under TEC, §39.023(a) and (c), the first instructional day of a week is Monday. The commissioner may provide local education agencies (LEAs) an optional extension of assessment administrations for online testing. An LEA may choose the optional extension by registering to test online. Once registered, the LEA may administer online assessments on any school day during the extended testing window.

(b) Through publication on the Texas Education Agency website, the commissioner shall provide the University Interscholastic League (UIL) with a three-year calendar of dates, beginning with the 2006-2007 school year, reserved for testing on or before May 1 of the year preceding the three-year cycle of reserved testing dates.

(c) The commissioner may change the dates reserved for testing as necessary. The commissioner shall notify the UIL of any changes to the schedule for the primary administrations of the statewide assessments.

(d) If a change to the primary administration testing calendar creates a scheduling conflict between a UIL area, regional, or state competition and the statewide assessments, the commissioner shall determine whether those UIL events must be cancelled or rescheduled.

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

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## TITLE 22. EXAMINING BOARDS

### PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

#### CHAPTER 461. GENERAL RULINGS

##### 22 TAC §§461.1 - 461.17, 461.19 - 461.22, 461.35

The Texas Behavioral Health Executive Council proposes the repeal of §§461.1 - 461.17, 461.19 - 461.22, and 461.35, relating to general rulings. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will

be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code

which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

- §461.1. *References by Board Members.*
- §461.2. *Unofficial Statements and/or Decisions.*
- §461.3. *Former Board Members.*
- §461.4. *Replacement and Duplicate Licenses.*
- §461.5. *Contents of License.*
- §461.6. *File Updates.*
- §461.7. *License Statuses.*
- §461.8. *Remailing Fee.*
- §461.9. *Conflicts of Interest and Recusals.*
- §461.10. *License Required.*
- §461.11. *Professional Development.*
- §461.12. *Prohibition Against Dual Office Holding.*
- §461.13. *Errors.*
- §461.14. *Conflict Between Other Laws and Board Rules.*
- §461.15. *Compliance with Act, Rules, Board Directives and Orders.*
- §461.16. *Filing of False or Misleading Information with the Board.*
- §461.17. *Profile Information.*
- §461.19. *Petition for Rulemaking.*
- §461.20. *Agency Staff Training and Education.*
- §461.21. *Sick Leave Pool.*
- §461.22. *Agency Contracts and Purchasing.*
- §461.35. *Use of Historically Underutilized Businesses (HUBS).*

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 June 29, 2020.

TRD-202002578

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## CHAPTER 463. APPLICATIONS AND EXAMINATIONS

### 22 TAC §§463.1 - 463.12, 463.14, 463.16 - 463.23, 463.25 - 463.31

The Texas Behavioral Health Executive Council proposes the repeal of §§463.1 - 463.12, 463.14, 463.16 - 463.23, and 463.25 - 463.31, relating to applications and examinations. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

**Overview and Explanation of the Proposed Rule.** The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.



Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt

rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

- §463.1. *Types of Licensure.*
- §463.2. *Application Process.*
- §463.3. *Applicants with Pending Complaints.*
- §463.4. *Applicants with Disabilities.*
- §463.5. *Application File Requirements.*
- §463.6. *Regionally Accredited Institutions.*
- §463.7. *Criminal History Record Reports.*
- §463.8. *Licensed Psychological Associate.*
- §463.9. *Licensed Specialist in School Psychology.*
- §463.10. *Provisionally Licensed Psychologists.*
- §463.11. *Licensed Psychologists.*
- §463.12. *Licensure by Reciprocity.*
- §463.14. *Written Examinations.*
- §463.16. *Disclosure of Examination Information.*
- §463.17. *Rescheduling of Examination Due to Religious Holy Day.*
- §463.18. *Failing Written Examinations.*
- §463.19. *Time Limit on Examination Failures and Passing Scores.*
- §463.20. *Refunds and Transfer of Application and Examination Fees.*
- §463.21. *Board Members as Reviewers of Examination.*
- §463.22. *Reinstatement of a License.*
- §463.23. *Criteria for Examination Consultants.*
- §463.25. *Foreign Graduates.*
- §463.26. *Health Service Provider in Psychology Specialty Certification.*
- §463.27. *Temporary License for Persons Licensed in Other States.*
- §463.28. *Emergency Limited Temporary License.*
- §463.29. *Reciprocity Agreements with Other Jurisdictions.*
- §463.30. *Licensing for Military Service Members, Veterans and Spouses.*
- §463.31. *Use of Other Mental Health Licensing During Practicum, Internship, or Supervised Experience.*

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 June 29, 2020.

TRD-202002579

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## 22 TAC §§463.1 - 463.3

The Texas Behavioral Health Executive Council proposes new §§463.1 - 463.3, relating to Applications and Licensing.

**Overview and Explanation of the Proposed Rule.** The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will

have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

#### §463.1. Regionally Accredited Educational Institutions.

Degrees required for licensure under Occupations Code, Chapter 501 must have been awarded or conferred by an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

#### §463.2. Reciprocity Agreements with Other Jurisdictions.

(a) The Council may enter into reciprocal licensing agreements with other jurisdictions pursuant to §501.262 of the Psychologists' Licensing Act. In determining whether the requirements

for licensure, certification, or registration in other jurisdictions are substantially equal to those prescribed by the Psychologists' Licensing Act, for the granting of licensure by reciprocity, the Council will consider the following:

(1) whether the jurisdiction's qualifications for licensure are substantially equal to the requirements for a comparable license under the Psychologists' Licensing Act;

(2) whether a jurisdiction will license an applicant who would be ineligible for licensure in Texas due to a criminal history;

(3) whether the jurisdiction's cut-off score on a mutually required examination meets or exceeds the Texas cut-off score; and

(4) whether the jurisdiction's supervised experience requirements for a particular license provide a measure of public protection, which at a minimum is substantially equal to the supervised experience requirements for a comparable license under the Psychologists' Licensing Act.

#### §463.3. Use of Other Mental Health License During Supervised Experience.

(a) An individual who holds a mental health license, other than one issued under Chapter 501, may not obtain the required practicum, internship, or supervised experience required for a license under Chapter 501 while practicing under that license.

(b) An individual subject to subsection (a) of this section must comply with the Psychologists' Licensing Act and all applicable Council rules regarding the use of appropriate titles.

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 June 29, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## CHAPTER 463. APPLICATIONS AND LICENSING

### SUBCHAPTER B. LICENSING REQUIREMENTS

#### 22 TAC §§463.8 - 463.14

The Texas Behavioral Health Executive Council proposes new §§463.8 - 463.14, relating to Applications and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501 - 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rules do not impose any new or additional costs to

regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

**Statutory Authority.** The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§463.8. Licensed Psychological Associate.

(a) Licensure Requirements. An applicant for licensure as a psychological associate must:

(1) hold a graduate degree in psychology from a regionally accredited institution of higher education;

(2) provide documentation of at least six (6) semester credit hours of practicum, internship or other structured experience within the applicant's graduate degree program under the supervision of a licensed psychologist;

(3) pass all examinations required by the Council and meet each of the criteria listed in §501.255(a)(2) - (9) of the Occupations Code; and

(4) demonstrate graduate level coursework in each of the following areas:

(A) Psychological Foundations:

(i) the biological bases of behavior;

(ii) the acquired or learned bases of behavior, including learning, thinking, memory, motivation and emotion;

(iii) the social, cultural, and systemic bases of behavior;

(iv) the individual or unique bases of behavior, including personality theory, human development, and abnormal behavior;

(B) Research and Statistics:

(i) the methodology used to investigate questions and acquire knowledge in the practice of psychology;

(ii) coursework in research design and methodology, statistics, critical thinking, and scientific inquiry;

(C) Applied Psychology:

(i) the history, theory, and application of psychological principles;

(ii) the application of psychological theories to individuals, families, and groups;

(D) Assessment:

(i) intellectual, personality, cognitive, physical, and emotional abilities, skills, interests, and aptitudes;

(ii) socio-economic, including behavioral, adaptive, and cultural assessment;

(E) Interventions:

(i) the application of therapeutic techniques;

(ii) behavior management;

(iii) consultation; and

(F) Scientific and Professional, Legal, and Ethical Issues.

(b) Degree Requirements.

(1) For purposes of this rule:

(A) a graduate degree in psychology means the name of the candidate's major or program of studies contains the term "psychology;"

(B) a specialist degree shall be treated as a graduate degree; and

(C) one semester credit hour equals one and one-half quarter credit hours.

(2) A degree utilized to meet the requirements of this rule must consist of at least sixty (60) semester credit hours, with no more than twelve (12) semester credit hours of practicum, internship, or structured experience being counted toward the total degree hour requirement.

(3) Applicants must demonstrate proof of the graduate level coursework required in subsection (a)(4) of this section by identifying which courses or training listed on their transcripts satisfy the required areas of study. Applicants may be required to provide the Council with an official course catalogue or description from their university or training program to verify whether a course meets the requirements of this rule.

(c) Supervision Requirements.

(1) A licensed psychological associate must practice under the supervision of a licensed psychologist and may not practice independently.

(2) Notwithstanding paragraph (1) of this subsection and subject to the limitations set out in paragraph (3) of this subsection, a licensed psychological associate may practice independently if:

(A) the licensee can demonstrate at least 3,000 hours of post-graduate degree experience in the delivery of psychological services under the supervision of one or more licensed psychologists;

(B) the supervised experience was obtained in not less than 24 consecutive months, but not more than 48 consecutive months, and in not more than three placements; and

(C) the licensee submits an application for independent practice evidencing proof of the required supervised experience.

(3) A licensed psychological associate meeting the requirements of paragraph (2) of this subsection shall be approved for inde-

pendent practice, but remains subject to all Council rules, including Council §465.9 (relating to Competency).

(4) Applicants may not utilize any supervised experience obtained from a psychologist with a restricted license or to whom they are related within the second degree of affinity or consanguinity to satisfy the requirements of this rule.

(5) Applicants licensed as specialists in school psychology may utilize experience acquired under that license if the experience was supervised by a licensed psychologist.

(d) Notwithstanding subsection (c)(3) of this section, an application for independent practice may be denied if a gap of more than two years exists between the completion of the supervised experience required for independent practice and the date of application for independent practice. The rules governing the waiver of gaps related to supervised experience found in Council rule §463.11 shall govern any request for a waiver under this rule.

(e) The correct title for a person licensed under this rule shall be "licensed psychological associate" or "psychological associate."

(f) A licensed psychological associate authorized to practice independently under this rule must inform all patients and clients as part of the informed consent process, whether the licensee holds a master's, specialist or doctoral degree, and provide the patient with a current copy of any informational pamphlet or brochure published by the Council describing the differences between the levels of training and education received in master's, specialist, and doctoral degree programs. In lieu of providing each patient or client with a copy of the required pamphlet or brochure, licensees may publish in a conspicuous manner, the pamphlet or brochure on their website or provide a link to the pamphlet or brochure on the Council's website.

(g) Continuation of Prior Law.

(1) Notwithstanding subsection (b)(1)(A) of this section, a person who begins a graduate program leading to a degree required by subsection (a)(1) of this section before August 31, 2019, will be considered to have met the requirements of that subsection if the individual's degree is primarily psychological in nature. This subsection expires on August 31, 2021.

(2) Notwithstanding subsection (b)(2) of this section, a person who begins a graduate program leading to a degree required by subsection (a)(1) of this section before August 31, 2019, will be considered to have met the requirements of that subsection if the individual has completed 42 semester credit hours with at least 27 of those hours in psychology. Applicants with degrees consisting of less than 42 semester credit hours may utilize a maximum of 12 semester credit hours from another graduate degree program in psychology to achieve the total of 42 semester credit hours. This subsection expires on August 31, 2021.

*§463.9. Licensed Specialist in School Psychology.*

(a) License Requirements. An applicant for licensure as a specialist in school psychology must:

- (1) hold an appropriate graduate degree;
- (2) provide proof of specific graduate level coursework
- (3) provide proof of an acceptable internship;
- (4) provide proof of passage of all examinations required by the Council; and
- (5) meet the requirements imposed under §501.2525(a)(3) - (9) of the Occupations Code.

(b) Applicants who hold active certification as a Nationally Certified School Psychologist (NCSP) are considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must provide the Council with their NCSP certification number.

(c) Applicants who graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association are considered to have met all training and internship requirements for licensure under this rule. Applicants relying upon this subsection must submit an official transcript indicating the degree and date the degree was awarded or conferred.

(d) Applicants who do not hold active NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. Applicants applying under this paragraph must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology.

(e) Applicants applying under subsection (d) of this section must submit evidence of graduate level coursework as follows:

- (1) Psychological Foundations, including:
  - (A) biological bases of behavior;
  - (B) human learning;
  - (C) social bases of behavior;
  - (D) multi-cultural bases of behavior;
  - (E) child or adolescent development;
  - (F) psychopathology or exceptionalities;
- (2) Research and Statistics;
- (3) Educational Foundations, including any of the following:
  - (A) instructional design;
  - (B) organization and operation of schools;
  - (C) classroom management; or
  - (D) educational administration;
- (4) Assessment, including:
  - (A) psychoeducational assessment;
  - (B) socio-emotional, including behavioral and cultural, assessment;
- (5) Interventions, including:
  - (A) counseling;
  - (B) behavior management;
  - (C) consultation;
- (6) Professional, Legal and Ethical Issues; and
- (7) A Practicum.

(f) Applicants applying under subsection (d) of this section must have completed an internship with a minimum of 1200 hours and that meets the following criteria:

(1) At least 600 of the internship hours must have been completed in a public school.

(2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and subsection (d)(2)(C) of this section.

(3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(6) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(7) Internship hours must be obtained in not less than one or more than two academic years.

(8) An individual completing an internship under this rule must be designated as an intern.

(9) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(10) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(g) Trainee Status.

(1) An applicant for the specialist in school psychology license who has not yet passed the Jurisprudence Examination, but who otherwise meets all licensing requirements under this rule, may practice in the public schools under the supervision of a Licensed Specialist in School Psychology, as a trainee for not more than one year.

(2) A trainee status letter shall be issued to an applicant upon proof of licensing eligibility, save and except proof of passage of the Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A trainee's status may be suspended or revoked upon a showing of a violation of the Council's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The one-year period for trainee status shall not be tolled by any suspension of the trainee status.

(5) Following official notification from the Council upon passage of the Jurisprudence Examination or the expiration of one year, whichever occurs first, an individual's trainee status shall terminate.

(6) An individual practicing under trainee status must be designated as a trainee.

(h) Provision of psychological services in the public schools by unlicensed individuals.

(1) An unlicensed individual may provide psychological services under supervision in the public schools if:

(A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education;

(B) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Council that has not been denied or returned; or

(C) the individual has been issued a trainee status letter.

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under §501.004 of the Psychologists' Licensing Act.

(3) An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Council.

(4) The authority to practice referenced in paragraph (1)(B) and (C) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule. The Council will not issue more than one trainee status letter to an individual, regardless of the number of applications filed.

§463.10. Licensed Psychologists.

(a) Licensure Requirements. An applicant for licensure as a psychologist must:

(1) hold a doctoral degree in psychology from a college or university accredited by a regional accrediting organization;

(2) pass all examinations required by the agency;

(3) submit documentation of supervised experience from a licensed psychologist which satisfies the requirements of Council rule §463.11; and

(4) meet all other requirements of §501.2525 of the Occupations Code.

(b) Degree Requirements.

(1) For those applicants with a doctoral degree conferred on or after January 1, 1979, the transcript must state that the applicant has a doctoral degree that designates a major in psychology.

(2) For those applicants with a doctoral degree conferred prior to January 1, 1979, the transcript must reflect a doctoral degree that designates a major in psychology or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training. A doctoral degree will be considered the substantial equivalent to a doctoral degree in psychology if the training program meets the following criteria:

(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(F) The program must have an identifiable body of students who matriculated in the program.

(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(I) The following curricular requirements must be met and demonstrated through appropriate course work:

(i) Scientific and professional ethics related to the field of psychology.

(ii) Research design and methodology, statistics.

(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Council evidence of competency in each of the four core areas.

(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(II) Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.

(III) Social basis of behavior: social psychology, group processes, organizational and system theory.

(IV) Individual differences: personality theory, human development, abnormal psychology.

(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.

(3) Any person intending to apply for licensure under the substantial equivalence clause must file with the Council an affidavit showing:

(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection verified by official transcripts;

(B) Information regarding each of the instructors in the courses submitted as substantially equivalent;

(C) Appropriate, published information from the university awarding the degree, demonstrating that the requirements noted in paragraph (2) of this subsection have been met.

(c) An applicant who holds an active Certificate of Professional Qualification in Psychology (CPQ) is considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must request that documentation of their certification be sent directly to the Council from the Association of State and Provincial Psychology Boards (ASPPB), be submitted to the Council in the sealed envelope in which it was received by the applicant from ASPPB, or be submitted to the Council as directed by agency staff.

(d) An applicant who holds an active specialist certification with the American Board of Professional Psychology (ABPP) is considered to have met all requirements for licensure under this rule except for passage of the EPPP and Jurisprudence Examination. Applicants relying upon this subsection must request that documentation of their specialist certification be sent directly to the Council from ABPP, be submitted to the Council in the sealed envelope in which it was received by the applicant from ABPP, or be submitted to the Council as directed by agency staff.

(e) The requirement for documentation of supervised experience under this rule is waived for an applicant who is actively licensed as a doctoral-level psychologist in good standing and has been practicing psychology in another jurisdiction for at least five years or can affirm that the applicant has received at least 3,000 hours of supervised experience from a licensed psychologist in the jurisdiction where the supervision took place. At least half of those hours (a minimum of 1,500 hours) must have been completed within a formal internship, and the remaining one-half (a minimum of 1,500 hours) must have been completed after the doctoral degree was conferred. Applicants relying upon this subsection must request that verification of their out-of-state licensure be sent directly to the Council from the other jurisdiction, be submitted to the Council in the sealed envelope in which it was received by the applicant from the other jurisdiction, or be submitted to the Council as directed by agency staff.

(f) Provisional License.

(1) An applicant who has not yet passed the required examinations or is seeking to acquire the supervised experience required under Council rule 463.11 may practice under the supervision of a licensed psychologist as a provisionally licensed psychologist for not more than two years if the applicant meets all other licensing requirements.

(2) A provisional license will be issued to an applicant upon proof of provisional license eligibility. However, a provisional license will not be issued to an applicant who was issued a provisional license in connection with a prior application.



(3) A provisionally licensed psychologist is subject to all applicable laws governing the practice of psychology.

(4) A provisionally licensed psychologist may be made the subject of an eligibility or disciplinary proceeding. The two-year period for provisional licensure shall not be tolled by any suspension of the provisional license.

(5) A provisional license will expire after two years if the person does not qualify for licensure as a psychologist.

§463.11. Supervised Experience Required for Licensure as a Psychologist.

(a) Required Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program and at least 1,750 of which must have been received as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(1) A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant whose doctoral degree was conferred prior to September 1, 2017.

(2) The formal internship must be documented by the Director of Internship Training. Alternatively, if the Director of Internship Training is unavailable, the formal internship may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program.

(3) Following conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting, while licensed or authorized to practice in another jurisdiction, or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained without a provisional license or trainee status prior to September 1, 2016 may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this rule if the experience was obtained under the supervision of a licensed psychologist.

(b) Satisfaction of Post-doctoral Supervised Experience with Doctoral Program Hours.

(1) Applicants who received their doctoral degree from a degree program accredited by the American Psychological Association (APA), the Canadian Psychological Association (CPA), or a substantially equivalent degree program, may count the following hours of supervised experience completed as part of their degree program toward the required post-doctoral supervised experience:

(A) hours in excess of 1,750 completed as part of the applicant's formal internship; and

(B) practicum hours certified by the doctoral program training director (or the director's designee) as meeting the following criteria:

(i) the practicum training is overseen by the graduate training program and is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and ultimately licensure;

(ii) the practicum training is governed by a written training plan between the student, the practicum training site, and the

graduate training program. The training plan must describe how the trainee's time is allotted and assure the quality, breadth, and depth of the training experience through specification of the goals and objectives of the practicum, the methods of evaluation of the trainee's performance, and reference to jurisdictional regulations governing the supervisory experience. The plan must also include the nature of supervision, the identities of the supervisors, and the form and frequency of feedback from the agency supervisor to the training faculty. A copy of the plan must be provided to the Council upon request;

(iii) the supervising psychologist must be a member of the staff at the site where the practicum experience takes place;

(iv) at least 50% of the practicum hours must be in service-related activities, defined as treatment or intervention, assessment, interviews, report-writing, case presentations, and consultations.

(v) individual face-to-face supervision shall consist of no less than 25% of the time spent in service-related activities;

(vi) at least 25% of the practicum hours must be devoted to face-to-face patient or client contact;

(vii) no more than 25% of the time spent in supervision may be provided by a licensed allied mental health professional or a psychology intern or post-doctoral fellow; and

(viii) the practicum must consist of a minimum of 15 hours of experience per week.

(2) Applicants applying for licensure under the substantial equivalence clause must submit an affidavit or unsworn declaration from the program's training director or other designated leader familiar with the degree program, demonstrating the substantial equivalence of the applicant's degree program to an APA or CPA accredited program at the time of the conferral of applicant's degree.

(3) An applicant and the affiant or declarant shall appear before the agency in person to answer any questions, produce supporting documentation, or address any concerns raised by the application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of substantial equivalency under this rule.

(c) General Requirements for Supervised Experience. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(1) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(2) Gaps Related to Supervised Experience.

(A) Unless a waiver is granted by the Council, an application for a psychologist's license will be denied if a gap of more than seven years exists between the date an applicant's doctoral degree was officially conferred and the date of the application.

(B) The Council shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(i) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act, during any gap period;

(ii) proof of professional development, which at a minimum meets the Council's professional development requirements, during any gap period;

(iii) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(iv) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(3) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(4) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(5) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(6) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(7) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(8) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Council rules.

(9) Unless authorized by the Council, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(10) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use that title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use that title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Council rule.

(d) Formal Internship Requirements. The formal internship hours must be satisfied by one of the following types of formal internships:

(1) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (AP-PIC); or

(2) The successful completion of an organized internship meeting all of the following criteria:

(A) It must constitute an organized training program which is designed to provide the intern with a planned, programmed

sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(B) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(C) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(D) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(E) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(F) At least 25% of trainee's time must be in direct patient/client contact.

(G) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(H) Training must be post-clerkship, post-practicum and post-externship level.

(I) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(J) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(3) The successful completion of an organized internship program in a school district meeting the following criteria:

(A) The internship experience must be provided at or near the end of the formal training period.

(B) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(C) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(D) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(E) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(F) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the intern-

ship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(G) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(H) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(I) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(J) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(K) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(L) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(M) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(e) Industrial/Organizational Requirements. Individuals from an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have taken place after conferral of the doctoral degree and in accordance with subsection (a) of this rule. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Council rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(f) Licensure Following Respecialization.

(1) In order to qualify for licensure after undergoing respecialization, an applicant must demonstrate the following:

(A) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing respecialization;

(B) completion of a formal post-doctoral respecialization program in psychology which included at least 1,750 hours in a formal internship;

(C) completion of respecialization within the two year period preceding the date of application for licensure under this rule; and

(D) upon completion of the respecialization program, at least 1,750 hours of supervised experience obtained as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(2) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

(3) The rules governing the waiver of gaps related to supervised experience shall also govern any request for waiver of a gap following respecialization.

§463.12. Temporary License.

(a) A temporary license may be issued to an applicant seeking to practice in this state for a limited time and purpose. To be eligible for temporary licensure, an applicant must:

(1) submit a completed application for temporary licensure, setting forth a brief description of the type of psychological services to be provided;

(2) pay the application fee;

(3) submit proof that the applicant is actively licensed, certified, or registered as a psychologist or psychological associate by another jurisdiction having requirements substantially equal to those prescribed by the Psychologists' Licensing Act;

(4) submit documentation directly from the jurisdiction in which the applicant is licensed indicating that the applicant is in good standing with that jurisdiction;

(5) be supervised (sponsorship) by a psychologist licensed in this state; and

(6) provide documentation that the applicant has passed the Examination for Professional Practice of Psychology at the Texas cutoff for the type of temporary license sought.

(b) Substantial equivalency of another jurisdiction's requirements may be documented by the applicant providing a copy of the other jurisdiction's regulations with the pertinent sections highlighted to indicate training and exam requirements for a particular type of license. The material is then reviewed for substantial equivalency by the Council. An applicant need not demonstrate substantial equivalency if the applicant is licensed in a jurisdiction with which the Council has reciprocity.

(c) Applicants for temporary licensure who hold a current Certificate of Professional Qualification in Psychology, status as a National Health Service Provider, or designation as a specialist from the American Board of Professional Psychology may have documentation from the credentialing entity sent directly to the Council as compliance with and in lieu of subsection (a)(3) and (6) of this section.

(d) For a psychologist practicing under a temporary license issued pursuant to this rule, the supervision required by subsection (a)(5) of this section shall consist of sponsorship by a psychologist licensed in this state. The sponsoring psychologist must be available for consultation with the temporary licensee, but otherwise has no supervisory responsibility for the temporary license holder or the services provided under the temporary license.

(e) Applicants meeting the requirements for temporary licensure shall be granted a temporary license authorizing the delivery of psychological services for no more than thirty days. Upon utilization of the full thirty days, or the expiration of one year from the date of licensure, whichever occurs first, the temporary license shall expire.

(f) A temporary licensee must submit written notification to the Council of the dates licensee intends to deliver psychological services in this state, at least 24 hours prior to the delivery of those services. Psychological services may not be provided in this state under a temporary license on any date not approved by the Council.

(g) Temporary licensees are subject to all applicable laws governing the practice of psychology in this state, including the Psychologists' Licensing Act and Council rules.

(h) An applicant for permanent licensure in this state is not eligible for temporary licensure. Upon receipt of an application for permanent licensure by a temporary license holder, any temporary license held by an applicant shall expire without further action or notice by the Council.

(i) A temporary license holder may not receive another temporary license until the expiration of one year from the date of issuance of their last temporary license, regardless of whether that license is active or expired.

§463.13. Licensure by Reciprocity.

An individual applying for licensure by reciprocity with this agency must meet each of the following criteria to be eligible for licensure by reciprocity:

(1) Submit an application in the form prescribed by the Council and corresponding fee;

(2) Submit verification that the applicant is actively licensed, certified, or registered in good standing in a jurisdiction with which Texas shares reciprocity;

(3) Pass the jurisprudence examination; and

(4) Submit any other documentation or information requested in the application or which the Council may deem necessary in order to ensure the public's safety when processing the application.

§463.14. Remedy for Incomplete License Requirements

(a) An applicant who does not meet all of the prerequisites for a particular license under Chapter 501, may petition the Council for a waiver or modification of the prerequisite(s). An applicant may not petition for the waiver or modification of the degree required for the particular license sought or passage of the requisite examinations.

(b) The Council may waive or modify a prerequisite for obtaining a license under Chapter 501, subject to subsection (a) of this section, if:

(1) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41; and

(2) the failure or inability to meet the prerequisite was due to a disaster declared under Chapter 418 of the Government Code or under similar authority in another jurisdiction.

(c) The Council may approve or deny a petition under this rule, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought.

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 June 29, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER C. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND MILITARY SPOUSES

### 22 TAC §463.20

The Texas Behavioral Health Executive Council proposes new 22 TAC §463.20, relating to Applications and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods

of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

#### Statutory Authority

The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

#### §463.20. Special Provisions Applying to Military Service Members, Veterans, and Spouses.

(a) Substantial Equivalency Determination. In accordance with §55.004 of the Occupations Code, the licensing requirements for a license to practice psychology in another jurisdiction will be considered substantially equivalent to Texas' requirements if the other jurisdiction's requirements meet or exceed the following criteria:

##### (1) Licensed Specialist in School Psychology.

(A) The completion of a training program in school psychology that has been approved or accredited by the American Psychological Association or the National Association of School Psychologists, or completion of a master's degree in psychology with specific course work similar to the coursework required in the Council's rules; and

(B) Passage of the School Psychology Examination.

(2) Licensed Psychological Associate.

(A) A graduate degree that is primarily psychological in nature and consisting of at least 42 semester credit hours in total with at least 27 semester credit hours in psychology courses;

(B) Passage of the EPPP at the Texas cut-off score; and

(C) A minimum of 6 semester credit hours of practicum, internship, or experience in psychology, under the supervision of a licensed psychologist.

(3) Licensed Psychologist.

(A) A doctoral degree in psychology;

(B) Passage of the EPPP at the Texas cut-off score; and

(C) A minimum of two years or 3,000 hours of supervised experience under a licensed psychologist.

(b) In accordance with §55.007 of the Occupations Code, an applicant who is a military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(1) Licensed Specialist in School Psychology. A military service member or military veteran who has delivered psychological services within the military for at least one year is considered to have met the following requirements for this type of license: a practicum and 600 internship hours.

(2) Licensed Psychological Associate. A military service member or military veteran who has delivered psychological services within the military for at least one year is considered to have met the following requirements for this type of license: 6 semester credit hours of supervised experience.

(3) Licensed Psychologist. A military service member or military veteran who has delivered psychological services within the military for at least one year, following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year or 1,750 hours of supervised experience.

(c) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

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 June 29, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER D. SPECIALTY CERTIFICATIONS

### 22 TAC §463.25

The Texas Behavioral Health Executive Council proposes new 22 TAC §463.25, relating to Applications and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of

the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

#### Statutory Authority

The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

#### §463.25. Health Service Psychologist Specialty Certification.

(a) Health Service Psychologist (HSP) is a specialty certification from the Council available to Texas licensed psychologists who are listed in the National Register of Health Service Psychologists.

(b) The Council will issue the HSP specialty certification to actively licensed psychologists upon receipt of proof from the National Register that the licensee currently holds the HSP credential from the National Register.

(c) The HSP specialty certification by the Council must be renewed in connection with the person's license. Renewal of the HSP specialty certification requires payment of the renewal fee established by the Council.

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 June 29, 2020.  
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## SUBCHAPTER E. EXAMINATIONS

### 22 TAC §463.30, §463.31

The Texas Behavioral Health Executive Council proposes new §463.30 and §463.31, relating to Applications and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will



have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§463.30. Examinations Required for Licensure.

(a) Jurisprudence Examination. All applicants for licensure are required to pass the Jurisprudence Examination prior to the Council granting a license.

(b) School Psychology Examination. Applicants for licensure as a specialist in school psychology must take the School Psychology Examination administered by the Educational Testing Service before applying for licensure as a specialist in school psychology.

(c) Examination for Professional Practice in Psychology (EPPP). All applicants for licensure as a psychological associate or psychologist are required to pass the EPPP prior to the Council

granting a license. An applicant who has taken the EPPP either in the past or in another jurisdiction will not be required to retake the exam provided the applicant's score satisfies the Council's current minimum acceptable score for licensure.

§463.31. Minimum Passing Scores for Examinations.

(a) Cutoff Scores for the Examination for Professional Practice in Psychology. The minimum acceptable score for the Examination for Professional Practice in Psychology is 500 for computer based examinations and seventy percent (70%) for paper based versions of the test.

(b) Cutoff Scores for the School Psychology Examination. The minimum acceptable score for the School Psychology Examination is the same as the current cut-off score for the Nationally Certified School Psychologist credential.

(c) Cutoff Scores for the Jurisprudence Examination. The minimum acceptable score for the Jurisprudence Examination for all applicants is ninety percent (90%).

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 June 29, 2020.

TRD-202002589

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER F. PROFESSIONAL DEVELOPMENT

### 22 TAC §463.35

The Texas Behavioral Health Executive Council proposes new 22 TAC §463.35, relating to Applications and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a govern-

ment program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

#### Statutory Authority

The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§463.35. Professional Development.

(a) Persons licensed under Chapter 501 are obligated to continue their professional education by completing a minimum of 40 hours of professional development during each renewal period they hold a license. At least 6 of these hours must be in ethics, the Council's rules, or professional responsibility, and another 6 or more hours must be in cultural diversity. Acceptable cultural diversity hours include, but are not limited to professional development regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and social economic status.

(b) Relevancy. All professional development hours must be directly related to the practice of psychology. The Council will make the determination as to whether the activity or publication claimed by the licensee is directly related to the practice of psychology. In order to establish relevancy to the practice of psychology, the Council may require a licensee to produce course descriptions, conference catalogs and syllabi, or other material as warranted by the circumstances. A person may not claim professional development credit for personal psychotherapy, workshops for personal growth, the provision of services to professional associations by a licensee, foreign language courses, or computer training classes.

(c) At least half of the professional development hours required by this rule must be obtained from or endorsed by a provider listed in subsection (f)(1) of this section.

(d) The Council will not pre-approve professional development credit.

(e) Approved Professional Development Activities. The Council will accept professional development hours obtained by participating in one or more of the following activities, provided that the specific activity may not be used for credit in more than one renewal period:

(1) attendance or participation in a formal professional development activity for which professional development hours have been pre-assigned by a provider;

(2) teaching or attendance as an officially enrolled student in a graduate level course in psychology at a regionally accredited institution of higher education;

(3) presentation of a program or workshop; and

(4) authoring or editing publications.

(f) Approved Professional Development Providers. The Council will accept professional development hours from the following providers:

(1) national, regional, state, or local psychological associations; public school districts; regional service centers for public school districts; state or federal agencies; or psychology programs, or counseling centers which host accredited psychology training programs, at regionally accredited institutions of higher education; and

(2) other formally organized groups providing professional development that is directly related to the practice of psychology. Examples of such providers include: public or private institutions, professional associations, and training institutes devoted to the study or practice of particular areas or fields of psychology; and professional associations relating to other mental health professions such as psychiatry, counseling, or social work.

(g) Credit for professional development will be provided as follows:

(1) For attendance at formal professional development activities, the number of hours pre-assigned by the provider.

(2) For teaching or attendance of a graduate level psychology course, 4 hours per credit hour. A particular course may not be taught or attended by a licensee for professional development credit more than once.

(3) For presentations of workshops or programs, 3 hours for each hour actually presented, for a maximum of 6 hours per year.

(4) For publications, 8 hours for authoring or co-authoring a book; 6 hours for editing a book; 4 hours for authoring a published article or book chapter. A maximum credit of 8 hours for publication is permitted for any one year.

(h) Professional development hours must have been obtained during the renewal period for which they are submitted and may not be utilized to fulfill the requirements for more than one renewal period. However, if the hours were obtained during the license renewal month and are not needed for compliance for that renewal period, they may be submitted the following renewal period to meet that period's professional development requirements.

(i) The Council will accept as documentation of professional development:

(1) for hours received from attendance or participation in formal professional development activities, a certificate or other document containing the name of the sponsoring organization, the title of the activity, the number of pre-assigned professional development hours for the activity, and the name of the licensee claiming the hours;

(2) for hours received from attending college or university courses, official grade slips or transcripts issued by the institution of higher education must be submitted;

(3) for hours received for teaching college or university courses, documentation demonstrating that the licensee taught the course must be submitted;

(4) for presenters of professional development workshops or programs, copies of the official program announcement naming the licensee as a presenter and an outline or syllabus of the contents of the program or workshop;

(5) for authors or editors of publications, a copy of the article or table of contents or title page bearing the name of licensee as the author or editor;

(6) for online or self-study courses, a copy of the certificate of completion containing the name of the sponsoring organization, the title of the course, the number of pre-assigned professional develop-

ment hours for the activity, and stating the licensee passed the examination given with the course.

(j) It is the responsibility of each licensee to maintain documentation of all professional development hours claimed under this rule and to provide this documentation upon request by the Council. Licensees shall maintain documentation of all professional development hours for 5 years following the renewal period in which those hours were utilized.

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 June 29, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER G. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

### 22 TAC §463.40

The Texas Behavioral Health Executive Council proposes new §463.40, relating to Applications and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to

the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of

individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§463.40. Ineligibility Due to Criminal History.

Those crimes which TSBEP considers directly related to the duties and responsibilities of a licensee are:

(1) offenses listed in Article 42A.054 of the Code of Criminal Procedure;

(2) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;

(3) any criminal violation of the Psychologists' Licensing Act;

(4) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;

(5) any criminal violation of Chapter 32, Subchapter B (Forgery) of the Penal Code;

(6) any criminal violation of §32.42 (Deceptive Business Practices), §32.43 (Commercial Bribery), §32.45 (Misapplication of Fiduciary Property), §32.46 (Securing Execution of Document by Deception), §32.50 (Deceptive Preparation and Marketing of Academic Product), §32.51 (Fraudulent Use or Possession of Identifying Information), §32.52 (Fraudulent, Substandard, or Fictitious Degree), or §32.53 (Exploitation of Child, Elderly or Disabled Individual) of the Penal Code;

(7) any criminal violation of Chapter 37 (Perjury and Other Falsification) of the Penal Code;

(8) any offense involving the failure to report abuse;

(9) any criminal violation of §38.12 (Barratry and Solicitation of Professional Employment) of the Penal Code;

(10) any criminal violation involving a federal health care program, including 42 USC §1320a-7b (Criminal penalties for acts involving Federal health care programs);

(11) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of psychology; and

(12) any attempt, solicitation, or conspiracy to commit an offense listed herein.

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 June 29, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



CHAPTER 465. RULES OF PRACTICE

22 TAC §§465.1 - 465.18, 465.20 - 465.22, 465.32 - 465.35, 465.37, 465.38

The Texas Behavioral Health Executive Council proposes the repeal of §§465.1 - 465.18, 465.20 - 465.22, 465.32 - 465.35, 465.37, and 465.38, relating to rules of practice. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

**Overview and Explanation of the Proposed Rule.** The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications

necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

- §465.1. *Definitions.*
- §465.2. *Supervision.*
- §465.3. *Providers of Psychological Services.*
- §465.4. *Employment of Individuals Not Licensed by This Board.*
- §465.5. *Practice of Psychology.*
- §465.6. *Public Statements, Advertisements, and Specialty Titles.*
- §465.7. *Display of License/Renewal Permit.*
- §465.8. *Psychological Services Are Provided within a Defined Relationship.*
- §465.9. *Competency.*
- §465.10. *Basis for Scientific and Professional Judgments.*
- §465.11. *Informed Consent.*
- §465.12. *Privacy and Confidentiality.*
- §465.13. *Personal Problems, Conflicts and Dual Relationships.*
- §465.14. *Misuse of Licensees' Services.*
- §465.15. *Fees and Financial Arrangements.*
- §465.16. *Evaluation, Assessment, Testing, and Reports.*
- §465.17. *Therapy and Counseling.*
- §465.18. *Forensic Services.*
- §465.20. *Research.*
- §465.21. *Termination of Services.*
- §465.22. *Psychological Records, Test Data and Test Materials.*
- §465.32. *Disposition and Assumption of the Practice of a Mental Health Professional.*
- §465.33. *Improper Sexual Conduct.*
- §465.34. *Providing Mental Health Services to Those Served by Others.*
- §465.35. *Resolution of Allegations of Board Rule Violations.*
- §465.37. *Compliance with All Applicable Laws.*
- §465.38. *Psychological Services for Schools.*

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 June 29, 2020.

TRD-202002580

Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



**22 TAC §§465.1, 465.2, 465.4 - 465.6, 465.8 - 465.18, 465.20 - 465.22, 465.32 - 465.35, 465.38**

The Texas Behavioral Health Executive Council proposes new 22 TAC §§465.1, 465.2, 465.4 - 465.6, 465.8 - 465.18, 465.20 -

465.22, 465.32 - 465.35, and 465.38, relating to Rules of Practice.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the scope of practice, standards of care, and ethical practice for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of

the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

#### Statutory Authority

The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

#### §465.1. Definitions.

The following terms have the following meanings:

(1) "Adoption evaluation" has the same meaning as assigned by §107.151 of the Family Code.

(2) "Child custody evaluation" has the same meaning as assigned by §107.101 of the Family Code.

(3) "Client" means a party other than a patient seeking or obtaining psychological services, as defined in §501.003 of the Occupations Code, for a third-party with the goal of assisting or caring for that third-party or answering a referral question through the use of forensic psychological services.

(4) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.



(5) "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, a federal, state, or local governmental entity, an attorney, or an administrative body including federal and private disability benefits providers to assist in addressing a forensic referral question.

(6) "Forensic psychological services" are services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. However, forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Improvement Act (IDEIA).

(7) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(8) "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants, and any other individual subject to the regulatory authority of the Council.

(9) "Patient" means a person who receives psychological services, as defined in §501.003 of the Occupations Code, regardless of whether the patient or a third-party pays for the services. The term "patient" shall include a client if the client is a person listed in §611.004(a)(4) or (5) of the Health and Safety Code who is acting on a patient's behalf. A person who is the subject of a forensic evaluation is not considered to be a patient under these rules.

(10) "Private school" has the same meaning as assigned by §5.001 of the Texas Education Code, but does not include a parent or legal guardian who chooses to homeschool a child.

(11) "Professional relationship" means a fiduciary relationship between a licensee and a patient or client involving communications and records deemed confidential under §611.002 of the Health and Safety Code. A professional relationship also exists where licensees are appointed by a court or other governmental body to answer a referral question through the use of forensic psychological services.

(12) "Professional standards" are determined by the Council through its rules.

(13) "Provision of psychological services" means any use by a licensee of education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, or performing research, or teaching to an individual, group, or organization.

(14) "Public school" means any state agency, regional education service center, diploma program, school district, or charter

school established or authorized under Title 2 of the Texas Education Code and supported in whole or in part by state tax funds.

(15) "Recognized member of the clergy," as used in §501.004(a)(4) of the Occupations Code, means a member in good standing of and accountable to a denomination, church, sect or religious organization recognized under the Internal Revenue Code, §501(c)(3).

(16) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments, treatment plans, consultations, session notes, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(17) "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(18) "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provision of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(19) "Test data" refers to a patient's specific answers to test materials, whether spoken or written, generated in drawings, or recorded by computers or other lab devices.

(20) "Test materials" refers to test booklets, forms, manuals, instruments, protocols, software, as well as test questions, and stimuli protected by federal copyright law and used in psychological testing to generate test results and test reports.

#### §465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) A licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. Methods of supervision may include synchronous remote or electronic means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.2525(a)(2)(A), or 501.260(b)(3) of the Occupations Code must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Council. A licensee shall inform all supervisees of any disciplinary order restricting the licensee's license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing a supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) A supervisor may allow a supervisee, as part of a required practicum, internship, or period of supervised experience required for licensure under Chapter 501, to supervise others in the delivery of psychological services.

(6) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists must be under the supervision of a Licensed Psychologist and may not engage in independent practice unless the provisional licensee is licensed in another state

to independently practice psychology and is in good standing in that state.

(2) A Provisionally Licensed Psychologist may, as part of a period of supervised experience required for licensure as a psychologist, supervise others in the delivery of psychological services.

(3) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and trainees. The following rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well as all interns and trainees working toward licensure as a specialist in school psychology.

(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.

(2) Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology who has a minimum of 3 years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(3) Supervisors must sign educational documents completed for students by the supervisee, including student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(4) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program; and

(E) the supervisee's trainee or licensure status.

(5) Supervisors must ensure that each individual completing any portion of the internship required for licensure as an LSSP, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(6) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

#### §465.4. Employment of Unlicensed Individuals.

(a) Individuals Licensed in Another Profession. Psychologists may employ or utilize individuals who are licensed members of another profession to provide only activities or services permitted by the applicable license or licenses held by that individual. In addition, a person licensed under Chapter 501 may supervise a licensed member of another profession to the extent permissible by the other profession's statute and regulations. Any service provided by the licensed member of another profession may not be described or represented to the patient or client as psychological services, and the individual must be clearly identified to the patient or client as a licensee of the applicable profession who is providing services pursuant to that individual's own license.

(b) Unlicensed Individuals. Psychologists may employ unlicensed individuals only to perform services which do not constitute the practice of psychology or the activities and services of another licensed profession. Permissible duties include:

(1) Secretarial and clerical duties such as scheduling appointments or processing insurance forms;

(2) Data gathering, such as administering, proctoring, or scoring non-projective tests, obtaining histories or obtaining documentation for record keeping purposes, provided that it does not require psychological education or involve the provision of psychological services; and

(3) Technical, educational, or other duties that are adjunctive to and incorporated into the provision of psychological services such as providing educational information or assisting a client's work with a computer, special equipment or special materials, provided that the duties do not require psychological education or involve the provision of psychological services or the services or activities of another licensed profession.

#### §465.5. Multiple Licensure.

Multiple licenses regulated by the Council are treated as one for purposes of discipline. Any complaint or disciplinary action under these rules is directed to the licensee's psychology practice as a whole, and applies to all psychology licenses held by a licensee.

#### §465.6. Solicitation, Use of Titles, and Business Names.

(a) Solicitation of Testimonials and/or Patients.

(1) Licensees do not solicit testimonials from current clients or patients or from other persons who are vulnerable to undue influence.

(2) Licensees do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential patients or clients.

(b) Use of Titles.

(1) An individual may not use the title of "Licensed Psychologist" unless the individual is licensed as such by this agency.

(2) An individual may not use the title of "Psychologist" when engaged in the practice of psychology, unless the individual is licensed as such by this agency.

(3) A licensed psychologist may not use a specialty title unless one or more of the following criteria have been met:

(A) the individual holds a doctorate in the area of specialization;

(B) the individual has undergone retraining under the American Psychological Association retraining guidelines in effect at the time of specialization;

(C) the individual has completed a two-year postdoctoral fellowship in the area of specialization;

(D) for individuals who matriculated from a doctoral program in psychology prior to 1978, documentation of academic coursework and relevant applied experience, as well as proof that the title has been used for at least five years; or

(E) documentation of certification, approval, or specialist status granted by a professional, refereed board, provided that the licensee indicates the name of the board which granted the title and that the individual's status with the specialty board is current and in good standing. Use of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising, unless the licensee discloses the complete name of the specialty board that conferred the aforementioned specialty title, certification, approval or specialist status.

(c) Assumed Names and Legal Entities. Licensees engaged in the practice of psychology under an assumed name or through a legal entity must comply with the name and notification requirements set out in the Assumed Business and Professional Name Act found in Chapter 71 of the Texas Business and Commerce Code and §5.060 of the Texas Business Organizations Code.

#### §465.8. Psychological Services Are Provided within a Defined Relationship.

Licensees provide psychological services only in the context of a defined professional relationship.

#### §465.9. Competency.

(a) Licensees provide only services for which they have the education, skills, and training to perform competently.

(b) Competency includes the ability to provide services concerning a specific individual that takes into account characteristics of that individual including age, gender, ethnicity, national origin, disability, language, and socio-economic status.

(c) Licensees maintain current knowledge of scientific and professional information that ensures competency in every area in which they provide services.

(d) Licensees provide services in an unfamiliar area or involving new techniques only after first undertaking appropriate study and training, including supervision, and/or consultation from a professional competent to provide such services.

(e) In emerging areas in which generally recognized standards for preparatory training do not exist, licensees take reasonable steps to ensure the competence of their work and to protect patients, clients, research participants, and other affected individuals from the potential for harm.

(f) Licensees are responsible for ensuring that all individuals practicing under their supervision are competent to perform those services.

(g) Licensees who delegate performance of certain services such as test scoring are responsible for ensuring that the entity to whom the delegation is made is competent to perform those services.

(h) Licensees who lack the competency to provide particular psychological services to a specific individual must withdraw and refer the individual to an appropriate service provider.

(i) Emergency Situations. In emergencies, when licensees are asked to provide services to individuals for whom appropriate mental health services are not available and for which the licensee has not obtained the necessary competence, licensees may provide such services until the emergency has abated or to the extent necessary to ensure that services are not denied. If ongoing services are provided, licensees must comply with subsection (d) of this section, as soon as practicable or refer the patient to an appropriate service provider.

(j) Licensees refrain from initiating or continuing to undertake an activity when they know or should know that there is a substantial likelihood that personal problems or conflicts will prevent them from performing their work-related activities or producing a psychological report in a competent and timely manner. When licensees become aware of such conflicts, they must immediately take appropriate measures, such as obtaining professional consultation or assistance in order to determine whether they should limit, suspend, or terminate the engagement in accordance with §465.21 of this title (relating to Termination of Services).

#### §465.10. Basis for Scientific and Professional Judgments.

Licensees rely on scientifically and professionally derived knowledge when making professional judgments.

#### §465.11. Informed Consent.

(a) Except in an inpatient setting where a general consent has been signed, licensees must obtain and document in writing informed consent concerning all services they intend to provide to the patient, client or other recipient(s) of the psychological services prior to initiating the services, using language that is reasonably understandable to the recipients unless consent is precluded by applicable federal or state law.

(b) Licensees provide appropriate information as needed during the course of the services about changes in the nature of the services to the patient client or other recipient(s) of the services using language that is reasonably understandable to the recipient to ensure informed consent.

(c) Licensees provide appropriate information as needed, during the course of the services to the patient client and other recipient(s) and afterward if requested, to explain the results and conclusions reached concerning the services using language that is reasonably understandable to the recipient(s).

(d) When a licensee agrees to provide services to a person, group or organization at the request of a third party, the licensee clarifies to all of the parties the nature of the relationship between the licensee and each party at the outset of the service and at any time during the services that the circumstances change. This clarification includes the role of the licensee with each party, the probable uses of the services and the results of the services, and all potential limits to the confidentiality between the recipient(s) of the services and the licensee.

(e) When a licensee agrees to provide services to several persons who have a relationship, such as spouses, couples, parents and

children, or in group therapy, the licensee clarifies at the outset the professional relationship between the licensee and each of the individuals involved, including the probable use of the services and information obtained, confidentiality, expectations of each participant, and the access of each participant to records generated in the course of the services.

(f) At any time that a licensee knows or should know that the licensee may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the licensee explains the potential conflict to all affected parties and adjusts or withdraws from all professional services in accordance with Council rules and applicable state and federal law. Further, licensees who encounter personal problems or conflicts as described in §465.9(j) of this title (relating to Competency) that will prevent them from performing their work-related activities in a competent and timely manner must inform their clients of the personal problem or conflict and discuss appropriate termination and referral to insure that the services are completed in a timely manner.

(g) When persons are legally incapable of giving informed consent, licensees obtain informed consent from any individual legally designated to provide substitute consent.

(h) When informed consent is precluded by law, the licensee describes the nature and purpose of all services, as well as the confidentiality of the services and all applicable limits thereto, that the licensee intends to provide to the patient, client, or other recipient(s) of the psychological services prior to initiating the services using language that is reasonably understandable to the recipient(s).

#### §465.12. Privacy and Confidentiality.

(a) Licensees utilize business practices and provide services in a manner that safeguards the privacy and confidentiality of patients and clients.

(b) Licensees must inform their patients or clients about confidentiality and foreseeable limitations on confidentiality created by existing and reasonably foreseeable circumstances prior to the commencement of services as part of the informed consent process.

(c) Licensees keep patients and clients informed of all changes in circumstances affecting confidentiality as they arise.

(d) Licensees comply with Chapter 611 of the Texas Health and Safety Code and all other state and federal law applicable to patient or client confidentiality.

(e) Licensees disclose confidential information without the consent of a patient or client only in compliance with applicable state and federal law.

(f) Licensees who release confidential records relating to a patient or client that also contain confidential information relating to a second patient or client that the licensee obtained through the provision of services to that second individual, and who lack consent or other legal authority to disclose the second individual's identity or records, must remove all identifying and confidential information relating to the second individual before releasing the records.

(g) Licensees may share information for consultation purposes without a consent only to the extent necessary to achieve the purposes of the consultation. Licensees shall exclude information that could lead to the identification of the patient or client.

(h) Licensees shall not require a patient or client to waive a legal right to confidentiality as a condition of providing services.

(i) Licensees include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

§465.13. Personal Problems, Conflicts and Dual Relationships.

(a) In General.

(1) Licensees refrain from providing services when they know or should know that their personal problems or a lack of objectivity are likely to impair their competency or harm a patient, client, colleague, student, supervisee, research participant, or other person with whom they have a professional relationship.

(2) Licensees seek professional assistance for any personal problems, including alcohol or substance abuse likely to impair their competency.

(3) Licensees do not exploit persons over whom they have supervisory evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients.

(4) Licensees refrain from entering into or withdraw from any professional relationship that conflicts with their ability to comply with all Council rules applicable to other existing professional relationships.

(b) Dual Relationships.

(1) A licensee must refrain from entering into a dual relationship with a client, patient, supervisee, student, group, organization, or any other party if such a relationship is likely to impair the licensee's objectivity, prevent the licensee from providing competent psychological services, or exploit or otherwise cause harm to the other party.

(2) A licensee must refrain from entering into or withdraw from a professional relationship where personal, financial, or other relationships are likely to impair the licensee's objectivity or pose an unreasonable risk of harm to a patient or client.

(3) A licensee who is considering or involved in a professional or non-professional relationship that could result in a violation of this rule must take appropriate measures, such as obtaining professional consultation or assistance, to determine whether the licensee's relationships, both existing and contemplated, are likely to impair the licensee's objectivity or cause harm to the other party.

(4) Licensees do not provide psychological services to a person with whom they have had a sexual relationship.

(5) Licensees do not terminate psychological services with a person in order to have a sexual relationship with that person. Licensees do not terminate psychological services with a person in order to have a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of the client.

§465.14. Misuse of Licensee Services.

(a) Licensees decline to offer services when limitations or conditions are placed on their work by the patient, client, or third parties which could foreseeably cause the licensee to violate a Council rule.

(b) If licensees become aware of misuse or misrepresentation of their services or the results of their services, they take reasonable steps to correct or minimize the misuse or misrepresentation.

§465.15. Fees and Financial Arrangements.

(a) General Requirements.

(1) Before the provision of any services, the licensee and the recipient of psychological services reach an agreement specifying the compensation and billing arrangements.

(2) If services are not paid for as agreed, the licensee shall not utilize a collection agency or legal measures to collect any unpaid fees unless the licensee has provided the affected party with at least 30 days written notice, separate and apart from any notice provided as part of the informed consent process, that such measures will be taken and the party has been provided with a reasonable opportunity to make prompt payment.

(3) Licensees shall not withhold records solely because payment has not been received unless specifically permitted by law.

(4) In reporting their services to third-party payers, licensees accurately state the nature, date and fees for the services provided.

(b) Ethical and Legal Requirements.

(1) Licensees do not engage in fraudulent billing.

(2) Licensees do not misrepresent their fees.

(3) Licensees do not overcharge or otherwise exploit recipients of services or payers with respect to fees.

(4) Licensees do not receive payments from or divide fees with another health care provider in exchange for professional referrals.

(5) A licensee does not participate in bartering if it is clinically contra-indicated or if bartering has the potential to create an exploitative or harmful dual relationship.

§465.16. Evaluation, Assessment, Testing, and Reports.

(a) Scope and Purpose.

(1) Licensees clearly describe the scope and purpose of evaluation, assessment, and testing to patients before they provide these psychological services.

(2) Licensees produce reports that clearly state and accurately reflect the scope and purpose of evaluation, assessment, and testing.

(b) Reliability and Validity.

(1) Licensees verify, by signature and date, that every evaluation, assessment, test result, report, recommendation, or psychological diagnostic or evaluative statement produced is based on information and techniques sufficient to provide appropriate substantiation for its findings.

(2) Licensees administer, score, interpret or use assessment techniques or tests only if they are familiar with the reliability, validation and related standardization or outcome studies of, and proper applications and use of, the techniques they use.

(3) Licensees who administer, score, interpret or utilize psychological assessment techniques, tests or instruments do so in a manner and for purposes for which there are professional or scientific bases.

(4) Licensees do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(5) Licensees do not base decisions or recommendations on tests and measures that are obsolete or not useful for the current purpose.

(c) Limitations.

(1) Licensees include all information that provides the basis for their findings in any report in which they make findings or diagnoses about an individual.

(2) Licensees identify limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals.

(3) Licensees identify various test factors and characteristics of the person being assessed that might affect their professional judgment or reduce the accuracy of their interpretations when interpreting assessment results, including automated interpretations.

(4) Licensees include any significant reservations they have about the accuracy or limitations of their interpretations or findings in any report they produce.

(5) Licensees provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When such an examination is not practical, licensees document the efforts they made to obtain such an examination and clarify the probable impact of their limited information to the reliability and validity of their conclusions.

(6) Licensees must meet any education, training, or licensure requirements established by a test publisher for the purchase or use of its test materials. It is presumed that a licensee meets any such requirements if a test publisher or other authorized vendor, sells test materials to a licensee. Any false or misleading representation by a licensee regarding the individual's qualifications will negate this presumption.

(d) Test Security and Validity. Licensees conduct testing and maintain and release test protocols and data in a secure manner that does not compromise the validity of the test.

(e) Production of Reports.

(1) Licensees shall provide the patient, client, or subject of the evaluation with an estimate of the time needed to produce a report prior to conducting any evaluation, assessment, or testing.

(2) Licensees shall produce a report within a reasonable time period following completion of the evaluation, assessment, or testing needed to substantiate the report.

(3) Licensees shall notify a patient, client, or subject of the evaluation if a report cannot be produced within the original estimated time period and provide a new production date together with a reasonable explanation for why the report will be delayed.

§465.17. Therapy and Counseling.

(a) Imbalances of Power.

(1) Licensees who engage in therapy or counseling recognize the actual or perceived power or undue influence they hold over current and former patients and clients.

(2) Licensees are presumed to have power and influence over former therapy or counseling patients or clients.

(3) Licensees do not engage in sexual relationships with, employ, enter into business with or otherwise exploit any former patient or client over whom they have actual or perceived power or undue influence created through a therapeutic relationship.

(b) Treatment plans.

(1) Licensees create specific written treatment plans that include, at a minimum, agreed upon goals of the treatment, the techniques to be used, and the tentative duration of the treatment for any therapy or counseling that they provide.

(2) Licensees explain the treatment plan to all recipients of the therapy or counseling before commencing the services.

(3) Licensees alter and document the alteration in the treatment plan when clinically indicated.

(4) Licensees confer with and obtain consent from the patient, client, or other recipient(s) of services concerning significant alterations in the treatment plan.

§465.18. Forensic Services.

(a) In General.

(1) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees, must comply with all applicable Council rules concerning forensic services regardless of whether the licensee is acting as a factual witness or an expert.

(2) Licensees who engage in forensic services must have demonstrated appropriate knowledge of and competence in all underlying areas of psychology about which they provide such services.

(3) All forensic opinions, reports, assessments, and recommendations rendered by a licensee must be based on information and techniques sufficient to provide appropriate substantiation for each finding.

(4) When appointed or designated in writing by a court to provide psychological services, a licensee shall obtain and keep a copy of the court order.

(5) When providing forensic psychological services to a minor who is the subject of a court order or the ward of guardianship, a licensee shall obtain and keep a copy of the relevant portions of any court order, divorce decree, or letters of guardianship authorizing the individual to provide substitute consent on behalf of the minor or ward.

(b) Limitation on Services.

(1) A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.

(2) A licensee who is asked to provide an opinion concerning a specific matter for which the licensee lacks sufficient information to render a professional opinion shall decline to render that opinion unless the required information is provided.

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without conducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

(4) A written or oral opinion about the psychological characteristics of an individual rendered by a licensee who did not conduct an examination of that individual must contain clarification of the extent to which this limits the reliability and validity of the opinion and the conclusions and recommendations of the licensee.

(5) When seeking or receiving court appointment or designation as an expert for a forensic evaluation a licensee specifically avoids accepting appointment or engagement for both evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case.

(c) Describing the Nature of Services. A licensee must document in writing that subject(s) of forensic evaluations or their parents or legal representative have been informed of the following:

(1) The nature of the anticipated services (procedures);

(2) The specific purpose and scope of the evaluation;

(3) The identity of the party who requested the psychologist's services;

(4) The identity of the party who will pay the psychologist's fees and if any portion of the fees is to be paid by the subject, the estimated amount of the fees;

(5) The type of information sought and the uses for information gathered;

(6) The people or entities to whom psychological records will be distributed;

(7) The approximate length of time required to produce any reports or written results;

(8) Applicable limits on confidentiality and access to psychological records;

(9) Whether the psychologist has been or may be engaged to provide testimony based on the report or written results of forensic psychological services in a legal proceeding; and

(10) The licensee's name as it appears in their professional file with the Council prior to initiating services.

(d) Certain Testimony Prohibited.

(1) A licensee may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation.

(2) In a contested suit, a licensee may provide other relevant information and opinions, other than those prohibited by paragraph (1) of this subsection, relating to any party that the licensee has personally evaluated or treated.

(3) This subsection does not apply to a suit in which the Department of Family and Protective Services is a party.

(e) Child Custody Evaluations.

(1) The role of the child custody evaluator is one of professional expert. A licensee serving as a child custody evaluator shall not function as an advocate, but must remain impartial and objective. Licensees conducting child custody evaluations, including those licensees appointed by a court, are subject to the Council's jurisdiction and must follow all applicable Council rules.

(2) The term "supervision" as used in this subsection shall have the meaning assigned by §107.101 of the Family Code. However, the term shall not encompass the restrictions and requirements set forth in §465.2 of this title (relating to Supervision) nor shall a licensee providing supervision under this subsection have supervisory responsibility under that same rule.

(3) Minimum Qualifications of Child Custody Evaluator.

(A) A licensee must be qualified to conduct a child custody evaluation pursuant to §107.104 of the Family Code before the licensee may conduct an evaluation. Licensees qualified to conduct evaluations under §107.104(b)(2) must conduct evaluations under supervision in accordance with that section.

(B) Notwithstanding any other grounds for qualification, the Council has determined that a licensed psychologist is qualified to conduct child custody evaluations if the licensee:

(i) has obtained a minimum of 8 professional development hours directly related to the performance of child custody evaluations since becoming a licensed psychologist, and is board certified

in forensic psychology by the American Board of Professional Psychology (ABPP); or

(ii) has obtained a minimum of 40 professional development hours directly related to the performance of child custody evaluations since becoming a licensed psychologist, and has conducted at least three child custody evaluations under the supervision of a qualified licensee.

(C) A licensee who does not meet the minimum qualification requirements set forth in §107.104 of the Family Code, may nevertheless conduct a child custody evaluation if:

(i) appointed to do so pursuant to §107.106 of the Family Code. A licensee appointed under §107.106 must comply with the provisions of Subchapter D of the Family Code and this rule; or

(ii) the individual is licensed as a psychologist, and has completed at least ten social studies or other child custody evaluations ordered by a court in suits affecting the parent-child relationship prior to September 1, 2015.

(D) If requested by a court, a licensee selected to conduct or who is conducting a child custody evaluation must demonstrate appropriate knowledge and competence in child custody evaluation services consistent with professional models, standards, and guidelines.

(E) In addition to the minimum qualifications set forth by this rule, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct child custody evaluations.

(4) Disclosure of Conflicts and Bias.

(A) Licensees shall comply with all disclosure requirements set forth in §107.107 of the Family Code.

(B) Following any disclosure required by §107.107(c), a licensee must resign as child custody evaluator, unless:

(i) the court finds that no conflict of interest exists and that any previous knowledge of a party or child who is the subject of the suit is not relevant; or

(ii) the parties and any attorney for a child who is the subject of the suit agree in writing to the licensee's continued appointment as the child custody evaluator.

(C) Except as authorized by §107.107(f), licensees may not accept appointment as a child custody evaluator if they have worked in a professional capacity with a party, a child who is the subject of the suit, or a member of the party's or child's family. The term "family" as used in this subpart has the meaning assigned by §71.003 of the Family Code.

(5) Elements of Child Custody Evaluation.

(A) Licensees shall comply with §§107.108, 107.109, and 107.1101 of the Family Code when conducting child custody evaluations.

(B) Licensees may conduct psychometric testing as part of a child custody evaluation in accordance with §107.110 of the Family Code.

(6) Communications and Recordkeeping of Child Custody Evaluator.

(A) Licensees shall comply with the requirements of §107.112 of the Family Code regarding:

(i) the disclosure of communications between evaluation participants;

(ii) the creation and retention of records relevant to the evaluation; and

(iii) access to evaluation records.

(B) Licensees conducting child custody evaluations shall maintain the confidentiality of records obtained from the Department of Family and Protective Services pursuant to §107.111 of the Family Code, as well as any records obtained pursuant to §107.1111. Licensees may not disclose any information obtained from the records except as required or allowed by law. Failure to maintain confidentiality as required by law will result in disciplinary action against a licensee.

#### (7) Evaluation Report.

(A) A licensee who conducts a child custody evaluation shall prepare and file a report in accordance with §107.113 of the Family Code.

(B) A licensee shall provide a copy of any report filed with the Court in accordance with §107.114 of the Family Code.

#### (f) Adoption Evaluations.

(1) The role of the adoption evaluator is one of professional expert. A licensee serving as an adoption evaluator shall not function as an advocate, but must remain impartial and objective. Licensees conducting adoption evaluations, including those licensees appointed by a court, are subject to the Council's jurisdiction and must follow all applicable Council rules.

#### (2) Minimum Qualifications of Adoption Evaluator.

(A) A licensee must be qualified to conduct an adoption evaluation pursuant to §107.154 of the Family Code before the licensee may conduct an evaluation.

(B) Licensees qualified to conduct a child custody evaluations are also qualified to conduct adoption evaluations.

(C) A licensee who does not meet the minimum qualification requirements set forth in §107.154, may nevertheless conduct an adoption evaluation if:

(i) appointed to do so pursuant to §107.155 of the Family Code. A licensee appointed under §107.155 must comply with the provisions of Subchapter E of the Texas Family Code and this rule; or

(ii) the individual is licensed as a psychologist, and has completed at least ten social studies or other child custody evaluations ordered by a court in suits affecting the parent-child relationship prior to September 1, 2015.

#### (3) Disclosure of Conflicts and Bias.

(A) Licensees shall comply with all disclosure requirements set forth in §107.156 of the Family Code.

(B) Following any disclosure required by §107.156(c), a licensee must resign as adoption evaluator, unless:

(i) the court finds that no conflict of interest exists and that any previous knowledge of a party or child who is the subject of the suit is not relevant; or

(ii) the parties and any attorney for a child who is the subject of the suit agree in writing to the licensee's continued appointment as the adoption evaluator.

(C) Except as authorized by §107.156(e) of the Family Code, licensees may not accept appointment as an adoption evaluator if they have worked in a professional capacity with a party, a child who is the subject of the suit, or a member of the party's or child's family. The term "family" as used in this subpart has the meaning assigned by §71.003 of the Family Code.

(4) A licensee shall report to the Department of Family and Protective Services any adoptive placement that appears to have been made by someone other than a licensed child-placing agency or a child's parent or managing conservator.

(5) Licensees shall comply with §§107.158, 107.159, and 107.160 of the Family Code when conducting adoption evaluations.

(6) Licensees conducting adoption evaluations shall maintain the confidentiality of records obtained from the Department of Family and Protective Services pursuant to §107.163 of the Family Code. Licensees may not disclose any information obtained from the records except as required or allowed by law. Failure to maintain confidentiality as required by §107.163 of the Family Code will result in disciplinary action against a licensee.

(g) Duty to Report Complaints. Licensees must report any complaint filed against them that alleges facts tending to show a violation of this rule in connection with a child custody or adoption evaluation. The report must be made to the court that ordered the evaluation within 30 days of receiving notice of the complaint from the Council. Only those complaints for which a licensee receives notice from the Council need to be reported.

#### (h) Parenting Facilitators.

(1) The title "parenting facilitator" is defined in §153.601 of the Family Code.

(2) The Council's jurisdiction over licensees who also accept engagements as parenting facilitators is limited to its enforcement of Council rules. The Family Code sets forth procedures for the qualifications, duties, appointment and removal, reporting, record retention, and compensation of parenting facilitators. The Family Code also provides procedures for disclosure of conflicts of interest by parenting facilitators.

(3) A parenting facilitator who is also a licensed psychologist in Texas is a provider of forensic psychological services and must comply with all applicable Council rules.

(4) Participants in parenting facilitation are not patients as defined in these rules and in Texas Health and Safety Code §611.001. Records created during parenting facilitation are not confidential.

(5) Parenting facilitators must comply with §§153.6061 and 153.6101 of the Family Code as to duties and qualifications, and with the "Guidelines for Parenting Coordination" published by the Association of Family and Conciliation Courts.

(6) The following psychologist-parenting facilitator practice standards are set forth consistent with §153.6101 of the Family Code:

(A) Parenting facilitators licensed by the Council shall comply with the standard of care applicable to the license to practice psychology in Texas.

(B) Psychologist-parenting facilitators meet all requirements of §153.6101 of the Family Code, including active licensure to practice as a psychologist in Texas; completion of 8 hours of family violence dynamics training provided by a family violence service provider; 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution sys-



tem or other dispute resolution organization approved by the court; 24 classroom hours of training in the fields of family dynamics, child development, and family law; and 16 hours of training in the laws governing parenting coordination and parenting facilitation and the multiple styles and procedures used in different models of service.

§465.20. Research.

(a) Conducting Research.

(1) Licensees who conduct research involving human research participants must obtain informed consent which includes risks, discomfort, adverse effects, limitations on confidentiality including anticipated sharing or use of personally identifiable research data and of the possibility of unanticipated future uses, as well as any aspects about which the prospective participants inquire.

(2) Licensees shall conduct all research involving animals in a humane manner which minimizes the discomfort, infection, illness and pain of animal subjects. A procedure subjecting animals to pain, stress or privation is used only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, education or applied value.

(b) Research results.

(1) Psychologists do not fabricate data or falsify results in their publications.

(2) Licensees who discover significant errors in their published data take all reasonable steps to correct such errors.

(3) Licensees do not present substantial portions or elements of another individual's research work or data as their own.

(4) Licensees take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have contributed.

§465.21. Termination of Services.

(a) Licensees do not abandon patients or clients.

(b) Withdrawal from a professional relationship in compliance with Council rules to avoid a prohibited dual relationship is not abandonment of a patient or client.

(c) Licensees terminate a professional relationship when it becomes reasonably clear that the patient or client no longer needs the service, is not benefiting or is being harmed by continued service.

(d) Prior to termination of a professional relationship for any reason, the licensee takes all reasonable steps to facilitate transfer of responsibility for the patient or client to a qualified service provider if necessary to prevent physical or emotional harm and, if not precluded by the patient or client's conduct, provides appropriate pre-termination counseling and referrals.

(e) Licensees who are required to interrupt services of a professional relationship for any reason shall make arrangements for provision of any services to all patients or clients required during the interruption.

(f) Termination of employment with agencies or organizations.

(1) When entering into employment or contractual relationships, licensees provide for orderly and appropriate resolution of responsibility for patient or client care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the patient or client.

(2) Licensees who are employed by an organization or agency to provide psychological services must, upon termination

of that employment, work with the employer to facilitate access to records of all services provided by the licensee to patients or clients as otherwise required by Council rules and applicable law.

(3) Licensees who are employed by an organization or agency to provide psychological services must, upon termination of that employment, work with the employer to facilitate transfer of clients or patients who are continuing to receive services from the agency or organization to another qualified service provider.

(g) Termination of employment with public schools.

(1) A LSSP who is under contract as an employee of a public school to provide school psychological services must deliver to such public school a written resignation before terminating services or employment without cause. The resignation must be filed with the public school's board of trustees or designee not later than the 45th day before the first day of instruction of the following school year. A written resignation mailed by prepaid certified or registered mail to the president of the public school's board of trustees or designee at the post office address of the public school is considered delivered at the time of mailing.

(2) A LSSP who is under contract as an employee of a public school may resign at any time if given written consent by the public school's board of trustees or designee or if such resignation is for cause.

§465.22. Psychological Records, Test Data and Test Materials.

(a) General Requirements.

(1) All licensees shall create and maintain accurate, current, and pertinent records of all psychological services rendered by or under the supervision of the licensee.

(2) All records shall be sufficient to permit planning for continuity in the event that another care provider takes over delivery of services to a patient or client for any reason, including the death, disability or retirement of the licensee and to permit adequate regulatory and administrative review of the psychological service.

(3) All licensees shall identify impressions and tentative conclusions as such in patient or client records.

(4) All records and record entries shall be created in as timely a manner as possible after the delivery of the specific services being recorded.

(5) Records shall be maintained and stored in a way that permits review and duplication.

(6) Licensees working in public school settings shall comply with all federal and state laws relative to the content, maintenance, control, access, retention and destruction of psychological and educational records, test data and test protocols.

(7) Licensees are prohibited from falsifying, altering, fabricating, or back-dating records and reports.

(b) Maintenance and Control of Records.

(1) Licensees shall maintain records in a manner that protects the confidentiality of all services delivered by the licensee.

(2) Licensees are responsible for the contents of, as well as the access, retention, control, maintenance, and destruction of all records unless stated otherwise by law.

(3) Licensees shall make all reasonable efforts to protect against the misuse of any record.

(4) Licensees shall maintain control over records to the extent necessary to ensure compliance with all applicable state and federal laws.

(5) In situations where it becomes impossible for a licensee to maintain control over records as required by state or federal law, the licensee shall make all necessary arrangements for transfer of the licensee's records to another licensee who will ensure compliance with state and federal laws concerning records.

(6) The possession, access, retention, control, maintenance, and destruction of records of psychological services rendered by a licensee as an employee of or contractor for an agency or organization remain the responsibility of that agency or organization upon termination of the licensee's employment or contract unless otherwise required by state or federal law or legal agreement.

(c) Access to Records.

(1) Records shall be entered, organized and maintained in a manner that facilitates their use by all authorized persons.

(2) Records may be maintained in any media that ensure confidentiality and durability.

(3) A licensee shall release information about a patient or client only upon written authorization from the patient or client, or as otherwise permitted or required under state or federal law.

(4) Test materials are not part of a patient's or client's record and may not be copied or distributed unless otherwise permitted or required under state or federal law.

(5) Test data are part of a patient's records and must be released to the patient as part of the patient's records. In the event test data are commingled with test materials, licensees may inquire whether the patient will accept a summary or narrative of the test data in lieu of having to either redact the test materials or extract the test data from test materials in order to comply with the request for records.

(6) Licensees cooperate in the continuity of care of patients and clients by providing appropriate information to succeeding qualified service providers as permitted by applicable Council rule and state and federal law.

(7) Licensees who are temporarily or permanently unable to practice psychology shall implement a system that enables their records to be accessed in compliance with applicable Council rules and state and federal law.

(8) Access to records may not be withheld due to an outstanding balance owed by a client for psychological services provided prior to the patient's request for records. However, licensees may impose a reasonable fee for review and/or reproduction of records and are not required to permit examination until such fee is paid, unless there is a medical emergency or the records are to be used in support of an application for disability benefits.

(9) No later than 15 days after receiving a written request from a patient to examine or copy all or part of the patient's mental health records, a psychologist shall:

(A) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(B) inform the patient in writing that the information does not exist or cannot be found; or

(C) when withholding information, provide the patient with a signed and dated statement reflecting the licensee's determination, based upon the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the patient or another person. The written statement must specify the

portion of the record being withheld, the reason for denial and the duration of the denial.

(10) A licensee may, but is not required to provide a patient with access to psychotherapy notes, as that term is specifically defined in 45 C.F.R. §164.501, maintained by the licensee concerning the patient.

(d) Retention of Records.

(1) Licensees shall comply with all applicable laws, rules and regulations concerning record retention.

(2) In the absence of applicable state and federal laws, rules and regulations, records and test data shall be maintained for a minimum of seven years after the date of termination of services with the patient, client, or subject of evaluation, or five years after a patient or subject of evaluation reaches the age of majority, whichever is greater.

(3) All records shall be maintained in a manner which permits timely retrieval and production.

(e) Outdated Records.

(1) Licensees take reasonable steps when disclosing records to note information that is outdated.

(2) Disposal of records shall be done in an appropriate manner that ensures confidentiality of the records in compliance with applicable Council rules and state and federal laws.

§465.32. Disposition and Assumption of the Practice of a Mental Health Professional.

(a) In General.

(1) A licensee has the right to sell or otherwise dispose of the licensee's practice to another licensed psychologist.

(2) A licensee has the right to assume the practice of a licensee.

(3) Arrangements regarding accounts receivable and other financial and tangible assets and liabilities of the practice being transferred must be resolved by the selling and assuming licensees prior to the transfer of any patient or client records.

(b) Notice and Referral of Patients and Clients.

(1) A licensee who intends to sell, retire, or otherwise dispose of a practice must make reasonable efforts to notify current and former patients or clients that on a given date the practice is being sold and that patient or client records will be transferred to the buyer unless the patient or client provides the name of an alternative mental health care provider to receive the records. This notice must provide a reasonable time to the patients and clients to make suitable responses and arrangements.

(2) A licensee who assumes the practice of another mental health service provider may state a willingness to provide services to all patients or clients the licensee is competent to treat.

(3) A licensee who assumes a practice must provide an appropriate referral to a qualified mental health services provider to any patient or client who notifies the licensee that they do not want to receive services from the licensee or to a patient or client to whom the licensee declines to offer services.

(4) If the patient or client accepts a referral, the referring licensee must forward the patient or client's records to that mental health professional.

§465.33. Improper Sexual Conduct.

(a) "Sexual Harassment" means sexual advances, requests for sexual favors, or other verbal or physical conduct or contact of a sexual nature that has the purpose or effect of creating an intimidating, hostile, or offensive environment and that occurs within a professional relationship. The determination of whether conduct or comments rise to the level of sexual harassment must be made based upon the totality of the circumstances, and from the viewpoint of a reasonable person. Sexual harassment does not include simple teasing, offhand comments, or isolated incidents that are not serious in nature.

(b) "Sexual Impropriety" is deliberate or repeated comments, gestures, or physical acts of a sexual nature that include, but are not limited to:

(1) Behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexually demeaning;

(2) Making inappropriate comments about an individual's body;

(3) Making sexually demeaning comments to an individual;

(4) Making comments about an individual's potential sexual performance, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction in therapy/counseling;

(5) Requesting details of a patient or client's sexual history when not clinically indicated for the type of consultation;

(6) Requesting a date;

(7) Initiating conversation regarding the sexual problems, preferences, or fantasies of either party; or

(8) Kissing of a sexual nature.

(c) A sexual relationship is the engaging in any conduct that is sexual or may be reasonably interpreted as sexual in nature including, but not limited to:

(1) Sexual intercourse;

(2) Genital contact;

(3) Oral to genital contact;

(4) Genital to anal contact;

(5) Oral to anal contact;

(6) Touching breasts or genitals;

(7) Encouraging another to masturbate in one's presence;

(8) Masturbation in another's presence; or

(9) Exposure of sexual organs, breasts or buttocks.

(d) A dating relationship is a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature, but does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The existence of such a relationship shall be determined based on consideration of:

(1) The length of the relationship;

(2) The nature of the relationship; and

(3) The frequency and type of interaction between the persons involved in the relationship.

(e) A licensee may not engage in sexual harassment, sexual impropriety, or a sexual relationship with a current patient or client; a former patient or client over whom the licensee has influence due to a

therapeutic relationship; current students or trainees of the licensee; individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of current patients or a supervisee over whom the licensee has administrative or clinical responsibility. A licensee may not engage in a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of former patients for at least two years after termination of services.

(f) A licensee may not engage in a dating relationship with a current client or former client over whom the licensee has influence due to therapeutic relationship; current students or trainees of the licensee; individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of current clients, or a supervisee over whom the licensee has administrative or clinical responsibility. A licensee may not engage in a dating relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of former clients, for at least two years after termination of services. A licensee may never engage in a dating relationship when there is potential for harm to any of these individuals.

(g) Licensees do not accept as patients individuals with whom they have engaged in sexual relationships.

§465.34. Providing Mental Health Services to Those Served by Others.

Licensees do not knowingly provide psychological services to clients receiving mental health services elsewhere without first discussing consequent treatment issues with the clients. Licensees shall consult with the other service providers after appropriate consent has been obtained.

§465.35. Duty to Report Rule Violations.

(a) A licensee that becomes aware of another licensee violating a state or federal law within the jurisdiction of the Council, may attempt to resolve the violation informally with the other licensee if the violation does not involve actual or likely harm to an individual or the public. Any unresolved violations must be reported to the Council.

(b) A licensee that becomes aware of another licensee violating a state or federal law within the jurisdiction of the Council involving actual or likely harm to an individual or the public, must report the violation of the Council.

§465.38. Psychological Services for Schools.

(a) This rule acknowledges the unique difference in the delivery of school psychological services in public and private schools from psychological services in the private sector. The Council recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in public and private schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) A LSSP is a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.

(2) The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.

(3) The delivery of school psychological services in the public schools of this state shall be consistent with nationally recognized standards for the practice of school psychology. Licensees providing school psychological services in a private school should comply with those same nationally recognized standards where possible, but at a minimum, must comply with all applicable Council rules, including those related to informed consent, notification of the right to file a complaint, competency, forensic services, and misuse of services.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in public and private schools. A person utilizing this license may not provide psychological services in any context or capacity outside of a public or private school.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or LSSP. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Council to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs;

(B) Those individuals listed in §463.11; and

(C) Individuals seeking to fulfill the licensing requirements of §463.10 of this title (relating to Licensed Psychological Associate) or §463.12 of this title (relating to Licensed Psychologist).

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, but any such contracting may not involve the broad range of school psychological services listed in subsection (b)(1) of this rule.

(3) An LSSP who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP subject to this provision shall be responsible for ensuring the school psychological services delivered comply with subsection (b)(3) above.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g;

(3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq.;

(4) Texas Public Information Act, Texas Government Code, Chapter 552;

(5) Section 504 of the Rehabilitation Act of 1973;

(6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101; and

(7) HIPAA when practicing in a private school.

(g) Informed Consent in a Public School. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Council rules, is necessary in this context. Licensees providing psychological services under subsection (e)(2) of this section or in a private school however, must obtain informed consent as otherwise required by the Council rules.

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



## CHAPTER 469. COMPLAINTS AND ENFORCEMENT

### 22 TAC §§469.1 - 469.12, 469.14, 469.15

The Texas Behavioral Health Executive Council proposes the repeal of §§469.1 - 469.12, 469.14, and 469.15, relating to complaints and enforcement. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have fore-

seeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to

prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

- §469.1. *Timeliness of Complaints.*
- §469.2. *Public Complaint Notification Statement.*
- §469.3. *Standardized Complaint Form.*
- §469.4. *Complaint Investigation.*
- §469.5. *Complaint Disposition.*
- §469.6. *Temporary Suspension of a License.*
- §469.7. *Persons with Criminal Backgrounds.*
- §469.8. *Rehabilitation Guidelines.*
- §469.9. *Complaints Alleging Violation of Court Orders or Education Law.*
- §469.10. *Rules of Evidence in Contested Cases.*
- §469.11. *Legal Actions Reported and Reciprocal Discipline.*
- §469.12. *Suspension of License for Failure to Pay Child Support.*
- §469.14. *Monitoring of Licensees.*

§469.15. *Disciplinary Action for Persons with Dual Licensure.*

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



## CHAPTER 470. ADMINISTRATIVE PROCEDURE

### 22 TAC §§470.1 - 470.6, 470.8 - 470.12, 470.15 - 470.24

The Texas Behavioral Health Executive Council proposes the repeal of §§470.1 - 470.6, 470.8 - 470.12, and 470.15 - 470.24, relating to administrative procedure. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§470.1. *Objective and Scope.*

§470.2. *Definitions.*

§470.3. *Construction.*

§470.4. *Records of Official Action.*

§470.5. *Conduct and Decorum.*

§470.6. *Agreement to be in Writing.*

§470.8. *Informal Disposition of Complaints.*

§470.9. *Witness Fees.*

§470.10. *Subpoenas.*

§470.11. *Service in Non-Rulemaking Proceedings.*

§470.12. *Contested Cases Referred to the State Office of Administrative Hearings.*

§470.15. *Proposal for Decision.*

§470.16. *Final Decision.*

§470.17. *Motion for Rehearing.*

§470.18. *The Record.*

§470.19. *Costs of Appeal.*

§470.20. *Computation of Time.*

§470.21. *Disciplinary Guidelines.*

§470.22. *Schedule of Sanctions.*

§470.23. *Aggravating and Mitigating Circumstances.*

§470.24. *Enforcement of Orders, Decisions, and Rules.*

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



## CHAPTER 470. SCHEDULE OF SANCTIONS

### 22 TAC §470.1

The Texas Behavioral Health Executive Council proposes new §470.1, relating to schedule of sanctions.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to a schedule of sanctions for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules

are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

**Statutory Authority.** The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§470.1. Schedule of Sanctions.

The following standard sanctions shall apply to violations of Chapter 501 and 22 TAC Part 21.

Figure: 22 TAC §470.1

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

Filed with the Office of the Secretary of State on June 29, 2020.





## CHAPTER 471. RENEWALS

### 22 TAC §§471.1, 471.3 - 471.6

The Texas Behavioral Health Executive Council proposes the repeal of §§471.1 and 471.3 - 471.6, relating to renewals. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

**Overview and Explanation of the Proposed Rule.** The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse

effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and,

by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§471.1. *Renewal of a License.*

§471.3. *Initial License Renewal Dates.*

§471.4. *Nonrenewal for Default of Guaranteed Student Loan.*

§471.5. *Updated Information Requirements.*

§471.6. *Renewal Terms Exclusive to Licensees on Active Military Duty.*

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 June 29, 2020.

TRD-202002583

Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## CHAPTER 473. FEES

### 22 TAC §§473.1 - 473.5, 473.8

The Texas Behavioral Health Executive Council proposes the repeal of §§473.1 - 473.5 and 473.8, relating to fees. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to

perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council

estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§473.1. *Application Fees.*

§473.2. *Examination Fees (Non-Refundable).*

§473.3. *Biennial Renewal Fees (Not Refundable).*

§473.4. *Late Fees for Renewals.*

§473.5. *Miscellaneous Fees (Not Refundable).*

§473.8. *Open Records Fees.*

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 June 29, 2020.

TRD-202002584

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

#### SUBCHAPTER A. GENERAL PROVISIONS [INTRODUCTION]

##### 22 TAC §801.2, §801.11

The Texas Behavioral Health Executive Council proposes amended §801.2 and new §801.11, relating to General Provisions.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules are the definitions for the rules in Chapter 801 and pertain to the general operations for the Texas State Board of Examiners of Marriage and Family Therapists; the rules also incorporate changes necessary to implement H.B. 1501.

Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose these rules.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rules are in effect, the Executive Council esti-

mates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

**Statutory Authority.** The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

#### §801.2. Definitions.

The following words and terms when used in this chapter, have the following meanings unless the context indicates otherwise.

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.

{(3) Administrative law judge (ALJ)--An individual who presides at an administrative hearing held under Texas Government Code, Chapter 2001 (relating to Administrative Procedure), as defined in Texas Government Code, Chapter 2003 (relating to State Office of Administrative Hearings).}

{(4) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.}

(3) [(5)] Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(4) [(6)] Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council [board] or unlicensed.

(5) Council--The Texas Behavioral Health Executive Council.

(6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.

(7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885. [Completed application--The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria in §801.73 of this title (relating to Required Application Materials).]

{(8) Contested case--A proceeding in accordance with the APA and this chapter, including rule enforcement and licensing in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.}

{(9) Disciplinary action--A sanction imposed by board order, such as denial, reprimand, probated suspension, suspension, or revocation of a license or administrative penalty. A disciplinary action is posted on the board's website and reported to the National Practitioner Data Bank.}

(8) [(10)] Endorsement--The process whereby the council [board] reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council [board] may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(9) Executive director--the executive director for the Texas Behavioral Health Executive Council.

(10) [(11)] Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

{(12) Formal hearing--A hearing or proceeding in accordance with this chapter to address the issues of a contested case.}

(11) [(13)] Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

{(14) HHSC--The Health and Human Services Commission.}

(12) [(15)] Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

{(16) Informal settlement conference--An informal disposition of a contested case held to determine whether the disputed matters can be resolved without further proceedings.}

{(17) Investigator--A professional complaint investigator employed by the HHSC.}

(13) [(18)] Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council [board] rules, and other state laws and rules relating to the practice of marriage and family therapy.

(14) [(19)] License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(15) [(20)] Licensed marriage and family therapist (LMFT)--A qualified individual licensed by the council [board] to provide marriage and family therapy for compensation.

(16) [(21)] Licensed marriage and family therapist associate (LMFT Associate)--A qualified individual licensed by the council [board] to provide marriage and family therapy for compensation under the supervision of a council-approved [board-approved] supervisor. The appropriate council-approved [board-approved] terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not council-approved [board-approved] and may not be used.

(17) [(22)] Licensee--Any person licensed by the council [board].

(18) [(23)] Licensure examination--The national licensure examination administered by the Association of Marital and Family

Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(19) [(24)] Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(20) [(25)] Month--A calendar month.

[(26) Open Meetings Act--Texas Government Code Chapter 551.]

[(27) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the administrative law judge (ALJ) as having an interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.]

(21) [(28)] Person--An individual, corporation, partnership, or other legal entity.

[(29) Pleading--Any written allegation filed by a party concerning its claim or position.]

[(30) Public Information Act--Texas Government Code Chapter 552.]

(22) [(31)] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

[(32) Respondent--A person alleged to have violated the Act or board rules.]

(23) [(33)] Supervision--

(A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(B) Supervision, Council-ordered [~~Board-ordered~~]-For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council [~~Board~~] Order, defined by the Order and the Council-Ordered [~~Board-Ordered~~] Supervision Plan, and must be conducted as specified in the Council [~~Board~~] Order and Supervision Plan (generally in face-to-face, one-on-one sessions).

(24) [(34)] Supervision hour--50 minutes.

(25) [(35)] Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate council-approved [~~board-approved~~] terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.

(26) [(36)] Technology-assisted services--Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.

(27) [(37)] Therapist--A person who holds a license issued by the council [~~board~~].

(28) [(38)] Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions.

#### §801.11. The Board.

(a) Membership. The board is composed of nine members appointed by the governor. Four members must be selected from the general public. Five members must be eligible for licensure under the Act, at least one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice or education of marriage and family therapy for at least five years, or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) Terms. Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd-numbered year.

(c) Vacancies. In the event of a vacancy, the governor will appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

(d) Elections. At the meeting held nearest to August 31 of each year, the board will elect a vice-chair by a majority vote of the members present.

(e) Officers.

(1) Chair. The chair is appointed by the governor and serves at the will of the governor.

(A) The chair presides at all meetings he or she attends and performs all duties prescribed by law and board rules.

(B) The chair is authorized by the board to make minor procedural decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board. The executive director or the executive director's designee will keep a record of the minor procedural decisions and include them in a report to the board.

(2) Vice-chair.

(A) The vice-chair performs the duties of the chair in the absence or disability of the chair.

(B) In the event of a vacancy, the vice-chair serves as chair until the governor appoints or designates a new chair.

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees must consist of no more than four members and must make reports to the board at regular meetings.

(g) Compensation. No board member may receive compensation for serving on the board. Each member is entitled to reimburse-

ment of travel expenses for each day the member performs board functions.

(h) Meetings.

(1) Agendas.

(A) The executive director or the executive director's designee must prepare and submit to each board member an agenda which includes items required by law, items requested by members, and other matters of board business approved by the chair.

(B) The official agenda of a board meeting must be filed with the secretary of state as required by Texas Government Code, Chapter 551 (relating to Open Meetings).

(2) Frequency of meetings. The board must meet at least biannually and may meet at other times as the chair deems necessary. All meetings must be conducted in accordance with Texas Government Code, Chapter 551 (relating to Open Meetings).

(3) Attendance. It is grounds for removal from the board if a member is absent from more than half of the regularly scheduled board meetings the member is eligible to attend during the calendar year without an excuse approved by majority vote of the board. The chair must notify the governor a potential ground for removal exists. The attendance records of the members must be made available to the governor of the State of Texas and the Texas Sunset Advisory Commission.

(4) Transaction of official business. The board may transact official business only when it is a legally constituted meeting with a quorum present. Five members of the board constitute a quorum.

(i) The board is not bound in any way by any statement or action on the part of any board member, committee member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board. Board member or staff member opinions, except when a statement or action is in pursuance of the specific instructions of the board, about ethical dilemmas or practice issues should never be substituted for appropriate professional consultation or legal advice.

(j) Training. A person who is appointed to and qualifies for office as a board member may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program meeting the requirements established in Texas Occupations Code §502.059 (relating to Training Requirements) and Texas Government Code Chapter 551 (relating to Open Meetings).

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER B. THE BOARD

### 22 TAC §§801.11 - 801.19

The Texas Behavioral Health Executive Council proposes the repeal of §§801.11 - 801.19, relating to the Board. The proposed

repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications

necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.11. *The Board.*

§801.12. *Petition for the Adoption of a Rule.*

§801.13. *Executive Director and HHSC.*

§801.14. *Official Records.*

§801.15. *Impartiality and Nondiscrimination.*

§801.16. *Policy on Disability Accommodations.*

§801.17. *License Certificate.*

§801.18. *Fees.*

§801.19. *Request for Criminal History Evaluation Letter.*

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706



## SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

### 22 TAC §§801.41 - 801.58

The Texas Behavioral Health Executive Council proposes the repeal of §§801.41 - 801.58, relating to guidelines for Professional Therapeutic Services and Code of Ethics. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507



of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

- §801.41. *Purpose.*
- §801.42. *Professional Therapeutic Services.*
- §801.43. *Professional Representation.*
- §801.44. *Relationships with Clients.*
- §801.45. *Sexual Misconduct.*
- §801.46. *Testing.*
- §801.47. *Drug and Alcohol Use.*
- §801.48. *Record Keeping, Confidentiality, Release of Records, and Required Reporting.*
- §801.49. *Licensees and the Board.*
- §801.50. *Corporation and Business Names.*
- §801.51. *Consumer Complaint Information.*
- §801.52. *Display of License Certificate.*
- §801.53. *Advertising and Announcements.*
- §801.54. *Research and Publications.*
- §801.55. *Parenting Coordination.*
- §801.56. *Parenting Facilitation.*
- §801.57. *Child Custody Evaluations.*
- §801.58. *Technology-Assisted 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.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706



## SUBCHAPTER B. RULES OF PRACTICE

### 22 TAC §§801.41 - 801.48, 801.50, 801.53 - 801.58

The Texas Behavioral Health Executive Council proposes new §§801.41 - 801.48, 801.50, and 801.53 - 801.58, relating to Rules of Practice.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the scope of practice, standards of care, and ethical practice for marriage and family therapists; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose these rules.

Proposed §801.58 pertains to technology-assisted services; and the proposed version of this rule is essentially the same or very similar to the rule that currently exists except the required amount of continuing education hours prior to initiating technology assisted services has been reduced from fifteen to eight. According to the Executive Director for the Texas State Board of Examiners of Marriage and Family Therapists, Sarah Faszholz, before proposing and adopting rules regarding technology-assisted services in 2017, the Board gathered national research and consulted with the Association for Marriage and Family Regulatory Boards (AMFTRB). The AMFTRB had issued teletherapy guidelines which recommend required training and the Board found that many states follow these guidelines. The research suggests that there are specific issues that must be addressed for safe online practice and that practicing online is not the same as traditional face-to-face practice. When AMFTRB surveyed all Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited programs, they found that the vast majority of programs do not require or offer training in technology-assisted services.

The Board also conducted research of regulatory standards, across other states' marriage and family therapy boards, other mental health boards and other disciplines/professions to determine minimum standards in teletherapy and telehealth to promote public safety. The Board also researched guidelines set forth by the Telebehavioral Health Institute, the American Telemedicine Association, National Board of Certified Counselors Distance Counselor Credential, and AMFTRB Teletherapy Guidelines. The number of hours required in the current rule was based on several certification programs and the minimum number of hours determined by those organizations, including AMFTRB and the National Board for Certified Counselors, for safe practice. After providing fifteen hours of training, under existing rule, continuing education providers reported to the Board that adequate training could be provided in eight hours. Eight hours would also more readily allow a licensee to complete required training over a weekend; therefore the proposed rule accommodates this recommendation.

The Board also received comments in favor of this rule. For example, the Texas Counseling Association (TCA) submitted the following public comment regarding §801.58, in general, stating that they honored and respected the thorough research and discussion that the Board conducted during the process of developing the rules regarding technology-assisted services. The Board diligently reviewed rules not only from other licensing boards, but also investigated how other fields are managing the use of technology, and the Board created language that is comprehensive and that clearly delineates minimum standards of practice. Specific to §801.58(d), which requires training before a licensee may provide technology-assisted services as well as continuing education during subsequent renewal periods, TCA appreciated the Board's desire to ensure that clinicians providing TAS have received adequate training to do so, and agreed with the requirements set forth in this section.

Subsequent to the adoption of §801.58, the Board has resolved several complaints, citing violation of one or more provisions within §801.58 and requiring continuing education on the general topic of technology-assisted services as well as the specific requirements of Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 and The Health Information Technology for Economic and Clinical Health (HITECH) Act, 42 U.S.C. Chapter 156, Subchapter III.

Ms. Faszholz, on behalf of the Board, has determined that proposed §801.58 protects the public by ensuring licensees have obtained an adequate level of training prior to initiating technology-assisted services and that licensee's maintain such training during each renewal period. Furthermore, the Board conducted research and was able to find in person as well as online education at low or no cost to licensees, which could satisfy the requirements of the current and proposed §801.58. Therefore, the Board estimates this rule currently has no adverse economic impact, and estimates the proposed §801.58 will also have no adverse economic impact.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

**Statutory Authority.** The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt

rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.41. Purpose of Rules of Practice.

The purpose of this subchapter is to provide guidelines regarding the provision of professional therapeutic services and to establish standards of professional and ethical conduct required of a licensee.

§801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by an LMFT or MFT Associate.

(1) Marriage and couples therapy using systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner.

(2) Sex therapy using systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders, except treatment for sex offenses. Sex offender treatment as defined by Texas Occupations Code, Chapter 110, and Chapter 810 of this title (relating to Council on Sex Offender Treatment), is not included under Sex Therapy. An individual seeking treatment for a sexual offense must be referred for services to those licensed by the Council on Sex Offender Treatment.

(3) Family therapy using systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member.

(4) Child therapy using systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child.

(5) Play therapy using systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems.

(6) Individual psychotherapy using systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual.

(7) Divorce therapy using systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners.

(8) Mediation using systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. A court appointed mediation requires a specialized training period.

(9) Group therapy using systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span.

(10) Chemical dependency therapy using systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client.

(11) Rehabilitation therapy using systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society.

(12) Referral services using systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family.

(13) Diagnostic assessment using the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their

therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary.

(14) Psychotherapy using systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness.

(15) Hypnotherapy using systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions.

(16) Biofeedback using systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education.

(17) Assessment and appraisal using systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems.

(18) Consultation using systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

(19) Activities under the Texas Family Code, Chapter 153, Subchapter K, concerning Parenting Plan, Parenting Coordinator, and Parenting Facilitator.

(20) Parent education and parent training including advice, counseling, or instructions to parents or children.

(21) Life coaching and any related techniques or modalities.

(22) Any other related services provided by a licensee.

#### §801.43. Professional Representation.

(a) A licensee is subject to and bound by provisions of the Act, the Council Act, and council rules.

(b) A licensee must submit written report to the council of an alleged misrepresentation or violation of the Act, the Council Act, or council rules.

(c) When providing professional therapeutic services as defined in §801.42 of this title (relating to Professional Therapeutic Services), a licensee must indicate his or her licensure status as an LMFT or LMFT Associate, including any probationary status or other restrictions placed on the licensee by the council.

(d) A licensee may not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including:

- (1) the effectiveness of services;
- (2) the licensee's qualifications, capabilities, background, training, education, experience, professional affiliations, fees, products, or publications; or
- (3) the practice of marriage and family therapy.

(e) A licensee may not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

(f) A licensee may not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.

(g) A licensee must make reasonable efforts to prevent others whom the licensee does not control from making misrepresentations, exaggerated, false, deceptive, or fraudulent claims or statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation, exaggerated, false, deceptive, or fraudulent claim or statement made by another, the licensee must take immediate and reasonable action to correct the misrepresentation, claim or statement.

#### §801.44. Relationships with Clients.

(a) A licensee must provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee must make known in writing to a prospective client the important aspects of the professional relationship, including the licensee's status as an LMFT or LMFT Associate, any probationary status or other restrictions placed on the licensee by the council, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee must obtain an appropriate consent for treatment before providing professional services. A licensee must make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Before the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee must maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian before providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.

(d) A licensee must make known in writing to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration may be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in Texas Health and Safety Code, §164.006 (relating to Soliciting and Contracting with Certain Referral Sources). Compliance with Texas Health and Safety Code, Chapter 164 (relating to Treatment Facilities Marketing and Admission Practices) is not considered a violation of state law regarding illegal remuneration.

(f) A licensee may not exploit the licensee's position of trust with a client or former client.

(g) A licensee may not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee may not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee must set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee must take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee must make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity begun by either the licensee, the client, or former client for the purposes of establishing a social, business, or other relationship not related to therapy. A licensee must ensure the welfare of the client or former client if a non-therapeutic relationship arises.

(m) A licensee may not bill clients or third parties for services not actually rendered or as agreed to in writing.

(n) A licensee must end a professional relationship when it is reasonably clear the client is not benefiting from it. Upon ending a professional relationship, if the client still requires mental health services, the licensee must make reasonable efforts to provide a written referral to clients for appropriate services and to facilitate the transfer to appropriate care.

(o) A licensee who engages in technology-assisted services must provide the client with the licensee's license number and information on how to contact the council by telephone, electronic communication, or mail. The licensee must comply with all other provisions of this chapter.

(p) A licensee may not offer services that are beyond the licensee's professional competency, and the services provided must be within accepted professional standards of practice and appropriate to the needs of the client.

(q) A licensee must base all services on an assessment, evaluation, or diagnosis of the client.

(r) A licensee must evaluate a client's progress on a continuing basis to guide service delivery and must make use of supervision and consultation as indicated by the client's needs.

(s) A licensee may not promote or encourage the illegal use of alcohol or drugs by a client.

(t) A licensee may not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee must take immediate and reasonable action to inform the other mental health services provider.

(u) A licensee may not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee must report to the council knowledge of any unlicensed practice.

(v) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

(w) A licensee may not provide services while impaired by physical health, mental health, medical condition, or by medication, drugs, or alcohol.

§801.45. Sexual Misconduct.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Mental health services--The assessment, diagnosis, treatment, or therapy in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) Sexual contact--

(A) deviate sexual intercourse as defined by Texas Penal Code, §21.01;

(B) sexual contact as defined by Texas Penal Code, §21.01;

(C) sexual intercourse as defined by Texas Penal Code, §21.01;

(D) requests by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(3) Sexual exploitation--A pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice.

(4) Therapeutic deception--A representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's therapy.

(b) A licensee may not engage in sexual contact with a person who is:

(1) a client or a former client;

(2) a supervisee, an LMFT Associate, or an intern for whom the licensee has administrative or clinical responsibility;

(3) a student in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

(4) a clinical supervisor or supervisee of the licensee.

(c) A licensee may not provide therapeutic services to a person with whom the licensee has had a sexual relationship.

(d) A licensee may not practice therapeutic deception or sexual exploitation.

(e) It is not a defense under subsections (b) - (d) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the person;

(2) outside the therapy, treatment or supervision sessions, classes, or work hours of the person; or

(3) off the premises regularly used by the licensee for the therapy, treatment or supervision sessions, classes, or work hours of the person.

(f) The following, when done in the context of professional services, is considered sexual exploitation.

(1) Sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature and:

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context.

(2) Any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual.

(3) Inappropriate sexual comments about or to a person, including making sexual comments about a person's body.

(4) Making sexually demeaning comments to or about an individual's sexual orientation.

(5) Making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in therapy or treatment.

(6) Requesting details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(7) Initiating conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(8) Kissing or fondling.

(9) Making a request for non-professional social contact.

(10) Any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature.

(11) Any intentional exposure of genitals, anus, or breasts.

(12) Encouraging a client, student, supervisee, intern, LMFT Associate, or former client to masturbate in the presence of the licensee.

(13) Masturbation by the licensee when a client, student, supervisee, intern, LMFT Associate, or former client is present.

(g) Examples of sexual contact includes those activities and behaviors described in Texas Penal Code, §21.01.

§801.46. Testing.

(a) A licensee must make known to clients the purposes and explicit use of any testing done as part of a professional relationship.

(b) A licensee may not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A licensee may not administer and interpret any test without the appropriate training and experience to administer and interpret the test.

(d) A licensee must observe the necessary precautions to maintain the security of any test administered by the licensee or under the licensee's supervision.

§801.47. Drug and Alcohol Use.

A licensee may not use alcohol or drugs in a manner which adversely affects the licensee's ability to provide marriage and family therapy services.

§801.48. Record Keeping, Confidentiality, Release of Records, and Required Reporting.

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

(b) A licensee may not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), or other state or federal statutes or rules.

(c) A licensee must comply with Texas Health and Safety Code, Chapters 181 (relating to Medical Records Privacy) and 611 (relating to Mental Health Records), and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice, concerning access to and release of mental health records and confidential information.

(d) A licensee must report or release information as required by the following statutes:

(1) Texas Family Code, Chapter 261 (relating to Investigation of Report of Child Abuse or Neglect);

(2) Texas Human Resources Code, Chapter 48 (relating to Investigations and Protective Services for Elderly Persons and Persons with Disabilities);

(3) Texas Health and Safety Code, Chapter 161, Subchapter L (relating to Abuse, Neglect, and Unprofessional or Unethical Conduct in Healthcare Facilities); and

(4) Texas Civil Practice and Remedies Code, §81.006 (relating to Duty to Report Sexual Exploitation by a Mental Health Services Provider).

(A) If a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider (during therapy or any other course of treatment), the licensee must report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:

(i) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;

(ii) the council if the misconduct involves a licensee;

and  
(iii) any other state licensing agency which licenses the mental health services provider.

(B) Before making a report under this subsection, the reporter must inform the alleged victim of the reporter's duty to report and must determine if the alleged victim wants to remain anonymous.

(C) A report under this subsection is required to contain only the information needed to:

(i) identify the reporter;

(ii) identify the alleged victim, unless the alleged victim has requested anonymity;

(iii) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(iv) provide the name of the alleged perpetrator.

(e) A licensee must keep accurate records of therapeutic services, including dates of services, types of services, progress or case notes and billing information for a minimum of seven years after termination of services or five years after a client reaches the age of majority, whichever is greater.

(f) Records created by a licensee during the scope of the licensee's employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (e) of this section.

(g) A licensee must retain and dispose of client records in such a way that confidentiality is maintained.

(h) In independent practice, the licensee must establish a plan for the custody and control of the licensee's client mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services.

#### §801.50. Corporation and Business Names.

When an assumed name is used in any practice of therapy, the name of the licensee must be listed in conjunction with the assumed name. An assumed name used by a licensee may not be false, deceptive, or misleading.

#### §801.53. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement of services may not contain information which is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable. Advertising includes any announcement of services, letterhead, business cards, commercial products, and billing statements. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at a foreign university that has been determined to be equivalent to a degree from an accredited institution or program by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) The council imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a licensee must clearly state his or her license status by the use of a title such as "Licensed Marriage and Family Therapist," "LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S," or "LMFT Supervisor."

(e) A licensee may not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee.

(f) An LMFT or LMFT Associate holding a provisional license must indicate the provisional status on all advertisements, billing, and announcements of treatment by the use of the term "Provisional Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist Associate," as appropriate.

(g) If a licensee becomes aware of a misuse of licensee's license certificate or misrepresentation of licensee's services or the results of licensee's services, the licensee must take reasonable steps to correct or minimize the misuse or misrepresentation.

#### §801.54. Research and Publications.

(a) In research with a human subject, a licensee is responsible for the welfare of the human subject throughout a project and must take reasonable precautions so the human subject suffers no injurious emotional, physical, or social effect.

(b) A licensee must disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the human subject client.

(c) When conducting and reporting research, a licensee must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the licensee's research or publication.

#### §801.55. Parenting Coordination.

(a) In accordance with the Texas Family Code, §153.601(3), "parenting coordinator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described in the Texas Family Code, §153.606, in a suit affecting the parent-child relationship; and

(2) who:



(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through confidential procedures; and

(B) is not appointed under another statute or a rule of civil procedure.

(b) A licensee who serves as a parenting coordinator is not acting under the authority of a license issued by the council, and is not engaged in the practice of marriage and family therapy. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the council, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parenting coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Texas Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Texas Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee may not provide marriage and family therapy services to any person while simultaneously providing parenting coordination services. The foregoing rule does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§801.56. Parenting Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, Regular Session, 2009, and Texas Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with the Texas Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by the Texas Family Code, §153.6061, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators must comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees must also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Texas Family Code, Chapter 153, or this section.

(d) In accordance with the Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator may not provide other marriage and family therapy services to any person while simultaneously providing parenting facilitation services. The foregoing rule does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with the Texas Family Code, §153.6101(b)(1), an LMFT Associate may not serve as a parenting facilitator.

(f) A licensee serving as a parenting facilitator uses child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in the Texas Family Code, Chapter 153.

(g) A licensee serving as a parenting facilitator must assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(h) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function. The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function. A parenting facilitator must review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function. A parenting facilitator must educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function. A parenting facilitator must work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(i) A licensee serving as a parenting facilitator must be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur may not be stated or implied.

(j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator must tailor the techniques used to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parenting facilitator must be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(l) A licensee serving as a parenting facilitator may not provide legal advice.

(m) A licensee serving as a parenting facilitator must serve by written agreement of the parties and/or formal order of the court.

(n) A licensee serving as a parenting facilitator may not begin to provide services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(o) A licensee serving as a parenting facilitator must maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and

includes a commitment to assist all parties, as opposed to any one individual.

(p) A licensee serving as a parenting facilitator:

(1) must end or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) may not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) may not coerce or improperly influence any party to make a decision;

(4) may not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) may not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. A licensee may not give or receive a commission, rebate, or similar remuneration for parenting facilitation or other professional referrals.

(r) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(s) A licensee serving as a parenting facilitator must communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(t) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individual who provides services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(u) A licensee serving as a parenting facilitator must, before the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(v) Information obtained during the parenting facilitation process may not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the council.

(w) In the initial session with each party, a licensee serving as a parenting facilitator must review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(x) A licensee serving as a parenting facilitator:

(1) must comply with all mandatory reporting requirements, including but not limited to Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) must report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) must maintain records necessary to support charges for services and expenses, and must make a detailed accounting of those charges to the parties and their counsel, if requested to do so;

(4) must maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) must maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(y) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §153.6083(c) of the Texas Family Code (concerning Communications and Recordkeeping of Parenting Facilitator) or as otherwise directed by the court.

(z) Records of a licensee serving as a parenting facilitator must be released on the request of either parent, as directed by the court, or as directed by the council.

(aa) Charges for parenting facilitation services must be based upon the actual time expended by the parenting facilitator, or as directed by the written agreement of the parties, and/or formal order of the court.

(bb) All fees and costs must be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(dd) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(ee) A licensee serving as a parenting facilitator:

(1) must complete minimum training as required by the Texas Family Code, §153.6101, as determined by the appointing court;

(2) must have extensive practical experience with high conflict or litigating parents;

(3) must complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and

(4) must regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.

(ff) A licensee serving as a parenting facilitator must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(gg) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (cc) of this section, is based on functional skills taught during the training rather than the use of specific titles or names.

§801.57. Child Custody Evaluations.

(a) Licensees must comply with all applicable statutes and rules, including but not limited to Texas Family Code, Chapter 107, Subchapters D, E, and F (relating to Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions).

(b) When a licensee who has conducted a court-ordered child custody evaluation or adoption evaluation receives any complaint relating to the outcome of the evaluation, the licensee must report the complaint to the court that ordered the evaluation. See council rules, found in §884.3 of this title (relating to Special Requirements for Complaints Alleging Violations Related to Court Ordered Evaluations).

(c) Disclosure of confidential information in violation of Texas Family Code, §107.111 (relating to Child Custody Evaluator Access to Investigative Records of Department of Family and Protective Services; Offense) or §107.163 (Adoption Evaluator Access to Investigative Records of Department of Family and Protective Services; Offense) is grounds for disciplinary action, up to and including license revocation.

(d) A licensee may not provide any other type of service, neither sequentially nor simultaneously in the same case that he or she provides a child custody evaluation, unless required by court order.

(e) A licensee may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child in accordance with Texas Family Code, Chapter 107, Subchapter D.

(f) Before beginning child custody evaluations or adoption evaluations, a licensee must inform the parties in writing of:

(1) the limitations on confidentiality in the evaluation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation, and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(g) An LMFT Associate may not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services or otherwise allowed by law.

§801.58. Technology-Assisted Services.

(a) Licensees who provide marriage and family therapy to clients or supervision to supervisees outside the State of Texas must comply with the laws and rules of Texas and of the out-of-state authority which govern the practice of marriage and family therapy.

(b) Licensees who provide treatment, consultation, and supervision using technology-assisted services must meet the same standards of appropriate practice as licensees who practice in traditional (i.e., in-person) settings.

(c) In accordance with Texas Occupations Code, §502.251 (relating to License Required), a person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Texas Occupations Code, §502.004 (relating to Application of Chapter)

(d) Before providing technology-assisted services, a licensee must receive appropriate education, training, or supervised experience in using relevant technology. A therapist who uses technology-assisted services must maintain documentation of academic preparation and supervision in the use of technology-assisted services as part of the therapist's academic program or the substantial equivalent provided through at least eight hours of continuing education and 2 hours every subsequent renewal period.

(e) A licensee may not render therapy using technology-assisted services without complying with the following at the onset of each session:

(1) fully verifying the location and identity of the client, to the most reasonable extent possible; and

(2) disclosing the identity of the licensee.

(f) Before providing technology-assisted services, a licensee must determine whether a client is a minor. Upon determining that a client is a minor, and before providing technology-assisted services, a licensee must obtain required consent from a parent or guardian and must verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

(g) The licensee must determine if technology-assisted service is an appropriate delivery of treatment or supervision, considering the professional, intellectual, or emotional needs of the client or supervisee.

(h) Informed consent must include, at a minimum, information that defines electronic service delivery as practiced by the licensee and the potential risks and ethical considerations. The licensee must obtain and maintain written or electronic evidence documenting appropriate client informed consent for the use of technology-assisted services. The licensee must ensure that the informed consent complies with other informed consent requirements in this chapter and must include the following:

(1) identification of the client, the therapist, and the therapist's credentials;

(2) list of services provided by the licensee using technology-assisted services;

(3) client agreement that the therapist determines on an on-going basis whether the condition being assessed or treated is appropriate for technology-assisted services;

(4) details on security measures taken with the use of technology-assisted services, as well as potential risks to privacy notwithstanding such measures;

(5) information regarding secure protocols and back-up plans in case of technical failure;

(6) the licensee's credentials or training to engage in technology-assisted services, physical location of practice, and contact information;

(7) risks and benefits of engaging in the use of technology;

(8) emergency procedures to follow when the therapist is not available;

(9) information collected and any passive tracking mechanisms used;

(10) third-party websites or services used by the licensee to facilitate technology-assisted services; and

(11) an explanation of how records are maintained electronically, including encryption type and record security, and the archival storage period for transaction records.

(i) Therapists who use technology-assisted services must meet or exceed applicable federal and state legal requirements of health information privacy, including compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191; The Health Information Technology for Economic and Clinical Health (HITECH) Act, 42 U.S.C. Chapter 156, Subchapter III; Texas Health and Safety Code, Chapter 181 (relating to Medical Records Privacy); and state privacy, confidentiality, and security rules.

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 June 26, 2020.

TRD-202002553

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER C. APPLICATIONS AND LICENSING

**22 TAC §§801.71, 801.74 - 801.76, 801.112 - 801.115, 801.142, 801.143, 801.174, 801.202 - 801.204, 801.263, 801.264, 801.266**

The Texas Behavioral Health Executive Council proposes new §§801.71, 801.74 - 801.76, 801.112 - 801.115, 801.142, 801.143, 801.174, 801.202 - 801.204, 801.263, 801.264, and 801.266, relating to Applications and Licensing.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to the qualifications necessary to obtain a license and continuing education requirements for marriage and family therapists; and incorporate changes necessary

to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rules are in effect, the Executive Council esti-

mates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

**Statutory Authority.** The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.71. Purpose of Applications and Licensing.

The purpose of this subchapter is to set out the application procedures for examination and licensure as an LMFT and LMFT Associate.

§801.74. Application to Take Licensure Examination.

An applicant must submit:

(1) all requirements in council rules, 22 Texas Administrative Code, §882.1 and §882.2 (concerning Application Process and General Application File Requirements);

(2) in lieu of an official transcript as required in council rules, a letter from a college or university official stating the applicant is in good academic standing and has completed or is enrolled in a graduate internship in marriage and family therapy or an equivalent internship may be submitted to approve the applicant to sit for licensure examination, but the applicant must still submit an official transcript before the license may be issued;

(3) a copy of government-issued picture identification (i.e., driver's license, passport); and

(4) an Examination Security Information Acknowledgement Form.

§801.75. Application for Licensed Marriage and Family Therapist Associate (LMFT Associate).

(a) **Qualifications.** An applicant for LMFT Associate must meet the qualifications required by §502.252(b) of the Act.

(b) **Application Requirements.** An applicant must submit:

(1) all requirements in council rules, 22 Texas Administrative Code, §882.1 and §882.2 (concerning Application Process and General Application File Requirements);

(2) Supervisory Agreement Form; and

(3) proof of achieving a passing score on a licensure examination.

(c) **Academic Requirements.** An applicant for LMFT Associate must meet the education requirements as prescribed in §801.112 of this title (relating to General Academic Requirements). Staff may require an applicant to submit a council-approved educational equivalency form.

§801.76. Application for Licensed Marriage and Family Therapist (LMFT).

(a) **Qualifications.** An applicant for LMFT must meet the qualifications required by §502.252(b) of the Act.

(b) Application Requirements. An applicant must submit:

(1) all requirements in council rules, 22 Texas Administrative Code, §§882.1 and 882.2 (relating to Application Process and General Application File Requirements);

(2) a licensed Supervised Experience Verification Form;  
and

(3) proof of achieving a passing score on a licensure examination.

(c) Academic Requirements. An applicant for LMFT must meet the education requirements as prescribed in §801.112 of this title (relating to General Academic Requirements). Staff may require an applicant to submit a council-approved educational equivalency form.

(d) Supervised Clinical Experience Requirements and Conditions. An applicant for LMFT must meet the supervised clinical experience requirements and conditions as mandated in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions).

§801.112. General Academic Requirements.

(a) An applicant must submit an official transcript showing:

(1) a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(2) a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), Marriage, Couples, and Family Counseling (MCFC) specialization which meets the requirements of §801.114(b)(8) of this title (relating to Academic Course Content) and starts on or after January 1, 2017, (the earliest class reported on one of an applicant's official transcripts denotes the start of a program); or

(3) a master's or doctorate degree from a regionally accredited institution of higher education in marriage and family therapy or in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(b), (c), and (d) of this title (relating to Academic Requirements) with the required minimum course content as described in §801.114 of this title.

(b) An applicant with foreign degree or coursework must comply with council rules, 22 Texas Administrative Code §882.11 (relating to Applicants with Foreign Degrees).

(c) An applicant must submit a course description from an official school catalog or syllabus for any course listed on the transcript with a title not self-explanatory or apparently relevant to academic requirements.

(d) The council will not accept any undergraduate courses as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(e) The council will accept as meeting academic requirements only those courses shown on the applicant's transcript as:

(1) part of the applicant's program of studies and as completed with a passing grade or for credit; or

(2) taken outside the applicant's program of studies and completed with at least a "B" or "pass."

(f) The council will consider a quarter hour of academic credit as two-thirds of a semester hour.

§801.113. Academic Requirements.

(a) An applicant for the licensure examination must have completed or be enrolled in a council-approved marriage and family therapy graduate internship.

(b) An applicant for LMFT Associate or LMFT must have a master's or doctorate degree in marriage and family therapy or a master's or doctorate degree in a related mental health field with course work and training determined by the council to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the council with (the earliest class reported on one of an applicant's official transcripts denotes the start of a program):

(1) at least 45 semester hours for an applicant who started a program before August 1, 2017; or

(2) at least 60 semester hours for an applicant who started a program on or after August 1, 2017.

(c) A degree or course work in a related mental health field must have been a planned course of study designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems.

(d) Examples of degrees in a related mental health field may include counseling, psychology, social work, or family studies with an emphasis on Marriage and Family Therapy. Degrees in fields other than those listed may be reviewed for eligibility toward course equivalency in accordance with council rules, 22 Texas Administrative Code, §882.1 (relating to Application Process).

§801.114. Academic Course Content.

(a) An applicant who holds a graduate degree in a mental health-related field must have course work in each of the following areas:

(1) theoretical foundations of marriage and family therapy--three semester hours;

(2) assessment and treatment in marriage and family therapy--12 semester hours;

(3) human development, gender, multicultural issues and family studies--six semester hours;

(4) psychopathology--three semester hours;

(5) professional ethics--three semester hours;

(6) applied professional research--three semester hours;

and

(7) supervised clinical internship--12 months or nine semester hours.

(b) An applicant who begins a graduate degree program in marriage and family therapy or a mental health-related field on or after August 1, 2017, must complete course work and the minimum required semester hours in each of the following areas (the earliest class reported on one of an applicant's official transcripts denotes the start of a program):

(1) theoretical knowledge and foundations of marriage and family therapy--three semester hours--including the historical development, theoretical and empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy;

(2) assessment and treatment in marriage and family therapy--12 semester hours--including but is not limited to treatment ap-

proaches specifically designed for use with a wide range of diverse couples, families, and children, including sex therapy, same sex couples, young children, adolescents, interfaith couples, crisis intervention, and elderly;

(3) human development, gender, multicultural issues and family studies--six semester hours;

(4) psychopathology--three semester hours--including traditional psycho-diagnostic categories including knowledge and use of the Diagnostic and Statistical Manual of Mental Disorders;

(5) professional ethics--three semester hours--including professional identity of the marriage, couple, and family therapist, including professional socialization, scope of practice, professional organizations, licensure and certification; and ethical issues related to the profession of marriage, couple, and family therapy as well as the practice of individual therapy;

(6) applied professional research--three semester hours--including research evidence related to MFT, becoming an informed consumer of research, and research and evaluation methods;

(7) treatment of addictions and management of crisis situations--no minimum requirements;

(8) supervised clinical internship--12 months or nine semester hours. During the supervised clinical internship, the applicant must have 300 hours of experience, of which:

(A) at least 150 hours must be direct client contact hours; and

(B) of the 150 direct client contact hours, at least 75 hours must be direct client contact with couples and families.

(c) The remaining courses needed to meet the 45 or 60 graduate semester hour requirement must be marriage and family therapy or related course work in areas directly supporting the development of an applicant's professional marriage and family, individual, or group therapy skills.

(d) Staff may issue an LMFT Associate license to an applicant who has a deficiency in pre-graduate internship months, semester hours, or clock hours required by subsection (a)(7) or (b)(8) of this section, but must require the applicant to complete the deficient months, semester hours, or clock hours in addition to the post-graduate, licensed supervised clinical experience requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions) before awarding an LMFT license to that applicant.

§801.115. Academic Requirements and Supervised Clinical Internship Equivalency for Applicants Currently Licensed as an LMFT in Another Jurisdiction.

An applicant currently licensed as a marriage and family therapist in another jurisdiction of the United States who does not meet the academic requirements in §801.114 of this title (relating to Academic Course Content) may be considered to have met the requirements according to the following:

(1) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, the academic requirements (including the internship) are considered met.

(2) If an applicant has been licensed as an LMFT in another United States jurisdiction for less than two consecutive years immediately preceding the date the application is received, staff may grant one month of credit for every two months of independent marriage and family therapy practice toward any deficit in the academic internship requirement.

§801.142. Supervised Clinical Experience Requirements and Conditions.

An applicant for LMFT must complete supervised clinical experience acceptable to the council.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy including at least 3,000 hours of supervised clinical practice, of which:

(A) at least 1,500 hours must be providing direct clinical services, with no more than 500 hours provided via technology-assisted services (as approved by the supervisor); and

(B) of the 1,500 hours of direct clinical services, at least 500 hours must be providing direct clinical services to couples or families.

(C) of the 3,000 hours of supervised clinical practice, at least 200 hours must be council-approved supervision as defined in §801.2 of this title (relating to Definitions), of which:

(i) at least 100 hours must be individual supervision; and

(ii) no more than 50 hours may be provided by telephonic services;

(iii) with unlimited hours by live video; and

(iv) while providing services, the LMFT Associate must participate in a minimum of one hour of supervision every week, except for good cause shown.

(D) The remaining hours may come from related experiences, including workshops, public relations, writing case notes, consulting with referral sources, etc.

(2) Staff may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title (relating to Academic Course Content) toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours, of which no more than 250 hours may be direct clinical services to couples or families, completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours, of which no more than 200 hours may be direct clinical services to couples or families, completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(C) No more than 100 excess graduate internship supervision hours may be counted toward the minimum requirement of at least 200 hours of council-approved supervision.

(3) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(4) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act, the Council Act, or council rules.

(5) Within 30 days of the initiation of supervision, an LMFT Associate must submit to the council a Supervisory Agreement Form for each council-approved supervisor.

(6) An LMFT Associate may have no more than two council-approved supervisors at a time, unless given prior approval by the council or its designee.

(7) Except as specified in paragraph (2) of this section, hours of supervision and supervised clinical experience accrued toward an out-of-state LMFT license may be accepted only by endorsement.

(A) The applicant must ensure supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the council.

(B) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, the supervised clinical experience requirements are considered met. If licensed for any other two-year period, the application will be reviewed to determine whether clinical experience requirements have been met in accordance with council rules, 22 Texas Administrative Code, §882.1 (relating to Application Process).

§801.143. Supervisor Requirements.

(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the following:

(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40-hour continuing education course in clinical supervision; or

(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of council approval of the Supervisory Agreement Form;

(3) a record of all locations at which the LMFT Associate will practice;

(4) a dated and signed record of each supervision conference with the LMFT Associate's total number of hours of supervised experience, direct client contact hours, and direct client contact hours with couples or families accumulated up to the date of the conference; and

(5) a copy of any written plan for remediation of the LMFT Associate.

(e) Within 30 days of the termination of supervision, a supervisor must submit written notification to the council.

(f) Both the LMFT Associate and the council-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may not supervise more than 12 persons at one time.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(g) Supervisor status expires with the LMFT license.

(h) To maintain council approval, a supervisor must successfully complete the following continuing education each renewal period:

(1) at least three hours of clinical supervision continuing education; and

(2) the jurisprudence exam.

(i) A supervisor who fails to meet all requirements for licensure renewal may not advertise or represent himself or herself as a supervisor in any manner.

(j) A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the council.

(k) A supervisor who becomes subject to a council disciplinary order is no longer an approved supervisor. The person must:

(1) inform each LMFT Associate of the council disciplinary order;

(2) refund all supervisory fees received after date the council disciplinary order was ratified to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(l) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(m) The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

§801.174. Licensure and Jurisprudence Examinations.

(a) The council will accept the national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(b) An applicant must apply to take the licensure examination per §801.74 of this title (relating to Application to Take Licensure Examination). The applicant must pay the examination fee to the appro-



priate party as dictated by the current examination contract or agreement.

(c) The council, or its designee, will determine the times and places for licensing examinations and give reasonable public notice.

(d) The council, or its designee, will notify the examinee of the results of the licensure examination in accordance with the current examination contract or agreement. If the council is notified of a potential delay of notification of exam results, the council will notify the examinee as soon as possible regarding the delay.

(e) An applicant who fails the national licensure examination must comply with council rules, 22 Texas Administrative Code, §882.6 (relating to Limitation on Number of Examination Attempts).

(f) All applicants must comply with council rules, 22 Texas Administrative Code, §882.5 (relating to Jurisprudence Examination Requirement).

§801.202. LMFT Associate License.

(a) The initial LMFT Associate license will be issued for a period of 24 months and may be renewed biennially for a period not to exceed a total of 72 months.

(b) An LMFT Associate who has held the LMFT Associate license for 72 months and submitted documentation to the council to satisfy all minimum requirements for LMFT licensure, except the 500 hour requirement set in §801.142(1)(B) of this title (relating to Supervised Clinical Experience Requirements and Conditions) and requiring at least 500 hours of direct clinical services to couples or families, may renew his or her LMFT Associate license only once more (not exceeding 96 months of licensure as an LMFT Associate).

(c) An LMFT Associate who has held the LMFT Associate license for 72 months (or 96 months if subsection (b) of this section applies) and has not met the minimum requirements for LMFT licensure, may not renew but must reapply for the LMFT Associate license, meeting all current application requirements and passing the national licensure examination no more than six months before the date the application is received.

§801.203. Provisional LMFT License.

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration was obtained, were substantially equivalent to the requirements set out in §801.76 of this title (relating to Application for Licensed Marriage and Family Therapist (LMFT));

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the council;

(3) is sponsored by a Texas LMFT with whom the provisional license holder may practice under this section;

(4) provides documentation, on council prescribed forms, of the experience requirements set out in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions) and §801.143 of this title (relating to Supervisor Requirements); and

(5) meets any other requirements set forth under the Act.

(b) Upon formal written request, the council may waive the requirement set out in subsection (a)(3) of this section, if the council determines that compliance with subsection (a)(3) of this section, would cause undue hardship to the applicant.

(c) The council will issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examinations required by §801.174 of this title (relating to Licensure and Jurisprudence Examinations);

(2) the provisional license holder provides official graduate transcripts meeting the requirements set forth in §801.112 through §801.115 of this title (relating to General Academic Requirements, Academic Requirements, Academic Course Content, and Academic Requirements and Supervised Clinical Internship Equivalency for Applicants Currently Licensed as an LMFT in Another Jurisdiction, respectively);

(3) the provisional license holder provides documentation, on council prescribed forms, of the experience requirements set out in §801.142 and §801.143 of this title (relating to Supervised Clinical Experience Requirements and Conditions and relating to Supervisor Requirements, respectively); and

(4) the provisional license holder meets any other requirements set forth under the Act.

(d) The council must complete the processing of a provisional license holder's application for an LMFT license within 180 days after the provisional license was issued. The council may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

§801.204. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) An applicant for licensure under this section must comply with council rules, 22 Texas Administrative Code, §882.60 (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

(b) An applicant's qualifications that either match or exceed Texas licensure requirements are considered substantially equivalent.

(c) Upon request, an applicant must provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant must provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) For an application for a license submitted by a verified military service member or military veteran, the applicant will receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act, the Council Act, or council rules.

§801.263. Requirements for Continuing Education.

(a) An LMFT must complete 30 clock hours of continuing education which is acceptable to the council each renewal period. Of the 30 clock hours required for LMFT license renewal, no more than 15 clock hours may be delivered through a learning format that does not accommodate real-time interaction, such as self-study correspondence course or pre-recorded webinar.

(b) An LMFT Associate must complete 15 clock hours of continuing education which is acceptable to the council each renewal period. Of the 15 clock hours required for LMFT Associate license renewal, no more than six clock hours may be delivered through a learning format that does not accommodate real-time interaction, such as self-study correspondence course or pre-recorded webinar.

(c) All licensees are required to complete six hours of ethics each renewal period.

§801.264. Types of Acceptable Continuing Education.

To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations, the education must be received from a continuing education provider that:

- (1) ensures the education provided is related to the practice of marriage and family therapy;
- (2) ensures the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented;
- (3) verifies attendance of participants and provides participants with a letter or certificate of attendance displaying the licensee's name, topic covered, date course was taken, and hours of credit earned;
- (4) maintains all continuing education records and documentation for at least three years; and
- (5) provides participants a mechanism for evaluation of each continuing education activity.

§801.266. Determination of Clock Hour Credits and Credit Hours Granted.

The council credits continuing education activities that meet the criteria §801.264 of this title (relating to Types of Acceptable Continuing Education) on a one-for-one basis with one credit hour for each clock hour spent in the continuing education activity, unless otherwise designated in the provisions below:

- (1) Completing the jurisprudence exam once per renewal period may count for one hour of the ethics requirement described in §801.263 (relating to Requirements for Continuing Education).
- (2) Hours spent providing clinical supervision of a marriage and family therapy intern or an LMFT Associate may count for no more than one-half of the continuing education required each renewal period.
- (3) A presenter of a continuing education activity may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the continuing education required each renewal period. The same seminar or topic may not be used more than once biennially.
- (4) An author of a book or peer reviewed article which enhances a marriage and family licensee's knowledge or skill may claim continuing education credit not to exceed one-half of the continuing education required each renewal period.

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§801.71 - 801.76

The Texas Behavioral Health Executive Council proposes the repeal of §§801.71 - 801.76, relating to Application Procedures. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council

may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.71. *Purpose of Application Procedures.*

§801.72. *General Application Procedures.*

§801.73. *Required Application Materials.*

§801.74. *Application to Take Licensure Examination.*

§801.75. *Application for Licensed Marriage and Family Therapist Associate (LMFT Associate).*

§801.76. *Application for Licensed Marriage and Family Therapist (LMFT).*

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706



## SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

### 22 TAC §§801.91 - 801.93

The Texas Behavioral Health Executive Council proposes the repeal of §§801.91 - 801.93, relating to Criteria for Determining Fitness of Applicants for Examination and Licensure. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

**Overview and Explanation of the Proposed Rule.** The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate

a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.91. *Purpose of Criteria for Determining Fitness of Applicants.*

§801.92. *Finding of Non-Fitness for Licensure.*

§801.93. *Finding of Non-Fitness for Licensure Subsequent to Issuance of License.*

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706



## SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

### 22 TAC §§801.111 - 801.115

The Texas Behavioral Health Executive Council proposes the repeal of §§801.111 - 801.115, relating to Academic Requirements for Examination and Licensure. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

**Overview and Explanation of the Proposed Rule.** The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a

result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.111. *Purpose of Academic Requirements.*

§801.112. *General Academic Requirements.*

§801.113. *Academic Requirements.*

§801.114. *Academic Course Content.*

§801.115. *Academic Requirements and Supervised Clinical Internship Equivalency for Applicants Currently Licensed as an LMFT in Another Jurisdiction.*

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§801.141 - 801.143

The Texas Behavioral Health Executive Council proposes the repeal of §§801.141 - 801.143, relating to Experience Requirements for Licensure. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council

may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.141. *Purpose of Experience Requirements.*

§801.142. *Supervised Clinical Experience Requirements and Conditions.*

§801.143. *Supervisor Requirements.*

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 June 26, 2020.

TRD-202002557

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER H. EXAMINATIONS

### 22 TAC §801.171, §801.174

The Texas Behavioral Health Executive Council proposes the repeal of §801.171 and §801.174, relating to Examinations. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

**Overview and Explanation of the Proposed Rule.** The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined

that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to

prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.171. *Purpose.*

§801.174. *Licensure and Jurisprudence Examinations.*

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 June 26, 2020.

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Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Marriage and Family Therapists  
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For further information, please call: (512) 305-7706



## SUBCHAPTER I. LICENSING

### 22 TAC §§801.201 - 801.205

The Texas Behavioral Health Executive Council proposes the repeal of §§801.201 - 801.205, relating to Licensing. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

**Overview and Explanation of the Proposed Rule.** The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically au-

thorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.201. *General Licensing.*

§801.202. *LMFT Associate License.*

§801.203. *Provisional LMFT License.*

§801.204. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

§801.205. *Emergency Limited Temporary License.*

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 June 26, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 307-7706



## SUBCHAPTER J. LICENSE RENEWAL, INACTIVE STATUS, AND SURRENDER OF LICENSE

### 22 TAC §§801.231 - 801.237

The Texas Behavioral Health Executive Council proposes the repeal of §§801.231 - 801.237, relating to License Renewal, Inactive Status, and Surrender of License. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council

to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.231. *Purpose.*

§801.232. *General License Renewal.*

§801.233. *Staggered Renewals.*

§801.234. *Licensure Renewal.*

§801.235. *Late Renewal.*

§801.236. *Inactive Status.*

§801.237. *Surrender of License.*

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 June 26, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706



## SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

### 22 TAC §§801.261 - 801.264, 801.266, 801.268

The Texas Behavioral Health Executive Council proposes the repeal of §§801.261 - 801.264, 801.266, and 801.268 relating to Continuing Education Requirements. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to

licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333

Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.261. *Purpose.*

§801.262. *Deadlines.*

§801.263. *Requirements for Continuing Education.*

§801.264. *Types of Acceptable Continuing Education.*

§801.266. *Determination of Clock Hour Credits and Credit Hours Granted.*

§801.268. *Reporting and Auditing of Continuing Education.*

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 June 26, 2020.

TRD-202002561

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706

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## SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

### 22 TAC §§801.291 - 801.304

The Texas Behavioral Health Executive Council proposes the repeal of rules §§801.291-801.304, relating to Complaints and Violations. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the

Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing educa-

tion requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

- §801.291. *General Complaints and Violations.*
- §801.292. *Criteria for Denial of a License.*
- §801.293. *Procedures for Imposing Disciplinary Action*
- §801.294. *Violations by an Unlicensed Person.*
- §801.295. *Power to Sue*
- §801.296. *Complaint Procedures.*
- §801.297. *Monitoring of Licensees.*
- §801.298. *Default Orders.*
- §801.299. *Administrative Penalties.*
- §801.300. *Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.*
- §801.301. *Relevant Factors.*
- §801.302. *Severity Level and Sanction Guide.*
- §801.303. *Other Actions.*
- §801.304. *Reciprocal Discipline.*

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §§801.302, 801.303, 801.305

The Texas Behavioral Health Executive Council proposes new §§801.302, 801.303, 801.305, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152

of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The proposed rules pertain to a schedule of sanctions for marriage and family therapists; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose these rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rules are necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from the applicable board for the profession into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation, they provide clarification regarding existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

**Statutory Authority.** The rules are proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose these rules.

Lastly, the Executive Council proposes these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.302. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in council rules, 22 Texas Administrative Code, §884.20 (relating to Disciplinary Guidelines and General Schedule of Sanctions).

(1) Level One--Revocation of license with a possible administrative penalty from \$500 to \$5,000. These violations evidence intentional or gross misconduct on the part of the licensee or cause or pose a high degree of harm to the public or may require severe punishment as a deterrent to the licensee, or other licensees.

(2) Level Two--Extended suspension of license with a possible administrative penalty from \$250 to \$2,500. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three--Moderate suspension of license with a possible administrative penalty of no more than \$250. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time that is less than a year.

(4) Level Four--Probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five--Reprimand. These violations involve inadvertent or relatively minor misconduct or rule violations not directly involving the health, safety and welfare of the public.

(6) An administrative penalty may be assessed for any violation, in lieu of, or in addition to, other disciplinary actions.

§801.303. Other Actions.

A complaint may be resolved by issuance of a warning letter or a conditional letter of agreement which does not involve a formal disciplinary action.

(1) A warning letter informs the licensee of the licensee's duties under the Act, the Council Act, or council rules and whether the council has a concern about the circumstances surrounding the complaint.

(2) A "Conditional Letter of Agreement" informs the licensee of the licensee's duties under the Act, the Council Act, or council rules, whether the conduct or omission complained of appears to violate such duties, and creating council-ordered conditions for the long-term resolution of the issues in the complaint. This "Conditional Letter of Agreement" specifies the immediate disposition of the complaint. The licensee is issued the "Conditional Letter of Agreement" by staff; a signature of agreement by the licensee is required. If the licensee fails to comply with all the council-ordered conditions in the specified time frame outlined in the "Conditional Letter of Agreement," staff will open a new complaint arising out of the non-compliance with a "Conditional Letter of Agreement" or the underlying conduct.

§801.305. Schedule of Sanctions.

The following standard sanctions shall apply to violations of Texas Occupations Code, Chapter 502 and 22 Texas Administrative Code, Part 35.

Figure: 22 TAC §801.305

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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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706



## SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

### 22 TAC §801.331, §801.332

The Texas Behavioral Health Executive Council proposes the repeal of §801.331 and §801.332, relating to Licensing of Persons with Criminal Backgrounds. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to

perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council



estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.331. *Purpose of Criteria for Licensing of Persons with Criminal Backgrounds.*

§801.332. *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.

Filed with the Office of the Secretary of State on June 26, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706

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## SUBCHAPTER N. INFORMAL SETTLEMENT CONFERENCES

### 22 TAC §801.351

The Texas Behavioral Health Executive Council proposes the repeal of §801.351, relating to Informal Settlement Conference. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a

result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make

all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code, the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.351. *Informal Settlement Conference.*

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 June 26, 2020.

TRD-202002566

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## SUBCHAPTER O. FORMAL HEARINGS

### 22 TAC §§801.361 - 801.364

The Texas Behavioral Health Executive Council proposes the repeal of §§801.361 - 801.364, relating to Formal Hearings. The proposed repeal corresponds with the proposal of new rules elsewhere in this edition of the *Texas Register*.

Overview and Explanation of the Proposed Rule. The proposed repeal of rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral

Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has proposed new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the corresponding proposed new rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amend-

ment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to [Open.Records@tsbep.texas.gov](mailto:Open.Records@tsbep.texas.gov).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this proposal.

§801.361. *Purpose.*

§801.362. *Proper Notice.*

§801.363. *Default.*

§801.364. *Action after Hearing.*

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 June 26, 2020.

TRD-202002567

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 305-7706



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

##### SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM

##### DIVISION 2. ADVISORY COMMITTEE

##### 25 TAC §98.121

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §98.121, concerning the Texas HIV Medication Advisory Committee.

##### BACKGROUND AND PURPOSE

The Texas HIV Medication Advisory Committee is mandated under Texas Health and Safety Code, Chapter 85, Subchapter K and advises the Executive Commissioner and DSHS in the development of procedures and guidelines for the Texas HIV Medication Program. The program helps provide medications for the treatment of HIV and its related complications for low-income Texans.

The purpose of the proposal is to avoid abolishment of the Texas HIV Medication Advisory Committee by August 1, 2020, as prescribed in the current rule. The proposed rule amendment is necessary to extend the date of the Texas HIV Medication Advisory Committee abolishment from August 1, 2020, to August 1, 2030.

The proposal is also being revised to comply with Texas Government Code, §2001.039, which requires that each state agency

review and consider for re-adoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Section 98.121 has been reviewed and DSHS has determined that reasons for adopting the section continue to exist because a rule on this subject is required by statute.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §98.121 changes the expiration date of the Texas HIV Medication Advisory Committee to reflect that the need for the committee has been established and that it continues until August 1, 2030.

##### FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the section will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

##### GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to DSHS;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

##### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

##### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

##### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; and the rule does not impose a cost on regulated persons.

##### PUBLIC BENEFIT AND COSTS

Ms. Imelda Garcia, Associate Commissioner, Laboratory and Infectious Disease Services Division, has determined that for each year of the first five years that the rule is in effect, the public benefit will be the continued professional advice provided by the Texas HIV Medication Advisory Committee to DSHS in relation to the administration of the Texas HIV Medication Program.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

#### REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

DSHS has determined that the 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

Written comments on the proposal may be submitted to Derek Johnson, Legislative Liaison, Department of State Health Services, P.O. Box 149347, Mail Code 7909, Austin, Texas 78714-9347; street address 1100 West 49th Street, Austin, Texas 78756 or by email to [hivstd@dshs.texas.gov](mailto:hivstd@dshs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule §98.121" in the subject line.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §85.003, which requires DSHS to act as lead agency and primary resource for AIDS and HIV policy; Texas Health and Safety Code, §85.016, which allows for the adoption of rules; Texas Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Texas Health and Safety Code, §85.272, which establishes the Texas HIV Medication Advisory Committee and its duties; and by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters within DSHS jurisdiction. Review of the rule implements Texas Government Code, §2001.039.

The amendment implements Texas Government Code, §531.0055 and Texas Health and Safety Code, Chapters 85 and 1001.

§98.121. *Texas HIV Medication Advisory Committee.*

(a) The committee. The Texas HIV Medication Advisory Committee is mandated under Texas Health and Safety Code Chapter 85, Subchapter K, and is governed under the terms of those statutory provisions and by this section. The purpose of the committee is to advise the executive commissioner and the Texas Department of State Health Services (department) in the development of procedures and guidelines for the Texas HIV Medication Program (program).

(b) Tasks. The committee shall:

- (1) review the aims and the goals of the program;
- (2) evaluate ongoing program efforts;
- (3) recommend both short-range and long-range goals and objectives for medication needs;
- (4) recommend medications for addition to or deletion from the program's formulary; and
- (5) carry out any other tasks given to the committee by the executive commissioner.

(c) Committee abolished. By August 1, 2030 [~~August 1, 2020~~], the executive commissioner will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(d) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person may be appointed to serve the unexpired portion of that term.

(e) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A quorum for the purpose of transacting official business is six members.

(2) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(f) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which they are assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

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 June 29, 2020.  
TRD-202002644



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 567. CERTIFICATE OF PUBLIC ADVANTAGE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§567.1 - 567.6, 567.21 - 567.26, 567.31 - 567.33, 567.41, and 567.51 - 567.54 in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 567.

##### BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 3301, 86th Legislature, Regular Session, 2019, which added Chapter 314A to the Texas Health and Safety Code (HSC). This chapter requires HHSC, as the agency designated by the Governor under HSC § 314A.004, to adopt rules for the administration and implementation of Chapter 314A. This chapter permits qualifying hospitals in certain low-population counties to apply for a Certificate of Public Advantage (COPA), which grants merging hospitals immunity from federal and state antitrust laws.

The proposed rules require hospitals eligible to apply for a COPA to pay a fee if applying for a COPA and, if granted a COPA, pay an annual supervision fee, report changes that could affect the COPA, submit an annual report, request approval from HHSC to change rates, and submit a corrective action plan if found to be out of compliance with any of 26 TAC Chapter 567.

Additionally, a merger could reduce competition, which could have an adverse impact on rural communities.

##### SECTION-BY-SECTION SUMMARY

Proposed new §567.1, relating to Purpose, describes the purpose of the rules in 26 TAC, Chapter 567.

Proposed new §567.2, relating to Definitions, defines the key terms and phrases used in the rules.

Proposed new §567.3, relating to Applicability, describes the criteria for hospitals to be eligible to apply for a COPA.

Proposed new §567.4, relating to Certificate of Public Advantage Required, notes that a merger agreement will not receive immunity under HSC Chapter 314A without a COPA.

Proposed new §567.5, relating to Compliance, describes the requirements for applying and operating under a COPA.

Proposed new §567.6, relating to Scope, describes the parameters and limitations of a COPA.

Proposed new §567.21, relating to Changes That Could Affect the Certificate of Public Advantage, requires applicants to notify HHSC of certain events concerning hospitals that are party to the agreement.

Proposed new §567.22, relating to Application, describes the COPA application process and requirements.

Proposed new §567.23, relating to Texas Health and Human Services Commission Review, notes HHSC's standard of review of the application.

Proposed new §567.24, relating to Attorney General Review, describes HHSC's duty to consult with the Attorney General on each COPA application.

Proposed new §567.25, relating to Fees, describes the COPA application fee and the annual supervision fee for each hospital operating under a COPA.

Proposed new §567.26, relating to Conditions for Issuing a Certificate of Public Advantage, describes the conditions under which HHSC will issue a COPA.

Proposed new §567.31, relating to Terms, notes HHSC's ability to require hospitals operating under a COPA to comply with additional terms or conditions, if necessary.

Proposed new §567.32, relating to Annual Report, describes the annual reporting requirements for each hospital operating under a COPA.

Proposed new §567.33, relating to Voluntary Termination, allows a hospital operating under a COPA to voluntarily terminate a COPA on 30 days' notice.

Proposed new §567.41, relating to Rate Reviews for Hospitals Operating Under a Certificate of Public Advantage, describes the review process for proposed rate changes for hospital services and requirements for HHSC's approval or denial of a proposed rate change.

Proposed new §567.51, relating to Supervision, describes the duty of HHSC to supervise each hospital operating under a COPA.

Proposed new §567.52, relating to Annual Review, describes HHSC's annual review process.

Proposed new §567.53, relating to Investigation; Consequences, describes HHSC's authority to investigate a hospital and the potential consequences of an investigation.

Proposed new §567.54, relating to Corrective Action Plan; describes HHSC's authority to require a corrective action plan and the timeframes associated with corrective action plans.

##### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to HHSC and an increase in revenue to state government as a result of enforcing and administering the rules as proposed.

HHSC will not use the fiscal impact summary that was based on projected agency needs identified in March 2019, because those needs were based on the introduced version of the bill and not the final version of the bill. HHSC originally intended to add full time employees to implement the provisions of HB 3301. HHSC has now determined that existing resources will be used to process applications and provide supervision under these proposed rules.

The proposed rules will increase state revenue. The revenue will not be remitted to HHSC and will instead be added to the state's General Revenue fund.

The application fee for a COPA is \$75,000.

The annual supervision fee is \$200,000 for each hospital operating under a COPA.

HHSC has identified 16 hospitals that are eligible to apply for a COPA, but HHSC cannot determine the number of hospitals that will apply for a COPA. As long as a hospital is eligible under the law, it has the right to apply. Thus, HHSC will not be able to estimate costs associated with the COPA rules.

As of the date of these proposed rules, HHSC has received two COPA applications.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will require an increase in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules; and
- (7) the proposed rules will increase the number of individuals subject to the rules.

HHSC has insufficient information to determine the proposed rules' effect on the state's economy. HHSC will request the legislature to appropriate the fees collected for COPA applications and annual supervision. In order to apply for a COPA, an applicant must pay a fee to HHSC, and HHSC will administer a fee for annual supervision of a COPA. The proposed rules only apply to a small number of qualifying stakeholders, based statutory requirements that the hospital be located in certain counties (those with a population of less than 100,000 and not adjacent to a county with a population of 250,000 or more; or with a population of more than 100,000 and less than 150,000 and not adjacent to a county with a population of 100,000 or more).

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be an adverse economic effect on small businesses or micro-businesses, or rural communities.

HHSC estimates that the number of hospitals subject to the proposed rules is 16. The 16 hospitals eligible for a COPA are in rural communities. HHSC does not have sufficient information at this time to determine the economic impact of the proposed rules on small businesses, micro-businesses, and rural communities.

Alternative methods were not considered because the content of the proposed rule is required by state statute, and there are no alternative methods of achieving the purpose of the proposed rule that are consistent with the health, safety, environmental, and economic welfare of the state.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules could affect a local economy, either positively by keeping hospitals open and allowing them to coordinate services, or negatively by reducing competition and wages. Because the number of hospitals that will participate and the number of mergers that may form are all unknown, more detailed economic effects cannot be determined at this time.

The proposed rules will only affect private hospitals. Public hospitals are not eligible to apply for a COPA under H.B. 3301 and the proposed rules. Therefore, no revenue will be generated from local governments.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and implement legislation that does not specifically state that §2001.0045 applies to the rules.

The proposed rules require hospitals eligible to apply for a COPA to pay a fee if applying for a COPA and, if granted a COPA, pay an annual supervision fee, report changes that could affect the COPA, submit an annual report, request approval from HHSC to change rates, and submit a corrective action plan if found to be out of compliance with any of 26 TAC Chapter 567.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of rules to implement H.B. 3301. Hospital mergers under this legislation will benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public, and these benefits may outweigh any anticompetitive effects of joining competitors to address unique challenges in providing health care services in rural areas.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require an application fee and annual supervision fees for hospitals operating under a COPA. HHSC does not have sufficient information on operational changes in hospitals that may be necessary to comply with this rule.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the 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

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or by email to [HCQ\\_PRT@hhsc.state.tx.us](mailto:HCQ_PRT@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following

business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R041" in the subject line.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §§567.1 - 567.6

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC, Chapter 314A.

#### §567.1. Purpose.

The purpose of this chapter is to implement Texas Health and Safety Code Chapter 314A, which requires qualifying hospitals seeking to negotiate and enter into a merger agreement to be certified by the Texas Health and Human Services Commission through the issuance of a Certificate of Public Advantage.

#### §567.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certificate of Public Advantage (COPA)--The written approval by the Texas Health and Human Services Commission that governs a cooperative agreement.

(2) Hospital--A nonpublic general hospital that is licensed under Texas Health and Safety Code Chapter 241 and is not maintained or operated by a political subdivision of this state.

(3) Merger Agreement--An agreement among two or more hospitals for the consolidation by merger, or other acquisition or transfer of assets, by which ownership or control over substantially all the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital, or hospitals, or another entity that controls the hospitals.

#### §567.3. Applicability.

This chapter only applies to a merger agreement among hospitals, each of which is located within a county that:

(1) contains two or more hospitals; and

(2) has a population of:

(A) less than 100,000 and is not adjacent to a county with a population of 250,000 or more; or

(B) more than 100,000 and less than 150,000 and is not adjacent to a county with a population of 100,000 or more.

#### §567.4. Certificate of Public Advantage Required.

A merger agreement between hospitals may not receive immunity under Texas Health and Safety Code Chapter 314A without a Certificate of Public Advantage.

#### §567.5. Compliance.

(a) Each party to a merger agreement shall comply with Texas Health and Safety Code Chapter 314A (relating to Merger Agreements Among Certain Hospitals), this chapter, and all statutes and rules applicable under the hospital license.

(b) Each hospital operating under a Certificate of Public Advantage shall agree to any ongoing supervision the Texas Health and Human Services Commission may require.

#### §567.6. Scope.

(a) A Certificate of Public Advantage (COPA) is issued for a merger agreement identified in a COPA application.

(b) A COPA may not be altered.

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 June 26, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 834-4591



## SUBCHAPTER B. APPLICATION AND ISSUANCE

### 26 TAC §§567.21 - 567.26

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC, Chapter 314A.

#### §567.21. Changes That Could Affect the Certificate of Public Advantage.

A Certificate of Public Advantage (COPA) applicant shall notify the Texas Health and Human Services Commission of the following in writing as soon as practicable:

(1) termination of the merger agreement;

(2) cessation of operation of any hospital party to the agreement, and the certificate holder shall include in the written notice the location where the medical records will be stored and the identity and telephone number of the custodian of the medical records;

(3) change in CMS Certification Number of any hospital party to the agreement;

(4) change to the accrediting organization status of any hospital party to the agreement;

(5) change in hospital name, telephone number, or administrator of any hospital party to the agreement;

(6) pending sale of or change in ownership of any hospital party to the agreement;

(7) bankruptcy of any hospital party to the agreement; or

(8) federal antitrust action related to the COPA.

#### §567.22. Application.



(a) The acquiring party in a proposed merger agreement (the applicant) may apply to the Texas Health and Human Services Commission (HHSC) for a Certificate of Public Advantage (COPA) governing the merger agreement.

(b) An application is not complete unless it contains all the following information:

- (1) an accurate and complete application form;
- (2) a letter of intent from each party to the merger agreement;
- (3) an executive summary;
- (4) a written copy of the proposed merger agreement;
- (5) a description of the nature and scope of the proposed merger;
- (6) a copy of the most recent application for license renewal for each party to the merger agreement;
- (7) a patient census for each hospital involved in the merger agreement;
- (8) health outcomes for the geographic area of each county in which a hospital involved in the merger agreement is located;
- (9) Pricing data reported separately for all inpatient and outpatient services that occurred at each hospital party to the merger agreement for the previous five years and monthly aggregated data, computed separately for Medicaid, Medicare, commercial, and all other payors, including:
  - (A) number of patients, classified by type of inpatient or outpatient service;
  - (B) total billed charges of the hospital, stated separately to include and exclude any physician services;
  - (C) total amounts of the hospital's billed charges allowed under health plan contracts, stated separately to include and exclude any physician services; and
  - (D) total amounts of the hospital's billed charges actually paid by health plans and patients (combined), stated separately to include and exclude any physician services;
- (10) any quality metrics that will be used to measure the quality improvements of the COPA such as observation status;
- (11) information regarding the current state of competitive dynamics and projections of how the market will operate in the county where the proposed merger would occur;
- (12) an analysis of the merger agreement that provides a detailed explanation as to:
  - (A) whether the proposed merger agreement would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and
  - (B) whether the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition that may result from the proposed merger;
- (13) the application fee;
- (14) any evidence of support from municipalities and counties served by each hospital party to the proposed merger; and
- (15) any additional information HHSC deems necessary based on the circumstances specific to the application.

(c) If an applicant believes the application contains proprietary information that is required to remain confidential, the applicant may submit two applications:

(1) one application with complete information for HHSC's use with proprietary information clearly identified but not redacted, and

(2) one application, labeled as redacted and available for public release, with proprietary information redacted.

(d) An applicant shall submit a complete unredacted copy of the application and any related materials to the Attorney General at the same time it submits the application to HHSC.

(e) An application shall not be deemed filed until HHSC determines the application is complete. HHSC may request additional information necessary to make the application complete and to meet the requirements of Texas Health and Safety Code Chapter 314A and this chapter.

#### §567.23. Texas Health and Human Services Commission Review.

Upon reception of a complete application, the Texas Health and Human Services Commission will review the application in accordance with the standards prescribed by Texas Health and Safety Code §314A.056 and this chapter.

#### §567.24. Attorney General Review.

The Texas Health and Human Services Commission will consult with the Attorney General regarding each Certificate of Public Advantage application.

#### §567.25. Fees.

(a) All fees shall be paid to the Texas Health and Human Services Commission (HHSC) and are nonrefundable.

(b) The fee for a Certificate of Public Advantage (COPA) application is \$75,000 and must be submitted with the application.

(c) The annual fee for supervision of a COPA is \$200,000 for each hospital party to the merger agreement.

(1) The first supervision fee shall be paid no later than 30 calendar days after the date HHSC issued the COPA.

(2) Each subsequent supervision fee shall be paid no later than the anniversary of the date HHSC issued the COPA.

#### §567.26. Conditions for Issuing a Certificate of Public Advantage.

The Texas Health and Human Services Commission (HHSC) will issue a Certificate of Public Advantage if:

(1) it determines under the totality of the circumstances that:

(A) the proposed merger would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(B) the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition that may result from the proposed merger; and

(2) the application:

(A) provides specific evidence showing that the proposed merger would likely benefit the public;

(B) explains in detail how the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition; and

(C) sufficiently addresses the following factors:

(i) the quality and price of hospital and health care services provided to citizens of this state;

(ii) the preservation of sufficient hospitals within a geographic area to ensure public access to acute care;

(iii) the cost efficiency of services, resources, and equipment provided or used by the hospitals that are a party to the merger agreement;

(iv) the ability of health care payors to negotiate payment and service arrangements with hospitals proposed to be merged under the agreement;

(v) the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons providing goods or services to, or in competition with, hospitals; and

(vi) any other factor the applicant deems relevant to HHSC's determination under Texas Health and Safety Code §314A.056.

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

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Karen Ray

Chief Counsel

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## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §§567.31 - 567.33

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC, Chapter 314A.

#### §567.31. Terms.

The Texas Health and Human Services Commission may include terms or conditions of compliance in connection with a Certificate of Public Advantage issued if necessary to ensure that the proposed merger likely benefits the public as specified in this chapter.

#### §567.32. Annual Report.

On the anniversary of the date the Texas Health and Human Services Commission (HHSC) issued a Certificate of Public Advantage (COPA), each hospital operating under the COPA shall submit an annual report to HHSC. The report must include:

(1) information about the extent of the benefits attributable to the issuance of the COPA;

(2) if applicable, information about the hospital's actions taken:

(A) in furtherance of any commitments made by the parties to the merger; and

(B) to comply with terms imposed by HHSC as a condition for approval of the merger agreement;

(3) a description of the activities conducted by the hospital under the merger agreement;

(4) information relating to the price, cost, and quality of and access to health care for the population served by the hospital; and

(5) any other information required by HHSC to ensure compliance with Texas Health and Safety Code Chapter 314A and this chapter, including information relating to compliance with any terms or conditions for issuance of the COPA.

#### §567.33. Voluntary Termination.

A hospital operating under a Certificate of Public Advantage (COPA) approved under this chapter may voluntarily terminate its COPA by giving the Texas Health and Human Services Commission notice at least 30 days before the date of the termination.

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 D. RATE REVIEW

### 26 TAC §567.41

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new section implements Texas Government Code §531.0055 and HSC, Chapter 314A.

#### §567.41. Rate Reviews for Hospitals Operating Under a Certificate of Public Advantage.

(a) House Bill 3301, passed by the 86th Texas Legislature and signed by the Governor, requires the Texas Health and Human Services Commission (HHSC) to conduct rate reviews for certain hospitals operating under a Certificate of Public Advantage (COPA).

(b) A hospital operating under a COPA pursuant to Texas Health and Safety Code §314A.056 may not change rates for hospital services without prior approval from HHSC.

(c) At least 90 days before the implementation of any proposed change in rates for inpatient or outpatient hospital services and, if appli-

cable, at least 60 days before the execution of a reimbursement agreement with a third-party payor, a hospital operating under a COPA must submit to HHSC:

(1) a completed application;

(2) any proposed change in rates for services that meet the definition in 25 TAC §133.2 of "inpatient services" or "outpatient services;"

(3) if applicable, any change in reimbursement rates under a reimbursement agreement with a third-party payor;

(4) for an agreement with a third-party payor, other than an agreement described by paragraph (5) of this subsection, or in which rates are set under the Medicare or Medicaid program, information showing:

(A) that the hospital and the third-party payor have agreed to the proposed rates;

(B) whether the proposed rates are less than the corresponding amounts in the producer price index published by the Bureau of Labor Statistics of the United States Department of Labor relating to the hospital services for which the rates are proposed, or a comparable price index chosen by HHSC if the producer price index described by this paragraph is abolished; and

(C) if the proposed rates are above the corresponding amounts in the producer price index, as described by subparagraph (B) of this paragraph, a justification for proposing rates above the corresponding amounts in the producer price index;

(5) to the extent allowed by federal law, for an agreement with a managed care organization that provides or arranges for the provision of health care services under the Medicare or Medicaid program, information showing:

(A) whether the proposed rates are different from rates under an agreement that was in effect before the date the applicable merger agreement took effect;

(B) whether the proposed rates are different from the rates most recently approved by HHSC for the applicable hospital, if HHSC has previously approved rates for the applicable hospital following the issuance of the COPA under this chapter that governs the hospital; and

(C) if the proposed rates exceed rates described by subparagraphs (A) or (B) of this paragraph, a justification for proposing rates in excess of those rates; and

(6) any information concerning costs, patient volume, acuity, payor mix, and other information requested by HHSC.

(d) Any information requested by HHSC, or its designee, shall be provided to HHSC or its designee no later than 10 business days after the request.

(e) HHSC in its sole discretion may designate an individual or entity contracted with HHSC to review the provided materials and make a recommendation to HHSC.

(f) HHSC shall approve the proposed rate change if HHSC determines that:

(1) the proposed rate change likely benefits the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the proposed rate does not inappropriately exceed competitive rates for comparable services in the hospital's market area.

(g) HHSC shall deny or modify the proposed rate change to meet requirements outlined in subsection (f) of this section, if HHSC determines that the proposed rate change does not satisfy subsection (f) of this section.

(h) HHSC will notify the hospital in writing of HHSC's decision to approve, deny, or modify the proposed rate change not later than the 30th day before the implementation date of the proposed change.

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

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Karen Ray

Chief Counsel

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## SUBCHAPTER E. ENFORCEMENT

### 26 TAC §§567.51 - 567.54

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC, Chapter 314A.

#### §567.51. Supervision.

The Texas Health and Human Services Commission will supervise each hospital operating under a Certificate of Public Advantage to ensure that the immunized conduct of a merged entity furthers the purposes of this chapter.

#### §567.52. Annual Review.

(a) Upon receipt of the annual report required by §567.32 of this chapter (relating to Annual Report), the Texas Health and Human Services Commission (HHSC) will conduct an annual review of each approved Certificate of Public Advantage (COPA).

(b) Prior to any review, HHSC will ask the Attorney General whether the Attorney General intends to conduct any review of the COPA.

(c) HHSC will not complete an annual review until:

(1) the Attorney General informs HHSC whether that office intends to conduct any review of the COPA; and

(2) the Attorney General has had the opportunity to conduct the review, if needed.

#### §567.53. Investigation; Consequences.

To ensure that the activities of a hospital resulting from a merger agreement continue to benefit the public, the Texas Health and Human Services Commission (HHSC) may:

(1) investigate the hospital's activities; and

(2) require the hospital to perform a certain action or refrain from a certain action or revoke the hospital's certificate of public advantage, if HHSC determines that:

(A) the hospital is not complying with Texas Health and Safety Code Chapter 314A, this chapter, or a term or condition of compliance with the Certificate of Public Advantage (COPA) governing the hospital's immunized activities;

(B) HHSC's approval and issuance of the COPA was obtained as a result of material misrepresentation;

(C) the hospital has failed to pay any fee required under this chapter; or

(D) the benefits resulting from the approved merger no longer outweigh the disadvantages attributable to the reduction in competition resulting from the approved merger.

§567.54. Corrective Action Plan.

(a) If the Texas Health and Human Services Commission (HHSC) determines that an activity of a hospital operating under a Certificate of Public Advantage does not benefit the public as described by this chapter or no longer meets the standard prescribed by this chapter, HHSC will notify the hospital that it must adopt a plan to correct any deficiency in the hospital's activities.

(b) No later than 20 calendar days after notification by HHSC, the hospital shall return a written corrective action plan to HHSC responding to each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(c) If HHSC determines the corrective action plan does not sufficiently address each cited deficiency, HHSC will notify the hospital that it must submit a revised corrective action plan. A hospital shall submit a revised corrective action plan no later than 20 calendar days after notification by HHSC.

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

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Karen Ray

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## CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

### SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

#### DIVISION 2. REQUIRED NOTIFICATION

##### 26 TAC §746.303

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §746.303, concerning What changes must I notify Licensing of regarding the child-care center's designee, governing body, and director?

## BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the portion of Senate Bill (S.B.) 708, 86th Legislature, Regular Session, 2019, which adds Subsection 42.0412(c-1) to the Texas Human Resources Code (HRC). HRC 42.0412(c-1) requires HHSC Child Care Licensing (CCL) to collect the total number of employees who left employment with each licensed child-care center during the preceding calendar year and publish the data on the Search Texas Child Care website. CCL is implementing this legislative requirement by changing §746.303 to require licensed child-care centers to report the total number of employees who ceased working at the center the previous calendar year to CCL through their online CCL account. IT changes will enable this information to be published on the Search Texas Child Care website.

## SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.303 adds new subsection (b), which requires a center to annually report to CCL the total number of employees who ceased working at the center during the previous calendar year.

## FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

## GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

## SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities. HHSC estimates that there are approximately 8,800 Licensed Day Care Centers required to comply with the rule. HHSC does not have sufficient information to determine how many small businesses, micro-businesses, or rural communities would be impacted by the proposed rule.

There are no alternative methods of achieving the purpose of the proposed rule that are consistent with the health, safety, environmental, and economic welfare of the state.

## LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule: does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Licensing, has determined that for each year of the first five years the rule is in effect, the public benefit will be increased transparency about the annual number of employees who leave employment at each licensed child-care center.

Trey Wood has also determined that for the first five years the rule is in effect, there could be anticipated economic costs to persons who are required to comply with the proposed rule. The proposed rule requires licensed day care centers to report the number of staff who ceased working at the center during the previous calendar year using the Center's on-line Child Care Licensing account. While businesses will utilize information currently in their possession to comply with the new reporting requirement, some providers have indicated a cost to gather and report this information. HHSC does not have sufficient information to determine these costs.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the 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 Aimee Belden at (512) 438-3971 in the Child Care Licensing Department of the HHSC Regulatory Services Division.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Licensing, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLrules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R025" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.0412.

§746.303. *What changes must I notify Licensing of regarding the child-care center's designee, governing body, [and] director, and employees?*

(a) You must notify us in writing, no later than five days after a change is made, regarding:

- (1) The designee of your center that is not a sole proprietorship. The designee for a sole proprietorship is the owner/sole proprietor;
- (2) The board chair for a corporate facility or other executive officer of the governing body;
- (3) The address of the center's designee or governing body; and
- (4) The center director.

(b) By January 15 of each year, you must report to us through your online Child Care Licensing Account the total number of employees who ceased working at your center during the previous calendar year.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## TITLE 34. PUBLIC FINANCE

### PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 81. INSURANCE

##### 34 TAC §§81.1, 81.7, 81.12

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 81, concerning Insurance, by amending §81.1 (Definitions) and §81.7 (Enrollment and Participation), and by adding new §81.12 (HealthSelectShoppERS).

ERS administers employment-related benefits, including insurance benefits through the Texas Employees Group Benefits Program (GBP), for several classes of State of Texas public servants, including elected officials, appointed public officers, employees and their dependents, and other persons eligible to participate in the GBP. ERS proposes amendments to Chapter 81 to include the requirements and administration by ERS of the tobacco user premium differential assessment to GBP participants, as authorized by Tobacco User Premium Differential, §1551.3075 of the Texas Insurance Code. In addition, ERS proposes to establish the HealthSelectShoppERS program in accordance with Rider 16 of the Employees Retirement System of Texas bill pattern in Article I of the General Appropriations Act (House Bill 1) of the 86th Legislature. This program is designed to provide an incentive for eligible GBP health benefit plan participants to select certain lower cost network facilities for specified, non-emergency covered medical services and procedures.

Section 81.1, concerning Definitions, is proposed to be amended to add new definitions for the terms "Tobacco Product" and "To-

bacco User" consistent with ERS' administration of tobacco user premium differential assessment.

Section 81.7, concerning Enrollment and Participation, is proposed to be amended to incorporate the requirements and administration of the tobacco user premium differential assessment. Since September 2011, ERS has administered the assessment across all GBP health benefit plans. ERS requires all GBP health benefit plan participants to certify their Tobacco Products usage. Tobacco users are assessed a monthly tobacco user premium differential in addition to any regular GBP health benefit plan contribution they may have. Effective September 1, 2020, the ERS Board of Trustees adopted a new tobacco policy that included changes to the definition of Tobacco Product to include electronic cigarettes and vaping products. This change to the Tobacco Product definition is expected to increase the number of GBP health benefit plan participants who meet the criteria and must certify as a Tobacco User and is expected to reduce the negative cost and health impact of electronic cigarette and vaping products on the health benefit plan and health benefit plan participants.

Section 81.12 is proposed to be added to establish the HealthSelectShoppERS program within the GBP. The program provides an incentive for eligible GBP health benefit plan participants to seek and obtain lower cost medical services or procedures by certain network facilities. Eligible GBP members would receive an employer contribution by the GBP member's health benefit plan to a health care reimbursement account or limited purpose health care reimbursement account. The participant, and the GBP member if the participant is not the GBP member, must meet all the requirements as specified in §81.12 and §85.8 for the GBP member to receive the employer contribution. GBP members may then use their health care reimbursement account or limited purpose health care reimbursement account funds to offset their cost of future medical services and procedures. ERS anticipates the program will lower the cost of medical services and procedures for the GBP health benefit plans and health benefit plan participants.

#### GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five years the amended rules will be in effect:

- the proposed rule amendments will not create or eliminate a government program but will add an incentive program within the existing GBP;
- implementation of the proposed rule amendments will not require the creation or elimination of employee positions;
- implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency;
- the proposed rule amendments will not require an increase or decrease in fees paid to the agency, but the proposed rule amendments related to tobacco user premium differential assessment are expected to increase the amount of tobacco user premium differential assessed on GBP participants by ERS;
- the proposed rule amendments related to HealthSelectShoppERS will create a new regulation;
- the proposed rule amendments related to tobacco user premium differential assessment will expand an existing regulation;
- the proposed rule amendments will not increase or decrease the number of individuals subject to the rule's applicability; and

-- the proposed rule amendments will not affect the state's economy.

Mr. Keith Yawn, Director of Strategic Initiatives, and Ms. Georgina Bouton, Assistant Director of Group Benefits, have determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules. To Mr. Yawn's and Ms. Bouton's knowledge, other than the expected increase in the amount of tobacco user premium differential assessed on GBP participants by ERS, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and small businesses, micro-businesses or rural communities should not be affected. The proposed rule amendments do not constitute a taking.

Mr. Yawn also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules would be to enable ERS to effectively assess the tobacco user premium differential across GBP health benefit plans to reduce the negative cost and health impact of tobacco, electronic cigarettes and vaping products on the GBP health benefit plans and health benefit plan participants.

Ms. Bouton also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules would be to enable GBP health benefit plans and health benefit plan participants to increase cost savings for specified elective, non-emergency covered medical services and procedures.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at [paula.jones@ers.texas.gov](mailto:paula.jones@ers.texas.gov). The deadline for receiving comments is August 10, 2020, at 10:00 a.m.

The amendments are proposed under Texas Insurance Code, §1551.052, which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

No other statutes are affected by the proposed amendments.

#### §81.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accelerated life benefit--A term life insurance benefit to be paid in advance of the death of an insured member or dependent, as requested by the insured member and approved by the carrier or administering firm, in accordance with the terms of the group term life insurance plan as permitted by §1551.254 of the Act. An accelerated life benefit payment may be requested only if the insured person is diagnosed with a terminal condition and only once during the lifetime of the insured person. For purposes of this definition, a terminal condition is an incurable health condition that the administering firm or carrier determines with reasonable medical certainty will result in the death of the insured within 12 months.

(2) Act--The Texas Employees Group Benefits Act, Insurance Code, Chapter 1551, as amended.

(3) Active duty--An employee's expenditure of time and energy in the service of his/her employer, including elected officials of the state of Texas who are eligible for coverage under the Act. An employee is on active duty on each day of a regular paid vacation or

regular paid sick leave or on a non-working day, if the employee was on active duty on the last preceding workday.

(4) AD&D--Voluntary accidental death and dismemberment coverage.

(5) Age of employee--The age to be used for determining optional term life and AD&D insurance required contributions. For these purposes, the age of the employee is the employee's attained age on September 1.

(6) Annuitant--A retired person who is eligible under §1551.102 of the Act to participate in the GBP and meets all requirements for retirement from a state retirement program or the Optional Retirement Program.

(7) Basic plan--The plan of group insurance, including prescription drug coverage, determined by the Board of Trustees, currently HealthSelect or HealthSelect Medicare Advantage participant-only, as applicable, and basic term life insurance coverage, in which every eligible full-time employee and annuitant, is automatically enrolled after meeting any applicable waiting period or unless participation is expressly waived.

(8) Benefits Coordinator--A person employed by an employer to provide assistance to its employees and their dependents with all aspects of GBP participation. The benefits coordinator for all other GBP participants is ERS.

(9) Board of Trustees or Board--The Board of Trustees of the Employees Retirement System of Texas.

(10) CHIP--Children's Health Insurance Program.

(11) CMS--Centers for Medicare and Medicaid Services or its successor agency.

(12) COBRA--Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, and any subsequent amendments.

(13) Consumer Directed HealthSelect<sup>SM</sup>--The self-funded high deductible health benefit plan offered through the GBP and administered by the Employees Retirement System of Texas and qualified carriers or administering firms.

(14) Dependent--With respect to an eligible member, means the member's:

(A) spouse, as recognized by applicable law, which includes only a married spouse as evidenced by a properly issued and completed marriage license or an informally married spouse whose marriage is memorialized by a Declaration of Informal Marriage and filed of record with an appropriate governmental authority. Absent clear and compelling evidence of an informal marriage existing at the time of enrollment and deemed sufficient by ERS, it is a plan design requirement that the licensed marriage or Declaration of Informal Marriage must occur, or be filed, as applicable, prior to the effective date of the dependent spouse's enrollment in the GBP;

(B) child under 26 years of age;

(C) child age 26 and older whom the Board of Trustees or its designee determines is certified by an approved practitioner to be mentally or physically incapacitated from gainful employment, and earns less than the monthly wage standard for enrolling in CHIP in Texas for a family of one at the time of application or reevaluation. If the child earns more than this wage standard for a period of six months or longer in any calendar year, then the child must demonstrate to ERS his/her continued eligibility for dependent coverage by proving he/she is dependent on the member for care or support and either lives with the member or has care provided by the member on a regular basis; and

(D) child under age 26 who is the member's ward, as that term is defined by §1002.030, Texas Estates Code.

(E) In this section, "child" includes:

(i) a natural child, adopted child, stepchild, foster child; or a child in the possession of a participant who is designated as managing conservator of the child under an irrevocable or unrevoked affidavit of relinquishment under Texas Family Code, Chapter 161; or

(ii) a child who is related to the member by blood or marriage and was claimed as the member's dependent on his/her federal income tax return for the tax year preceding the plan year in which the child is first enrolled as the member's dependent in the GBP, and for each subsequent year in which the child is enrolled as the member's dependent. The federal income tax return must have been filed when first due or before any timely extensions expired.

(F) The requirement in subparagraph (E)(ii) of this paragraph that a child must be claimed as the member's dependent on his/her federal income tax return preceding the child's enrollment does not apply if:

(i) the child is born in the year in which the child is first enrolled; or

(ii) the member can demonstrate good cause for not claiming the child as a dependent in the preceding tax year.

(15) Employee--A person eligible to participate in the GBP under §1551.101 of the Act, which includes an appointed or elected state officer, judicial officer, or employee in the service of the state of Texas. The term also includes an eligible employee of an institution of higher education and any persons required or permitted by the Act to enroll as members.

(16) Employer--State of Texas and its agencies, institutions of higher education, and other governmental or quasi-governmental employers within the state whose employees or annuitants are authorized by the Act to participate in the GBP.

(17) ERS--Employees Retirement System of Texas.

(18) Evidence of insurability--Evidence required by ERS, an administering firm, or a qualified carrier for approval of coverage or changes in coverage other than GBP health coverage pursuant to the enrollment and participation provisions in this chapter.

(19) Executive director--The executive director of the Employees Retirement System of Texas. All references to the executive director also include the person or position designated by the executive director or Board of Trustees to perform the relevant function of the executive director.

(20) Former COBRA unmarried child--A member's unmarried child who is at least 26 years of age, who had GBP coverage as a dependent until the child became ineligible, who had continuation coverage under COBRA until that coverage expired, and who reinstates GBP coverage pursuant to §1551.158 of the Act.

(21) GBP (Group Benefits Program)--The Texas Employees Group Benefits Program as established and administered by the Board of Trustees pursuant to the Act.

(22) GBP health coverage--Includes HealthSelect<sup>SM</sup> of Texas, Consumer Directed HealthSelect<sup>SM</sup>, HMOs and Medicare Advantage plans, as applicable.

(23) Health insurance waiting period--The applicable waiting period defined in §1551.1055 of the Act.

(24) HealthSelect<sup>SM</sup> of Texas--The self-funded health benefit plan offered in the GBP and administered by the Employees Retirement System of Texas and a qualified carrier or administering firm. HealthSelect of Texas also includes a Prescription Drug Plan administered by a Pharmacy Benefit Manager approved by the Board.

(25) HealthSelect<sup>SM</sup> Medicare Rx--A plan, approved by the Board of Trustees, that provides prescription drug coverage designed for participants who are eligible for Medicare-primary coverage in the GBP as permitted by CMS.

(26) HMO--A health maintenance organization, as defined by §1551.007 of the Act, and approved by the Board of Trustees to provide health care coverage to eligible participants in the GBP.

(27) Insurance required contribution--Any out-of-pocket charge incurred by a member or by a member's dependent as payment for coverage provided under the GBP that exceeds the state's or employer's contributions made on behalf of the member.

(28) LWOP (Leave without pay)--The leave status of an employee who is certified by his/her employer to be absent from active duty for an entire calendar month, who does not receive any compensation for time absent from active duty, and who has not received a refund of retirement contributions based upon the most recent term of employment.

(29) Medicare Advantage Plan--A plan, approved by the Board of Trustees, that provides health coverage for participants who are eligible for Medicare-primary coverage. The plan is administered as a Medicare Advantage Plan as permitted by CMS through:

(A) a health maintenance organization; or

(B) any other plan, organization, carrier or administering firm approved by the Board of Trustees to provide the coverage.

(30) Medicare-eligible--The status of a participant who is eligible for primary coverage under Medicare Part A and/or Part B. Eligibility may extend to a dependent that is qualified to receive Medicare benefits as his/her primary coverage as permitted by CMS.

(31) Member--For purposes of this chapter only regarding insurance plan participation in the GBP, a member is a participant who is an employee, retiree, or other person eligible to participate in the GBP as provided under the Act and who is not a dependent.

(32) Minimum retiree optional life--A standard \$10,000 term life insurance policy whose insurance required contribution is set solely on the basis of the benefit rather than on the retiree's age. It is available for retirees at any time during their retirement. If a retiree does not have life insurance, the retiree may apply for this coverage with evidence of insurability. If the retiree has Election 1 or Election 2 optional life, the retiree may elect to reduce the life coverage to this coverage by requesting the change without an application or evidence of insurability.

(33) Optional Coverage--Coverage established by the Board of Trustees in the GBP and as set forth in §81.7(c)(1)(A) - (K).

(34) ORP--The Optional Retirement Program as provided in the Government Code, Chapter 830.

(35) Participant--An employee, annuitant, or dependent, as defined in the Act, a surviving spouse or child of a deceased member, or any other person eligible for coverage under the Act and enrolled in any coverage offered under the GBP.

(36) Placement for adoption--The legal status of a child under which a person assumes and retains the legal obligation for total or

partial support of the child in anticipation of the person's adoption of such child.

(37) Preexisting condition--Any injury or medical condition for which a participant received medical treatment or services, or was prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage. However, if the evidence of insurability requirements set forth in §81.7(d) of this chapter must first be satisfied, the three-month period for purposes of determining the preexisting conditions exclusion will be the three-month period immediately preceding the date of the employee's completed application for coverage.

(38) Premium conversion plan--A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the Board of Trustees and designed to provide premium conversion as described in §81.7(b) of this chapter.

(39) Retiree--An employee who retires or is retired and who:

(A) is authorized by the Act to participate in the GBP as an annuitant;

(B) on August 31, 1992, was a participant in a group insurance program administered by an institution of higher education; or

(C) on the date of retirement, meets the service credit requirements of the Act for participation in the GBP as an annuitant; and

(i) on August 31, 2001, was an eligible employee with an employer whose employees are authorized to participate in the GBP and, on the date of retirement has three years of service with such an employer;

(ii) on August 31, 2001, had three years of service as an eligible employee with an employer whose employees are authorized to participate in the GBP; or

(iii) is determined by ERS to be eligible as described by §1551.102 and §1551.114 of the Act.

(40) Salary--The amount of compensation, which includes the employee's regular salary, longevity, shift differential, hazardous duty pay, and benefit replacement pay, received by an employee as of the employee's first day of active duty and as of September 1, for an existing or rehired employee. This amount is used for determining optional term life and disability income limitations. Non-salaried appointed officials, state-wide elected officials and members of the Legislature may use the salary of a state district judge or their actual salary as of September 1 of each year for determining their optional term life. For members of the Legislature, disability income limitations will be based on their actual monthly salary.

(41) Tobacco product--All types of tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and dip; and all electronic cigarettes and vaping products.

(42) Tobacco user--A participant who has used a tobacco product or tobacco products five or more times during the preceding three months.

(43) ~~[(41)]~~ TRS--The Teacher Retirement System of Texas.

#### §81.7. Enrollment and Participation.

(a) Enrollment Categories.

(1) Full-time employees and their dependents.

(A) A new employee:



(i) who is not subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a)(1) of this chapter (relating to Eligibility) for automatic insurance coverage, shall be enrolled in the basic plan unless the employee completes an enrollment form to elect other coverage or to waive GBP health coverage as provided in §81.8 of this chapter (relating to Waiver of Health Coverage). Coverage of an employee under the basic plan, and other coverage selected as provided in this paragraph, becomes effective on the date on which the employee begins active duty.

(ii) who is subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a)(1) of this chapter for automatic insurance coverage, shall be enrolled in the basic plan beginning on the first day of the calendar month following 60 days of employment unless, before this date, the employee completes an enrollment form to elect other coverage or to waive GBP health coverage as provided in §81.8 of this chapter.

(iii) who has existing, current, and continuous GBP health coverage as of the date the employee begins active duty is not subject to the health insurance waiting period and is eligible to enroll as a new employee in health insurance and additional coverage and plans which include optional coverage by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverage selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(B) Dependent enrollment and optional coverage:

(i) To enroll eligible dependents, to elect to enroll in an approved HMO, and to elect additional coverage and plans which include optional coverage, an employee not subject to the health insurance waiting period shall complete an enrollment form within 30 days after the date on which the employee begins active duty. Coverage selected within 30 days after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the enrollment form is completed. An enrollment form completed after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (d) of this section.

(ii) To enroll eligible dependents or to elect to enroll in an approved HMO, an employee subject to the health insurance waiting period shall complete an enrollment form before the first day of the month following 60 days of employment. Coverage selected before the first day of the month following 60 days of employment becomes effective on the first day of the month following 60 days of employment. An employee completing an enrollment form after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (d) of this section. The provisions of subparagraph (A)(ii) of this paragraph apply to the election of additional coverage and plans, which include optional coverage, for an employee subject to the health insurance waiting period.

(C) Except as otherwise provided in this section, an employee may not change coverage.

(D) An eligible employee who enrolls in the GBP is eligible to participate in premium conversion and shall be automatically enrolled in the premium conversion plan. The employee shall be automatically enrolled in the plan for subsequent plan years as long as the employee remains on active duty.

(E) Coverage for a newly eligible dependent, other than a dependent referred to in subparagraph (F) or (H) of this paragraph, will be effective on the first day of the month following the date the person becomes a dependent if an enrollment form is completed on or

within 30 days after the date the person first becomes a dependent. If the enrollment form is completed and signed after the initial period for enrollment as provided in this paragraph, the enrollment form will be governed by the rules in subsection (d) of this section.

(F) A member's newborn natural child will be covered immediately and automatically for 30 days from the date of birth in the health plan in effect for the employee/retiree. A member's newly adopted child will be covered immediately and automatically from the date of placement for adoption for 30 days in the health plan in effect for the employee/retiree. To continue coverage for more than 30 days after the date of birth or placement for adoption, an enrollment form for GBP health coverage must be submitted by the member within 30 days after the date of birth or placement for adoption.

(G) The effective date of a newborn natural child's life and AD&D coverage will be the date of birth, if the child is born alive, as certified by an attending physician or a certified nurse-midwife. The effective date of a newly adopted child's life and AD&D coverage will be the date of placement for adoption. The effective date of all other eligible dependents' life and AD&D coverage will be as stated in subparagraph (E) of this paragraph.

(H) GBP health coverage of a member's eligible child for whom a covered employee/retiree is court-ordered to provide medical support becomes effective on the date on which the member's benefits coordinator receives a valid copy of the qualified medical child support order.

(I) The effective date of GBP health coverage for an employee's/retiree's dependent, other than a newborn natural child or newly adopted child, will be as stated in subparagraph (E) of this paragraph.

(J) For purposes of this section, an enrollment form is completed when all information necessary to effect an enrollment has been transmitted to ERS in the form and manner prescribed by ERS.

(2) Part-time employees. A part-time employee or other employee who is not automatically covered must complete an application/enrollment form provided by ERS authorizing necessary deductions for insurance required contributions for elected coverage. All other rules for enrollment stated in paragraph (1) of this subsection, other than the rule as to automatic coverage, apply to such employee:

(A) If the employee is not subject to a health insurance waiting period, this form must be submitted to ERS either through ERS Online or through his/her benefits coordinator on, or within 30 days after, the date on which the employee begins active duty.

(B) If the employee is subject to a health insurance waiting period, this form must be submitted to ERS either through ERS Online or through his/her benefits coordinator before the first day of the month following 60 days of employment.

(C) If the employee has existing, current, and continuous GBP health coverage as of the date the employee begins active duty, the employee is not subject to the health insurance waiting period and is eligible to enroll as a new employee in health insurance and additional coverage and plans which include optional coverage by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverage selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(3) Retirees and their dependents.

(A) Provided the insurance required contributions are paid or deducted, an employee's GBP health, dental, vision and term

life insurance coverage (including eligible dependent coverage) may be continued upon retirement as provided in §81.5(b) of this chapter. The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance plan as a retiree. All other coverage in force for an active employee, but not available to a retiree, will automatically be discontinued concurrently with the commencement of retirement status. Except as provided in subparagraph (E) of this paragraph, if a retiree retires directly from active duty and is not covered as an active employee on the day before becoming an annuitant, the retiree may enroll in the basic plan.

(B) A retiree may enroll in GBP health, dental, vision and life insurance coverage for which the retiree is eligible as provided in §81.5(b) of this chapter, including dependent coverage, by completing an enrollment form as specified in clauses (i) - (iii) of this subparagraph. For the purposes of this subparagraph, the effective date of retirement of a retiree who is eligible to receive, but who has not yet received, an annuity is the date on which ERS receives written notice of the retirement. An application/enrollment form received after the initial period for enrollment as provided in this subparagraph, is subject to the provisions of subsection (d) of this section.

(i) A retiree who is not subject to the health insurance waiting period on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health, dental, vision and life insurance coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable before, on, or within 30 days after, the retiree's effective date of retirement.

(ii) A retiree who is subject to the health insurance waiting period on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable, before the first day of the calendar month following 60 days after the date of retirement or before the first day of the calendar month after the retiree's 65th birthday, whichever is later as appropriate. The effective date for such coverage shall be the first day of the calendar month following 60 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later as appropriate.

(iii) A retiree who is ineligible for health insurance on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable, before the first day of the calendar month after the retiree's 65th birthday. The effective date for such coverage shall be the first day of the calendar month following 60 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later.

(C) A retiree who becomes eligible for minimum retiree optional life insurance coverage or dependent life insurance coverage as provided in §81.5(b)(6) of this chapter, may apply for approval of such coverage by providing evidence of insurability acceptable to ERS.

(D) Enrollments in and applications to change coverage become effective as provided in subparagraph (B) of this paragraph unless other coverage is in effect at that time. If other coverage is in effect at that time, coverage or waiver of coverage becomes effective on the first day of the month following the date of approval of retirement by ERS; or, if cancellation of the other coverage preceded the date of

approval of retirement, the first day of the month following the date the other coverage was canceled.

(E) A retiree who seeks enrollment in GBP health coverage after turning age 65 will be automatically enrolled in HealthSelect of Texas until Medicare enrollment is confirmed by CMS. A retiree who is enrolled in a health plan and turns age 65 will remain enrolled in that health plan until the retiree's Medicare enrollment can be confirmed by CMS. Once Medicare enrollment is confirmed, the retiree will be automatically enrolled in the Medicare Advantage Plan unless the retiree opts out of the Medicare Advantage Plan and enrolls in other coverage by completing an enrollment form as specified in subparagraph (B)(i) - (iii) of this paragraph. If the retiree is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(F) A Medicare-eligible retiree who seeks enrollment in GBP health coverage, or is retired and enrolled in a health plan and becomes eligible for Medicare, will be automatically enrolled in the HealthSelect of Texas Prescription Drug Program until Medicare enrollment is confirmed by CMS. Upon confirmation of Medicare enrollment, the retiree will be enrolled in HealthSelect Medicare Rx. A retiree who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage. If the retiree is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

#### (4) Medicare-eligible Dependents.

(A) A dependent as defined in §81.1 of this chapter (relating to Definitions) who becomes eligible for Medicare-primary coverage as specified in §81.1 of this chapter, either through disability, age, or other requirements as set forth by CMS, will be automatically enrolled in the Medicare Advantage Plan, once Medicare enrollment is confirmed by CMS, unless the retiree and his/her dependents opt out of the Medicare Advantage Plan and enroll in other coverage by completing an enrollment form as specified in paragraph (3)(B)(i) - (iii) of this subsection. If the dependent is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(B) A Medicare-eligible dependent eligible for GBP health coverage will be automatically enrolled in HealthSelect Medicare Rx, once Medicare enrollment is confirmed by CMS. A Medicare-eligible dependent who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage. If the dependent is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

#### (5) Surviving dependents.

(A) Provided that the insurance required contributions are paid or deducted, the health, dental, and vision insurance coverage of a surviving dependent may be continued on the death of the deceased employee/retiree if the dependent is eligible for such coverage as provided by §81.5(e) of this chapter.

(B) A surviving spouse who is receiving an annuity shall make insurance required contribution payments by deductions from the annuity as provided in subsection (h)(7) of this section. A surviving spouse who is not receiving an annuity may make payments as provided in subsection (h)(7) of this section.

(C) A Medicare-eligible surviving dependent eligible for GBP health coverage will be automatically enrolled in the Medicare Advantage Plan, once Medicare enrollment is confirmed by CMS, unless the surviving dependent opts out of the Medicare Advantage Plan and enrolls in other coverage.

(D) A Medicare-eligible surviving dependent eligible for GBP health coverage will be automatically enrolled in HealthSelect Medicare Rx, once Medicare enrollment is confirmed by CMS. A Medicare-eligible surviving dependent who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage.

(6) Former COBRA unmarried children. A former COBRA unmarried child must provide an application to continue GBP health, dental and vision insurance coverage within 30 days after the date the notice of eligibility is mailed by ERS. Coverage becomes effective on the first day of the month following the month in which continuation coverage ends. Insurance required contribution payments must be made as provided in subsection (h)(1)(A) of this section.

(b) Premium conversion plans.

(1) An eligible employee participating in the GBP is deemed to have elected to participate in the premium conversion plan and to pay insurance required contributions with pre-tax dollars as long as the employee remains on active duty. The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance required contributions under this section shall be the amount required to pay the participant's portion of the insurance required contributions for coverage under each type of insurance included in the plan.

(c) Special rules for additional coverage and plans which include optional coverage.

(1) Only an employee/retiree or a former officer or employee specifically authorized to join the GBP may apply for additional coverage and plans. An employee/retiree may apply for or elect additional coverage and plans for which he/she is eligible without concurrent enrollment in GBP health coverage provided by the GBP. Additional coverage and plans, as determined by the Board of Trustees, may include:

- (A) dental coverage;
- (B) optional term life;
- (C) dependent term life;
- (D) short- and long-term disability;
- (E) voluntary accidental death and dismemberment;
- (F) long-term care;
- (G) health care and dependent care reimbursement;
- (H) commuter spending account;
- (I) vision;
- (J) limited purpose flexible spending account; or
- (K) health savings account.

(2) An eligible member in the GBP and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the contract with the HMO.

(3) An eligible member in the GBP electing additional coverage and plans and/or Consumer Directed HealthSelect, HMO or Medicare Advantage coverage in lieu of the basic plan is obligated for the full payment of insurance required contributions. If the insurance required contributions are not paid, all coverage not fully funded by the state contribution will be canceled. A person eligible for the state

contribution will retain member-only GBP health coverage as a member provided the state contribution is sufficient to cover the insurance required contribution for such coverage. If the state contribution is not sufficient for member-only coverage in the health plan selected by the member employee/retiree, the member employee/retiree will be enrolled in the basic plan or the Medicare Advantage Plan, as applicable, except as provided for in subsection (g)(2)(B) of this section.

(4) An eligible member in the GBP enrolled in an HMO and the HMO's contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the member is eligible by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in HealthSelect of Texas, Consumer Directed HealthSelect, or a Medicare Advantage Plan (if eligible) by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1; or

(C) if the member does not make one of the elections, as defined in subparagraphs (A) or (B) of this paragraph, the member and covered eligible dependents will automatically be enrolled in the basic plan or the Medicare Advantage Plan, as applicable.

(5) A member enrolled in an HMO whose contract with ERS is terminated during the fiscal year or that fails to maintain compliance with the terms of its contract, as determined by ERS, will be eligible to make one of the following elections:

(A) change to another approved HMO for which the member is eligible. The effective date of the change in coverage will be determined by ERS; or

(B) enroll in HealthSelect of Texas, Consumer Directed HealthSelect, or a Medicare Advantage Plan (if eligible). The effective date of the change in coverage will be determined by ERS.

(d) Changes in coverage after the initial period for enrollment.

(1) Changes for a qualifying life event.

(A) Subject to the provisions of paragraphs (3) and (4) of this subsection, a member shall be allowed to change coverage during a plan year within thirty (30) days of a qualifying life event that occurs as provided in this paragraph if the change in coverage is consistent with the qualifying life event.

(B) A qualifying life event occurs when a participant experiences one of the following changes:

- (i) change in marital status;
- (ii) change in dependent status;
- (iii) change in employment status;
- (iv) change of address that results in loss of benefits eligibility;
- (v) change in Medicare or Medicaid status, or CHIP status;
- (vi) significant cost of benefit or coverage change imposed by a third party provider; or
- (vii) change in coverage ordered by a court.

(C) A member who loses benefits eligibility as a result of a change of address shall change coverage as provided in paragraphs (6) - (9) of this subsection.

(D) A member may apply to change coverage on, or within 30 days after, the date of the qualifying life event, provided, however, a change in election due to CHIP or Medicaid status under subparagraph (B) of this paragraph may be submitted on, or within 60 days after, the change in CHIP or Medicaid status.

(E) Except as otherwise provided in subsection (a)(1)(F) and (H) of this section, the change in coverage is effective on the first day of the month following the date on which the enrollment form is completed.

(F) Documentation may be required in support of the qualifying life event.

(G) Following a qualifying life event, a member may change applicable coverage, drop or add an eligible dependent if the change is consistent with the qualifying life event.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) An eligible member who wishes to add or increase optional coverage after the initial period for enrollment must make application for approval by providing evidence of insurability acceptable to ERS, if required. Unless not in compliance with paragraph (1) of this subsection, coverage will become effective on the first day of the month following the date approval is received by ERS, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee whose coverage was canceled while the employee was on LWOP, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee/retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV optional term life insurance, except as otherwise provided in subsection (f) of this section;

(B) employees who wish to enroll in or increase optional term life insurance, dependent life insurance, or disability income insurance after the initial period for enrollment;

(C) employees enrolled in the GBP whose coverage was waived, dropped or canceled, except as otherwise provided in subsection (f) of this section; and

(D) retirees who wish to enroll in minimum optional life insurance or dependent life insurance as provided in subsection (a)(3)(C) of this section.

(5) An employee/retiree who wishes to add eligible dependents to the employee's/retiree's HMO coverage may do so:

(A) during the annual enrollment period; or

(B) upon the occurrence of a qualifying life event as provided in paragraph (1) of this subsection.

(6) A member who is enrolled in an approved HMO and who permanently moves out of the HMO service area shall make one of the following elections, to become effective on the first day of the month following the date on which the member moves out of the HMO service area:

(A) enroll in another approved HMO for which the member and all covered dependents are eligible; or

(B) if the member and all covered dependents are not eligible to enroll in an approved HMO; either:

(i) enroll in HealthSelect of Texas or Consumer Directed HealthSelect; or

(ii) enroll in an approved HMO if the member is eligible, and drop any ineligible covered dependent, unless not in compliance with §81.11(c)(3) of this chapter (relating to Cancellation of Coverage and Sanctions).

(7) When a covered dependent of a member permanently moves out of the member's HMO service area, the member shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HMO service area:

(A) drop the ineligible dependent, unless not in compliance with §81.11(c)(3) of this chapter;

(B) enroll in an approved HMO if the member and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas or Consumer Directed HealthSelect, provided the eligible member and all dependents enroll in the same health plan at that time.

(8) An eligible member will be allowed an annual opportunity to make changes in coverage.

(A) Subject to other requirements of this section, a member will be allowed to:

(i) change or enroll themselves and any eligible dependents in an eligible health, dental or vision plan;

(ii) enroll themselves and their eligible dependents in an eligible health, dental or vision plan from a waived or canceled status;

(iii) add, decrease or cancel eligible coverage, unless prohibited by §81.11(c)(3) of this chapter;

(iv) apply for coverage as provided in paragraph (3) of this subsection; and

(v) waive any or all GBP coverage including health as provided in §81.8 of this chapter.

(B) Surviving dependents and former COBRA unmarried children are not eligible to add dependents to coverage through annual enrollment. A surviving dependent or former COBRA unmarried child may enroll an eligible dependent in dental or vision insurance coverage if the dependent is enrolled in health insurance coverage.

(C) Annual enrollment opportunities will be scheduled each year at times announced by ERS.

(9) A participant who is a retiree or a surviving dependent, or who is in a direct pay status, may decrease or cancel any coverage at any time unless such coverage is health insurance coverage ordered by a court as provided in §81.5(c) of this chapter.

(10) A member and his/her dependents who are enrolled in the Medicare Advantage Plan may collectively enroll in HealthSelect of Texas, Consumer Directed HealthSelect or an HMO.

(A) Such opportunity will be scheduled on at least an annual basis each year, at times announced by ERS.

(B) Additional opportunities will occur each month prior to an annual enrollment period. Coverage selected during these opportunities will be effective on the first of the month following processing by CMS.

(11) If a member drops coverage for his/her dependent because the dependent gained other coverage effective the first day of a month, then the effective date of the qualifying life event can be either the last day of the month preceding the gained coverage or on the first day of the month in which the gained coverage is effective.

(e) Special provisions relating to term life benefits

(1) An employee or annuitant who is enrolled in the group term life insurance plan may file a claim for an accelerated life benefit for himself or his covered dependent in accordance with the terms of the plan in effect at that time. An accelerated life benefit paid will be deducted from the amount that would otherwise be payable under the plan.

(2) An employee or annuitant who is enrolled in the group term life insurance plan may make, in conjunction with receipt of a vitatical settlement, an irrevocable beneficiary designation in accordance with the terms of the plan in effect at that time.

(f) Re-enrollment in the GBP.

(1) The provisions of subsection (a)(1) of this section shall apply to the enrollment of an employee who terminates employment and returns to active duty within the same fiscal year, who transfers from one employer to another, or who returns to active duty after a period of LWOP during which coverage is canceled.

(2) An employee to whom paragraph (1) of this subsection applies shall be subject to the same requirements as a newly hired employee to re-enroll in the coverage in which the employee was previously enrolled. Provided that all applicable preexisting conditions exclusions were satisfied on the date of termination, transfer, or cancellation, no new preexisting conditions exclusions will apply. If not, any remaining period of preexisting conditions exclusions must be satisfied upon re-enrollment.

(3) If an employee is a member of the Texas National Guard or any of the reserve components of the United States armed forces, and the employee's coverage is canceled during a period of LWOP or upon termination of employment as the result of an assignment to active military duty, the period of active military duty shall be applied toward satisfaction of any period of preexisting conditions exclusions remaining upon the employee's return to active employment.

(g) Continuing coverage in special circumstances.

(1) Continuation of coverage for terminating employees. A terminating employee is eligible to continue all coverage through the last day of the month in which employment is terminated.

(2) Continuation of coverage for employees on LWOP status.

(A) An employee in LWOP status may continue the coverage in effect on the date the employee entered that status for the period of leave, but not more than 12 months. The employee must pay

insurance required contributions directly as provided in subsection (h)(1)(A) of this section.

(B) An employee whose LWOP is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of LWOP. The employee must pay insurance required contributions directly as defined in subsection (h)(1)(A) of this section. Failure to make the payment of insurance required contributions by the due date will result in the cancellation of all coverage except for member-only health and basic life coverage. The employee will continue in the health plan in which he/she was enrolled immediately prior to the cancellation of all other coverage.

(3) Continuation of coverage for a former member or employee of the Legislature. Provided that the insurance required contributions are paid, the GBP health, dental, vision and life insurance coverage of a former member or employee of the Legislature may be continued on conclusion of the term of office or employment.

(4) Continuation coverage for a former board member. Provided that the insurance required contributions are paid, the GBP health, dental, vision and life insurance coverage of a former member of a board or commission, or of the governing body of an institution of higher education, as both are described in §1551.109 of the Act, may be continued on conclusion of service if no lapse in coverage occurs after the term of office. Life insurance will be reduced to the maximum amount for which the former board member is eligible.

(5) Continuation of coverage for a former judge. A former state of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the coverage that was in effect during the calendar month immediately prior to the month in which the former judge did not serve on judicial assignments. This coverage may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment.

(6) Continuation of coverage for a surviving spouse and/or dependent child/children of a deceased employee/retiree. The surviving spouse and/or dependent child/children of a deceased employee/retiree, who, in accordance with §81.5(j)(1) of this chapter, elects to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee/retiree dies, provided all insurance required contributions due for the month in which the employee/retiree died and for the election/enrollment period have been paid in full.

(7) Continuation of coverage for a covered employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the GBP as an employee, or whose coverage has ended following the maximum period of LWOP as provided in paragraph (2)(A) of this subsection. An employee, his/her spouse and/or dependent child/children, who, in accordance with §81.5(j)(2) of this chapter, elect to continue GBP health, dental and vision coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee's coverage

ends, provided all insurance required contributions due for the month in which the coverage ends and for the election/enrollment period have been paid in full.

(8) Continuation of coverage for a spouse who is divorced from a member and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children of an employee/retiree who, in accordance with §81.5(j)(4) of this chapter, elect to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all insurance required contributions due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(9) Continuation of coverage for a dependent child who has attained 26 years of age. A 26-year-old dependent child (not provided for by §81.5(c) of this chapter) of a member who, in accordance with §81.5(j)(5) of this chapter, elects to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child of the member attains 26 years of age, provided all insurance required contributions due for the month in which the dependent child attained age 26 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of coverage for certain dependents of former employees who are continuing coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving dependent of a deceased former employee, who, in accordance with §81.5(j)(6)(A) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(j)(6)(B) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child who has attained 26 years of age, who, in accordance with §81.5(j)(6)(C) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 26.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (6) - (10) of this subsection means the continuation of only GBP health, dental and vision coverage which meets the following requirements.

(A) Type of benefit coverage. The coverage shall consist of only the GBP health, dental and vision coverage, which, as of the time the coverage is being provided, are identical to the GBP health, dental and vision coverage provided for a similarly situated person for whom a cessation of coverage event has not occurred.

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) in the case of loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, the last day of the 18th calendar month of the continuation period;

(ii) in the case of loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(j)(3) of this chapter, up to the last day of the 29th calendar month of the continuation period;

(iii) in any case other than loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, the last day of the 36th calendar month of the continuation period;

(iv) the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any insurance required contribution as provided in subsection (h) of this section;

(vi) the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion; or

(vii) the date on which the participant, after the date of election, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Insurance required contribution costs. The insurance required contribution for a participant during the continuation coverage period will be 102% of the employee's/retiree's GBP health, dental and vision coverage rate and is payable as provided in subsection (h) of this section.

(i) The insurance required contribution for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's GBP health, dental and vision coverage rate and is payable as provided in subsection (h)(1)(A) of this section.

(ii) The insurance required contribution for a participant eligible for 29 months of coverage will increase to 150% of the employee's/retiree's GBP health, dental and vision coverage rate for the 19th through 29th months of coverage and is payable as provided in subsection (h)(1)(A) of this section.

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue GBP health coverage under the provisions of §81.5(j)(1) - (6) of this chapter.

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues GBP coverage for the maximum period as provided in subparagraph (B)(i) - (iii) of this paragraph. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

(h) Payment of Insurance Required Contributions.

(1) A member whose monthly cost of coverage is greater than the combined amount contributed by the state or employer for the member's coverage must pay a monthly contribution in an amount that exceeds the combined monthly contributions of the state or the employer. A member shall pay his/her monthly insurance required contributions through deductions from monthly compensation or annuity payments or by direct payment, as provided in this paragraph.

(A) A member who is not receiving a monthly compensation or an annuity payment, or is receiving a monthly compensation or annuity payment that is less than the member's monthly insurance required contribution, shall pay his/her monthly insurance required contribution under this subparagraph.

(i) An employee whose monthly compensation is less than the employee's monthly insurance required contribution shall pay his/her monthly insurance required contribution through his/her employer. A non-salaried board member of an employer shall pay his/her monthly insurance required contributions through the employer for which he/she sits as a board member.

(ii) A retiree whose monthly annuity payment is less than the retiree's monthly insurance required contribution shall pay his/her monthly insurance required contributions directly to ERS.

(B) If the member does not comply with subparagraph (A) of this subsection by the due date required, ERS will cancel all coverage not fully funded by the state contribution. If the state contribution is sufficient to cover the required insurance contribution for such coverage, the member will retain member-only health and basic life coverage. If the state contribution is not sufficient to cover the member-only coverage in the health plan selected, the member will be enrolled in the basic plan except as provided for in paragraph (2)(B) of this subsection.

(2) An institution of higher education may contribute a portion or all of the insurance required contribution for its part-time employees described by §1551.101(e)(2) of the Act, if:

(A) the institution of higher education pays the contribution with funds that are not appropriated from the general revenue fund;

(B) the institution of higher education electing to pay the contribution for its part-time employees does so for all similarly situated eligible part-time employees; and

(C) the contribution paid as provided in this paragraph is paid beginning on the first day of the month following the part-time employee's completion of any applicable waiting period.

(3) A participant who continues GBP health, dental and vision coverage under COBRA as provided in §81.5(j) of this chapter must pay his/her monthly insurance contributions on the first day of each month covered.

(A) A participant's monthly insurance required contribution is 102% of the monthly amount charged for other participants in the same coverage category and in the same plan. All insurance required contributions due for the election/enrollment period must be postmarked or received by ERS on or before the date indicated on the

continuation of coverage enrollment form. Subsequent insurance required contributions are due on the first day of each month of the participant's coverage and must be postmarked or received by ERS within 30 days of the due date to avoid cancellation of coverage.

(B) A participant's monthly insurance required contribution for continuing coverage as provided in §81.5(j)(3) of this chapter is increased after the 18th month of coverage to 150% of the monthly amount charged for other participants in the same coverage category and in the same plan. The participant's monthly insurance required contribution is due on the first day of each month covered, and must be postmarked or received by ERS within 30 days of the due date.

(4) The full cost for GBP health, dental and vision coverage is required to be paid for a member's unmarried child who is over 26 years of age, whose coverage under COBRA expired, and who has reinstated coverage in the GBP pursuant to §1551.158 of the Act. No state contribution is paid for this coverage.

(5) Survivors of a paid law enforcement officer employed by the state or a custodial employee of the institutional division of the Texas Department of Criminal Justice who suffers a death in the line of duty as provided by Chapter 615, Government Code, are eligible for GBP coverage as provided in subparagraphs (A) - (C) of this paragraph.

(A) The insurance required contribution due under this paragraph for a surviving spouse's GBP coverage is the same amount as a member-only contribution. The state contribution applicable to member-only coverage is applied to the surviving spouse's contribution for the coverage.

(B) The insurance required contribution due under this paragraph for GBP coverage for a surviving spouse with dependent children is the same amount as the member-with-children contribution. The state contribution applicable to member-with-children coverage is applied to the contribution of the surviving spouse with dependent children for the coverage.

(C) The insurance required contribution due under this paragraph for a surviving dependent child's GBP coverage, when there is no surviving spouse, is the same amount as member-only contribution. The state contribution applicable to member-only coverage is applied to the surviving dependent child's contribution for the coverage.

(D) The surviving spouse or surviving dependent child must timely pay his/her insurance required contributions for the GBP coverage. The survivor's contribution must be either deducted by ERS from the survivor's annuity payment, if any, or submitted to ERS via direct payment. Any applicable state contribution will be paid directly to ERS by the employer that employed the deceased law enforcement officer or custodial employee.

(6) If a retiree whose eligibility for health insurance is based on §§1551.102(i), 1551.111(e) or 1551.112(c) of the Act, obtains interim health insurance as provided in §1551.323 of the Act, the retiree must pay the total contribution for such coverage for as long as the retiree wants the coverage or until the first day of the month following the retiree's 65th birthday. The amount of contribution shall be determined by the Board of Trustees based on an actuarial determination, as recommended by ERS' consulting actuary for insurance, of the estimated total claims costs for individuals eligible for such coverage. If a retiree who is eligible for coverage under this paragraph is also eligible for COBRA coverage, then COBRA coverage should be exhausted, if possible, before applying for the coverage under this paragraph.

(7) A member's surviving spouse or surviving dependent who is receiving an annuity shall authorize deductions for insurance required contributions from the annuity as provided in paragraph (1) of

this subsection. A member's surviving spouse or surviving dependent who is not receiving an annuity may make payments as provided in paragraph (1)(A) of this subsection.

(i) The amount of state contribution for certain retirees is determined in accordance with §1551.3196 of the Act.

(1) An individual is grandfathered at the time of retirement and not subject to §1551.3196 of the Act, if on or before September 1, 2014, the individual has served in one or more positions for at least five years for which the individual was eligible to participate in the GBP as an employee.

(2) Records of ERS shall be used to determine whether or not an individual meets the grandfathering requirements specified in paragraph (1) of this subsection. ERS may, in its sole discretion, require an individual to provide additional documentation satisfactory to ERS that the individual meets the grandfathering requirements specified in paragraph (1) of this subsection.

(j) Tobacco User Premium Differential.

(1) Assessment. Pursuant to §1551.3075 of the Act, ERS shall assess a monthly tobacco user premium differential, in an amount determined by the Board of Trustees or as set in the General Appropriations Act, for participants enrolled in GBP health coverage who are certified as tobacco users or are age eighteen or older at the start of the current plan year and whose tobacco-use status has not been certified. ERS shall assess a single premium differential for each GBP member who is a tobacco user, a single premium differential for the member's dependent spouse who is a tobacco user, and a single premium differential for one or more of the member's dependent children who are tobacco users. A participant will not be subject to a premium differential assessment if the participant has been certified not to be a tobacco user or ERS has approved the participant for a one-year waiver under the Choose to Quit program.

(2) Payment. The GBP member responsible for paying a tobacco user's insurance required contribution shall pay any assessed premium differential for the member and the member's dependents.

(3) Certification of Tobacco-Use Status. Each GBP member with GBP health coverage must certify the tobacco-use status of the member and the member's enrolled dependents.

(A) If participants certify that they are not a tobacco user, ERS shall not assess the premium differential.

(B) ERS shall assess the premium differential monthly for any participant age eighteen or older at the start of the current plan year whose tobacco-use status has not been certified.

(4) Choose to Quit Wellness Program. ERS may approve a one-year waiver for a participant who completes the Choose to Quit program for that plan year.

(A) The participant must complete all of the following steps to have the premium differential waived:

(i) participate in an office visit with a licensed physician to receive tobacco counseling and establish a tobacco cessation course of treatment under that physician's recommendation and supervision;

(ii) complete the course of treatment, which may or may not result in cessation of tobacco use;

(iii) participate in an office visit with the licensed physician following completion of treatment and obtain the physician's signature and the date of signature on the Choose to Quit certification form; and

(iv) sign and submit the Choose to Quit certification form to ERS.

(B) The Choose to Quit certification form must be signed by the physician during the plan year for which the waiver is requested and postmarked within thirty calendar days of the physician's signature date to be effective for that plan year.

(C) Once processed and approved by ERS, the participant's premium differential will be waived for the remainder of the plan year and any premium differential previously paid for that plan year will be refunded.

(D) A member with more than one dependent child certified as a tobacco user will not receive a refund of the premium differential paid for dependent children unless all dependent children certified as tobacco users complete the steps set forth in paragraph (4)(A) of this section.

(E) At the beginning of each plan year, ERS shall reinstate the monthly assessment of the premium differential for the participant unless the participant has been separately certified not to be a tobacco user.

(5) Sanctions. If any participant fails to accurately certify any participant's use of a tobacco product or submits false information to ERS regarding a participant's use of a tobacco product, ERS may impose one or more of the sanctions described in §1551.351(b) of the Act.

§81.12. HealthSelectShoppERS.

(a) Description. The HealthSelectShoppERS program is designed to provide an incentive for eligible health benefit plan participants to select certain network facilities for specified elective, non-emergency medical services and procedures. The incentive will be limited to an amount that is compliant with applicable federal laws and regulations and will be publicly posted by ERS. The incentive is an employer contribution by a GBP member's health benefit plan to the GBP member's TexFlex health care reimbursement account or limited purpose health care reimbursement account, as set forth in §85.8.

(b) Administration. The HealthSelectShoppERS program is administered by the Board. The Board may designate and contract with a vendor, administrator or firm to perform the day-to-day administrative responsibilities of the HealthSelectShoppERS program. The designated vendor, administrator or firm shall perform its duties as assigned by the program administrator and in accordance with its contract with the program administrator, the Code, rules and all applicable state and federal laws and regulations.

(c) Eligibility. A GBP member and the member's dependents are eligible for the HealthSelectShoppERS program if all of the conditions of this subsection are met:

(1) the GBP member is an employee on active duty on the date of a search described in subsection (d)(1) of this section and on the date of payment of an employer contribution described in subsection (d)(3) of this section;

(2) the GBP member and any dependents participating in the HealthSelectShoppERS program are enrolled in Consumer Directed HealthSelect or the HealthSelect of Texas In-Area Benefits Plan or Out-of-State Plan on the date of a search described in subsection (d)(1) of this section, on the date of receipt of a service described in subsection (d)(2) of this section, and on the date of payment of an employer contribution described in subsection (d)(3) of this section;

(3) neither the GBP member nor any dependents participating in the HealthSelectShoppERS program is receiving Medicare benefits as his or her primary coverage on the date of a search described



in subsection (d)(1) of this section, on the date of receipt of a service described in subsection (d)(2) of this section, and on the date of payment of an employer contribution described in subsection (d)(3) of this section; and

(4) the GBP member is eligible to receive an employer contribution to a TexFlex health care reimbursement account or limited purpose health care reimbursement account on the date of payment of an employer contribution described in subsection (d)(3) of this section. A previously established health care reimbursement account or limited purpose health care reimbursement account is not required as a condition of eligibility.

(d) Program Requirements. Participants must complete all of the following steps to receive a HealthSelectShoppERS program incentive.

(1) Conduct a search in which the participant is presented with a selection of network facilities that provide the medical service or procedure:

(A) the search must be conducted, facilitated and documented in accordance with requirements established by ERS and the vendor, administrator, or firm with administrative responsibilities designated by the Board;

(B) the medical service or procedure must meet all health benefit plan requirements to be a covered service when performed, including, but not limited to, applicable requirements related to referrals, prior authorizations and medical necessity;

(C) the search must identify the participant who will receive the medical service or procedure;

(D) on the date of the search, the GBP member must meet all eligibility requirements set forth in subsection (c)(1) of this section; and

(E) on the date of the search, the participant and the GBP member, if the participant is not the GBP member, must meet all eligibility requirements set forth in subsection (c)(2) and (3).

(2) (2) Receive the medical service or procedure for which the described search was conducted:

(A) the participant must receive the medical service or procedure at a facility included in a search described in subsection (d) of this section;

(B) the participant must receive the medical service or procedure for which the described search was conducted within applicable program deadlines; and

(C) on the date of the participant's medical service or procedure, the participant and the GBP member, if the participant is not the GBP member, must meet all program eligibility requirements set forth in subsection (c)(2) and (3) of this section.

(3) (3) Meet all HealthSelectShoppERS program requirements on the date that the employer contribution to the GBP member's TexFlex account is made by the health benefit plan. Once processed by ERS, a contribution in the amount specified in the related search applicable to the facility providing the medical service or procedure shall be made by the health benefit plan to the GBP member's TexFlex health care reimbursement account or limited purpose health care reimbursement account as provided herein. The contribution will be an employer contribution to the applicable TexFlex account. The employer contribution will be made only if, on the date of the contribution and as determined in the sole discretion of ERS:

(A) all program requirements have been met; and

(B) all eligibility requirements set forth in subsection (c) of this section are met.

(e) Funding.

(1) Funding of the employer contributions by the health benefit plan shall originate from the Employees Life, Accident, and Health Insurance and Benefits Fund specified in §1551.401 of the Act.

(2) No GBP member may receive more employer contributions per plan year related to program participation by the GBP member and all of the GBP member's dependents than the designated amount set by the Employees Retirement System of Texas and publicly posted.

(3) All employer contributions will be made by the health benefit plan solely at the discretion of ERS.

(f) Standing. A person has no standing to submit a grievance or appeal regarding HealthSelectShoppERS under §81.9(c) or any other rule or statutory provision that provides for the submission of a grievance or appeal to ERS.

(g) Termination. The HealthSelectShoppERS program may be terminated by the Board if the Board determines that the plan is no longer advantageous to the GBP or its participants.

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 June 29, 2020.

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Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

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For further information, please call: (877) 275-4377



## CHAPTER 85. FLEXIBLE BENEFITS

### 34 TAC §§85.1, 85.3, 85.4, 85.7 - 85.9, 85.13, 85.17

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 85, concerning Flexible Benefits, by amending §§85.1 (Introduction and Definitions), 85.3 (Eligibility and Participation), 85.4 (Separate Plans), 85.7 (Enrollment), 85.9 (Payment of Claims from Reimbursement Accounts), 85.13 (Funding), and 85.17 (Grievance Procedure), and by adding new rule §85.8 (HealthSelectShoppERS).

ERS administers the TexFlex Program which includes a flexible spending account ("FSA") program that allows active employees to set aside, on a pre-tax basis, a portion of earnings to pay for or be reimbursed for certain qualifying expenses, such as health care and dependent care expenses. ERS proposes to amend Ch. 85 to specify the manner in which eligible active employees participating in certain Texas Employees Group Benefits Program ("GBP") health benefit plans may receive employer contributions by their health benefit plan to their health care reimbursement account or limited purpose health care reimbursement account under the HealthSelectShoppERS program. The HealthSelectShoppERS program is designed to provide an incentive for eligible GBP health benefit plan participants to select certain lower cost network facilities for specified, non-emergency covered medical services and procedures in order to achieve shared savings for the health plan and individual plan partici-

pants who choose to utilize the program according its requirements. The program is proposed to be added in Title 34, Part 4, Chapter 81, TAC, in accordance with Rider 16 of the Employees Retirement System of Texas bill pattern in Article I of the General Appropriations Act (House Bill 1) of the 86th Legislature. In addition, ERS proposes to amend Ch. 85 to reflect a waiting period prior to the effective date of an employee's health care reimbursement plan equivalent to the waiting period for GBP health benefit plan coverage.

Section 85.1, concerning Introduction and Definitions, is proposed to be amended to change the term "Texas Employees Group Benefits Program" to "Texas Employees Group Benefits Program (GBP)" and to include "vision" in the list of program coverages.

Section 85.3, concerning Eligibility and Participation, is proposed to be amended to reflect a waiting period prior to the effective date of a health care reimbursement plan elected by an employee that is equivalent to the waiting period for health insurance coverage for employees enrolling in a GBP health benefit plan.

Section 85.4, concerning Separate Plans, is proposed to be amended to add a reference to the new rule §85.8 (HealthSelectShoppERS) in §85.4(b).

Section 85.7, concerning Enrollment, is proposed to be amended to allow health care reimbursement account participants, who were previously limited to carryover amounts in excess of \$25, to carryover unexpended balance amounts of \$25 or less if the participant reenrolls in the plan for the subsequent plan year, to clarify that any carryover that rolls over into subsequent plan years does not affect the maximum amount of participant contributions permitted under §125(i) of the Internal Revenue Code, and to update the reference to the amount of unspent flexible savings account plan dollars that may be carried over to the immediately following plan year.

Pursuant to IRS Notice 2013-71, for a plan year beginning on or after September 1, 2014, the Employees Retirement System of Texas allowed a participant to carry over up to \$500 of unspent flexible savings account plan dollars to the immediately following plan year. The flexible savings account dollars carried over may be used to pay or reimburse incurred expenses under the health care reimbursement plan during the entire plan year to which the dollars are carried over. The IRS Notice had that \$500 limit amount indexed, and IRS Notice 2020-33 announced that this IRS limit would be increasing to \$550. Because these IRS limits are expected to periodically change with indexing, ERS is proposing to amend this rule to permit ERS administration to increase the permitted carryover amount while staying in compliance with those IRS limits.

Section 85.8, concerning the HealthSelectShoppERS program, is proposed to be added to specify the requirements related to employer contributions by the health benefit plan to health care reimbursement accounts or limited purpose health care reimbursement accounts under the HealthSelectShoppERS program. The program provides an incentive to eligible GBP health benefit plan participants who obtain lower cost medical services or procedures by certain network facilities with an employer contribution by the GBP member's health benefit plan to the GBP member's TexFlex health care reimbursement account or limited purpose health care reimbursement account. Employer contributions by the health benefit plan under the HealthSelectShoppERS program must meet all the

requirements as specified in §85.8, which include classification of the incentive as employer contributions, the maximum annual contribution amount, and establishment of an account for any GBP member who receives a contribution but does not have an established account. GBP members may use their TexFlex health care reimbursement account or limited purpose health care reimbursement account funds, including employer contributions, to offset their cost of future medical services and procedures. ERS anticipates the HealthSelectShoppERS program will lower the cost of medical services and procedures for the GBP health benefit plans and health plan participants.

Section 85.9, concerning Payment of Claims from Reimbursement Accounts, is proposed to be amended to limit health care reimbursement for an eligible period of coverage in a plan year to the combined employee election and employer contribution amount.

Section 85.13, concerning Funding, is proposed to be amended to change "§85.13(b) Contributions" to "§85.13(b) Employee Contributions" and to add §85.13(c) Employer Contributions to specify that employer contributions made in connection with the HealthSelectShoppERS program are the only employer contributions available under the TexFlex program.

Section 85.17 concerning Grievance Procedure is proposed to be amended to change "Program" to "TexFlex program."

#### GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five years the amended rules will be in effect:

- the proposed rule amendments will not create or eliminate a government program;
- implementation of the proposed rule amendments will not require the creation or elimination of employee positions;
- implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency;
- the proposed rule amendments will not require an increase or decrease in fees paid to the agency;
- the proposed rule amendments will create a new regulation;
- the proposed rule amendments will not expand, limit or repeal an existing regulation;
- the proposed rule amendments will not increase or decrease the number of individuals subject to the rule's applicability; and
- the proposed rule amendments will not affect the state's economy.

Ms. Georgina Bouton, Assistant Director of Group Benefits, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules. To Ms. Bouton's knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and small businesses, micro-businesses or rural communities should not be affected. The proposed rule amendments do not constitute a taking.

Ms. Bouton also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to amend the TexFlex Program to enable the GBP health benefit plans and health benefit plan participants to increase cost savings for specified elective,

non-emergency covered medical services and procedures, and to increase the amount of flexible savings account dollars carried over by plan participants under the health care reimbursement plan from one plan year to the following year.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at [paula.jones@ers.texas.gov](mailto:paula.jones@ers.texas.gov). The deadline for receiving comments is August 10, 2020, at 10:00 a.m.

The amendments and new rule are proposed under Texas Insurance Code, §1551.052, which authorizes the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities, and Texas Insurance Code, §1551.206(b), which authorizes the Board to include in the TexFlex cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

No other statutes are affected by the proposed amendments.

### §85.1. Introduction and Definitions.

(a) Summary. The purpose of these rules is to govern the flexible benefits program. These rules constitute the Plan document for the State of Texas Employees Flexible Benefit Program (TexFlex). The flexible benefits plan (the plan) includes reimbursement account arrangements with optional benefits available for selection by participants as described in the plan and these rules. The plan is intended to be qualified under the Internal Revenue Code (the Code), §125, as amended from time to time, and is intended to continue as long as it qualifies under §125 and is advantageous to the state and institutions of higher education employees. Optional benefits offered under the plan for individual selection consist only of a choice between cash and certain statutory nontaxable fringe benefits as defined in the Code, §125, and regulations promulgated under the Code, §125. The plan may also include separate benefits as defined in the Code, §132, and regulations promulgated under the Code, §132, separate from the cafeteria plan, and governed by individual plan documents.

#### (b) Applicability of rules.

(1) These rules are applicable only to employees as defined in these rules, and terminated employees, as described in §85.3(b)(1)(B) and (C) of this title (relating to Eligibility and Participation).

(2) An employee who retired or separated from employment prior to September 1, 1988, shall not be entitled to benefits under the provisions of the plan and these rules, unless the employee is rehired and then becomes eligible for benefits.

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) Act--The state law that authorized the establishment of a flexible benefits plan and is designated in the Texas Insurance Code, Chapter 1551, as amended.

(2) Account--A record keeping account established by the Employees Retirement System of Texas or its designee in the name of each participant for the purpose of accounting for contributions made to the account and benefits paid to a participant.

(3) Active duty--The expenditure of time and energy in the service of an employer as defined in these rules. An employee will be considered to be on active duty on each day of a regular paid vacation

or on a non-work day, on which the employee is not disabled, if the employee was on active duty on the last preceding work day.

(4) Board of trustees--The board of trustees of the Employees Retirement System of Texas (ERS).

(5) Code--The Internal Revenue Code, as amended from time to time.

(6) Compensation--A participant's base salary, including amounts that would otherwise qualify as compensation but are not received directly by the participant pursuant to a good faith, voluntary, written or electronic salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under this plan, plus longevity and hazardous duty pay and including non-monetary compensation, the value of which is determined by the Employees Retirement System of Texas, but excluding overtime pay.

(7) Debit Card--A bank issued convenience card or similar technology approved by the plan administrator and permitted to be used by participants as an optional method to pay for eligible transactions. Use of the card is governed by the plan administrator and issuing financial institution. The card is referred to as the Flex Debit Card.

(8) Dependent--An individual who qualifies as a dependent under the Code, §152, and when applicable taking into account the Code, §105, or any individual who is:

(A) a dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemption under the Code, §151, or, is otherwise, a qualifying individual as provided in the Code, §21; or

(B) a dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

(9) Dependent care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(10) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits).

(11) Dependent care expenses--Expenses incurred by a participant which:

(A) are incurred for the care of a dependent of the participant;

(B) are paid or payable to a dependent care service provider or to the participant as reimbursement for such expenses; and

(C) are incurred to enable the participant to be gainfully employed for any period for which there are one or more dependents with respect to the participant. Dependent care expenses shall not include expenses incurred for the services outside the participant's household for the care of a dependent, unless such dependent is a dependent under the age of 13 with respect to when the participant is entitled to a tax deduction under the Code, §151, or a dependent who is physically or mentally incapable of self support. In the event that the expenses are incurred outside the dependent's household, the dependent must spend at least eight hours each day in the participant's household. Dependent care expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.

(12) Dependent care service provider--A person or a dependent care center (as defined in the Code, §21) who provides care or

other services described in the definition of "dependent care expenses" in this section, but shall not include:

- (A) a related individual described in the Code, §129; or
  - (B) a dependent care center which does not meet the requirements of the Code, §21.
- (13) Effective date of the plan--September 1, 1988.
- (14) Election form--A paper or electronic form provided by the Employees Retirement System of Texas that is an agreement by and between the employer and the participant, entered into prior to an applicable period of coverage, in which the participant agrees to a reduction in compensation for purposes of purchasing benefits under the plan.
- (15) Eligible employee--An employee who has satisfied the conditions for eligibility to participate in the plan in accordance with the plan and §85.3(a)(1), and (b)(1) of this title (relating to Eligibility and Participation), and, to the extent necessary, a retired or terminated employee who is entitled to benefit payments under the plan.
- (16) Employee--A person who is eligible to participate in the Texas Employees Group Benefits Program as an employee.
- (17) Employer--The State of Texas, its agencies, commissions, institutions of higher education, and departments, or other governmental entity whose employees are authorized to participate in the Texas Employees Group Benefits Program.
- (18) Expenses incurred--Expenses for services received or performed and for which the participant is legally responsible.
- (19) Executive director--The executive director of the Employees Retirement System of Texas.
- (20) Flexible benefit dollars--The dollars available to a participant which may be used for purposes of purchasing benefits under the plan.
- (21) General purpose health care reimbursement account--The account described in §85.5(b)(1) of this title.
- (22) Grace period--A two (2) month and 15 day period, adopted by the TexFlex plan pursuant to IRS Notice 2005-42, immediately following the end of the plan year during which participants may continue to incur expenses for reimbursement from the prior year account balance. The grace period does not apply to a health care reimbursement plan year that begins on or after September 1, 2014, but does apply to the dependent care reimbursement plan.
- (23) Health care expenses--Any expenses incurred by a participant, or by a spouse or dependent of such participant, for health care as described in or authorized in accordance with the Code, §105 and §213, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense by insurance or other means. The types of expenses include, but are not limited to, amounts paid for hospital bills, doctor bills, prescription drugs, hearing exams, vision exams, and eye exams.
- (24) Health care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.
- (25) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits).

(26) Institution of higher education--All public community/junior colleges, senior colleges or universities, or any other agency of higher education within the meaning and jurisdiction of the Education Code, Chapter 61, except the University of Texas System and the Texas A&M University System.

(27) Leave of absence without pay--The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty for an entire calendar month, and who does not receive any compensation for that month.

(28) Limited purpose health care reimbursement account--The account described in §85.5(b)(3) of this title.

(29) Option--Any specific benefit offering under the plan.

(30) Participant--An eligible employee who has elected to participate in the plan for a period of coverage.

(31) Period of coverage--The plan year during which coverage of benefits under the plan is available to and elected by a participant; however, an employee who becomes eligible to participate during the plan year may elect to participate for a period lasting until the end of the current plan year. In such case, the interval commencing on such employee's entry date and ending as of the last day of the current period of coverage shall be deemed to be such participant's period of coverage.

(32) Plan--The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the state of Texas and any amendments which may be made to the plan from time to time. The plan is referred to herein as TexFlex, and is comprised of a dependent care reimbursement plan, a health care reimbursement plan, an insurance premium conversion plan, and a qualified transportation benefit plan.

(33) Plan administrator--The board of trustees of the Employees Retirement System of Texas or its designee.

(34) Plan year--A 12-month period beginning September 1 and ending August 31.

(35) Run-out period--The period following the end of the plan year between September 1 and December 31, during which participants may file claims for reimbursement of expenses incurred during the plan year.

(36) Statutory nontaxable benefit--A benefit provided to a participant under the plan, which is not includable in the participant's taxable income by reason of a specific provision in the Code and is permissible under the plan in accordance with the Code, §125.

(37) Spouse--The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce, or annulment.

(38) TexFlex--The flexible benefits plan adopted by the board of trustees.

(39) Texas Employees Group Benefits Program (GBP)--The employee insurance benefits program administered by the Employees Retirement System of Texas, pursuant to [the] Texas Insurance Code, Chapter 1551. The program consists of health, voluntary accidental death and dismemberment, optional term life, dependent term life, short and long term disability, vision, and dental insurance coverages.

(40) Third Party Administrator or TPA--The vendor, administrator or firm selected by the plan administrator to perform the day-to-day administrative responsibilities of the TexFlex program for participants of the Texas Employees Group Benefits Program who en-

roll in either the health care reimbursement plan, dependent care reimbursement plan or both.

§85.3. *Eligibility and Participation.*

(a) Dependent care reimbursement plan.

(1) Eligibility. Any employee eligible to participate in the Texas Employees Group Benefits Program may elect to participate in the dependent care reimbursement account.

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30 days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made on the date on which the employee begins active duty becomes effective on that date. An election made after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the employee begins active duty.

(B) An employee who is otherwise eligible to participate in the Texas Employees Group Benefits Program but who declined participation in the dependent care reimbursement account prior to the beginning of a plan year, and who, after the beginning of a plan year, has a qualifying life event, as defined in §85.7(c) of this title (relating to Enrollment), may elect to participate in the dependent care reimbursement account as provided in §85.7(c) of this title.

(C) A qualifying life event as defined in §85.7(c) of this title (relating to Enrollment) will permit a change or revocation of participation during the plan year as provided in §85.7(c) of this title.

(D) An eligible employee shall have an opportunity to enroll or change benefit options during the annual enrollment period. The annual enrollment period shall be prior to the beginning of a new plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year.

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(3) Duration of participation.

(A) An employee's election to participate or to waive participation in the dependent care reimbursement plan shall be irrevocable for the plan year unless there is a qualifying life event as defined in §85.7(c) of this title (relating to Enrollment).

(B) An employee returning to active duty following termination of employment, or following a period of approved leave without pay, during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title (relating to Enrollment).

(b) Health care reimbursement plan.

(1) Eligibility.

(A) Any employee eligible to participate in the Texas Employees Group Benefits Program may elect to participate in a health care reimbursement account, except that an employee participating in a consumer directed health plan with a health savings account, as permitted under Subchapter J, Chapter 1551, Insurance Code, may only participate in the limited purpose health care reimbursement account described by §85.5(b)(3), of this title (relating to Benefits). Only participants in a consumer directed health plan are eligible to elect to participate in the limited purpose health care reimbursement account described by §85.5(b)(3) of this title.

(B) Prior to September 1, 2014, an employee whose employment has been terminated, voluntarily or involuntarily, and who had a health care reimbursement account at the time of termination, shall retain the health care reimbursement account for the applicable period of election. The terminated employee must pre-pay, on a monthly basis, the elected amount and any administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment.

(C) On and after September 1, 2014, the employee's period of coverage ends on the date of termination of employment.

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30 days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made by an employee to participate in the health care reimbursement plan shall be effective on the date that the employee's coverage in a GBP health benefit plan begins. But if an employee opts out or waives GBP health coverage as provided in §81.8 of this title (relating to Waiver of Health Coverage), the employee's election shall become effective on the first day of the calendar month following 60 days of employment. ~~[on the date on which the employee begins active duty becomes effective on that date. An election made after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the employee begins active duty.]~~

(B) An employee who is eligible but who declined participation in the health care reimbursement account prior to the beginning of a plan year, and who, after the beginning of a plan year, has a qualifying life event, as defined in §85.7(c) of this title (relating to Enrollment), may elect to participate in a health care reimbursement account as provided in §85.7(c) of this title.

(C) A qualifying life event as defined in §85.7(c) of this title (relating to Enrollment) will permit the following changes in election during the plan year, as provided in §85.7(c) of this title:

(i) an increase in the election amount, if the increase is consistent with the qualifying life event; or

(ii) a decrease in the election or election amount, if the decrease is consistent with the qualifying life event.

(D) An eligible employee shall have an opportunity to enroll or to change benefit options during the annual enrollment period. The annual enrollment period shall be prior to the beginning of a new

plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year.

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(F) If an eligible employee elects to enroll in a consumer directed health plan with a health savings account, any unspent flexible benefit plan dollars in the employee's health care reimbursement account at the end of the previous plan year shall automatically be transferred to and carryover into a limited purpose account as described by §85.5(b)(3) of this title, up to the maximum carryover permitted by the IRS. Such carryover shall comply with §85.7(g) of this title. Any flexible benefit plan dollars remaining that exceed the maximum carryover permitted by the IRS will be forfeited by the employee.

(3) Duration of participation.

(A) Except as otherwise provided in [subparagraph (C)(ii)] of paragraph (2)(C)(ii) or (D) of this subsection [5 or subparagraph (D) of this paragraph], an employee's election to or not to participate in a health care reimbursement account shall be irrevocable for the plan year.

(B) An employee returning to active duty following termination of employment, or following a period of leave without pay, during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title (relating to Enrollment) or a different requirement is imposed by the Family and Medical Leave Act of 1993 (FMLA).

(C) For plan years beginning before September 1, 2014, an employee who is enrolled in a health care reimbursement account who terminates employment during the plan year must retain the health care account for the remainder of the plan year and prepay premiums or make monthly premium payments due for the remainder of the plan year, as described in paragraph (1)(B) of this subsection.

(D) For plan years beginning on and after September 1, 2014, an employee who is enrolled in a health care reimbursement account who terminates employment during the plan year does not retain the health care account for the remainder of the plan year. The employee's period of coverage ends on the date of termination. An employee may only file a claim for reimbursement for expenses incurred before the date of termination.

(E) Notwithstanding any provision to the contrary in this Plan, if an employee goes on a qualifying unpaid leave under the Family Medical Leave Act (FMLA), to the extent required by the FMLA, the plan administrator will continue to maintain the employee's health care reimbursement account on the same terms and conditions as though he were still an active employee (i.e., the plan administrator or its designee will continue to provide benefits to the extent the employee opts to continue his coverage). If the employee opts to continue his coverage, the employee shall pay his or her contribution in the same manner as a participant on the non-FMLA leave, including payment with after-tax dollars while on leave. The employee may also be given the option to pre-fund all or a portion of the contribution for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year).

§85.4. *Separate Plans.*

(a) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §85.1, 85.3(a), 85.5(a), 85.5(c), 85.7, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19 of this title.

(b) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §§85.1, 85.3(b), 85.5(a), 85.5(b), 85.7, 85.8, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19 of this title.

(c) Insurance Premium Conversion Plan--A separate plan under §105(b) of the Code designed to provide insurance premium conversion as described in §81.7 of this title (relating to Enrollment and Participation). The Insurance Premium Conversion Plan is intended to comply with the Internal Revenue Code, §79 and §106.

(d) Qualified transportation benefit plan--A separate plan under the Code, §132, approved by the board of trustees, and designed to provide payment or reimbursement for certain transportation expenses. The qualified transportation benefit plan is governed by a plan document as executed and approved by the Executive Director, and as amended hereafter. A copy of the plan document may be obtained from the Employees Retirement System of Texas on request.

§85.7. *Enrollment.*

(a) Election of benefits.

(1) An eligible employee may elect to participate in the health care and/or dependent care reimbursement accounts within the flexible benefits plan by making an election and executing an election form or enrolling electronically.

(2) An employee who becomes eligible after the beginning of a plan year has 30 days from the date of eligibility to elect or decline benefits by executing an election form.

(3) By enrolling in the plan, the employee agrees to a reduction in compensation or agrees to after-tax payments equal to the participant's share of the cost and any fees for each reimbursement account selected.

(4) An election to participate in a reimbursement plan must be for a specified dollar amount plus any administrative fee.

(5) An annual enrollment period will be designated by the Employees Retirement System of Texas and shall be prior to the beginning of a new plan year. The annual enrollment period shall provide an opportunity to change and to elect or decline benefit options.

(6) An active employee who is enrolled in reimbursement accounts immediately prior to the annual enrollment period will be automatically re-enrolled with the same elections and contribution amounts for the new plan year unless the active employee takes action during the annual enrollment period to change contribution amounts or to decline participation.

(b) Effects of failure to elect.

(1) If the Employees Retirement System of Texas does not receive an election form from an eligible employee to participate in the reimbursement accounts by the due date, it shall be deemed an express election and informed consent by the eligible employee to:

(A) receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation; or

(B) in the case of automatic re-enrollment during the annual enrollment period, to continue participation in the reimbursement accounts with the same contributions for the new plan year.

(2) To the extent an eligible employee does not elect the maximum permissible participation amounts hereunder, he shall be deemed to have elected cash compensation.

(c) Benefit election irrevocable except for qualifying life event.

(1) An election to participate shall be irrevocable for the plan year unless a qualifying life event occurs, and the change in election is consistent with the qualifying life event. The plan administrator may require documentation in support of the qualifying life event.

(2) A qualifying life event occurs when an employee experiences one of the following changes:

- (A) change in marital status;
- (B) change in dependent status;
- (C) change in employment status;
- (D) change of address that results in loss of benefits eligibility;

(E) change in Medicare or Medicaid status, or Children's Health Insurance Program (CHIP) status;

(F) significant cost of benefit or coverage change imposed by a third party provider other than a provider through the Texas Employees Group Benefits Program; or

(G) change in coverage ordered by a court.

(3) An election form requesting a change in election must be submitted on, or within 30 days after, the date of the qualifying life event, provided, however, a change in election due to CHIP status under paragraph (2) of this subsection must be submitted on, or within 60 days after, the change in CHIP status.

(4) A change in election as provided in this subsection becomes effective on the first day of the month following the date of the qualifying life event.

(d) Payment of flexible benefit dollars.

(1) Flexible benefit dollars from an active duty employee shall be recovered through payroll withholding at least monthly during the plan year and remitted to the Employees Retirement System of Texas for the purpose of purchasing benefits. For the health care reimbursement account only, and except as otherwise provided in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation), flexible benefit dollars from employees on leave without pay status or who have insufficient funds for any month shall be recovered through direct after-tax payment from the employee or upon the return of the employee to active duty status from payroll withholding, for the total amount due.

(2) An employee's flexible benefit dollars with respect to any month during the plan year shall be equal to the authorization on the employee's election form plus any administrative fees.

(3) Flexible benefit dollars received by the Employees Retirement System of Texas shall be credited to the participant's dependent care reimbursement account and/or health care reimbursement account, as appropriate.

(e) Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reim-

burse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year, if the claim is electronically adjudicated or if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) Except as provided by subsection (g) of this section, any balances remaining after payment of all timely and correctly filed claims postmarked no later than December 31 following the close of the plan year, shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(3) An unexpended balance in an amount of \$25 or less is not eligible for carryover under subsection (g) of this section if the participant does not reenroll in the plan for the subsequent plan year. The unexpended balance [; and] shall be forfeited by the participant and will be available to pay administrative expenses of the flexible benefits program.

(f) Reimbursement report to participant. The plan administrator or its designee may provide to the participant periodic reports on each reimbursement account, showing the account transactions (disbursements and balances) during the plan year. These reports may be provided periodically through electronic means.

(g) Carryover of unexpended balances. Under IRS regulations, [Pursuant to IRS Notice 2013-71, for a plan year beginning on or after September 1, 2014,] a participant may be permitted to carry over a specific amount [up to \$500] of unspent flexible benefit plan dollars to the immediately following plan year. The flexible benefit dollars carried over may be used to pay or reimburse incurred expenses under the health care reimbursement plan during the entire plan year to which the dollars are carried over. A participant is entitled to carry over a designated amount set by the Employees Retirement System of Texas and publicly posted; such designated amount shall not exceed the maximum of the indexed amount of the carryover limit set by the Internal Revenue Service [\$500], and any balance in excess of this designated amount is forfeited as provided by subsection (e) of this section. Any amount of carryover that rolls over into the new plan year does not affect the maximum amount of participant contributions permitted under §125(i) of the Code.

#### §85.8. HealthSelectShoppERS.

(a) Description. The HealthSelectShoppERS program is designed to provide an incentive for eligible GBP health benefit plan participants to select certain network facilities for specified elective, non-emergency medical services and procedures. The program is described in §81.12 of this title (relating to HealthSelectShoppERS). The incentive is an employer contribution by a GBP health benefit plan to an active duty employee's health care reimbursement account or limited purpose health care reimbursement account.

(b) Employer Contributions by a GBP Health Benefit Plan.

(1) All HealthSelectShoppERS program incentives shall be employer contributions to active duty employees' health care reimbursement accounts or limited purpose health care reimbursement accounts.

(2) The annual employer contributions by GBP health benefit plans to any active duty employee in connection with the HealthSelectShoppERS program shall not exceed a designated amount set by the Employees Retirement System of Texas and publicly posted. Any employer contributions by a GBP health benefit plan to an active employee's account shall be in addition to the annual maximum employee contribution amount established by the plan administrator.

(3) The TPA will establish a health care reimbursement account or limited purpose health care reimbursement account for any

active duty employee who receives an employer contribution from a GBP health benefit plan but does not have an established account.

(4) Once credited into an active duty employee's health care reimbursement account or limited purpose health care reimbursement account, the employer contribution by the GBP health benefit plan is available to the employee as flexible benefit plan dollars.

§85.9. *Payment of Claims from Reimbursement Accounts.*

(a) Claim for reimbursement.

(1) Claims for reimbursement of expenses incurred during an eligible employee's period of coverage in the plan year may be submitted at any time during the plan year, but not later than December 31 following the close of the plan year.

(2) Claims shall be paid to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year, in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) Expenses incurred prior to becoming a participant or after the last day of a plan year, shall not be covered by this plan. A terminated participant may continue to file claims for eligible expenses incurred during the employee's period of coverage within the plan year, if applicable, to exhaust reimbursement account balances no later than December 31 following the close of the plan year.

(4) Claims shall be submitted in a manner prescribed by the Employees Retirement System of Texas or its designee, accompanied by such bills, receipts or other proof of incurring the expense as the plan administrator or its designee may require.

(5) A claim form must be submitted each time reimbursement or payment is requested, unless using the debit card.

(6) The dependent care and health care reimbursement accounts are separate accounts, and funds from one account may not be used to reimburse expenses of the other account.

(b) Debit Card transactions.

(1) Debit card payments for eligible expenses incurred during a participant's period of coverage in the plan year may occur at any time during the plan year.

(2) Transactions shall be processed to the extent of available flexible benefit dollars allocable to the applicable type of expenses and shall only be paid out of flexible benefit dollars for the plan year in which the expense was incurred. The TPA shall compare the participant's available balance and the amount of the expense to make certain that claims are paid according to the provisions of the Code and these rules.

(3) Expenses incurred prior to becoming a participant shall not be covered by this plan. Expenses incurred by a participant may be covered only in the plan year in which the expense is actually incurred. Upon a participant's termination, the debit card will be automatically deactivated. Paper claims may be filed for eligible expenses incurred during the participant's period of coverage within the plan year in which he was a participant. All claims for reimbursement from account balances must be filed no later than December 31 immediately following the close of the plan year.

(4) Participants may be required to submit bills, receipts or other proof of incurring the expense as the plan administrator or its designee may require.

(5) Reimbursements or payments made using the debit card may require additional supporting documentation as may be requested by the plan administrator or its designee, and the participant must maintain his own records to substantiate the eligibility of all expenses for individual income tax purposes, if necessary.

(c) Reimbursement of claims to participants.

(1) Payment of eligible expenses shall be made directly to the participant by the plan administrator or its designee unless payment for dependent or health care expenses is made directly to the applicable provider through use of a debit card, other similar technology, or other means approved by the plan administrator.

(2) The plan administrator may establish or waive the minimum payment as deemed necessary.

(3) Reimbursements to participants or dependent care providers shall be made at least once each month.

(4) Dependent care reimbursement shall at no time exceed the greater of the balance of the participant's account for the plan year at the time of the reimbursement, or an amount equal to the monthly salary reduction amount.

(5) Health care reimbursement shall at no time exceed the eligible employee's election and employer contributions, if applicable, for the eligible period of coverage in the plan year.

(d) Participant's responsibility.

(1) An employee or former employee will be held liable for any overpayments of benefits as a participant in the reimbursement accounts. The method of repayment shall be determined by the plan administrator or its designee, and until full restitution is made by the participant, no further claims payment from any TexFlex accounts will be made to the participant by the plan administrator or its designee.

(2) A health care reimbursement account participant who has insufficient funds during the plan year is liable for the monthly health care election amount and must pay for it with after-tax dollars, unless as described in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation). Should the participant fail to contribute to the account with after-tax dollars, upon the participant's return to active duty, payroll deduction will be required to recover the election amounts due.

§85.13. *Funding.*

(a) Expenses of administration. Any expenses incurred in the administration of the flexible benefits plan will be paid from the State Employees Cafeteria Trust Fund. An administrative fee to defray costs of administering the plan may be imposed on any, or each, reimbursement account as the board of trustees determines to be necessary.

(b) Employee Contributions.

(1) Contributions to the flexible benefits plan by active duty employees may be made only through payroll salary reduction. An employee who elects to participate in the health care and dependent care reimbursement plans must authorize, on an election form, the exact amount of salary reduction, in addition to any monthly administrative fee.

(2) Eligible health care reimbursement account participants on inactive employment status must continue to contribute to their health care reimbursement account with after-tax dollars paid directly to the Employees Retirement System of Texas in the exact amount of the election, plus any administrative fees.

(3) The minimum amount a participant may elect to reduce his salary on a monthly basis for each reimbursement account is \$15. The maximum amount an employee may elect to reduce his salary on a



monthly basis for each reimbursement account is limited to the amount stipulated in §85.5(b) and (c) of this title (relating to Benefits). Any administrative fee for a reimbursement account is in addition to these minimum and maximum amounts.

(4) When a participant receives no salary in a pay period, no salary reduction will be made for that pay period and no catch-up salary reduction will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursements Accounts) for health care reimbursement account participants.

(5) In situations where there are insufficient salary dollars to fund the amount of the salary reduction and fees, no salary reduction will be made, except as indicated in paragraph (6) of this subsection, for that pay period and no catch-up reduction will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursement Accounts) for health care reimbursement account participants.

(6) In the event an employee has elected to participate in more than one flexible benefits plan optional benefit and the employee's pay is sufficient to pay for one or more, but not all of the flexible benefits plan contributions, then payment of the flexible benefits plan contributions shall be made in the following order: health care reimbursement and dependent care reimbursement.

(7) If a participant elects to change contributions due to a qualifying life event (QLE), the plan administrator shall reimburse eligible claims based on the contribution in place when they occurred. Claims incurred during the initial enrollment period shall be reimbursed up to the amount of the participant's original contribution election. The plan administrator shall treat the remainder of the plan year following the QLE as a new coverage period, and claims incurred in this time period shall be reimbursed up to the amount of the new contribution election.

(c) Employer Contributions. The employer contributions referenced in §85.8(b) of this title, made to active duty employees' health care reimbursement accounts or limited purpose health care reimbursement accounts in connection with the HealthSelectShoppERS program are the only Employer Contributions available under the TexFlex Program.

*§85.17. Grievance Procedure.*

(a) Any person participating in the flexible benefits program, who is denied reimbursement of eligible expenses, may request the plan administrator or its designee to reconsider the claim. Any additional documentation in support of the claim may be submitted with the request for reconsideration. If the claim is again denied, the claim, accompanied by all related documents and copies of correspondence with the plan administrator or its designee, may be appealed by the person to the executive director of the Employees Retirement System of Texas. An appeal must be filed by the person in writing within 90 days from the date the plan administrator or its designee formally denies the claim and mails notice of this denial and right of appeal to the person.

(b) Any participant with a grievance regarding eligibility or other matters involving the TexFlex program [Program] may submit a written request to the executive director or the executive director's designee to make a determination on the matter in dispute.

(c) When the executive director or the executive director's designee reviews any matter arising under this section, information available to ERS will be considered. When the executive director or the executive director's designee completes the review and makes a decision, all parties involved will be notified in writing of the decision.

(d) Any participant aggrieved by the executive director's or the executive director's designee's decision may appeal the decision to the Board's designee provided the decision grants a right of appeal.

(1) Appeals of the Board's designee's decision will be conducted under the provisions of Chapter 67 of this title (relating to Hearings and Disputed Claims) and Chapter 1551, Insurance Code.

(2) A notice of appeal to the Board's designee must be in writing and filed with ERS within 30 days from the date the executive director's or the executive director's designee's decision is served on the participant in accordance with §67.7 of this title (relating to Filing and Service of Documents and Pleadings).

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 June 29, 2020.

TRD-202002595

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: August 9, 2020

For further information, please call: (877) 275-4377



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 1. MANAGEMENT

##### SUBCHAPTER F. ADVISORY COMMITTEES

###### 1 TAC §1.84

The Texas Department of Transportation (department) proposes amendments to 43 TAC §1.84, concerning Statutory Advisory Committees.

###### EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill No. 1959, 86th Regular Session, 2019, amended Transportation Code, Chapter 55, Funding of Port Security, Projects, and Studies, to clarify the duties of the Port Authority Advisory Committee (PAAC). Previously, Transportation Code, §55.007, required the PAAC to submit a biennial maritime port mission plan, while Transportation Code, §55.008, required the PAAC to submit a similar port capital program. The required content of the two reports was unclear but seemingly redundant. The statutory amendments clarified those requirements. The purpose of this rulemaking is to align the rules with the statutory changes.

Amendments to §1.84 specify that the PAAC is required to prepare, not later than December 1 of each even-numbered year, a single maritime port mission plan that conforms with the requirements of Transportation Code, §55.008, and submit the plan to the commission and to the governor, lieutenant governor, speaker of the house of representatives.

###### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there

will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Geir-Eilif Kalhagen, Maritime Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

Mr. Kalhagen has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will provide a singular, more coherent review and assessment of Texas' port system.

#### COSTS ON REGULATED PERSONS

Mr. Kalhagen has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small business, micro-business, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Kalhagen has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect there is no impact on the growth of state government. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

Mr. Kalhagen has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.84 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to [RuleComments@txdot.gov](mailto:RuleComments@txdot.gov) with the subject line "PAAC Reporting Rules." The deadline for receipt of comments is 5:00 p.m. on August 10, 2020. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §55.009, which requires the commission to adopt rules to implement Transportation Code, Chapter 55, and Transportation Code, §201.117, which requires the commission to determine the duties of its advisory committees.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §55.007 and §55.008.

#### §1.84. *Statutory Advisory Committees.*

##### (a) *Aviation Advisory Committee.*

(1) *Purpose.* Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) *Membership.* The commission will appoint nine members to staggered terms of three years with three members' terms expiring August 31 of each year. A majority of the members of the committee must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator. A member may not serve more than three consecutive terms on the committee.

##### (3) *Duties.* The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(5) Rulemaking. Section 1.83 of this subchapter (relating to Rulemaking) does not apply to the Aviation Advisory Committee.

(b) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission;

(C) advise the commission on the implementation of Transportation Code, Chapter 461; and

(D) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet as requested by the commission or the division designated under §1.82(f) of this subchapter (relating to Statutory Advisory Committee Operations and Procedures).

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(c) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §55.006, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the maritime port industry in Texas and others who have an interest in maritime ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding maritime ports and transportation-related matters to be considered in formulating department policies concerning the Texas maritime port system.

(2) Membership. Members shall be appointed pursuant to Transportation Code, §55.006. Members appointed by the commission

serve staggered three-year terms unless removed sooner at the discretion of the commission.

(3) Duties. The committee shall:

(A) prepare a maritime port mission plan, in accordance with Transportation Code, §55.008 and submit the plan to the governor, lieutenant governor, speaker of the house of representatives and commission not later than December 1 of each even-numbered year;

(B) review each project eligible to be funded under Transportation Code, Chapter 55, and make recommendations for approval or disapproval to the department; and

(C) advise the commission and the department on matters relating to port authorities; ~~and~~

~~[(D)] [not later than December 1 of each even-numbered year];~~

~~[(ii)] [prepare and submit a report on Texas maritime ports, in accordance with Transportation Code, §55.007, subsections (a)(3) and (b)];~~

~~[(ii)] [prepare and submit a port capital program, in accordance with Transportation Code, §55.008].~~

(4) Meeting. The committee shall meet at least semiannually and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(d) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, the governor, and committee members representing border trade interests. The committee's advice and recommendations will provide the governor, the commission, and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The border commerce coordinator designated under Government Code, §772.010, shall serve as the chair of the committee. The commission will appoint the other members of the committee in accordance with Transportation Code, §201.114. The commission will appoint members to staggered three-year terms expiring on August 31 of each year, except that the commission may establish terms of less than three years for some members in order to stagger terms.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Sections 1.82(i) and 1.83 of this subchapter do not apply to the Border Trade Advisory Committee.

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 June 25, 2020.

TRD-202002533

Becky Blewett  
Deputy General Counsel  
Texas Department of Transportation  
Earliest possible date of adoption: August 9, 2020  
For further information, please call: (512) 463-8630



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 8. ADVISORY OPINIONS

##### 1 TAC §§8.1, 8.3, 8.5, 8.7, 8.11, 8.13, 8.15, 8.17 - 8.19

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 8. Specifically, the Commission adopts amendments to §8.1, regarding Definitions, §8.3, regarding Subject of an Advisory Opinion, §8.5, regarding Persons Eligible To Receive an Advisory Opinion; §8.7, regarding Request for an Advisory Opinion, §8.11, regarding Review and Processing of a Request, §8.13 regarding Time Period, §8.15, regarding Publication in *Texas Register*; Comments, §8.17, regarding Letter Response, and §8.19, regarding Confidentiality, and adopts new §8.18, regarding No Defense to Prosecution or Civil Penalty. The amendments are adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2777). The rules will not be republished.

Section 571.091 of the Government Code requires the Commission to "prepare a written opinion answering the request of a person subject to [certain identified] laws for an opinion about the application of any of these laws to the person in regard to a specified existing or hypothetical factual situation." The Commission is also required to "issue an advisory opinion not later than the 60th day after the date the commission receives the request." By Commission vote, the 60-day deadline can be extended twice by 30 days.

Section 571.097 of the Government Code provides a defense to prosecution or to the imposition of a civil penalty that the person reasonably relied on a written advisory opinion relating the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved. Thus, an advisory opinion provides a useful function for the regulated community by providing assurance that a certain action is permissible. In 2019, the legislature passed Senate Bill 548, amending section 571.097 to state that a requestor of an opinion will have a similar defense if the requestor submits a written advisory opinion and the Commission does not issue an opinion within the 60-day period required by section 571.092. The defense applies only to acts giving rise to a potential violation of law occurring in the period beginning on the date the deadline passes and ending on the date the Commission issues the requested opinion. Thus, if a person requests an opinion and the Commission does not issue an opinion within the required 60-day period, or within the extended time period if the Commission votes to extend by 30 or 60 days, then the requestor has an absolute defense. The amendment is effective on September 1, 2019.

The passage of Senate Bill 548 prompted Commission staff to review the existing procedural rules for advisory opinions. Staff's primary concern is that a person who submits a request for an advisory opinion would have a defense to prosecution if the Commission does not meet in time to meet the 60-day deadline, or if the Commission meets to consider a draft opinion but does not adopt an opinion because of insufficient votes. At the November meeting, some of the commissioners expressed support for a rule that would automatically extend the 60-day deadline by another 60 days. The draft rules that are prepared for this agenda item include a rule (§8.13(b)) that would enact automatic extensions and numerous additional changes to clarify the advisory opinion process for both requestors and staff.

No public comments were received on these amended rules.

The amended and new rules are adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The adopted amendments and new rule affect Subchapter D of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2020.

TRD-202002505

J.R. Johnson

General Counsel

Texas Ethics Commission

Effective date: July 13, 2020

Proposal publication date: May 1, 2020

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



#### CHAPTER 12. SWORN COMPLAINTS SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

##### 1 TAC §12.29, §12.30

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 12. Specifically, the Commission amends §12.29, regarding Subpoenas Issued by Commission, and adds new §12.30, regarding Subpoenas Issued by Counsel for the Respondent. The amendment and new rule are adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2779). The rules will not be republished.

Section 571.137 of the Government Code authorizes the Commission to issue subpoenas in connection with a preliminary review (on application by Commission staff) or a formal hearing. The 2019 regular legislative session passed Senate Bill 548, which amended Tex. Gov't Code §571.125 and 571.130, regarding subpoenas in the Preliminary Review and Formal Hearing processes.

In response to the bill, Commission staff considered the need for any rules to clarify such subpoenas. Staff have expressed concerns about subpoenas being issued without receiving any notice. To address that concern, staff drafted this rule that would require any subpoena and proof of service to be filed with the Commission within three days of service. The rule also includes an enforcement mechanism authorizing the Commission's presiding officer to essentially sanction a respondent for noncompliance by excluding evidence obtained with the subpoena.

The statute specifically authorizes a respondent's counsel to "subpoena a witness to a hearing in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court." This appears, at the very least, to authorize a subpoena commanding a person to "attend and give testimony at a "hearing." It is not entirely clear whether this would authorize a subpoena to compel a person to produce documents or other tangible items at a hearing. The subpoena and discovery rules in the TRCP often use the term "witness" broadly to refer to a person served with or responding to a subpoena.

Senate Bill 548 applies only to a complaint filed on or after September 1, 2019.

No public comments were received on this amended rule.

The amended and new rule are adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Title 15 of the Election Code.

The amended and new rule affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J.R. Johnson

General Counsel

Texas Ethics Commission

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



### 1 TAC §12.34

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission rules in Chapter 12. Specifically, the Commission adds new §12.34, regarding Agreed Orders. The new rule is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2781). The rule will not be republished.

No public comments were received on this new rule.

The new rule is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The adopted new rule affects Subchapter E of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J.R. Johnson

General Counsel

Texas Ethics Commission

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## CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 12. Specifically, the Commission amends §12.83, regarding Preliminary Review, and §12.84, regarding Notice of Preliminary Review Hearing. The amendments are adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2782). The rules will not be republished.

These amended rules address the Commission's sworn complaint procedures in response to Senate Bill 548 (SB 548), enacted in the 2019 legislative session. Section 571.1242, Texas Government Code, as amended by SB 548, requires the Commission to either propose an agreement to settle a complaint or dismiss the complaint within 120 days after receiving the respondent's response to a notice of a complaint or the respondent's response to written questions, whichever is later. Section 571.1242 also requires the Commission to set a complaint for a preliminary review hearing "at the next [C]ommission meeting for which notice has not yet been posted" if a respondent rejects a proposed settlement during preliminary review.

The bill repealed the previous requirement that the Commission set a complaint for a preliminary review hearing if it is not resolved within 30 or 75 business days, depending on the category of the alleged violations in the complaint, of the respondent receiving the notice of the complaint. The amended rules are intended to clarify how these new requirements apply.

No public comments were received on these amended rules.

## SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

### 1 TAC §12.83

The amended rule is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The amended rule affects Subchapter E of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. PRELIMINARY REVIEW HEARING

### 1 TAC §12.84

The amended rule is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The amended rule affects Subchapter E of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES SUBCHAPTER A. GENERAL RULES

### 1 TAC §20.1

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission rules in Chapter 20. Specifically, the Commission amends §20.1, regarding Definitions. The amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2784). The rule will not be republished.

House Bill 2586 from the 86th legislative session, which went into effect on September 1, 2019, allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

The rule amendments address "hybrid" and "direct campaign expenditure-only" committees, which are concepts introduced by the new legislation. To simplify the rules, definitions for each

type of committee would be helpful. The definitions of "hybrid committee" and "direct campaign expenditure-only committee" merely copy the statutory language that describes these types of committees.

The adopted amendment rule should be read in conjunction with an amendment to Texas Ethics Commission rule §24.18 and new rules §22.35 and §24.19, which are adopted contemporaneously with this amendment.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule affects Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

### 1 TAC §22.35

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission adds new §22.35, regarding Corporate Contributions to Certain Political Committees. The amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2785). The rule will not be republished.

HB 2586 allows for the creation of what is referred to in campaign finance law as a hybrid political action committee, which may accept unlimited contributions from corporations and labor organizations to make direct campaign expenditures (i.e. independent expenditures), while using other non-corporate contributions to contribute to candidates.

Adopted rule 22.35 requires hybrid PACs, direct campaign expenditure-only committees, and general-purpose committees that accept contributions for administrative or solicitation expenses, to keep corporate or labor organization contributions in a separate account, to ensure that corporate contributions given to political committees, including hybrid PACs, are not given to candidates, officeholders, or their specific-purpose committees. The adopted rule also clarifies that corporate and labor organization contributions generally may not be used to make a political contribution.

This new rule should be read in conjunction with new Ethics Commission rule §24.19 and amendments to Ethics Commission rules §20.1 and §24.18, which are adopted contemporaneously with this new rule.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The adopted new rule affects Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J.R. Johnson

General Counsel

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## CHAPTER 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES APPLICABLE TO CORPORATIONS AND LABOR ORGANIZATIONS

### 1 TAC §24.18, §24.19

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 24. Specifically, the Commission amends §24.18, regarding Designation of Contribution for Administrative Purposes, and adds new §24.19, regarding Affidavit Required by a Political Committee Making a Direct Campaign Expenditure from a Political Contribution Accepted from a Corporation or Labor Organization. The amendment and new rule are adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2785). The rules will not be republished.

HB 2586 allows for the creation of what is referred to in campaign finance law as a hybrid political action committee, which may accept unlimited contributions from corporations and labor organizations to make direct campaign expenditures (i.e. independent expenditures), while using other non-corporate contributions to contribute to candidates.

The amendment to Ethics Commission rule §24.18 creates a presumption in most cases that corporate money given to a political committee is deemed designated "as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee." The amendment exempts hybrid PACs from this rule so that hybrid PACs may also use corporate contributions to fund direct campaign expenditures, as allowed by HB 2586. The amendment also adds a presumption that a corporate contribution to a political committee is deemed designated for permissible administrative purposes if it is deposited in a separate segregated account.

New Ethics Commission rule §24.19 is added primarily for clarity. It restates the new statutory requirement that the affidavit must be included in a political committee's campaign treasurer appointment before using a political contribution from a corporation or labor organization to make a direct campaign expenditure in connection with a campaign for an elective office. The second

sentence is the substance of the rule, which states that the requirement to file a "Hybrid PAC affidavit" also applies to a direct campaign expenditure only committee.

The adopted amendment and new rule should be read in conjunction with an amendment to Ethics Commission rule §20.1 and new rule §22.35, which are adopted contemporaneously with this amendment and new rule.

No public comments were received on this amended and new rule.

The amended and new rule are adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Title 15 of the Election Code.

The amended and new rule affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

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## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

#### SUBCHAPTER J. PURCHASED HEALTH SERVICES

#### DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

### 1 TAC §355.8201

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8201, concerning Waiver Payments to Hospitals for Uncompensated Care.

The amendment is adopted with changes to the proposed text as published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2381). The text of the rule will be republished.

#### BACKGROUND AND JUSTIFICATION

The rule amendment describes the methodology HHSC will use to calculate and distribute unspent Uncompensated Care (UC) payments for program years 2014 through 2017.

The hospital specific limit (HSL) is a limit on the amount of payments a hospital may receive for care to Medicaid and low-income uninsured patients. In Texas during the program years at issue, two types of HSLs existed for hospitals that participated in the Disproportionate Share Hospital (DSH) and UC programs: an interim HSL and a final HSL. The interim HSL is defined by HHSC and the final HSL is described in federal law. The interim



HSL is calculated in the payment year for DSH and UC to determine payment amounts using historical Medicaid and uninsured data. The final HSL is calculated two years after the payment year using actual data to determine whether hospitals were overpaid.

The final HSL has been the subject of ongoing federal litigation for several years. In 2010, the Centers for Medicare & Medicaid Services (CMS) promulgated a series of Frequently Asked Questions (FAQs) relating to the calculation of the final HSL. FAQ 33 stated that, when calculating the HSL, full payments from commercial insurers should offset the costs of providing care to Medicaid beneficiaries who also had commercial insurance. In December 2014, Texas Children's Hospital sued CMS to stop enforcement of FAQ 33. The court issued a temporary injunction preventing CMS from enforcing that FAQ.

Because of the uncertainty resulting from the litigation, HHSC agreed to refrain from paying 5 percent of UC payments and 3.5 percent of DSH payments annually until the issues underlying the lawsuit were resolved. That practice remained in effect for each program year between 2014 and 2017. During that time, HHSC withheld approximately \$646.2 million in UC payments.

#### *Upper Payment Limit Obligation*

In December 2011, HHSC received federal approval for an 1115 demonstration waiver that would allow HHSC to expand Medicaid managed care statewide and preserve supplemental Medicaid funding received under the Upper Payment Limit (UPL) program. Under the 1115 waiver, HHSC established the Delivery System Reform Incentive Payment (DSRIP) and UC funding pools.

The 1115 waiver approval required supplemental payments made during the first demonstration year of the waiver to be included in the UC pool cap. CMS determined that HHSC did not include UPL supplemental payments made in November 2011 and December 2011 (prior to the 1115 waiver approval) and, as such, this resulted in an overpayment in UC pool funding for the first demonstration year. CMS determined the total overpayment, known as the "UPL obligation," is approximately \$480.8 million, and that the obligation must be offset against the UC pool for the first five demonstration years of the waiver.

HHSC proposed multiple methodologies and sought stakeholder input to determine the most appropriate method to pay the remaining UPL obligation and to distribute the unspent UC funds for program years 2014 through 2017. Through this rule, HHSC is implementing one methodology discussed by HHSC and stakeholders. HHSC will use the \$646.2 million in unspent UC funds to offset the remaining UPL obligation and distribute the remaining unspent UC funds.

The methodology HHSC will use to distribute the unspent UC payments is described below.

#### *Methodology for Dispensing Unspent UC Payments*

The amendment to §355.8201 describes the methodology HHSC will use to calculate and distribute payments to hospitals made after July 31, 2020, using the unspent funds for UC program years 2014 through 2017. The amendment also details the basis for each hospital's payment allocation.

First, HHSC will apply the unspent UC funds from program years 2014 through 2017 to the remaining UPL obligation. After accounting for the UPL obligation, HHSC will then calculate the

remaining amount of unspent UC funds available for each program year.

The remaining unspent funds will be allocated based on each hospital's relative share of payments that are from a third-party payor for a Medicaid-enrolled patient and associated with third-party coverage as defined in §355.8066. Each hospital's payment allocation will be based on 100 percent of the hospital's payments associated with third-party coverage, except for children's hospitals, whose payment allocation will be based on 150 percent of their payments associated with third-party coverage. State hospitals, physician group practices, and ambulance and dental providers will not receive payments under the proposed methodology, as the CMS litigation and UPL debt repayment most significantly affected the initial UC payments to non-state hospitals.

HHSC will allocate a hospital's payment by multiplying the appropriate payment allocation percentage by the amount of payments that are from third-party payors for Medicaid patients received by the hospital in the data year of the corresponding UC program year. HHSC will then divide the payment amount by the total amount of payments from third-party payors for Medicaid patients received by all participating hospitals in the data year of the corresponding UC program year, and then multiply the amount by the remaining unspent UC funds available for the program year. Each hospital's payment will be limited to the actual costs incurred by that hospital calculated for the UC reconciliation for that program year.

#### COMMENTS

The 31-day comment period ended May 11, 2020.

During this period, HHSC received comments regarding the proposed rule from five commenters: Children's Hospital Association of Texas, CHRISTUS Health, Sensible Care EMS Ambulance Service, Tenet Healthcare, and Texas Children's Hospital.

A summary of comments relating to the rule and HHSC's responses to the comments follow.

Comment: Most commenters support the proposed rule amendment. Specifically, commenters expressed support for the proposed methodology of applying the unspent UC funds to the outstanding UPL obligation and the proposed methodology of distributing the remaining unspent UC funds.

Response: HHSC appreciates the comments in support of the proposal. No changes were made in response to the comments.

Comment: One commenter proposed HHSC include Emergency Medical Services Ambulance providers because they have suffered an increased cost of caring for the uninsured.

Response: While governmental ambulance providers are eligible to participate in UC, HHSC excluded governmental ambulance providers, as well as state hospitals, physician group practices, and dental providers, from the proposed methodology because the CMS litigation and UPL debt repayment most significantly affected the initial UC payments to non-state hospitals. No changes were made in response to this comment.

Comment: One commenter recommended HHSC amend the secondary reconciliation provision of the rule because the current provision requires a different and more restrictive methodology to be used to calculate the final HSL than was used to calculate the adjusted interim HSL.

Response: HHSC understands the commenter's concern but declines to make the suggested change because the comment is outside the scope of the proposed amendment. HHSC will take the comment into consideration for a future rule amendment. No changes were made in response to this comment.

Comment: One commenter requested HHSC amend the new language in §355.8201(g)(8)(A) relating to the methodology HHSC will use to calculate the unspent UC payments. The commenter proposed HHSC change the language to apply the proposed methodology to UC payments made after July 1, 2020. The commenter informed HHSC that the rule as proposed would impact a delayed UC payment owed to a provider for demonstration year (DY) 3, which the commenter did not believe was HHSC's intent.

Response: HHSC agrees with the commenter that a change is necessary. After the proposed rule was published, HHSC was made aware that the proposed language would impact the delayed DY 3 UC payment, which was not the intent. The delayed UC payment is separate from the withheld UC payments and thus should not be paid under the proposed methodology. By revising the rule to reflect the earliest distribution date of the withheld UC payments, HHSC will be able to make the delayed DY 3 UC payment prior to implementing the proposed methodology. HHSC has revised §355.8201(g)(8)(A) from the proposed version to change "January 1, 2020" to "July 31, 2020."

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

#### §355.8201. *Waiver Payments to Hospitals for Uncompensated Care.*

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section for services provided between October 1, 2017 and September 30, 2019, by eligible hospitals described in subsection (c) of this section. Waiver payments to hospitals for uncompensated charity care provided beginning October 1, 2019, are described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions and this section.

#### (b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Aggregate limit--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncom-

pensated-care provider pool, as described in subsection (f)(2) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(4) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Clinic--An outpatient health care facility, other than an Ambulatory Surgical Center or Hospital Ambulatory Surgical Center, that is owned and operated by a hospital but has a nine-digit Texas Provider Identifier (TPI) that is different from the hospital's nine-digit TPI.

(6) Data year--A 12-month period that is described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this title.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(13) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include only these professions: Certified Registered Nurse Anesthetists, Nurse Practitioners, Physician Assistants, Dentists, Certified Nurse Midwives, Clinical Social Workers, Clinical Psychologists, and Optometrists.

(16) Private hospital--A hospital that is not a large public hospital as defined in paragraph (14) of this subsection, a small public hospital as defined in paragraph (21) of this subsection or a state-owned hospital.

(17) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(18) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(19) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(20) Rural hospital--A hospital enrolled as a Medicaid provider that is:

(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC) and is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, or is located in an MSA but has 100 or fewer beds.

(21) Small public hospital--An urban public hospital - Class two or a non-urban public hospital as defined in §355.8065 of this title.

(22) Transition payment--Payments available only during the first demonstration year to hospitals that previously participated in a supplemental payment program under the Texas Medicaid State Plan. For a hospital participating in the 2012 DSH program, the maximum amount a hospital may receive in transition payments is the lesser of:

(A) the hospital's 2012 DSH room; or

(B) the amount the hospital received in supplemental payments for claims adjudicated between October 1, 2010, and September 30, 2011.

(23) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(24) Uncompensated-care payments--Payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act that are provided by the hospital to Medicaid eligible or uninsured individuals.

(25) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services, as defined by CMS.

(26) Urban rural referral center--A hospital designated by Medicare as a Rural Referral Center (RRC) that is located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, and that has more than 100 beds.

(27) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must have a source of public funding for the non-federal share of waiver payments; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Rate Analysis Department on the earlier of the following occurrences after the documents are executed:

(-a) The date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b) Thirty days before the projected deadline for completing the IGT for the first payment under the affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(II) Subsequent submissions. The parties must submit revised documentation as follows:

(-a) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Rate Analysis receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph will not receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:

(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC;

(B) submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP;

(C) be actively enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(D) have submitted, and be eligible to receive payment for, a Medicaid fee-for-service or managed-care inpatient or outpatient claim for payment during the demonstration year.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to timely receipt by HHSC of public funds from a governmental entity.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(5) of this section.

(2) HHSC will establish the following seven uncompensated-care pools: a state-owned hospital pool; a large public hospital pool; a small public hospital pool; a private hospital pool; a physician group practice pool; a governmental ambulance provider pool; and a publicly owned dental provider pool as follows:

(A) The state-owned hospital pool.

(i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs and state chest hospitals.

(ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncompensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

(B) Set-aside amounts. HHSC will determine set-aside amounts as follows:

(i) For small public hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the small rural public hospital set-aside amount by multiplying the value from item (-a-) of this subclause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small rural public hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the small public urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small public urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(ii) For private hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the private rural hospital set-aside amount by multiplying the value from item (-a-) of this sub-

clause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private rural hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the private urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(iii) Determine the total set-aside amount by summing the results of subclauses (i)(I), (i)(II), (ii)(I), and (ii)(II) of this subparagraph.

(C) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, and the set-aside amount among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph and the set-aside amount from subparagraph (B) of this paragraph.

(i) HHSC will allocate the funds among non-state-owned provider pools based on the following amounts:

(I) Large public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all large public hospitals, as defined in subsection (b)(14) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by large public hospitals to support DSH payments to themselves and private hospitals for the same demonstration year.

(II) Small public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC small public hospitals, as defined in subsection (b)(21) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by small public hospitals to support DSH payments to themselves for Pass One and Pass Two payments for the same demonstration year.

(III) Private hospitals: The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC private hospitals, as defined in subsection (b)(16) of this section, eligible to receive uncompensated-care payments under this section.

(IV) Physician group practices: The sum of the unreimbursed uninsured costs and Medicaid shortfall for physician group practices, as described in §355.8202(g)(2)(A) of this title (relating to Waiver Payments to Physician Group Practices for Uncompensated Care).

(V) Governmental ambulance providers: The sum of the uncompensated care costs multiplied by the federal medical assistance percentage (FMAP) in effect during the cost reporting period for governmental ambulance providers, as described in §355.8600 of this title (relating to Reimbursement Methodology for Ambulance

Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(VI) Publicly-owned dental providers: The sum of the total allowable cost minus any payments for publicly owned dental providers, as described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(ii) HHSC will sum the amounts calculated in clause (i) of this subparagraph.

(iii) HHSC will calculate the aggregate limit for each non-state-owned provider pool as follows:

(I) To determine the large public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds, from this subparagraph, by the amount calculated in clause (i)(I) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(II) To determine the small public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(II) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(ii) of this paragraph.

(III) To determine the private hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(III) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(iii) of this paragraph.

(IV) To determine the physician group practice pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(IV) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(V) To determine the maximum aggregate amount of the estimated uncompensated care costs for all governmental ambulance providers:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(V) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(VI) To determine the publicly owned dental providers pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(VI) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which a hospital is eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by the hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

(B) Unless otherwise instructed in the application, the hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report(s), the hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation. A hospital's annual maximum uncompensated-care payment amount is the sum of the components below. In no case can the sum of payments made to a hospital for a demonstration year for DSH and uncompensated-care payments, less the payments described in paragraph (3) of this subsection, exceed a hospital's specific limit as determined in §355.8066 of this title after modifications to reflect the adjustments described in paragraph (4) of this subsection.

(A) The interim hospital specific limit, calculated as described in §355.8066 of this title, except that an IMD may not report cost and payment data in the uncompensated-care application for services provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64, less any payments to be made under the DSH program for the same demonstration year, calculated as described in §355.8065 of this title;

(B) Other eligible costs for the data year, as described in paragraph (3) of this subsection;

(C) Cost and payment adjustments, if any, as described in paragraph (4) of this subsection; and

(D) For each hospital eligible for payments under subsection (f)(2)(C)(i)(I) of this section, the amount transferred to HHSC by that hospital's affiliated governmental entity to support DSH payments for the same demonstration year.

(3) Other eligible costs.

(A) In addition to cost and payment data that is used to calculate the hospital-specific limit, as described in §355.8066 of this

title, a hospital may also claim reimbursement under this section for uncompensated care, as specified in the uncompensated-care application, that is related to the following services provided to Medicaid-eligible and uninsured patients:

(i) direct patient-care services of physicians and mid-level professionals;

(ii) pharmacy services; and

(iii) clinics.

(B) The payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this title.

(4) Adjustments. When submitting the uncompensated-care application, hospitals may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts;

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) In addition to being subject to the reconciliation described in subsection (i)(1) of this section which applies to all uncompensated-care payments for all hospitals, uncompensated-care payments for hospitals that submitted a request as described in subparagraph (A)(i) of this paragraph that impacted the interim hospital-specific limit described in paragraph (2)(A) of this subsection will be subject to the reconciliation described in subsection (i)(2) of this section.

(D) Notwithstanding the availability of adjustments impacting the interim hospital-specific limit described in this paragraph, no adjustments to the interim hospital-specific limit will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this title.

(5) Reduction to stay within uncompensated-care pool aggregate limits. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the aggregate limit for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool aggregate limit.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(C) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool aggregate limit from subsection (f)(2) of this section divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the aggregate limit for the pool, each provider in the pool is eligible to receive their maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool aggregate limit.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the aggregate limit for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) HHSC will calculate a capped payment amount equal to the product of the provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) If the payment period is not the final payment period for the demonstration year, the revised maximum uncompensated-care payment for the payment period equals the lesser of:

(I) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(II) the difference between the capped payment amount from clause (i) of this subparagraph and the prior period payments from subparagraph (B)(i) of this paragraph.

(iii) If the payment period is the final payment period for the demonstration year:

(I) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the payment period equal to the amount of the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph that is supported by an IGT commitment.

(-a-) For hospitals and physician group practices, HHSC will obtain from each RHP anchor a current breakdown of IGT commitments from all governmental entities, including gov-

ernmental entities outside of the RHP, that will be providing IGTs for uncompensated-care payments for each hospital and physician group practice within the RHP that is eligible for such payments for the payment period.

(-b-) Ambulance and dental providers will be assumed to have commitments for 100 percent of the non-federal share of their payments. The non-federal share for ambulance providers is provided through certified public expenditures (CPEs); for ambulance providers, references to IGTs in this subsection should be read as references to CPEs.

(II) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the demonstration year to equal the IGT-supported maximum uncompensated-care payment for the payment period from subclause (I) of this clause plus the provider's prior period payments from subparagraph (B)(i) of this paragraph.

(III) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is less than or equal to their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment for the payment period equals the IGT-supported maximum uncompensated-care payment amount for the payment period from subclause (I) of this clause. For these providers, the difference between their capped payment amount from clause (i) of this subparagraph and their IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause is their unfunded cap room.

(IV) HHSC will sum all unfunded cap room from subclause (III) of this clause to determine the total unfunded cap room for the pool.

(V) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is greater than their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment amount for the payment period is calculated as follows:

(-a-) For each provider, HHSC will calculate an overage amount to equal the difference between the IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause and their capped payment amount for the demonstration year from clause (i) of this subparagraph. Unfunded cap room from subclause (IV) of this clause will be distributed to these providers based on each provider's overage as a percentage of the pool-wide overage.

(-b-) For each provider, the provider's revised maximum uncompensated-care payment amount for the payment period is equal to the sum of its capped payment amount from clause (i) of this subparagraph and its portion of its pool's unfunded cap room from item (-a-) of this subclause less its prior period payments from subparagraph (B)(i) of this paragraph.

(E) Once reductions to ensure that uncompensated-care expenditures do not exceed the aggregate limit for the demonstration year for the pool are calculated, HHSC will not re-calculate the resulting payments for any provider for the demonstration year, including if the IGT commitments upon which the reduction calculations were based are different than actual IGT amounts.

(F) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each rural hospital is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this

subsection multiplied by the value from subsection (f)(2)(B)(i)(I) of this section for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(G) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each urban RRC is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by 54% for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(6) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(7) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (5)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(8) Payments of unspent funds.

(A) HHSC will use the methodology described in this paragraph to calculate payment amounts to hospitals for uncompensated-care payments that are made after July 31, 2020, using any remaining funding for uncompensated-care program years beginning before October 1, 2017.

(B) The basis for each hospital's payment allocation will be the total amount of payments received by the hospital in the data year that are from a third-party payor for a Medicaid-enrolled patient and associated with third-party coverage as defined in §355.8066 of this subchapter (relating to Hospital-Specific Limit Methodology).

(C) All hospitals' payment allocations will be based on 100 percent of the amount described in subparagraph (B) of this paragraph, except:

(i) Children's hospitals as defined in §355.8065 of this subchapter (related to Disproportionate Share Hospital Reimbursement Methodology) will receive a payment allocation based on 150 percent of the amount described in subparagraph (B) of this paragraph.

(ii) State-owned teaching hospitals, state-owned IMDs, state chest hospitals, physician group practices, ambulance providers, and dental providers will not receive a payment allocation under the methodology described in this paragraph.

(D) Each hospital's payment amount will be allocated by:

(i) applying the appropriate percentage described in subparagraph (C) of this paragraph to the amount described in subparagraph (B) of this paragraph;

(ii) dividing the amount calculated in clause (i) of this subparagraph by the total amount of payments described in subparagraph (B) of this paragraph for all participating hospitals; and

(iii) multiplying the amount in clause (ii) of this subparagraph by the remaining uncompensated-care funding for the program year.

(E) Each payment amount will be compared to actual costs incurred by the hospital as determined by the reconciliation calculated for the demonstration year, as described in subsection (i) of this section.

(i) A hospital will receive the lesser of its actual costs, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section, or the hospital's allocation described in subparagraph (D) of this paragraph.

(ii) If, following the determination described in clause (i) of this subparagraph, there is funding remaining in the UC program year, the remaining funding amounts will be placed into a second pool.

(iii) The second pool will be allocated to hospitals that have not received UC payments that exceed their actual costs, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section after accounting for any additional payment the hospital is receiving under the methodology described in this paragraph. Any distribution under this subparagraph will be allocated by:

(I) Dividing the hospital's total uncompensated-care costs, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section, by the total uncompensated-care costs for all participating hospitals, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section; and

(II) Multiplying the amount described in subclause (I) of this clause by the funding remaining in the uncompensated-care program year after the distribution described in subparagraph (D) of this paragraph.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);



(B) the maximum IGT amount necessary for a hospital to receive the amount described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to a hospital will be determined based on the amount of funds transferred by the affiliated governmental entity or entities as follows:

(A) If the governmental entity transfers the maximum amount referenced in paragraph (1) of this subsection, the hospital will receive the full payment amount calculated for that payment period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection, HHSC will determine the payment amount to each hospital owned by or affiliated with that governmental entity as follows:

(i) At the time the transfer is made, the governmental entity notifies HHSC, on a form prescribed by HHSC, of the share of the IGT to be allocated to each hospital owned by or affiliated with that entity and provides the non-federal share of uncompensated-care payments for each entity with which it affiliates in a separate IGT transaction; or

(ii) In the absence of the notification described in clause (i) of this subparagraph, each hospital owned by or affiliated with the governmental entity will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment amounts for all hospitals owned by or affiliated with that governmental entity.

(C) For a hospital that is affiliated with multiple governmental entities, in the event those governmental entities transfer more than the maximum IGT amount that can be provided for that hospital, HHSC will calculate the amount of IGT funds necessary to fund the hospital to its payment limit and refund the remaining amount to the governmental entities identified by HHSC.

(3) Final payment opportunity. Within payments described in this section, a governmental entity that does not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) To the final payment up to the maximum amount;

(B) To remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Except in demonstration year 2 (October 1, 2012, to September 30, 2013), if a hospital submitted a request as described in subsection (g)(4)(A)(i) of this section that impacted its interim hospital-specific limit, that hospital will be subject to an additional reconciliation as follows:

(A) HHSC will compare the hospital's adjusted interim hospital-specific limit from subsection (g)(4)(A)(i) of this section for the demonstration year to its final hospital-specific limit as described in §355.8066(c)(2) of this title for the demonstration year.

(B) If the final hospital-specific limit is less than the adjusted interim hospital-specific limit, HHSC will recalculate the hospital's uncompensated-care payment for the demonstration year substituting the final hospital-specific limit for the adjusted interim hospital-specific limit with no other changes to the data used in the original calculation of the hospital's uncompensated-care payment other than any necessary reductions to the original IGT amount and will recoup any payment received by the hospital that is greater than the recalculated uncompensated-care payment. Recouped funds may be redistributed to other hospitals that received payments less than their actual costs.

(4) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the entity that owns or is affiliated with the hospital.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

(k) Penalty for failure to complete Category 4 reporting requirements for Regional Healthcare Partnerships. Hospitals must comply with all Category 4 reporting requirements set out in Chapter 354 of this title, Subchapter D (relating to Texas Healthcare Transformation and Quality Improvement Program). If a hospital fails to complete required Category 4 reporting measures by the last quarter of a demonstration year:

(1) the hospital will forfeit its uncompensated-care payments for that quarter; or

(2) the hospital may request from HHSC a six-month extension from the end of the demonstration year to report any outstanding Category 4 measures.

(A) The fourth-quarter payment will be made upon completion of the outstanding required Category 4 measure reports within the six-month period.

(B) A hospital may receive only one six-month extension to complete required Category 4 reporting for each demonstration year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2020.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 407-3285



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 4. PRESCRIBED BURNING BOARD ENFORCEMENT PROGRAM

##### SUBCHAPTER A. ENFORCEMENT, INVESTIGATION, PENALTIES AND PROCEDURES

###### 4 TAC §4.2

The Texas Department of Agriculture (the Department) adopts amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 4, Subchapter A, Enforcement, Investigation, Penalties and Procedures, §4.2, without changes to the proposed text as published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3189). The rule will not be republished.

The adopted amendments to §4.2 revise the Prescribed Burning Board's Schedule of Violations. These changes are made to update the source law column of the Schedule of Violations and clarify abbreviations and certain provisions in the penalty matrix. No substantive changes are made to the amount of the penalties or the conduct that may lead to the assessment of a penalty.

The Department received no comments.

The amendments are adopted under §153.102 of the Natural Resources Code, which provides the Department with the authority to adopt a schedule of disciplinary sanctions that the Department may impose for violations of Chapter 153 of the Natural Resources Code, and Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

Chapter 153 of the Texas Natural Resources Code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2020.

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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 936-9360



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 170. PRESCRIPTION OF CONTROLLED SUBSTANCES

The Texas Medical Board (Board) adopts amendments changing the title of 22 TAC Chapter 170 to "Prescription of Controlled Substances." Further amendments are adopted to §170.2, concerning Definitions, and §170.3, concerning Minimum Requirements for the Treatment of Chronic Pain. The Board also adopts new rule §170.9, in new Subchapter C, titled "Prescription Monitoring Program Check."

The amendments to §170.2 are adopted pursuant to HB 2174, 86th Texas Legislature, which set forth certain opioid prescription limits for the treatment of acute pain through new Section 481.07636 of the Texas Health and Safety Code. Section 170.3 amendments are proposed pursuant to §481.0764 of the Texas Health and Safety Code, which mandates a review of the Prescription Monitoring Program (PMP) prior to the issuance of a prescription for opioids, benzodiazepines, barbiturates, and carisoprodol. New Subchapter C, Prescription Monitoring Program Check, is adopted in accordance with Sections 481.076, 481.0764, and 481.0765 of the Texas Controlled Substances Act.

The Board sought stakeholder input at meetings held on October 9, 2019 and February 18, 2020. The stakeholder comments were incorporated into the proposed rules as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2284).

The amendments to §170.2 and §170.3 are adopted without changes to the proposed text published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2284). The adopted amendments to §170.2 and §170.3 will not be republished.

The new rule §170.9 in new Subchapter C titled Prescription Monitoring Program Check is adopted with non-substantive changes to the proposed language published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2284), based upon written comments received. Adopted new §170.9 will be republished.

The adopted amendments to §170.2, Definitions, are as follows:

The amendment to §170.2(2), relating to the definition for acute pain, clarifies that acute pain is time limited to no more than 30 days from the date of initial prescription for opioids for treatment of the pain during a period of treatment for the acute condition or injury.

The amendment to §170.2(4), relating to definition for chronic pain, clarifies that chronic pain is pain that exists for a period that has continued for no less than 91 days from the date of initial prescription for opioids for treatment of the condition or injury.

The amendments add new 170.2(10), setting forth a definition for post-surgical, post-procedure, persistent non-chronic pain. The new definition clarifies that there is pain that continues to exist in a period after the acute phase, but before becoming medically recognized as chronic pain. This period of pain exists for a period of more than 30 days but less than 91 days from the date of initial prescriptions for opioids during a period of treatment. This definition creates a period of time in which a physician will be allowed to prescribe opioids for more than a 10-day period for a condition, injury, or disease not already excepted under HB 2174, if the standard of care permits, and allow for an appropriate period for such treatment without the requirements related to chronic pain applying. Paragraphs (11) - (14) are re-numbered accordingly.

The adopted amendments to §170.3, Minimum Requirements for the Treatment of Chronic Pain, are as follows:

Section 170.3 amendments are adopted pursuant to §481.0764 of the Texas Controlled Substances Act, which mandates a review of the PMP prior to the issuance of a prescription for opioids, benzodiazepines, barbiturates, and carisoprodol.

Section 170.3(1)(C) is amended so that a review of the PMP is mandatory rather than optional. Remaining proposed amendments are changes made for readability and represent other non-substantive re-wording necessitated by the primary changes in text.

Section 170.3(5)(E)(v) is amended so that language indicating an option of checking the PMP when conducting a periodic review of a patient's compliance is deleted. A physician must continue to review the PMP prior to issuing each and every prescription for opioids, benzodiazepines, barbiturates, and carisoprodol. The proposed deletion is not intended to change a physician's duty to review the PMP and represents a non-substantive re-wording of the section.

Section 170.3(7) is amended to clarify that documentation of the PMP check must be maintained in the patient's medical record.

Chapter 170, New Subchapter C, §170.9. Prescription Monitoring Program Check.

The Texas Medical Board (Board) adopts new Subchapter C, Prescription Monitoring Program Check, in accordance with Sections 481.076, 481.0764, and 481.0765 of the Texas Controlled Substances Act. The purpose of the rule is to clarify when and under what circumstances a physician is required to check the PMP before issuing certain controlled substances. New Subchapter C adds one new section, §170.9, which contains five interrelated parts.

New §170.9(1) provides a description of the types of physician-patient interaction and medical settings that require a PMP check. This portion of the rule also specifies that the check is required prior to and each time a prescription is issued for opioids, benzodiazepines, barbiturates, or carisoprodol to the ultimate user.

New §170.9(2) clarifies the types of physician-patient interaction and medical settings that do not require a PMP check.

New §170.9(3) clarifies that documentation of the PMP check is required. The language also clarifies that it is permissible to

place a copy of the patient's PMP history in the patient's medical record to demonstrate the check was conducted as required when a prescription is issued for opioids, benzodiazepines, barbiturates, or carisoprodol to the ultimate user. This documentation method is proposed as acceptable, in addition to other appropriate forms and methods of documentation.

New §170.9(4) clarifies that physicians must perform the PMP check. This portion of the rule also specifies that physicians may allow certain other qualified individuals to check the PMP under Section 481.076(a)(5)(B) of the Health and Safety Code.

New §170.9(5) provides exceptions to the required PMP check in accordance with Section 481.0765 of the Texas Controlled Substances Act.

TMB received no written comments regarding proposed amendments to §170.3.

TMB received written comments regarding proposed amendments to §170.2 from the Texas Chiropractic Association (TCA) and a joint comment submitted by the following eight organizations (hereinafter referred to collectively as "the Organizations"): The Texas Medical Association, Texas Pain Society, Texas Society of Anesthesiologists, Texas Academy of Physicians, Texas Chapter of the American College of Physician Services, American College of Obstetricians and Gynecologists, Texas Association of Obstetricians and Gynecologists, and the Texas College of Emergency Physicians. TMB received written comments regarding proposed amendments to §170.9 from the Texas Orthopaedic Association (TOA) and the Organizations. No one appeared to provide oral comment at the TMB meeting held on June 12, 2020.

Summary of Comments

Section 170.2, Definitions

Joint Comment: The Organizations indicated a mix of support and opposition to the proposed definitions, objected to the lack of input on the proposed language prior to publication, and asked that the rules be returned to additional opioid workforce meetings for further discussion and development. The Organizations stated that their membership expressed concern and some confusion with tying the definitions to a prescription for opioids, recommending that they be tied to the onset or duration of pain instead. The Organizations recommended that the reference to palliative care should be referred to as "supportive palliative care", in accordance with changes adopted through SB 916 to Section 142A of the Texas Health and Safety Code.

TMB Response: TMB disagrees and declines to adopt the proposed amendments with changes. The new language reflects significant discussion from numerous physicians and associations over the terms "acute pain" "persistent non-chronic pain" and "chronic pain" during the opioid workgroup meetings. The general understanding, based on opioid workgroup and audience input, was that the proposed definitions were acceptable to utilize. However, additional opioid workgroup meetings will be held in order to continue discussing further possible improvements to the definitions.

The new and amended definitions retain the commonly understood timeframe that pain persisting over 90 days should be considered chronic. In addition, limiting acute to 30 days is consistent with the intent of the legislature to ensure judicious use of opioids during initial treatment phase for pain. Current research indicates that tolerance and addiction potential is greatly

increased when these types of medication are prescribed for periods more than ten days.

Regarding the request to refer to "supportive palliative care" rather than "palliative care", SB 916's language provides that all references to "palliative care" in the Health and Safety Code or other law mean "supportive palliative care", making it unlikely that there will be confusion between the two terms. TMB's adopted language referencing "palliative care" reflects the wording of Section 481.07636 of the Health and Safety Code.

Texas Chiropractic Association Comment: TCA opposed TMB's proposed language defining "acute pain" and "post-surgical, post-procedure, persistent non-chronic pain", stating the definitions were not supported by the medical literature and were contrary to the legislative intent behind HB 2174. TCA requested that the proposed definition for "acute pain" be changed so it is defined to last longer than 30 days and further asked that the proposed definition for "post-surgical, post-procedure, persistent non-chronic pain" be eliminated so that it would be included in the definition of "acute pain."

TMB Response: TMB disagrees and declines to adopt the amended definitions with changes recommended by TCA. The new language reflects significant discussion from numerous physicians and associations during the opioid workgroup meetings. Section 481.07636 concerns limits on acute pain prescribing, but it is commonly understood that many forms of pain can exceed the 10-day prescription limit. The limit of 10-days is retained in the rules. However, consistent with its express rulemaking authority related to the treatment of pain and opioid prescribing, TMB recognizes the need for flexibility in treating patients.

These definitions retain the commonly understood timeframe of pain persisting over 90 days being considered chronic pain. In addition, limiting the acute pain definition to 30 days is consistent with the intent of the legislature to ensure judicious use of opioids during the initial treatment period for pain. Current research indicates that tolerance and addiction potential is greatly increased when these types of medication are prescribed for periods of more than ten days. But the rule also acknowledges each patient presents unique considerations related to a physician's medical decision-making related to pain treatment and prescription medications.

#### New Section 170.9

Texas Orthopaedic Association Comment: TOA expressed general support for the rule, and specifically for the language allowing qualified delegates to perform the PMP check, but opposed documentation requirements set forth under the rule. TOA recommended allowing PMP's technology to document evidence of a PMP check and further that the rules provide that the use of an integrated PMP within an EHR program provide evidence of compliance.

TMB Response: TMB disagrees and declines to adopt the rule with the recommended changes. TMB has been given express authority under Tex. Occ. Code Chapters 153 and 168 to write rules related to the treatment of pain, including documentation standards. These additions for documenting PMP checks are consistent with existing rules in Chapter 170 related to documentation as a method to ensure compliance with the legislative intent to monitor prescribing practices. In addition, TMB understands the EHR systems are set-up to integrate automatic PMP checks. The concern is that this can be done by anyone with access to the records and an electronic check could be done by

simply clicking a box, creating uncertainty as to the identity of the individual who completed the review. Therefore, there is a need to add a requirement of verification to ensure that the practitioner prescribing is the individual who reviewed the information prior to issuing the prescription.

Joint Comment: The organizations expressed overall support for the rule, but opposed the documentation requirement, stating that Health and Safety Code Section 481.0764 does not require documentation of the PMP check. The organizations also stated that other agency rules, the Texas Board of Pharmacy (BOPH) and Texas Department of Licensing and Regulation (TDLR), respectively, do not require such documentation for pharmacists or podiatrists. The organizations further requested TMB "to deem physicians using an integrated EHR system to check the PMP as compliant with Section 481.0764(a)", stating that such would be consistent with TDLR and BOPH rules. Finally, the organizations recommended non-substantive drafting revisions.

TMB Response: TMB disagrees and declines to adopt the rule with the recommended changes related to the documentation mandate. Requiring the documentation of PMP checks is consistent with existing rules in Chapter 170 related to documentation as a method to ensure compliance with the legislative intent to monitor prescribing practices. In addition, TMB understands the EHR systems are set-up to integrate automatic PMP checks. The concern is that this can be done by anyone with access to the records and an electronic check could be done by simply clicking a box, creating uncertainty as to the identity of the individual who completed the review. Therefore, there is a need to add a requirement of verification to ensure that the practitioner prescribing is the individual who reviewed the information prior to issuing the prescription.

TMB agrees and appreciates the minor drafting revisions recommended, and adopts the new rule 170.9 with non-substantive changes incorporating those revisions.

## SUBCHAPTER A. PAIN MANAGEMENT

### 22 TAC §170.2, §170.3

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The amendments are further adopted under the authority of Sections 481.07636, 481.076, 481.0764, and 481.0765 of the Texas Health and Safety Code.

No other statutes, articles or codes are affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## SUBCHAPTER C. PRESCRIPTION MONITORING PROGRAM CHECK

### 22 TAC §170.9

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

The new rule is further adopted under the authority of Sections 481.07636, 481.076, 481.0764, and 481.0765 of the Texas Health and Safety Code.

#### §170.9. Prescription Monitoring Program Check.

The legislature has recognized the impact of the opioid crisis on the health and well-being of its citizens. The Prescription Monitoring Program (PMP) is a valuable tool to help prevent diversion of drugs and opioid-related overdose deaths. This subchapter establishes rules for a mandatory PMP check.

(1) Before a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol will be issued to a patient, a mandatory PMP check of the patient's controlled substance prescription history is required. The review of the patient's PMP prescribing history must be completed prior to and each time a prescription is issued for opioids, benzodiazepines, barbiturates, or carisoprodol to the patient for:

(A) take-home use, upon leaving an outpatient setting such as doctor's office, or ambulatory surgical center; or

(B) upon discharge from an inpatient setting, such as a hospital admission or discharge from an emergency department visit.

(2) A mandatory PMP check is not required before or during an inpatient stay, such as a hospital admission, or during an outpatient encounter in settings, such as an emergency department or ambulatory surgical center visit.

(3) The review of the patient's PMP prescribing history must be documented in the patient's medical records. Permitted documentation methods include, but are not limited to, placing a copy of the PMP check in the patient's medical records.

(4) The PMP check and documentation required by this section may be done by:

(A) the physician; or

(B) a delegate of the physician who is legally authorized under Section 481.076(a)(5)(B) of the Health and Safety Code.

(5) Exceptions. The PMP check set forth under paragraph (1) of this section is not required in the following circumstances:

(A) the prescriptions are issued pursuant to hospice care, treatment for a patient's diagnosis of cancer, or treatment for a patient's sickle cell disease and this is clearly documented in the patient's medical record; or

(B) the prescriber makes and documents a good faith attempt to comply but is unable to access the PMP because of circumstances outside the control of the prescriber.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016

## PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

### CHAPTER 881. GENERAL PROVISIONS

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §§881.1 - 881.13

The Texas Behavioral Health Executive Council adopts new §§881.1 - 881.13, relating to general provisions for the Executive Council. Except for §881.2, concerning Definitions, the new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2640) and will not be republished. In response to changes being proposed in 22 Texas Administrative Code Chapter 681, where the term Licensed Professional Counselor Intern (LPC-I) is being changed to Licensed Professional Counselor Associate (LPC-A), the Council adopts the corresponding name changes in §881.2 as a non-substantive change, which will be republished.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules are the general framework regarding the Executive Council's operations and the implementation of its statutory duties.

List of interested groups or associations against the rules.

None.

Summary of comments against the rules.

A commenter recommended deleting all of proposed §881.13. The commenter believed the rule was too vague, restricts citizen's rights to participate in public meetings, and provided too much discretion for the agency to act based upon what the commenter believes is undefined criteria.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

Texas agencies have the inherent authority to not only conduct meetings and other operations but also control how to conduct such proceedings. Section 881.13 insures that all participants, including the agency and the public, are treated fairly and respectfully so that agency business can be conducted in an orderly fashion. The rule aids and promotes respectful participation in meetings and put those on notice that if they choose to be threatening or abusive such conduct has no place before this agency. For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§881.2. *Definitions.*

(a) The following definitions are generally applicable throughout the agency's rules and policies:

(1) The term "ALJ" as used herein shall refer to an administrative law judge employed by SOAH.

(2) The terms "Chapter 501," "Chapter 502," "Chapter 503," "Chapter 505," and "Chapter 507" as used herein shall refer to the corresponding chapter in the Occupations Code.

(3) The term "Executive Council" or "Council" as used herein shall refer to the Texas Behavioral Health Executive Council (BHEC).

(4) The term "member board" as used herein shall refer to:

(A) The Texas State Board of Examiners of Marriage and Family Therapists (TSBEMFT);

(B) The Texas State Board of Examiners of Professional Counselors (TSBEP);

(C) The Texas State Board of Examiners of Psychologists (TSBEP); or

(D) The Texas State Board of Social Worker Examiners (TSBSWE).

(5) The term "PFD" as used herein shall refer to a proposal for decision issued by an ALJ.

(6) The terms "professional development" and "continuing education" as used herein have the same meaning.

(7) The term "SOAH" as used herein shall refer to the State Office of Administrative Hearings.

(8) The term "TAC" as used herein shall refer to the Texas Administrative Code.

(b) The following definitions apply only to those rules specific to the regulation of the practice of marriage and family therapy:

(1) "LMFT" refers to a licensed marriage and family therapist and has the same meaning as assigned by §502.002 of the Occupations Code.

(2) "LMFT Associate" refers to a licensed marriage and family therapist associate and has the same meaning as assigned by §502.002 of the Occupations Code.

(c) The following definitions apply only to those rules specific to the regulation of the practice of professional counseling:

(1) "LPC" refers to a licensed professional counselor and has the same meaning as assigned by §503.002 of the Occupations Code.

(2) "LPC Associate" refers to an individual licensed as a professional counselor associate under §503.308 of the Occupations Code.

(d) The following definitions apply only to those rules specific to the regulation of the practice of psychology:

(1) "LPA" or "Psychological Associate" refers to an individual licensed as a psychological associate under §501.259 of the Occupations Code.

(2) "LSSP" refers to an individual licensed as a specialist in school psychology under §501.260 of the Occupations Code.

(3) "Provisionally licensed psychologist" or "provisional licensee" means an individual licensed as a psychologist with provisional status under §501.253 of the Occupations Code.

(4) "PSYPACT" refers to the Psychology Interjurisdictional Compact found in Chapter 501, Subchapter L of the Occupations Code.

(e) The following definitions apply only to those rules specific to the regulation of the practice of social work:

(1) "LBSW" refers to a licensed baccalaureate social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(2) "LCSW" refers to a licensed clinical social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(3) "LMSW" refers to a licensed master social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(4) "LMSW-AP" refers to an individual licensed as a master social worker with the advanced practitioner specialty recognition.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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For further information, please call: (512) 305-7706



## SUBCHAPTER B. RULEMAKING

### 22 TAC §881.20, §881.21

The Texas Behavioral Health Executive Council adopts new §881.20 and §881.21, relating to rulemaking for the Executive Council. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2643). The rules will not be republished.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 507.153 Tex. Occ. Code limits the ability of the Executive Council to adopt rules pertaining to qualifications for licensure, the scope and standards of practice, continuing education requirements, and a schedule of sanctions unless such a rule is first proposed by a member board. Additionally, §2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules are the general framework regarding the Executive Council's rule-making procedures and proceedings.

#### List of interested groups or associations against the rule.

The Bluebonnet Counseling Association of Texas

The American Association for Marriage and Family Therapy

The Texas Counseling Association

The Texas Psychological Association

The Texas Association of Marriage and Family Therapy

The National Association of Social Workers - Texas Chapter

The Texas Society for Clinical Social Work

#### Summary of comments against the rule.

Commenters suggested changes to rule §881.20. Many requested grammatical changes, such as changing "must also" with "may only" because they felt §507.153 of the Tex. Occ. Code would require such a change. Generally, the commenters were concerned that rule §881.20 does not appropriately delineate the roles the Council and each underlying board will play in the rule making process or does not align with statutory intent.

Commenters suggested changes to rule §881.21. A commenter requested grammatical changes for the purposes of clarity. Other commenters requested the rule allow for petitions for rulemaking to be submitted directly to the appropriate boards instead of directly to the Council.

#### List of interested groups or associations for the rule.

None.

#### Summary of comments for the rule.

None.

#### Agency Response.

The agency disagrees that rule §881.20 usurps the authority of an underlying board or does not align with statutory intent. Sections 507.151 and 507.152 of the Tex. Occ. Code make it clear that all authority to administer, enforce, and adopt rules regarding the regulation of marriage and family therapists, professional counselors, psychologists, and social workers resides with the Council. While §507.153(a) of the Tex. Occ. Code does require that all rules concerning qualifications for licensure, scope of practice, continuing education requirements, and a schedule of sanction be first proposed by the applicable board; §507.153(c) and (d) of the Tex. Occ. Code states the council retains authority for final adoption of all rules and may adopt rules prescribing the procedure by which rules may be proposed to the Council. Rule §881.20 comports with this statutory mandate; and the commenters requested changes to this rule would impose limitations and restrictions upon the Council's review of rules proposed by boards that is not required by the Texas Occupations Code. The Council is required by law to review the rules proposed by boards and the agency disagrees that it should further restrict or limit its ability to do so, therefore the Council declines to make the requested changes.

Because the statutory authority for the adoption of all rules resides with the Council, then it is necessary for rule §881.21 to require all petitions for rulemaking to be directed to the Council. If a petition addresses a subject matter that by statute must first be proposed by a board, then under §507.151(b) of the Tex. Occ. Code the Council may request input or assistance from the applicable board. The Council also declines to make the requested grammatical changes because the rule, as drafted, does not appear to create any confusion or misunderstanding to the general public.

For these reasons the agency declines to make the requested changes, and hereby adopts the rules with no changes.

#### Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Executive Council adopts part of these new rules under the authority found in §2001.021 of the Tex. Gov't Code which requires state agencies to prescribe by rule the form for a petition for adoption of rules by interested persons and the procedure for its submission, consideration, and disposition.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council  
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For further information, please call: (512) 305-7706



## SUBCHAPTER C. PERSONNEL

### 22 TAC §§881.30 - 881.32

The Texas Behavioral Health Executive Council adopts new §§881.30 - 881.32, relating to personnel for the Executive Council. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issues of the *Texas Register* (45 TexReg 2646) and will not be republished.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.101 and 507.102 of the Tex. Occ. Code authorizes the Executive Council to employ an executive director and develop policymaking and management responsibilities for the Executive Council and executive director. Additionally, §656.048 of the Tex. Gov't Code requires state agencies to adopt rules relating to training and education for agency administrators and employees. Lastly, §661.002 of the Tex. Gov't Code requires state agencies to adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. These new rules implement these requirements.

#### List of interested groups or associations against the rule.

None.

#### Summary of comments against the rule.

A commenter question why are more procedures needed than in the Government Code and Employees Retirement System of Texas pertaining to the sick leave pool.

#### List of interested groups or associations for the rule.

None.

#### Summary of comments for the rule.

None.

#### Agency Response.

Section 661.002 of the Tex. Gov't Code requires state agencies to adopt rules and prescribe procedures relating to the operation of an agency sick leave pool, therefore the Executive Council must adopt rule §881.32.

#### Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code

which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts part of these new rules under the authority found in §656.048 of the Tex. Gov't Code which requires state agencies to adopt rules relating to training and education for agency administrators and employees.

Lastly, the Executive Council adopts these new rules pursuant to the authority found in §661.002 of the Tex. Gov't Code which requires state agencies to adopt rules and prescribe procedures relating to the operation of an agency sick leave pool.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council  
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For further information, please call: (512) 305-7706



## SUBCHAPTER D. CONTRACTS AND PROCUREMENT

### 22 TAC §§881.40, §881.41

The Texas Behavioral Health Executive Council adopts new §§881.40 and §881.41, relating to contracts and procurement for the Executive Council. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issues of the *Texas Register* (45 TexReg 2647). The rules will not be republished.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 2155.076 of the Tex. Gov't Code requires state agencies to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues, which must be consistent with the comptroller's rules. Section 2156.005 of the Tex. Gov't Code requires state agencies making purchases to adopt the comptroller's rules related to bid opening and tabulation. Section 2260.052 of the Tex. Gov't Code requires state agencies with rulemaking authority to develop rules to govern the negotiation and mediation of a claim for breach of contract. Section 2261.202 of the Tex. Gov't Code requires state agencies that make procurements to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities. Section 2161.003 of the Tex. Gov't Code requires a state agency to adopt the comptroller's rules adopted under Section 2161.002 of the Tex. Gov't Code, pertaining to historically underutilized businesses, as the agency's own rules. These new rules implement these requirements.

List of interested groups or associations against the rule.



None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules pursuant to the authority found in §§2155.076, 2156.005, 2161.002, 2161.003, 2260.052, and 2261.202 of the Tex. Gov't Code which as previously discussed requires state agencies to enact rules pertaining to bidding, purchasing, contracting, procurement, protests, and dispute resolution.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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For further information, please call: (512) 305-7706



## CHAPTER 882. APPLICATIONS AND LICENSING

### SUBCHAPTER A. LICENSE APPLICATIONS

#### 22 TAC §§882.1 - 882.13

The Texas Behavioral Health Executive Council adopts new §§882.1 - 882.13, relating to license applications. Except for §882.6, the new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2649) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §882.6 is being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Generally, these new rules implement the application process and procedures which will be used by the Executive Council.

List of interested groups or associations against the rule.

The Bluebonnet Counseling Association of Texas

The Texas Counseling Association

The Texas Psychological Association

The Texas Association of Marriage and Family Therapists

The National Association of Social Workers - Texas Chapter

The Texas Society for Clinical Social Work

Summary of comments against the rule.

A commenter requested rule §882.1 be changed to no longer require a letter be sent notifying the applicant of the agency's determination and instructions for next steps. The commenter suggests replacing letters with email notifications. Another commenter recommends that the processing time periods for all applications be made the same. One commenter believes this rule conflicts with the rule pertaining to fees, rule §885.1, because this rule states applications with the incorrect fee amount will be returned while the fees rule states fees are non-refundable.

A commenter questioned whether rule §882.2, which requires transcripts be sent to the agency directly, will still allow for applicants that are students to still be able to be approved to take certain licensure exams prior to conferral of a degree. Another commenter requested the deletion of the requirement to use DHS-USCIS Systematic Alien Verification of Entitlements (SAVE) Program for the verification of immigration status of applicants because the commenter felt it was unnecessarily and burdensome.

A commenter requested changes to rule §882.3 for the purposes of clarity, to include the possible denial of an application for examination as well as an application for licensure.

A commenter requested rule §882.6 be changed to allow for a board to set the amount of times an applicant may retake an exam. Another commenter requested the rule be changed to allow an applicant that has failed an exam to practice under supervision of a licensed practitioner for several years to then make a recommendation regarding the candidate's licensure. A commenter also requested changes for the purpose of clarity.

Commenters requested changes to rule §882.9, they want the rule to state that the Council will publish processing times of applications for each license type.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Administrative Procedures Act, Chapter 2001 of the Tex. Gov't Code, requires notification by certain means; therefore rule

§882.1 must comport with these requirements and require notification by letter, although this rule does not prohibit the use of email when corresponding with applicants. Rule §882.1 does not conflict with rule §885.1 because the Council will not process an application until it is complete, which requires the Council to receive the correct fee amount. Once the correct fee amount is received it is non-refundable, and the application will be processed, but if the wrong amount is received it will be returned to the applicant to submit the correct amount. Rule §882.1 specifies different processing time periods for different license types because that is the current practice in place, in the future the Council may reevaluate whether to make all the same but, due to data base restrictions, for the time being this rule will maintain the same time periods for the completeness of an application submission that currently exist.

Rule §882.2 must require that transcripts come directly from a verified source in order to ensure the authenticity of the submission. Depending upon a particular board, there may still be procedures for an applicant to be approved to sit for an examination prior to graduation but a license cannot be issued until the Council receives an official copy of a transcript verifying the conferral of a degree. The Council believes the utilization of the SAVE Program will make the application process easier for the verification of immigration status of applicants, additionally the use of the SAVE Program is required by federal law.

The Council declines to amend rule §882.3 as requested because the requested edits to add denial of exam applications to the rule appears unnecessary to the agency and does not appear to add any additional clarity to the rule.

Rule §882.6 is authorized and required, as written, because §507.253 of the Tex. Occ. Code states the Council shall, by rule, establish a limit on the number of exam retakes and the requirements for retaking an exam.

The Council declines to amend rule §882.9 as requested. While the Council's intent is to provide the public as much information as possible about processing times for licenses, depending upon what information and how it is stored by all the boards will determine what the Council will be able to publish. The rule as written will more accurately demonstrate the agency's workload. The agency does not see the need to include these requested changes in the rule, as the Council believes the general language currently in the rule is sufficient.

For these reasons the agency declines to make the requested changes, and hereby adopts the rules with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules in part under the authority found in §§2005.003 and 2005.006 of the Tex. Gov't Code which requires state agencies to adopt rules for process-

ing applications and issuing licenses, as well as complaint procedures for the same.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§882.6. *Limitation on Number of Examination Attempts.*

(a) An applicant may take an examination administered or required by the Council no more than three times. Failure to pass an examination subject to this rule within three attempts, will result in an automatic denial of an application.

(b) Notwithstanding subsection (a) of this section, an applicant whose application is denied under this rule may reapply for licensure, but will not be allowed or approved to sit for the exam again until the applicant has submitted a detailed study plan designed to address the known or suspected areas of deficiency. The study plan must be approved by the relevant member board before authorization will be given to retake the examination.

(c) Examinations which do not require pre-authorization by the Council to take, are not subject to this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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## SUBCHAPTER B. LICENSE

### 22 TAC §§882.20 - 882.27

The Texas Behavioral Health Executive Council adopts new §§882.20 - 882.27, relating to license. Except for §882.22 and §882.23, the new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2652) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §882.22 and §882.23 are being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Generally, these new rules provide the form and function for the licenses issued by the Executive Council.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter requested changes to rule §882.22(a) for consistency reasons. The commenter believes previously licensed marriage and family therapists seeking to reinstate a revoked license should be excepted from this rule to be consistent with §502.252(b)(7) of the Tex. Occ. Code.

A commenter requested edits to rule §882.26(c). The commenter believes the requirement that two or more psychologist be on staff limits opportunities for post-doctoral training and does not guarantee greater learning than if there was just one. Additionally, the commenter believes the minimum two hours per week of face-to-face supervision does not allow for supervision by technology or electronic means.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The lack of an exclusion or exception in rule §882.22(a) for LMFTs is unnecessary. Rule §881.10(a), pertaining to conflicts between other laws and council rules, would dictate that if a Council rule conflicted with a statute in the Texas Occupations Code, the statute would control. In this instance, rule §882.22(a) allows those with a prior license to apply for reinstatement with the Council. This does not guarantee that all prior revoked licensees will be reinstatement. An individual who had an LMFT revoked may still apply for reinstatement, but pursuant to §502.252(b)(7) the Tex. Occ. Code the Council would not be able to reinstate the license. Therefore rule §882.22(a) does not conflict with the Texas Occupations Code.

Rule §882.26(c) pertains to the criteria for a post-doctoral program to be considered substantially equivalent to an APA accredited or APPIIC member program. An individual may always apply with the Council for licensure and once approved the individual may conduct a post-doctoral program required for licensure as a psychologist that is not APA accredited, an APPIIC member program, or substantially equivalent. Therefore this rule does not limit the opportunity for post-doctoral training, it defines the pathway to complete this training prior to an application for licensure. Additionally, other rules, such as 22 Texas Administrative Code §465.2, allow for supervision by electronic means.

For these reasons the agency declines to make the requested changes, and hereby adopts the rules with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which re-

quires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§882.22. *Reinstatement of a License.*

(a) A person whose license has expired or been retired, revoked, or resigned, may apply for reinstatement of the license. A person seeking re-licensure must apply for reinstatement, rather than applying for a new license.

(b) An application for reinstatement shall be in writing and in the form prescribed by the Council.

(c) In the case of revocation or resignation, application for reinstatement shall not be made prior to one year after the effective date of the revocation or resignation or prior to any time period specified in the order of revocation or resignation. A person whose license was revoked under §108.053 may apply for reinstatement of the license if the person meets the requirements of §108.055 of the Occupations Code.

(d) A person seeking reinstatement of a license shall appear before the Council or member board to answer any questions or address any concerns raised by the person's application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of the application for reinstatement.

(e) The Council may approve or deny an application for reinstatement, and in the case of a denial, the Council may also set a reasonable period that must elapse before another application may be filed. The Council may also impose reasonable terms and conditions that an applicant must satisfy before reinstatement of an unrestricted license.

(f) An application for reinstatement of an expired, retired, revoked, or resigned license may be granted upon proof of each of the following:

- (1) payment of the application fee;
- (2) submission of a self-query report from the National Practitioner Data Bank (NPDB) reflecting any disciplinary history or legal actions taken against the applicant. A self-query report must be submitted to the agency in the sealed envelope in which it was received from the NPDB;
- (3) a fingerprint based criminal history check which reflects no disqualifying criminal history;
- (4) passage of any examinations required by a member board;
- (5) documentation of any continuing education required by a member board; and
- (6) submission of any other documentation or information requested in the application or which the Council or a member board may deem necessary in order to ensure the public's safety.

(g) The Council will evaluate each of the following criteria when considering reinstatement of an expired, revoked, or resigned license:

- (1) circumstances surrounding the expiration, revocation, or resignation of the license;
- (2) conduct of the applicant subsequent to the expiration, revocation, or resignation of the license;
- (3) lapse of time since the expiration, revocation, or resignation of the license;

(4) compliance with all terms and conditions imposed by the Council or a member board in any previous order; and

(5) applicant's present qualification to practice the regulated profession based upon the history of related employment, service, education, or training, as well as the applicant's continuing education since the expiration, revocation, or resignation of the license.

(h) Notwithstanding time limits on original applications and examinations found elsewhere in these rules, an applicant seeking reinstatement of a license must submit all required documentation and information, and successfully pass all required examinations within the period specified by the Council. Failure to do so shall result in the application for reinstatement expiring.

§882.23. *License Required to Practice.*

(a) A person may not engage in or represent that the person is engaged in the practice of marriage and family therapy, professional counseling, psychology, or social work within this state, unless the person is licensed or otherwise authorized to practice by law.

(b) A person is engaged in the practice of marriage and family therapy within this state if any of the criteria set out in §502.002(6) of the Occupations Code occurs either in whole or in part in this state.

(c) A person is engaged in the practice of professional counseling within this state if any of the criteria set out in §503.003(a) of the Occupations Code occurs either in whole or in part in this state.

(d) A person is engaged in the practice of psychology within this state if any of the criteria set out in §501.003(b) of the Occupations Code occurs either in whole or in part in this state.

(e) A person is engaged in the practice of social work within this state if any of the criteria set out in §505.0025 of the Occupations Code occurs either in whole or in part in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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## SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

### 22 TAC §§882.30 - 882.36

The Texas Behavioral Health Executive Council adopts new §§882.30-882.36, relating to duties and responsibilities. The new sections are adopted without changes to the proposed text as published in the April 24, 2020 issue of the *Texas Register* (45 TexReg 2655) and will not be republished.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional coun-

selors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. These new rules pertain to the duties and responsibilities of applicants going through the application process and licensees once they have obtained a license, which generally prohibit false or deceptive statements or practices.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter is concerned that rule §882.30(b) does not treat all license types equally and requests the rule be a single unified standard for all license types.

A commenter believes rule §882.32(a) requires licensees to be responsible for ensuring adequate record keeping for the agency and believes licensees cannot make sure the agency does the right thing with the information provided.

One commenter requested the addition of the word "must" to rule §882.36(a) for grammatical reasons. Another commenter requested the inclusion of Chapter 104 and 107 of the Texas Family Code in this rule.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

Pursuant to Tex. Occ. Code §§502.261(a) and 503.314(a) a marriage and family therapist and a licensed professional counselor must, respectively, display a copy of their license at their principle place of practice or in an appropriate and public manner. Therefore rule §882.30(b) must provide an exception for those licensed under Chapters 502 and 503 because Texas law will not allow them to provide a patient or client only written notification of a holder's license number along with instructions for verification.

Rule §882.32(a) requires licensee to update their contact information in the Council's online licensing system. A licensee will be responsible for entering the required information into this system, which the licensee will be able to check online. All data entry will be done by the licensee, there is no basis to think that the agency will manipulate, alter, or not use this data.

The addition of the word "must" in rule §882.36(a) would have no effect on this rule, and the agency does not find that this requested change is necessary to clear up any potential public confusion or misunderstanding of this rule. Rule §882.36 provides references to many of the statutes effecting a licensee's practice, but the rule is not intended to be an exhaustive list of every statute that could have an effect on a licensee. Citations to the Texas Family Code, specifically Chapter 107, are included in other rules of practice which a licensee should already be aware of before conducting any practice in the areas governed by the Texas Family Code; therefore the Council declines to add additional statutory references to this rule.

For these reasons the agency declines to make the requested changes, and hereby adopts the rules with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

### 22 TAC §§882.40 - 882.42

The Texas Behavioral Health Executive Council adopts new §§882.40 - 882.42, relating to criminal history and license eligibility. Except for §882.42, concerning Ineligibility Due to Criminal History, the new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2658) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §882.42 is being changed and adopted as republished below.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board; and §507.156 of the Tex. Occ. Code requires the Executive Council to adopt rules pertaining to the Executive Council's authority to revoke, suspend, or deny a license based upon a criminal conviction. These new rules implement this statutory duty.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter was concerned that subsections (b) and (d) of §882.40 contradicted each other and subsection (c) will allow licensees to renew a license by merely being fingerprinted and not completing any other renewal requirement.

One commenter requested the addition of the word "based" to fingerprint criminal history background checks in §882.41(d) for consistency reasons.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

Section 882.40(b) is a standalone requirement, it can apply to any licensee at any time, and does not contradict any other subsection of this rule. Subsection (c) of the rule deals with licensees who have not yet been required to complete a criminal history background check, and it does not waive any requirements for the renewal of a license. Subsection (d) of the rule pertains solely to those applicants who have already completed a criminal history background check and it exempts them from subsection (c).

The addition of the word "based" in §882.41(d) to describe the fingerprint criminal history background check would have no effect on this rule, the same term was used in §882.60(e), and the agency does not find that this requested change is necessary to clear up any potential public confusion or misunderstanding of this rule.

For these reasons the agency declines to make the requested changes, and hereby adopts the rules with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.156 of the Tex. Occ. Code, which requires the Executive Council to adopt rules necessary to comply with Chapter 53 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§882.42. *Ineligibility Due to Criminal History.*

(a) The Council may revoke or suspend a license, disqualify a person from receiving or renewing a license, or deny a person the opportunity to be examined for a license due to a felony or misdemeanor

conviction, or a plea of guilty or nolo contendere followed by deferred adjudication, if the offense:

- (1) is listed in Article 42A.054 of the Code of Criminal Procedure;
- (2) was a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure; or
- (3) directly relates to the duties and responsibilities of a licensee.

(b) In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee, the agency shall consider the factors listed in §53.022 of the Occupations Code. Each member board shall determine which crimes are directly related to the duties and responsibilities of its licensees.

(c) If the agency determines that a criminal conviction directly relates to the duties and responsibilities of a licensee, the agency must consider the factors listed in §53.023 of the Occupations Code when determining whether to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination. It shall be the responsibility of the applicant or licensee to provide documentation or explanations concerning each of the factors listed in the law. Any documentation or explanations received will be considered by the agency when deciding whether to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination.

(d) Notwithstanding any schedule of sanctions adopted by the Council or a member board, the Council shall:

- (1) revoke a license due to a felony conviction under §35A.02 of the Penal Code, concerning Medicaid fraud, in accordance with §36.132 of the Human Resources Code;
- (2) revoke or suspend a license for unprofessional conduct in accordance with §105.002 of the Occupations Code; and
- (3) revoke a license due to a license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(e) In accordance with Chapter 108 of the Occupations Code, an application for licensure as a psychologist or social worker will be denied if the applicant:

- (1) is required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure;
- (2) has been previously convicted of or placed on deferred adjudication for the commission of a felony offense involving the use or threat of force; or
- (3) has been previously convicted of or placed on deferred adjudication for the commission of an offense:
  - (A) under §§22.011, 22.02, 22.021 or 22.04 of the Penal Code, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections;
  - (B) during the course of providing services as a health care professional; and
  - (C) in which the victim of the offense was a patient.

(f) A person whose application was denied under subsection (e) of this section may reapply for licensure if the person meets the requirements of §108.054 of the Occupations Code.

(g) In accordance with §108.053 of the Occupations Code, the Council shall revoke the license of a psychologist or social worker if the licensee is:

- (1) convicted or placed on deferred adjudication for an offense described by subsection (e)(2) or (3) of this section; or
- (2) required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure.

(h) The Council will provide notice to a person whose application has been denied due to criminal history as required by §53.0231 and §53.051 of the Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## SUBCHAPTER E. CONTINUING EDUCATION

### 22 TAC §882.50

The Texas Behavioral Health Executive Council adopts new §882.50, relating to continuing education. The new section is adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2660) and will not be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. In order to maintain and renew a license, each license holder is required to obtain a minimum amount of education per renewal period in order to renew a license. Each applicable board will determine the minimum amount of required education and the Executive Council will ensure compliance. This new rule pertains to the Executive Council's ability to audit license holders for compliance purposes.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter requested the rule reference that inactive status licensees do not have to comply with this rule. Other commenters were concerned that the rule would result in 10% of all licensees being audited every month, which would result in over auditing and be more burdensome than beneficial to licensees and the agency.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

Rule §882.21(b)(2) already states that inactive licensees do not have to comply with continuing education requirements while the license is inactive, restating the same in §882.50 would be duplicative and unnecessary.

Rule §882.50(a) requires all licensee to complete the minimum amount of continuing education required to renew a license for each renewal period. Rule §882.50(b) allows the agency to conduct audits of licensees to ensure compliance with the continuing education requirements. Every month, a group of licensees will be required to renew their license and under §882.50(b)(1) 10% of these licensees will be subject to an audit, and, as the rule states, they will need to show compliance before their license will be renewed. Therefore, the only licensees that will be subject to the random audits of rule §882.50(b)(1) will be those renewing their license.

For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

Statutory Authority.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this new rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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For further information, please call: (512) 305-7706



## SUBCHAPTER F. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND MILITARY SPOUSES

**22 TAC §882.60, §882.61**

The Texas Behavioral Health Executive Council adopts new §882.60 and §882.61, relating to licensing provisions related to military service members, veterans, and military spouses. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2661). The rules will not be republished.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Chapter 55 of the Tex. Occ. Code requires state agencies that issue a license to adopt rules pertaining to licensing eligibility requirements for military service members, veterans, and spouses. These new rules implement this statutory duty.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

One commenter requested the addition of the word "based" to fingerprint criminal history background checks in rule §882.60(e) for consistency reasons.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

One commenter thought the addition of rule 882.61 was an excellent change.

Agency Response.

The addition of the word "based" in rule §882.60(e) to describe the fingerprint criminal history background check would have no effect on this rule, the same term was used in rule §882.41(d), and the agency does not find that this requested change is necessary to clear up any potential public confusion or misunderstanding of this rule. For these reasons the agency declines to make the requested change, and hereby adopts the rule with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.156 of the Tex. Occ. Code which requires the Executive Council to adopt rules necessary to comply with Chapter 53 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which re-

quires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. EMERGENCY TEMPORARY LICENSE

### 22 TAC §882.70

The Texas Behavioral Health Executive Council adopts new §882.70, relating to Emergency Temporary License. The new section is adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2663). The rule will not be republished.

#### Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Sections 501.263, 502.258, 503.308, and 505.357 of the Tex. Occ. Code require the adoption of rules for the Executive Council to issue a temporary license. This new rule implements this statutory duty.

#### List of interested groups or associations against the rule.

The Bluebonnet Counseling Association of Texas

The Texas Counseling Association

The Texas Psychological Association

The Texas Association of Marriage and Family Therapists

The National Association of Social Workers - Texas

The Texas Society for Clinical Social Work

#### Summary of comments against the rule.

Commenters have requested rule §882.70, pertaining to emergency temporary license, be amended to allow out-of-state licensees who are not in good standing the ability to apply for and be granted temporary licensure. Additionally, one commenter requested the emergency temporary license be made available for those applicants needing a job but waiting for the agency to process the application.

#### List of interested groups or associations for the rule.

None.

#### Summary of comments for the rule.

None.

#### Agency Response.

To allow out-of-state licensees who are not in good standing, meaning they are subject to a current disciplinary action, to apply for and be granted emergency temporary licenses would be antithetical to the mission of this agency - to protect the public. Once the out-of-state licensee is no longer subject to a disciplinary action then the licensee may apply, but to allow potential bad actors a pathway to temporary licensure will increase the potential for more harm. The purpose for the emergency temporary license is to allow out-of-state licensees to provide services in Texas in response to a disaster, therefore this licensing rule is not something that should be used for the typical or regular licensing process. For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

#### Statutory Authority.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this new rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts this new rule pursuant to the authority found in §§501.263, 502.258, 503.308, and 505.357 of the Tex. Occ. Code which requires the Executive Council to adopt rules for the issuance of temporary licenses.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## CHAPTER 883. RENEWALS SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §§883.1 - 883.3

The Texas Behavioral Health Executive Council adopts new §§883.1 - 883.3, relating to general provisions for the renewal



of a license. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issues of the *Texas Register* (45 TexReg 2665). The rules will not be republished.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.255 of the Tex. Occ. Code authorizes the Executive Council to renew licenses issued by the Executive Council, which must also include the name of the applicable board, and these new rules implement this statutory duty. Generally, these new rules establish the requirements for the biennial renewal of a license, and this biennial renewal period will be based upon the last day of the license holder's birth month.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter believes rule §883.2 should be amended so it does not conflict with the renewal or expiration dates listed in the rules for other license types.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

Rule §883.2 concerns the date on which a license, that can be renewed, must be renewed by, which is the last day of the licensee's birth month; except for those individuals that have more than one license from a member board, the renewal date shall coincide with the individual's existing renewal date. The commenter is concerned that this rule will conflict with the rules concerning the LPC-A (22 TAC §681.91) and the temporary license for social workers (22 TAC §781.411), but, by statute (§§503.308 and 505.357 of the Tex. Occ. Code, respectively) and by these rules, neither of those licenses can be renewed; so there exists no conflict because rule §883.2 does not apply to those rules. The commenter is also concerned that rule §883.2 will conflict with the rule concerning LMFT Associates (22 TAC §801.202). Rule §883.2 will work with the LMFT Associate rule because LMFT Associates will be required to renew on a biennial basis by the last day of the licensee's birth month. The only difference is under the LMFT Associates rule there is a limit to how many times a licensee may renew that license, because the license is intended to be used to gain licensure as an LMFT. Rule §883.2 does not conflict with the LMFT Associate rule because rule §883.2 only specifies the date upon which a renewal is required but does not address when a particular license can no longer be renewed. Additionally, the rules the commenter is concerned will conflict with rule §883.2 are currently working through the rule amendment process in an effort to avoid any possible future conflict. For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority of §507.255 of the Tex. Occ. Code which authorizes the Executive Council to issue license renewals upon meeting certain criteria.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## SUBCHAPTER B. RENEWAL PROVISIONS FOR MILITARY PERSONNEL

### 22 TAC §883.10

The Texas Behavioral Health Executive Council adopts new §883.10, relating to renewal terms for military personnel on active duty. The new section is adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2667). The rule will not be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.255 of the Tex. Occ. Code authorizes the Executive Council to renew licenses issued by the Executive Council, which must also include the name of the applicable board; and §55.002 of the Tex. Occ. Code requires state licensing agencies to adopt a rules regarding licensing renewal exemptions for individuals serving as military service members. This new rule implements the statutory duty.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this new rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts this new rule under the authority of §507.255 of the Tex. Occ. Code which requires the Executive Council to issue license renewals upon meeting certain criteria.

Lastly, the Executive Council adopts this new rule pursuant to the authority found in §55.002 of the Tex. Occ. Code which requires state licensing agencies to adopt a rules regarding licensing renewal exemptions for individuals serving as military service members.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 884. COMPLAINTS AND ENFORCEMENT

### SUBCHAPTER A. FILING A COMPLAINT

#### 22 TAC §§884.1 - 884.3, 884.5, 884.6

The Texas Behavioral Health Executive Council adopts new §§884.1 - 884.3, 884.5, and 884.6, relating to filing a complaint. Except for §884.2, the new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2668) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §884.2 is being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council

to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules are the general framework regarding the Executive Council's procedures for filing a complaint.

List of interested groups or associations against the rule.

The Coalition for Family Court Reform

Summary of comments against the rule.

A commenter requested rule §884.1 be amended so there would be no time limit for complaints alleging sexual misconduct, the commenter wanted to allow child victims as much time as possible to file a complaint. The commenter acknowledges that this would exceed record retention requirements but felt other records or testimony could be used in an investigation of such a complaint.

Commenters requested changes or the deletion of rule §884.3 in its entirety. Some commenters believe the process and requirements outlined in the rule for filing a complaint against a forensic examiner is overly burdensome to complainants and will not help protect to public against bad actors and misconduct. Some commenters believe the intent of the rule is so staff may dismiss complaints without investigating them. Some ask that the rule allow for the filing of a complaint while a family law case is still pending before a court and that there be no requirement for a complainant to provide or include any documentation regarding their complaint. Another commenter was concerned that allowing attorneys to provide opinion letter in support of a complaint will unnecessarily involve attorneys in the complaint process allowing them to opine on how a licensee did or did not follow the Texas Family Code as it relates to testing, which the commenter asserts an attorney has no such expertise to do. The commenter is afraid that attorneys will try to use the complaint process as a litigation tactic in family law cases. Another commenter wants the rule to include language that allows a complainant to file a copy of a court order making a finding that a child custody evaluator's report is defective, deficient, or in violation of a legal standard.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

While the Council is sympathetic to the commenter's concern in rule §884.1 regarding the investigation of sexual abuse allegations perpetrated against children, as a matter of fairness the Council believes that some time limitation must be imposed upon complaints against licensees. In order for licensees to be able to appropriately and fully respond to a complaint a licensee will almost always provide a copy of the records maintained by the licensee pertaining to the alleged victim, which is typically a patient file. Logically, it only makes sense to tie the requirement in this rule to the records retention requirements for each licensee. Additionally, if a criminal statute of limitation has not expired, the

alleged victim may file a criminal complaint and if the licensee is convicted of a criminal offense it will most likely also result in a disciplinary action against that individual's license.

Regarding the comments pertaining to §884.3, this agency is charged with the task of fairly regulating its licensees - so that the public is protected and that licensees are fairly investigated and prosecuted. The Council believes this rule will maintain this balance. The purpose behind the rule is to streamline the complaint intake process, the documents or information needed to initiate the complaint are items that will be necessary in virtually every court ordered forensic evaluation. Agency staff currently reviews complaints when they are initially filed for legal sufficiency, such as to determine if the allegation on their face state a violation of the law. The basic documentation and information required by this rule are used to make this determination. If a complaint fails to state a violation of law the complaint will be dismissed and the complainant will be notified why the agency could not investigate the complaint. Agency staff will often contact a complainant for more information or documentation regarding an alleged violation of law that staff is unable to determine if a violation of law has occurred. What this rule does is put complainants on notice of what staff will need to process and start investigations such complaints. Currently attorneys are not prohibited from filing complaints and opinion letters, the rule uses an attorney opinion letter as one example of possible documentation that may aid in the processing of a complaint and this agency does not have statutory authority to prohibit attorneys from filing complaints or letters for or against a complaint. The rule is intended to curtail the use of this agency's complaint process as a litigation tactic by requiring a judgment, final order, or dismissal be entered and provided with the complaint prior to the agency processing the complaint. The rule, as currently drafted, allows a complainant may file a copy of a court order finding a defect in a report or ordering a licensee to correct a defect in a report.

For these reasons the agency declines to make the requested changes, and hereby adopts the rules with no changes.

#### Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§884.2. *Standardized Complaint Form.*

All complaints must be submitted on the Council-approved complaint form. The complaint form shall be obtained free of charge from the Council's website or by requesting a copy from the Council.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Executive Director

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## SUBCHAPTER B. INVESTIGATIONS AND DISPOSITION OF COMPLAINTS

### 22 TAC §§884.10 - 884.12

The Texas Behavioral Health Executive Council adopts new §§884.10 - 884.12, relating to investigation and disposition of complaints. Except for §884.10 and §884.12, the new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2670) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §884.10 and §884.12 are being changed and adopted as republished below.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules are the general framework regarding the Executive Council's procedures for investigating and potentially resolving a complaint.

#### List of interested groups or associations against the rule.

The Bluebonnet Counseling Association of the Texas

The Texas Counseling Association

The Texas Psychological Association

The Texas Association of Marriage and Family Therapists

The National Association of Social Workers - Texas Chapter

The Texas Society for Clinical Social Work

#### Summary of comments against the rule.

Commenters requested changes to rule §884.12(c). In general commenters requested the rule be changed from allowing mem-

bers boards to provide input and assistance in enforcement matters and proceedings to requiring it. Some commenters believed §507.306 of the Tex. Occ. Code requires this change.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The comments all focus on subsection (c) of rule §884.12 but they may not have considered this subsection in conjunction with the entire rule. Subsection (a) of the rule states, in part: "each member board shall be responsible for reviewing complaints involving the standard of care, ethical guidelines, or scope of practice following a contested case before SOAH and making a recommendation to the Council regarding the final disposition." Then in subsection (c) the Council is allowed to solicit input and request assistance from a member board before entering the final order. Changing subsection (c) to a mandatory requirement, as opposed to permissive one, will only make subsection (c) redundant to the requirements of subsection (a). Therefore rule §884.12 complies with §507.306 of the Tex. Occ. Code; and for these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council adopts these new rules pursuant to the authority found in §§507.305 and 507.306 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning informal proceedings to resolve a complaint and assistance in disciplinary proceedings.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§884.10. *Investigation of Complaints.*

(a) The following priority rating system shall serve to distinguish between categories of complaints. The priority rating system is as follows:

- (1) cases involving a probability of imminent physical harm to the public or a member of the public;
- (2) cases involving sexual misconduct;

(3) cases involving applicants for licensure; and

(4) cases involving all other violations of state or federal law.

(b) The Enforcement Division shall investigate all complaints in a timely manner. A schedule shall be established for conducting each phase of a complaint that is under the control of the Council not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file of the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified in writing not later than the seventh day after the date the change is made.

(c) The Council may accept, but is not obligated to investigate, a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(d) A complainant may explain the allegations made in the complaint by attaching or including with the complaint any evidence the complainant believes is relevant to a determination of the allegations, including written statements or communications, medical or mental health records, recordings, photographs, or other documentary evidence.

(e) A review will be conducted upon receipt of a complaint to determine if the Council has jurisdiction over the complaint, and if so, whether the complaint states an allegation which, if true, would constitute a violation of the Council's rules or other law within the jurisdiction of the Council.

(f) Complaints that do not state a violation of a law within the jurisdiction of the Council shall be dismissed. If the complaint alleges a violation of a law within the jurisdiction of another agency, the complaint will be referred to that agency as required or allowed by law.

(g) Complaints that state a violation of a law within the jurisdiction of the Council shall be investigated by an investigator assigned by the Enforcement Division.

(h) Licensees will receive written notice of any alleged complaint(s), including specific information regarding any violation(s) encountered. Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record at the time of the mailing.

(i) Following completion of the investigation, an investigation report shall be drafted. This report shall include a recommendation as to whether the investigation has produced sufficient evidence to establish probable cause that a violation has occurred.

(j) The Enforcement Division Manager (or the manager's designee) and legal counsel shall review the investigation report to determine if there is probable cause that a violation occurred.

(k) A complaint for which the staff determines probable cause exists shall be referred for an informal conference by agency staff or a member board's Disciplinary Review Panel. Agency staff shall send the respondent notice of the date and time of the informal conference.

(l) A complaint for which staff or a Disciplinary Review Panel determines that probable cause does not exist shall be referred for dismissal.

(m) The services of a private investigator shall be retained only in the event that staff investigator positions are vacant or inadequate to provide essential investigative services. The services of a private investigative agency shall be obtained in accordance with the state's procurement procedures.

(n) If a complainant or respondent are represented by an attorney, any notice or service required by law shall be made upon the attorney at the attorney's last known address.

*§884.12. Complaint Disposition.*

(a) The Council must approve and enter all final orders following a contested case before SOAH or where no agreement exists between the agency and the respondent regarding the disposition of a contested enforcement related matter. However, each member board shall be responsible for reviewing complaints involving the standard of care, ethical guidelines, or scope of practice following a contested case before SOAH and making a recommendation to the Council regarding the final disposition. A recommendation from a member board must include any recommended modifications to the findings of fact and conclusions of law in the PFD, as well as the recommended sanction. A proposed final order reflecting a member board's recommendations shall satisfy the requirements of this rule.

(b) The Council shall review recommendations from member boards for anti-competitive impacts, administrative consistency, and good governance concerns. The Council may not substitute its judgment in contested enforcement matters for that of a member board where, in the Council's determination, none of the aforementioned concerns are present.

(c) The Council may solicit input from and request the assistance of a member board when considering a contested enforcement matter if there are concerns about the standard of care or ethical practice shown by a licensee. The Council may specify the format of the input and assistance requested to satisfy the requirements of this rule.

(d) Each member board is authorized to dismiss complaints and approve and enter agreed final orders and informal dispositions; Council ratification is not required. The Executive Director shall report the number of dismissals and agreed orders entered under this rule at Council meetings.

(e) Disposition by the Executive Director.

(1) The Executive Director is authorized to:

(A) dismiss a complaint if the investigator and legal counsel agree that a violation did not occur or that the agency lacks jurisdiction over the complaint;

(B) dismiss a complaint recommended for dismissal by a Disciplinary Review Panel;

(C) dismiss a complaint following a contested case hearing before SOAH where the ALJ finds no violation of the law has occurred;

(D) accept the voluntary resignation of a license;

(E) offer, approve, and enter agreed orders if the disciplinary sanction imposed complies with the disciplinary guidelines and relevant schedule of sanctions; and

(F) enter an order suspending a license upon receipt of an order suspending a license issued under Chapter 232 of the Family Code. Council ratification is not required.

(2) The Executive Director shall report the number of agreed orders, dismissals, resignations, and suspensions ordered, along with a brief summary of the basis for each, to the Council and relevant member board at the next regular meeting.

(3) The Executive Director must, when offering an agreed order or resignation order prior to an informal conference, advise the respondent of the right to an informal conference and that the matter

will be set for an informal conference if requested or if an informal disposition cannot be agreed upon.

(f) Any person who files a complaint will be notified of the disposition of the complaint. A person who filed a complaint that is dismissed will be notified of the dismissal by letter and the letter will reflect the legal basis or reason for the dismissal. A person who filed a complaint resulting in disciplinary action will be sent a copy of the Council's final order.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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For further information, please call: (512) 305-7706



## SUBCHAPTER C. DISCIPLINARY GUIDELINES AND SCHEDULE OF SANCTIONS

### 22 TAC §884.20, §884.21

The Texas Behavioral Health Executive Council adopts new §884.20 and §884.21, relating to disciplinary guidelines and schedule of sanctions. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2673) and will not be republished.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules are the general framework regarding the Executive Council's procedures for imposing sanctions.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council adopts these new rules pursuant to the authority found in §507.304 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning a schedule of sanctions.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## SUBCHAPTER D. DUTIES AND RESPONSIBILITIES

### 22 TAC §§884.30 - 884.32

The Texas Behavioral Health Executive Council adopts new §§884.30 - 884.32, relating to Duties and Responsibilities. Except for §884.30 and §884.32, the new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2676) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §884.30 and §884.32 are being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council

to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules require licensees to provide notice to the public of the complaint process, they require licensees to cooperate with Executive Council investigations, and they require licensees to report legal actions and a discipline.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council adopts these new rules pursuant to the authority found in §507.202 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning notice to the public of the complaint process.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

*§884.30. Cooperation with Council Investigations.*

Licensees must cooperate with and respond to Council investigations. Failure to cooperate or respond may serve as grounds for a Council-initiated complaint and disciplinary action.

*§884.32. Reportable Legal Action and Discipline.*

- (a) Licensees are required to report legal actions as follows:

(1) Any conviction, sentence, dispositive agreement, or order placing the licensee on community supervision or pretrial diversion, must be reported in writing to the Council within thirty days of the underlying event. A report must include the case number, court, and county where the matter is filed, together with a description of the matter being reported. A licensee shall provide copies of court documents upon request from agency staff.

(2) Any lawsuit brought by or against a licensee concerning or related to the delivery of services regulated by this agency or billing practices by the licensee. A report must include a copy of the initial pleading filed by or served upon the licensee, and must be submitted to the Council within thirty days of either filing by or service upon the licensee.

(3) Any administrative or disciplinary action initiated against a licensee by another health regulatory agency in this state or any other jurisdiction, or any agency or office within the federal government, must be reported to the Council by sending notification of the action within thirty days of the licensee receiving notice of the action. A report must include a copy of any complaint, notice of violation, or other documentation received by the licensee from the initiating entity which describes the factual basis for the action. A licensee must also supplement this report to the Council with a copy of any order, letter, or determination setting forth the final disposition of the matter within thirty days following the final disposition.

(b) A complaint shall be opened if a reported criminal action constitutes grounds for disciplinary action under applicable state or federal law. A complaint may be opened if a reported civil action constitutes grounds for disciplinary action under Council rules.

(c) Reciprocal Discipline:

(1) A complaint may be opened upon receipt of a report of discipline against a licensee by another health licensing agency in this state or any other jurisdiction.

(2) The Council may impose disciplinary action on a licensee according to its own schedule of sanctions for the conduct forming the basis of the other health licensing agency's disciplinary action.

(3) A voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health licensing agency constitutes disciplinary action under this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## SUBCHAPTER E. LICENSE SUSPENSION

### 22 TAC §884.40, §884.41

The Texas Behavioral Health Executive Council adopts new §884.40 and §884.41, relating to license suspension. Except for §884.40, the new sections are adopted without changes to the proposed text as published in the April 24, 2020 issue of the

*Texas Register* (45 TexReg 2677) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §884.40 is being changed and adopted as republished below.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules pertain to the Executive Council's proceedings to temporarily suspend a license.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

#### Statutory Authority

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

#### §884.40. *Temporary Suspension of a License.*

(a) In accordance with §507.302 of the Occupations Code, a license shall be temporarily suspended when the Council or an executive committee of the Council determines that the continued practice

by a licensee (respondent) would constitute a continuing and imminent threat to the public welfare.

(b) An executive committee of the Council shall convene as follows:

(1) For each temporary suspension proceeding, the Council shall appoint a three-member executive committee, called a "suspension panel," to consider the information and evidence presented by agency staff. The suspension panel must have at least one member from the same profession as the respondent and a majority of members from the respondent's member board. The suspension panel shall confer with each other and name a chair of the suspension panel.

(2) In the event of the recusal of a suspension panel member or the inability of a suspension panel member to attend a temporary suspension proceeding, the presiding officer for the Council may appoint an alternate council member to serve on the suspension panel.

(3) The suspension panel may convene in-person or via telephone, video conference, or other electronic means.

(c) Temporary Suspension Hearing. The meeting at which the suspension panel considers a temporary suspension is a temporary suspension hearing. At the temporary suspension hearing, agency staff shall present evidence and information to the suspension panel that the continued practice by a person licensed by the Council would constitute a continuing and imminent threat to the public welfare. Notice of the temporary suspension hearing shall be sent to the respondent no less than 10 days before the hearing by personal service or by registered or certified mail.

(d) Order of Temporary Suspension. If a majority of the suspension panel votes to temporarily suspend a license, the suspension shall have immediate effect, and the chair of the suspension panel will sign an Order of Temporary Suspension. The Order of Temporary Suspension shall include a factual and legal basis establishing imminent peril to the public health, safety, or welfare, as required by §2001.054(c-1) of the Government Code. The Order shall be sent to the respondent by first-class mail or email.

(e) Temporary Suspension Without Notice. In accordance with §507.302(b) of the Occupations Code, a license may be suspended without notice to the respondent if at the time of the suspension, agency staff request a hearing before SOAH to be held as soon as practicable but no later than 14 days after the date of the temporary suspension. The hearing is referred to as the "probable cause hearing."

(f) Notice, Continuance, and Waiver of Probable Cause Hearing. Agency staff shall serve notice of the probable cause hearing upon the respondent in accordance with SOAH's rules. The respondent may request a continuance or waiver of the probable cause hearing. If the ALJ grants the continuance request or the respondent waives the probable cause hearing, the suspension remains in effect until the suspension is considered by SOAH at the continued probable cause hearing or at the final hearing. If the probable cause hearing is not held within 14 days and the respondent did not request a continuance or waive the probable cause hearing, the suspended license is reinstated.

(g) Probable Cause Hearing. At the probable cause hearing, an ALJ shall determine whether there is probable cause to continue the temporary suspension of the license and issue an order on that determination.

(h) Final Hearing. The State Office of Administrative Hearings shall hold a hearing no later than 61 days from the date of the temporary suspension. At this hearing, agency staff shall present evidence supporting the continued suspension of the license and may present ev-

idence of any additional violations related to the licensee. This hearing is referred to as the "final hearing."

(i) Notice and Continuance of Final Hearing. Agency staff shall send notice of the final hearing in accordance with SOAH's rules. The respondent may request a continuance or waive the final hearing. If a final hearing is not held within 61 days of the date of the temporary suspension and the respondent did not request a continuance or waive the final hearing, the license is reinstated.

(j) Proposal for Decision. Following the final hearing, the ALJ shall issue a PFD on the suspension. The PFD may also address any other additional violations related to the licensee.

(k) A temporary suspension takes effect immediately and shall remain in effect until:

- (1) a final or superseding order of the Council is entered;
- (2) the ALJ issues an order determining that there is no probable cause to continue the temporary suspension of the license; or
- (3) a SOAH hearing is not timely held.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## SUBCHAPTER F. SPECIAL PROVISIONS FOR PERSONS LICENSED TO PRACTICE PSYCHOLOGY

### 22 TAC §884.50, §884.51

The Texas Behavioral Health Executive Council adopts new §884.50 and §884.51, relating to special provisions for persons licensed to Practice Psychology. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2680). The rules will not be republished.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules pertain to the Executive Council's proceedings



for competency evaluations and remedial plans for persons licensed under Chapter 501 Tex. Occ. Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## SUBCHAPTER G. COMPLIANCE

### 22 TAC §884.55

The Texas Behavioral Health Executive Council adopts new §884.55, relating to Compliance. The new section is adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2682). The rule will not be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. This new rule pertains to the Executive Council's procedures for monitoring and ensuring compliance with Executive Council orders.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this new rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts this new rule pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council adopts this new rule pursuant to the authority found in §507.404 of the Tex. Occ. Code which requires the Executive Council to adopt rules regarding monitoring a license holder's compliance with Executive Council orders.

Lastly, the Executive Council adopts this new rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks  
Executive Director  
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## SUBCHAPTER H. CONTESTED CASES

### 22 TAC §§884.60 - 884.63, 884.65

The Texas Behavioral Health Executive Council adopts new §§884.60 - 884.63 and 884.65, relating to Contested Cases. The new sections are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2683) and will not be republished.

Reasoned Justification.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These new rules pertain to the Executive Council's procedures for conducting a contested case to resolve a complaint.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The new rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these new rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks

Executive Director

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## CHAPTER 885. FEES

### 22 TAC §885.1

The Texas Behavioral Health Executive Council adopts new §885.1, relating to Fees.

The new section is adopted with changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2685). In response to changes being proposed in 22 Texas Administrative Code Ch. 681, where the term Licensed Professional Counselor Intern (LPC-I) is being changed to Licensed Professional Counselor Associate (LPC-A), the Council adopts the corresponding name changes in rule §885.1, as a non-substantive change, which is republished below. Additionally, other changes have been made to the adopted rule to correct errors in the previously published text.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 507.154 of the Tex. Occ. Code authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code. The new rule establishes application and renewal fees in the amount necessary to meet the contingency rider found in §18.11 of Art. IX in the General Appropriations Act for 2020-2021, see Tex. H.B. 1, 86th Leg., R.S. (2019).

List of interested groups or associations against the rule.

The Texas Counseling Association

The Texas Psychological Association

The Fort Bend Psychological Association  
The Texas Association of Marriage and Family Therapists  
The National Association of Social Workers - Texas Chapter  
The Texas Society for Clinical Social Work  
Summary of comments against the rule.

Commenters voiced their disapproval with the increase in fees, and many asked for a reduction in either the increase of the fees or a reduction in the fees previously charged. Some of the commenters believed licensing's fees were already too high and others requested that the fees stay the same. A group of licensees, psychologists, voiced their disapproval that the fees for their particular licensure application and renewals was substantially higher than others license types, some believed they were paying a disproportionate amount to fund the agency, and requested either a decrease in their fees or that all fees be the same for each license type. Some commenters voiced an opinion that an increase in fees will negatively impact businesses, while others believed businesses will be negatively impacted until the fees for all license types are the same. Some commenters also believed that having different fees for different licenses will reduce competition and put those license types with higher fees at a competitive disadvantage.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency must generate enough revenue to meet the contingency rider found in §18.11 of Art. IX in the General Appropriations Act for 2020-2021. Therefore, in order to meet this obligation, some of the current fees for applications and renewals must be increased.

This adopted rule will increase application fees for the following license types: Licensed Baccalaureate Social Worker (LBSW) and Licensed Master Social Worker (LMSW) applications will increase by \$29; Licensed Clinical Social Worker (LCSW) applications will increase by \$29; Social Worker supervisor status applications will increase by \$30; initial Licensed Marriage and Family Therapist (LMFT) associate applications will increase by \$29; LMFT by endorsement applications will increase by \$31; LMFT supervisor status applications will increase by \$30; Licensed Professional Counselor (LPC), LPC intern, and provisional license applications will increase by \$31; and LPC supervisor status applications will decrease by \$50.

This adopted rule will increase renewal fees for the following license types: LBSW and LMSW renewal applications will increase by \$61; LMSW advanced practitioner and LCSW renewal applications will increase by \$63; LMFT and LMFT associate renewal applications will increase by \$11; LPC renewal applications will increase by \$41; LPC supervisor status renewal applications will decrease by \$50; and Licensed Specialist in School Psychology renewal applications will increase by \$21. This adopted rule will create a new fee for the renewal of supervisor status for social workers which will be \$50.

Those license types not listed will have no increase in application or renewal fees. For example, the application fee for psychologists may appear to have increased but the application process

for licensure as a psychologist now includes the prior provisional licensure processes, so the net increase is effectively zero.

In order to equitably distribute the fees among the different license types, the agency started with the current application and renewal fees. In order to meet the legislatively mandated revenue requirement and in effort to implement the smallest possible changes to the current fee structure in place, those fees that were substantially higher than others stayed the same while those fees that were lower were increased modestly as listed above.

Several psychologists commented that by paying higher fees they were paying a disproportionate amount to fund the agency then other license types so they would be paying more and receiving the same benefits as others. This comment is not mathematically correct. According to the 2017 Sunset Commission report there are approximately 4,826 psychologists, if all renew their license under the new renewal fee of \$412 it will generate approximately \$1,988,312. According to the 2015 Sunset Commission report there are approximately 23,797 social workers, if all renew their license under the new renewal fee of \$135 it will generate approximately \$3,212,595. As a licensee group, psychologists will not be contributing a larger amount of revenue to the agency, the opposite is actually correct. Additionally, such a comment runs contrary to the intended purpose for the creation of the Executive Council, so that multiple mental health professions could come together, to pool resources, and become a more efficient regulatory body, as opposed to each licensed profession remaining siloed, having little interaction with each other.

Currently all license types are active in the Texas marketplace, and there is no current indication or data to support one license type has a competitive advantage or disadvantage over the other due to the current fee structure. The commenters have provided no empirical data or other information to support any anti-competitive effect the current fee structure has on the Texas marketplace. The commenters assume an increased fee or higher fee directly correlates to an anti-competitive effect, but psychologists have historically paid higher fees than other license types and again there is no current data to demonstrate one mental health profession has a competitive advantage or disadvantage over the other due to the current fees in place.

For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

Statutory Authority.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this new rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts this new rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

Lastly, the Executive Council adopts these new rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§885.1. *Executive Council Fees.*

(a) General provisions.

(1) All fees are nonrefundable and cannot be waived except as otherwise permitted by law.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees: Figure: 22 TAC §885.1(b)

(c) Late fees.

(1) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2020.

TRD-202002623

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Effective date: September 1, 2020

Proposal publication date: April 24, 2020

For further information, please call: (512) 305-7706

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 353. INTRODUCTORY PROVISIONS**

**SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS)**

**31 TAC §353.102, §353.103**

The Texas Water Development Board (TWDB) adopts new 31 Texas Administrative Code (TAC) §353.102 and §353.103, relating to geographic information standards, and renames 31 TAC Chapter 353 Subchapter G, without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2687). The rules will not be republished.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES**

The purpose of the additions is to establish standards that achieve uniformity of data and compatibility among geographic information software products used by state agencies and to place the standards under the direction of the state geographic information officer. These rules additions to GIS standards are identical to those currently under the Department of Information Resources (DIR), which intends to repeal its rules set out in 1 TAC Chapter 205. The rules are moving to the Texas Water Development Board (TWDB) because the state geographic information officer resides within this agency.

The current Chapter 353 Subchapter G, Texas Natural Resources Information System Partnerships, is renamed Texas Natural Resources Information System (TNRIS) to allow for inclusion of multiple rules related to this TWDB program within a single subchapter.

**SECTION BY SECTION DISCUSSION OF THE ADOPTED RULES**

**§353.102 Definitions**

Section 353.102 provides descriptions for terms related to geographic information technology, including a description for the state geographic information officer.

**§353.103 State Agency Geographic Information Standards**

Section 353.103 adopts standards to guarantee that data created or procured by state agencies achieve compatibility with all geographic information software products. Standards also ensure the data are uniform in the event datasets are compiled from different sources.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, or a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to ensure state agencies develop geographic information in a compatible format for ease of data exchange, seek out data procurement partners for cost share and cost reduction, and to ensure maps depicting boundary lines include a "not surveyed by a professional surveyor" disclaimer.

Even if the rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather is adopted under the authority of Texas Water Code §16.021. Therefore, these rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated the rules and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the rules is to provide state agency standards for geographic information procurement and compilation.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these rules require state agency compliance with standards for geographic information technology without burdening or restricting or limiting an owner's right to property and reducing its value by 25% or

more. Therefore, the rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

#### PUBLIC COMMENT

The proposed rule amendments were open for public comment, and the comment period ended on May 26, 2020. No comments were received, and no changes to the proposed rules have been made.

#### STATUTORY AUTHORITY

This rulemaking is under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §16.021.

Cross-reference to statute: Texas Water Code §16.021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



## TITLE 34. PUBLIC FINANCE

### PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

##### 34 TAC §§304.2 - 304.4

The Texas Emergency Services Retirement System (TESRS) adopts new rules §§304.2 - 304.4, regarding membership in the pension system and participation in the pension system by departments. The new rules are adopted by the Board without substantive changes to the proposed text as published in the April 24, 2020, edition of the *Texas Register* (45 TexReg 2693); however, non-substantive changes to the structure of the adopted rules were made to improve their consistency with *Texas Register* outlining and formatting guidelines. The new rules will be republished.

The new rules are necessary to clarify Board rules governing participation in the system to allow the administration of TESRS to comply with House Bill (H.B.) 3247, 86th Legislature, Regular Session, 2019, which amended §§861 - 865, Texas Government Code.

The adopted new rules are necessary to allow a participating department to revoke its election to participate in TESRS in an actuarially sound manner and to allow employees of participating departments to participate in TESRS in a manner that maintains the qualified status of the pension system, each as contemplated

under House Bill (H.B.) 3247, 86th Legislature, Regular Session, 2019, which amended §§861 - 865, Texas Government Code.

New §304.2, concerning Departmental Revocation of Participation in the Pension System, and §304.3, concerning Determination of Accrued Benefit, would allow a participating department to revoke its election to participate in TESRS in a manner that protects the actuarial soundness of the pension system and the accrued benefits of active fire fighters, EMS personnel, and support personnel in the pension system by requiring those departments that revoke participation in the pension system to pay within five years of the date of revocation a revocation charge equal to the department's allocated share of the TESRS net pension liability.

New §304.2 allows a participating department to revoke its election to participate in the pension system in a manner that maintains an actuarially sound pension system. The new rule applies to the following five circumstances:

1. A department notifies the pension system of its intent to no longer participate;
2. A department ceases to exist or perform emergency services;
3. A department ceases to enroll eligible members or make required contributions;
4. A department is no longer funded or maintained by political subdivision; or
5. All members of a department become ineligible to continue participating (i.e., all become paid employees of a non-governmental entity or covered by another pension system).

New §304.3 will protect the pension benefits of members of a department that revokes its participation in the pension system by fully vesting their accrued benefits as of the date of the department's revocation. The new rule provides a schedule detailing the calculation of vested accrued benefits for members.

New §304.4, concerning Employees of Participating Departments, allows employees of a participating department to participate in the pension system in a manner that ensures the participation of employees of participating departments, whether full-time or part-time, satisfies the plan qualification requirements under §401(a) of the Internal Revenue Code of 1986, as amended (Code), and maintains the status of the pension system as a governmental plan under §414(d) of the Code.

No public comments were received regarding the proposed new rules for Chapter 304.

The new rules are adopted under the Texas Government Code, §865.006(b), which authorizes the state board to adopt rules as necessary for the administration of the fund. Texas Government Code, §862.001, is affected by this proposal.

*§304.2. Departmental Revocation of Participation in the Pension System.*

(a) For purposes of this section and §304.3 of this title (relating to Determination of Accrued Benefit):

(1) "Effective date of revocation" means the later of the date upon which the requirements listed in subsection (c) of this section are satisfied or the date upon which the revocation occurs.

(2) "Revocation" means the occurrence of one of the events listed in subsection (b) of this section.

(b) A participating department will revoke, or be deemed to have revoked, its election to participate in the pension system as pro-

vided under §862.001(b), Texas Government Code, upon the occurrence of one of the following events:

(1) a department notifies the pension system of its intent to no longer participate in the pension system;

(2) a department ceases to exist or ceases to perform emergency services;

(3) a department ceases to enroll its eligible members in the pension system or to make contributions to the pension system for eligible members as required under Chapter 865, Texas Government Code;

(4) the political subdivision associated with the department establishes a paid department and no longer funds or otherwise maintains the department; or

(5) all members of a department become ineligible to continue participating in the pension system as paid employees pursuant to §304.4(c) of this title (relating to Employees of Participating Departments) or because they are covered by another public retirement system in the state.

(c) In connection with a revocation:

(1) the governing body of the department must provide written notice of its intent to no longer participate in the pension system or the circumstances causing the revocation to occur to the executive director, the governing body of the political subdivision associated with the department, and all current members of the department at least 120 days prior to the date the revocation will occur or, if such prior notice is not possible, as soon as practicable, provided that the notice period may be shortened or waived by the executive director in his or her sole discretion;

(2) the local board of the department must certify:

(A) that all individuals who have performed emergency services or support services (if applicable) for the department and were eligible to participate in the pension system during the 2 years prior to the date the revocation occurs have been properly enrolled in the pension system; and

(B) the accuracy of the department's membership roster and the total amount of qualified service earned by each current and former member as of the date the revocation occurs;

(3) all affected members of the department as defined in §304.3(a) of this title will become fully vested in such affected member's accrued benefit as determined under §304.3 of this title as of the date the revocation occurs, regardless of the years of qualified service or age of such affected member as of such date, and the affected member's accrued benefit shall be nonforfeitable as of such date; and

(4) no later than 60 days after receipt of the notice required under subsection (c)(1) of this section or notice from the executive director under subsection (d) of this section, the governing body of the political subdivision associated with the department must pay, or enter into an agreement to pay in accordance with subsection (j) of this section:

(A) all required contributions for each month of service performed by members prior to the date the revocation occurs that have not been paid, including, without limitation, contributions for any months of service which have not yet been invoiced by the pension system and for members of the department who were not enrolled in the pension system but should have been during the 2 years prior to the date the revocation occurs; and

(B) the revocation charge as determined under subsection (h) of this section in order to maintain an actuarially sound pension system as required by §862.001(b), Texas Government Code.

(d) If the executive director becomes aware that one of the events listed in subsection (a) of this section has occurred and the governing body of a participating department has not provided notice of such event to the pension system as required under subsection (c)(1) of this section, the executive director will send written notice to the governing body of the participating department and the governing body of the political subdivision associated with the department as soon as administratively possible to inform them that a revocation of the department's election to participate in the pension system has occurred and to notify each party of its responsibilities under this section. If the parties notify the executive director within 30 days of the date of the notice provided under this subsection that the revocation was unintentional and provide evidence satisfactory to the executive director that the circumstances that caused the revocation have been cured, the revocation will be deemed to have not occurred.

(e) The executive director will notify the state board of the occurrence of any revocation under this section at the next meeting of the state board following the effective date of the revocation.

(f) As of the effective date of the revocation:

(1) the revoking department will no longer be considered a participating department in the pension system;

(2) no additional members of the department may be enrolled in the pension system;

(3) no member of the department may accrue additional qualified service or benefits in connection with the performance of emergency services or support services for the department; and

(4) the governing body of the department and the governing body of the political subdivision associated with the department will have no further financial obligations to the pension system, except as provided under an agreement entered into under subsection (c)(4) of this section.

(g) Within 90 days after the effective date of revocation, the executive director will send written notice to each current member, vested terminated member, and retiree of the department by first class mail to the person's most recent address of record on file with the pension system. Such notice will explain how the person's benefits provided under the pension system are affected by the department's revocation, including, without limitation, the immediate vesting of the member's accrued benefit as determined under §304.3 of this title (if applicable), the amount of such accrued benefit, and information related to when and how the member may commence such accrued benefit.

(h) In order to maintain an actuarially sound pension system as required under §862.001(b), Texas Government Code, the governing body of the political subdivision associated with the department that revokes its participation in the pension system will be charged an additional amount as determined by the pension system's actuary in accordance with generally accepted actuarial standards. Such revocation charge shall be an amount equal to the department's allocated share of the pension system's net pension liability. The pension system's net pension liability used to determine the revocation charge under this section is the net pension liability of the pension system as reported in the most recent audited financial report of the pension system as that term is defined by GASB Statement No. 67.

(i) For purposes of this section, the department's allocated share of the pension system's net pension liability shall be equal to the greater of (1) or (2) where:

(1) equals the average of the department's contribution allocation percentage in the 2 most recent audited reports of information required for disclosure by GASB Statement No. 68 (GASB 68); and

(2) equals the average of the department's contribution allocation percentage in the 2 most recent audited reports of information required for disclosure by GASB 68 adjusted for decreases, if any, in the department's contribution rate per month and for decreases, if any, in the number of active members in the 5 most recent plan years.

(j) The governing body of the political subdivision associated with the department may enter into a written agreement with the pension system to pay any unpaid contributions, the revocation charge determined under subsection (h) of this section, or both over a period of time not to exceed 5 years. Interest on such amount due will accrue at the assumed rate of investment return of the pension system at the time the agreement is entered into, except that interest will be waived if full payment of the amount is completed no later than the first (1st) anniversary of the effective date of revocation.

(k) Neither the pension system nor the state board, nor any employee of the pension system, including, without limitation, the executive director, shall be liable to any person for any claim or loss of benefits resulting from the revocation of a department's participation in the pension system.

(l) Notwithstanding anything to the contrary above, the state board may temporarily suspend the ability of any department to voluntarily revoke its election to participate in the pension system as described in subsection (b)(1) of this section if continuing to allow such revocations would have a negative impact on the administration or actuarial soundness of the pension system.

#### *§304.3. Determination of Accrued Benefit.*

(a) For purposes of §304.2 of this title (relating to Departmental Revocation of Participation in the Pension System) and this section, an "affected member" means each current member of a participating department who is listed on the department's certified membership roster as required under §304.2(c)(2) of this title and who has not commenced a retirement benefit prior to the date a revocation occurs as determined under §304.2 of this title.

(b) Each affected member will be fully vested in the affected member's accrued benefit in the pension system as of the date the revocation occurs, regardless of the years of qualified service or age of such affected member as of such date, as determined under subsection (c), (d), or (e) of this section, as applicable.

(c) If the affected member has less than 10 years of qualified service with the pension system as of the date the revocation occurs, his or her accrued benefit will be equal to the product of (1) and (2) where:

(1) equals the product of the actual number of years of qualified service the affected member has earned with the pension system, including any partial years, multiplied by five percent (5%); and

(2) equals the full service retirement annuity determined under §308.2(f) of this title (relating to Service Retirement Annuity) based on the department's average monthly Part One contributions as of such date.

(d) If the affected member has at least 10 years but less than 15 years of qualified service with the pension system as of the date the revocation occurs, his or her accrued benefit will be equal to the product of (1) and (2) where:

(1) equals the sum of fifty percent (50%) plus the product of the actual number of years of qualified service, including any partial years, in excess of 10 years that the affected member has earned with the pension system multiplied by ten percent (10%); and

(2) equals the full service retirement annuity determined under §308.2(f) of this title based on the department's average monthly Part One contributions as of such date.

(e) If the affected member has 15 years of qualified service or more with the pension system as of the date the revocation occurs, his or her accrued benefit will be equal to the full service retirement benefit determined under §308.2(f) of this title plus any supplemental benefit determined under §308.2(g) of this title based on the department's average monthly Part One contributions and the affected member's actual years of qualified service as of such date.

(f) An affected member who vests in his or her accrued benefit under this section may commence such accrued benefit upon attaining age 55 by applying for a retirement benefit in accordance with Chapter 864, Texas Government Code.

(g) Accrued benefits of vested terminated members and retirees of a department will not be affected by a department's revocation of its participation in the pension system under §304.2 of this title. A vested terminated member of such department may commence his or her accrued benefit upon attaining age 55 by applying for a retirement benefit in accordance with Chapter 864, Texas Government Code, and a retiree of such department will continue to receive the retirement benefit he or she was receiving as of the date of such revocation.

#### §304.4. *Employees of Participating Departments.*

(a) In this section, "Code" means the Internal Revenue Code of 1986, as amended.

(b) Effective September 1, 2019, the 86th Texas Legislature adopted H.B. 3247 which amended §862.002, Texas Government Code, to allow the employees of a participating department to participate in the pension system. Pursuant to the authority granted to the state board under §861.006(a), Texas Government Code, and as contemplated by §302.7 of this title (relating to Employees of Participating Departments), the state board adopts this rule to ensure the participation of employees of participating departments, whether full-time or part-time, satisfies the plan qualification requirements under §401(a) of the Code and to maintain the status of the pension system as a governmental plan under §414(d) of the Code.

(c) Notwithstanding §862.002, Texas Government Code, the employees of any department that does not constitute or is not part of a governmental entity or a government-controlled entity are not eligible to participate in the pension system, including, without limitation, a §501(c)(3) or other nonprofit corporation incorporated under state law that contracts with a governmental entity to provide fire protection and emergency response services for the general public or receives public funding for the performance of such services.

(d) For purposes of this section, a participating department will constitute or will be considered to be a part of a governmental entity if the participating department is a department of a municipality, county, special-purpose district or authority or any other political subdivision of the state of Texas whose employees are considered employees of a governmental entity.

(e) For purposes of this section, a participating department will constitute or will be considered to be a part of a government-controlled entity if a majority of the governing body of the department is composed of publicly elected or appointed officials of the state of Texas or individuals appointed by such elected or appointed officials, regardless of whether or not the department itself is a governmental entity.

(f) Solely for purposes of participation in the pension system and, except as otherwise provided below, prior to the first date of participation in the pension system, if a governmental entity or government-controlled entity has both employees and volunteers who are performing emergency services or support services, the governing body of such entity may elect to treat its paid employees as members of a paid department that is separate from its volunteer department, and such paid department may make a separate election as to whether or not to participate in the pension system under §862.001(a-1), Texas Government Code. The governing body of such governmental entity or government-controlled entity must notify the executive director in writing of its election to treat its paid employees as members of a separate department prior to any election to participate in the pension system.

(g) Notwithstanding subsection (f) of this section, the governing body of a participating department that constitutes or is part of a governmental entity or a government-controlled entity that has made an election to participate in the pension system under §862.001(a-1), Texas Government Code, before September 1, 2020, may elect to treat its paid employees as members of a separate paid department that will not participate in the pension system by notifying the executive director in writing of its election no later than December 31, 2020. Such paid department will not be considered to have elected to participate in the pension system and its paid employees will not be enrolled as members of the pension system unless a separate election is made by the governing body of the department on behalf of such paid department to participate in the pension system.

(h) Any governmental entity or government-controlled entity that elects to separate its paid employees and volunteers into different departments for purposes of participation in the pension system under this section must maintain separate records for each department, including, without limitation, records related to the enrollment of its members and qualified service earned by each member in such department.

(i) For purposes of determining a member's eligibility to participate in the pension system, if a member performs emergency services or support services as both an employee and a volunteer for the same participating department, such member will not be eligible to earn qualified service for his or her service in both positions unless each position has different roles and responsibilities that are clearly distinct from the roles and responsibilities of the other position.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202002647

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (800) 919-3372



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**



## CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

### 37 TAC §163.33

The Texas Board of Criminal Justice adopts amendments to §163.33, concerning Community Supervision Staff, without changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1966). The rule will not be republished.

The adopted amendments clarify and codify current procedure regarding the duration of community supervision officer (CSO) and residential CSO certification. The adopted amendments specify that once the Community Justice Assistance Division (CJAD) has certified a CSO or residential CSO, the CSO or residential CSO will maintain certification and eligibility for certification provided they are in compliance with training hour requirements and are employed by a Community Supervision and Corrections Department (CSCD).

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202002575

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

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For further information, please call: (936) 437-6700



### 37 TAC §163.35

The Texas Board of Criminal Justice adopts amendments to §163.35, concerning Supervision, without changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1969). The rule will not be republished.

The adopted amendments clarify that a level of supervision for each offender based on the offender's criminogenic needs will be determined within 90 days, as opposed to two months, of placement on community supervision, acceptance of a transfer case, or discharge from any residential facility, and that a written individualized case supervision or treatment plan will be provided within 90 days, as opposed to two months. The adopted amendments codify current procedure. Other amendments are minor word changes, clarifications, and organizational changes.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202002576

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

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For further information, please call: (936) 437-6700



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS), adopts the repeal of §§700.401 - 700.412, Subchapter E, §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, 700.481, 700.505 - 700.509, 700.511 - 700.521, 700.523, 700.551, 700.553, 700.555, 700.557, 700.559, 700.561, 700.563, 700.565, and 700.567, in Chapter 700, concerning Child Protective Services. The repealed rules are adopted without changes to the proposed text as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1613). The rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

Through the enactment of House Bill (HB) 5 and Senate Bill (SB) 11, 85th Legislature, R.S. (2017), the Texas Department of Family and Protective Services (DFPS) became a stand-alone agency on September 1, 2017, separate from the Texas Health and Human Services Commission (HHSC) but for the provision of various administrative support services as provided in Government Code § 531.00553. This entailed internal reorganization of certain programs and divisions within DFPS as well as consolidation of other DFPS functions and programs into HHSC. Specifically, HB 5, HB 249, and SB 11 amended the Government Code, Texas Family Code (TFC), and Human Resources Code (HRC) to effectuate transfer of the Child Care Licensing regulatory program from DFPS to HHSC while keeping the function of investigating abuse, neglect, and exploitation in child care operations at DFPS. HB 5 also mandated DFPS to create a division to oversee all investigations concerning abuse, neglect, and exploitation of children. Consequently, the following three investigative functions were moved under the new Child Protective Investigations (CPI) division: (1) investigations of child abuse, neglect, and exploitation in childcare operations, which are now conducted by the Child Care Investigations (CCI) program but were formerly under Child Care Licensing; (2) child protective services investigations, which are now conducted by the Investigations program but were formerly under Child Protective Services (CPS); and (3) special investigations, which are conducted

by the Special Investigations (SI) program but were formerly under CPS.

As such, the overarching purpose of the rule changes is to create new chapter 707 in Title 40, Part 19, of the Texas Administrative Code that contains the rules for the CPI division of DFPS. As the division consists of functions that were already in existence in DFPS, the rule updates entail transferring already existing rules into this new chapter and further amending such rules to reflect the agency's new structure and new processes post 85th legislative session. This new chapter will include the investigation rules for traditional child protective services investigation and alternative response (formerly in 40 TAC 700, Subchapter E); rules relating to school investigations which are now handled by the SI program (formerly in 40 TAC 700, Subchapter D); and rules for investigations in child-care operations conducted by CCI (formerly in 40 TAC 745, Subchapters K and M).

#### COMMENTS

The 30-day comment period ended April 5, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

### SUBCHAPTER D. SCHOOL INVESTIGATIONS

#### 40 TAC §§700.401 - 700.412

##### STATUTORY AUTHORITY

The repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The repeals implement the Child Abuse Prevention and Treatment Act, Chapters 40 and 42 of the Texas Human Resources Code; Chapter 261 of the Texas Family Code including Texas Family Code §261.001; and Texas Government Code §531.02013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2020.

TRD-202002537

Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: July 15, 2020

Proposal publication date: March 6, 2020

For further information, please call: (512) 438-3397



### SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

#### DIVISION 1. INVESTIGATIONS

**40 TAC §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, 700.481, 700.505 - 700.509, 700.511 - 700.521, 700.523**

The repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The repeals implement the Child Abuse Prevention and Treatment Act, Chapters 40 and 42 of the Texas Human Resources Code; Chapter 261 of the Texas Family Code including Texas Family Code §261.001; and Texas Government Code §531.02013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2020.

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Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: July 15, 2020

Proposal publication date: March 6, 2020

For further information, please call: (512) 438-3397



#### DIVISION 2. ALTERNATIVE RESPONSE

**40 TAC §§700.551, 700.553, 700.555, 700.557, 700.559, 700.561, 700.563, 700.565, 700.567**

The repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The repeals implement the Child Abuse Prevention and Treatment Act, Chapters 40 and 42 of the Texas Human Resources Code; Chapter 261 of the Texas Family Code including Texas Family Code §261.001; and Texas Government Code §531.02013.

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### CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

The Department of Family and Protective Services (DFPS), adopts new §§707.447, 707.449, 707.451, 707.453, 707.455,

707.457, 707.459, 707.461, 707.463, 707.465, 707.467, 707.469, 707.471, 707.473, 707.477, 707.481, 707.483, 707.485, 707.487, 707.489, 707.491, 707.493, 707.495, 707.497, 707.499, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.549, 707.551, 707.553, 707.555, 707.557, 707.559, 707.561, 707.563, 707.565, 707.567, 707.597, 707.599, 707.601, 707.603, 707.605, 707.607, 707.609, 707.611, 707.613, 707.615, 707.617, 707.619, 707.621, 707.623, 707.625, 707.701, 707.703, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, 707.723, 707.725, 707.727, 707.729, 707.741, 707.743, 707.745, 707.747, 707.761, 707.763, 707.765, 707.767, 707.769, 707.781, 707.783, 707.785, 707.787, 707.789, 707.791, 707.793, 707.795, 707.797, 707.799, 707.801, 707.803, 707.815, 707.817, 707.819, 707.821, 707.823, 707.825, 707.827, 707.829, 707.831, 707.841, 707.843, 707.845, 707.847, 707.849, 707.851, 707.853, 707.855, 707.857, and 707.859 in new Chapter 707, concerning Child Protective Investigations.

New §§707.451, 707.453, 707.457, 707.467, 707.471, 707.473, 707.477, 707.481, 707.483, 707.485, 707.487, 707.489, 707.493, 707.495, 707.497, 707.499, 707.501, 707.505, 707.509, 707.511, 707.513, 707.515, 707.517, 707.551, 707.553, 707.561, 707.563, 707.565, 707.605, 707.607, 707.609, 707.611, 707.613, 707.615, 707.617, 707.619, 707.621, 707.623, 707.625, 707.703, 707.713, 707.715, 707.719, 707.727, 707.729, 707.763, 707.765, 707.767, 707.783, 707.787, 707.789, and 707.791 are adopted with changes to the proposed text published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1618). The changes only reflect non-substantive variations from the proposed rules, and as such do not create any new duties or powers, nor affect new persons or entities, other than those given notice. The rules will be republished.

New §§707.447, 707.449, 707.455, 707.459, 707.461, 707.463, 707.465, 707.469, 707.491, 707.503, 707.507, 707.549, 707.555, 707.557, 707.559, 707.597, 707.599, 707.601, 707.603, 707.701, 707.711, 707.717, 707.721, 707.723, 707.725, 707.741, 707.743, 707.745, 707.747, 707.761, 707.769, 707.781, 707.785, 707.793, 707.795, 707.797, 707.799, 707.801, 707.803, 707.815, 707.817, 707.819, 707.821, 707.823, 707.825, 707.827, 707.829, 707.831, 707.841, 707.843, 707.845, 707.847, 707.849, 707.851, 707.853, 707.855, 707.857, and 707.859 are adopted without changes to the proposed text in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1618). The rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

Through the enactment of House Bill (HB) 5 and Senate Bill (SB) 11, 85th Legislature, R.S. (2017), the Texas Department of Family and Protective Services (DFPS) became a stand-alone agency on September 1, 2017, separate from the Texas Health and Human Services Commission (HHSC) but for the provision of various administrative support services as provided in Government Code §531.00553. This entailed internal reorganization of certain programs and divisions within DFPS as well as consolidation of other DFPS functions and programs into HHSC. Specifically, HB 5, HB 249, and SB 11 amended the Government Code, Texas Family Code (TFC), and Human Resources Code (HRC) to effectuate transfer of the Child Care Licensing regulatory program from DFPS to HHSC while keeping the function of investigating abuse, neglect, and exploitation in child care oper-

ations at DFPS. HB 5 also mandated DFPS to create a division to oversee all investigations concerning abuse, neglect, and exploitation of children. Consequently, the following three investigative functions were moved under the new Child Protective Investigations (CPI) division: (1) investigations of child abuse, neglect, and exploitation in childcare operations, which are now conducted by the Child Care Investigations (CCI) program but were formerly under Child Care Licensing; (2) child protective services investigations, which are now conducted by the Investigations program but were formerly under Child Protective Services (CPS); and (3) special investigations, which are conducted by the Special Investigations (SI) program but were formerly under CPS.

As such, the overarching purpose of the rule changes is to create new chapter 707 in Title 40, Part 19, of the Texas Administrative Code that contains the rules for the CPI division of DFPS. As the division consists of functions that were already in existence in DFPS, the rule updates entail transferring already existing rules into this new chapter and further amending such rules to reflect the agency's new structure and new processes post 85th legislative session. This new chapter will include the investigation rules for traditional child protective services investigation and alternative response (formerly in 40 TAC 700, Subchapter E); rules relating to school investigations which are now handled by the SI program (formerly in 40 TAC 700, Subchapter D); and rules for investigations in child-care operations conducted by CCI (formerly in 40 TAC 745, Subchapters K and M).

Specifically regarding CCI, the rule updates reflect how CCI abuse, neglect, and exploitation investigations are conducted as of September 1, 2017 pursuant to the transfer of CCL regulatory functions to HHSC. Finally, the CCI abuse, neglect, and exploitation rules are also being updated to reflect how CCI investigates allegations of abuse, neglect, and exploitation using the definitions in Texas Family Code §261.001 that formerly applied only to child protective services investigations. Rule changes regarding the abuse, neglect, and exploitation definitions implement HB 249 and SB 11, which directed DFPS to use standardized definitions and processes for both, child-care investigations and child protective services investigations.

#### COMMENTS

The 30-day comment period ended April 5, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

### SUBCHAPTER A. INVESTIGATIONS DIVISION 1. INTAKE, INVESTIGATION AND ASSESSMENT

**40 TAC §§707.447, 707.449, 707.451, 707.453, 707.455, 707.457, 707.459, 707.461, 707.463, 707.465, 707.467, 707.469, 707.471, 707.473, 707.477, 707.481, 707.483, 707.485, 707.487, 707.489, 707.491, 707.493, 707.495, 707.497, 707.499, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517**

#### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§707.451. *What terms and definitions are used in reports, investigations, and assessments of abuse and neglect?*

(a) The following terms have the following meanings when used in this subchapter:

(1) An absent parent or non-custodial parent--a parent who, at the time of the occurrence of the conduct which is the basis for the investigation, does not have actual possession or control of the child and is not primarily responsible for the child's care because of any of the following:

- (A) Divorce;
- (B) Separation;
- (C) Incarceration; or

(D) Any other reason that results in the parent not having actual possession or control and primary responsibility of the child.

(2) Accident--an unforeseen, unexpected, or unplanned act or event that occurs unintentionally and causes or threatens physical injury despite exercising the care and diligence that a reasonable and prudent person would exercise under similar circumstances to avoid the risk of injury.

(3) Child--person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(4) Child safety--the absence of danger or the presence of protective actions demonstrated over time by a parent or caregiver that mitigates dangers to the child.

(5) Danger--behaviors or conditions that place a child in imminent danger of serious harm.

(6) Day--calendar day unless otherwise specified.

(7) Guardian--anyone named as "guardian of the person of a child" by a probate court order.

(8) Household--

(A) A unit composed of persons living together in the same dwelling, whether or not they are related to each other, when the dwelling consists of:

(i) The child's family's household, including the households of both parents when the parents reside separately;

(ii) A household in which the parent has arranged for or authorized placement of the child; or

(iii) A household in which the child is legally placed by a parent or a court.

(B) During the receipt and investigation of reports of child abuse and neglect, we treat an unrelated person who resides elsewhere or whose place of residence cannot be determined as a member of the household if the person is at least 10 years old and either:

(i) Has regular free access to the household; or

(ii) When in the household dwelling takes care of or assumes responsibility for children in the household.

(9) Investigations--a program of the Child Protective Investigations division of the Texas Department of Family and Protective Services that investigates allegations of child abuse and neglect by a person responsible for the child's care, custody, or welfare as defined in Texas Family Code §261.001(5)(A)-(C).

(10) Managing or possessory conservator--a person legally responsible for a child as the result of a court order.

(11) Parent--the mother, a man presumed to be the biological father or who has been adjudicated to be the biological father by a court of competent jurisdiction, or an adoptive mother or father. The term does not include a parent as to whom the parent-child relationship has been terminated.

(12) Preponderance of evidence--evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(13) Protective actions--specific actions that have been taken by an individual or family to directly address the danger of abuse and neglect and are demonstrated over time.

(14) Reasonable effort to prevent--actions that a person responsible for a child's care, custody, or welfare would have taken to protect a child from abuse the person knew or reasonably should have known was occurring. It is not required for that person to have directly perpetrated the abuse.

(15) Reporter--an individual who makes a report to the Texas Department of Family and Protective Services or a duly constituted law enforcement agency alleging the abuse or neglect of a child. If more than one individual makes a report alleging abuse or neglect of the same child, all such individuals shall have the designation of a reporter.

(16) Risk factors--elements of individual and family functioning that may place a child at risk of abuse or neglect.

(17) Risk of child abuse or neglect--a reasonable likelihood that in the foreseeable future there will be an occurrence of child abuse or neglect as defined in Texas Family Code (TFC) §261.001. The presence of risk does not constitute abuse or neglect as defined in TFC §261.001 but qualifies children and families to receive protective services as specified in §700.311(a)(1), subchapter C, chapter 700, of this title (relating to Eligible Individuals).

(18) Strengths--resources and conditions of an individual or the family that increase the likelihood or ability to protect a child from abuse or neglect but do not fully address the danger to the child.

(19) Substantial harm--real and significant physical injury or damage to a child.

(20) Substantial risk--a real and significant possibility or likelihood.

(b) Terms not defined in this subchapter have the meaning given in the Texas Family Code, including definitions in Chapter 101 and §261.001, Texas Family Code, and other relevant law, or their ordinary meaning if not defined in law.

§707.453. *What is emotional abuse?*

(a) Emotional abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(2) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning; or

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in mental or emotional injury to a child.

(b) In this section, the following terms have the following meanings:

(1) "Mental or emotional injury" means:

(A) That a child of any age experiences significant or serious negative effects on intellectual or psychological development or functioning. Although the child does not have to experience physical injury or be diagnosed by a medical or mental health professional in order for us to determine that the child suffers from a mental or emotional injury, when assessing the child, we will consult with professional collaterals outside of the Texas Department of Family and Protective Services that have witnessed and validated that the child is exhibiting behaviors indicative of observable and material impairment as specified in paragraph (2) of this subsection. When the mental or emotional injury involves exposure to domestic violence, we will consult with professional collaterals that have documented expertise or training in the dynamics of domestic violence, whenever possible.

(B) For purposes of paragraph (3) of subsection (a), "mental or emotional injury" resulting from a person's current use of a controlled substance includes a child of any age experiencing interference with normal psychological development, functioning, or emotional or mental stability, as evidenced by an observable and substantial change in behavior, emotional response, or cognition, related to the person's current use of a controlled substance.

(2) "Observable and material impairment" means discernible and substantial damage or deterioration to a child's emotional, social, and cognitive development. It may include but is not limited to depression; anxiety; panic attacks; suicide attempts; compulsive and obsessive behaviors; acting out or exhibiting chronic or acute aggressive behavior directed toward self or others; withdrawal from normal routine and relationships; memory lapse; decreased concentration; difficulty or inability to make decisions; or a substantial and observable change in behavior, emotional response, or cognition.

§707.457. *What is sexual abuse?*

(a) Sexual abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Sexual conduct harmful to a child's mental, emotional, or physical welfare, including:

(A) Conduct that constitutes the offense of continuous sexual abuse of young child or children under §21.02, Penal Code;

(B) Indecency with a child under §21.11, Penal Code;

(C) Sexual assault under §22.011, Penal Code; or

(D) Aggravated sexual assault under §22.021, Penal Code;

(2) Failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(3) Compelling or encouraging the child to engage in sexual conduct as defined by §43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of:

(A) Trafficking of persons under §20A.02(a)(7) or (8), Penal Code;

(B) Prostitution under §43.02(b), Penal Code; or

(C) Compelling prostitution under §43.05(a)(2), Penal Code;

(4) Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the per-

son knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by §43.21, Penal Code, or pornographic; or

(5) Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by §43.25, Penal Code.

(b) In this section, the following terms have the following meanings:

(1) "Causing, permitting, encouraging, engaging in, or allowing the photographing...." is a condition of the statutory definition of sexual abuse. It is met even if the child participates voluntarily.

(2) "Compelling or encouraging the child to engage in sexual conduct...." is a condition of the statutory definition of sexual abuse. It is met whether the child actually engages in sexual conduct or simply faces a substantial risk of doing so.

(3) "Sexual conduct harmful to a child's mental, emotional or physical welfare" includes but is not limited to rape; incest; sodomy; inappropriate touching of the child's anus, breast, or genitals, including touching under or on top of the child's clothing; deliberately exposing one's anus, breast, or any part of the genitals to a child; touching the child in a sexual manner or directing sexual behavior towards the child; showing pornography to a child; encouraging a child to watch or hear sexual acts; compelling, encouraging, or permitting a child to engage in prostitution; watching a child undress, shower, or use the bathroom with the intent to arouse or gratify one's sexual desire; voyeurism; sexually oriented acts, which may or may not include sexual contact or touching with intent to arouse or gratify the sexual desire of any person; and any sexually oriented act or practice that would cause a reasonable child under the same circumstance to feel uncomfortable or intimidated or that results in harm or substantial risk of harm to a child's growth, development, or psychological functioning.

(c) For purposes of paragraph (4) of subsection (a), pornographic has the same meaning as specified in Texas Penal Code §43.26.

§707.467. *What is neglectful supervision?*

(a) Neglectful supervision is a subset of the statutory definitions of neglect that appear in Texas Family Code (TFC) §261.001(4) and includes the following acts or omissions by a person:

(1) Placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(2) Placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(3) Placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under TFC §261.001(1)(E), (F), (G), (H), or (K) committed against another child.

(b) Neglectful supervision as defined in paragraph (1) of subsection (a) excludes an accident.

(c) For purposes of evaluating an allegation of "neglectful supervision", we will consider the following factors when assessing substantial risk:

(1) The child's age;

(2) Any arrangements the parents made to ensure the child's safety;

(3) The child's physical condition, psychological functioning, and level of maturity;

(4) Any intellectual, physical, or medical disability the child has;

(5) Any previous history or patterns of abuse or neglect;

(6) The frequency and duration of similar incidents; and

(7) The overall safety of the child's environment.

(d) In the case of prenatal use of alcohol or a controlled substance that was not lawfully prescribed by a medical practitioner, was lawfully prescribed as a result of the mother seeking out multiple health care providers as a means of exceeding ordinary dosages, or was not being used in accordance with a lawfully issued prescription, the mother is responsible for neglectful supervision under paragraph (1) of subsection (a) if:

(1) The mother knew or reasonably should have known she was pregnant; and

(2) It appears that the mother's use endangered the physical and emotional well-being of the infant. It is not necessary that the infant actually suffers from an injury.

(A) For the limited purpose of this subsection, "endangered" means that the mother's prenatal use exposed the infant to loss or injury or jeopardized the infant's emotional or physical health.

(B) "Endangered" includes but is not limited to a consideration of the following factors: evidence the mother extensively used alcohol or regularly or extensively used a controlled substance over the course of the pregnancy or in close proximity to the child's expected birth date, evidence that the mother has an alcohol or drug addiction, or evidence that the infant was at a substantial risk of immediate harm from the mother's use of alcohol or a controlled substance.

§707.471. *What is physical neglect?*

(a) Physical neglect is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following act or omission by a person: the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused.

(b) In this section, the following terms have the following meanings:

(1) "...necessary to sustain the life or health of the child ..." is a condition of the statutory definition of physical neglect and is met if the failure to provide food, clothing, or shelter results in an observable and material impairment to the child's growth, development, or functioning, or in a substantial risk of an observable and material impairment. For purposes of this paragraph, "observable and material impairment" means discernible and substantial damage or deterioration to the child's health or physical condition. It may include but is not limited to malnourishment; sudden or extreme weight loss; serious skin conditions or skin breakdown; serious illness or other serious medical conditions; or any other serious physical harm to the child as a direct result of the physical neglect.

(2) "Relief services" means both public and private services, including but not limited to services provided through the government, community agencies, volunteer organizations, relatives, friends, neighbors, etc., that are intended to improve the overall well-being and physical condition of the family. The services must be affordable, reasonable, readily available, and appropriate to meet the needs of the family. It is not necessary that the relief services be provided by us.

(c) Evidence of physical neglect may include but is not limited to the following if they endanger the life or health of the child: unsound or decaying walls, ceiling, floors, or stairways; ineffective or faulty heating, cooling, or ventilation systems; inadequate, faulty, or broken plumbing including contaminated water; broken windows, mirrors or other glass; dangerous sleeping arrangements; the existence of dangerous bacteria or germs; nonexistent or ineffective waste disposal; dangerous food storage; fecal contamination or excessive animal feces throughout the house; untreated infestations such as fleas, roaches, or rodents; significant and uncontrolled mildew and mold; dirt buildup that is likely to cause bacteria and viruses in the dwelling; and hazardous junk material or appliances left unsecured and within easy access to the child.

§707.473. *What is refusal to assume parental responsibility (RAPR)?*

(a) RAPR is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following act or omission by a person: the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(b) We will not make a finding of abuse or neglect against you and will not put your name on the child abuse and neglect central registry described in subchapter C, chapter 702, of this title (relating to Child Abuse and Neglect Central Registry) if you refuse to permit the child to remain in or return to the child's home because:

(1) The child has a severe emotional disturbance;

(2) The refusal is based solely on your inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(3) You have exhausted all reasonable means available to you to obtain the mental health services described above.

(c) In this subsection, the term severe emotional disturbance means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities as defined in Texas Family Code §261.001(9). We consider a child to have a severe emotional disturbance when a licensed mental health professional has given the child a mental health diagnosis that:

(1) Is recognized by the current version of the Diagnostic and Statistical Manual of Mental Disorders. Examples of mental health diagnoses that are consistent with severe emotional disturbance include, but are not limited to, Bipolar, Post-Traumatic Stress Disorder, Disruptive Mood Dysregulation Disorder, Conduct Disorder, Depression, Emotionally Disturbed, Mood Disorder, Oppositional Defiant Disorder, Psychotic Disorder, and Reactive Attachment Disorder; and

(2) Results in severe mental, behavioral, or emotional impairment(s) in functioning such that the child poses a danger to him or herself or others, or a licensed mental health professional has determined the child needs inpatient mental health or residential treatment.

(d) When determining whether the refusal to permit a child to remain in or return to the child's home was based solely on your inability to obtain mental health services necessary to protect the safety and well-being of the child and whether you exhausted all reasonable means available to obtain mental health services and prevent the removal of the child, we will consider factors including, but not limited to, the following:

(1) The reasons you were unable to access appropriate mental health treatment to meet the child's needs, such as your financial resources, the lack of appropriate services available in the community, or other reasons.

(2) Whether you followed recommendations of the mental health professionals who have treated the child, including complying with recommendations about actions you need to take, or, if in disagreement with a professional, whether you discussed with the professional concerns regarding recommendations, or sought out other mental health professionals for assistance or treatment, to the extent reasonable and practicable.

(3) Whether the present need for mental health services is necessary to protect the safety and well-being of the child unrelated to any recent incident of abuse or neglect.

(c) We will review records in the central registry and remove your name if you were included in the central registry when the Texas Department of Family and Protective Services was named managing conservator of your child who has a severe emotional disturbance solely, so you could obtain mental health services for the child.

*§707.477. When do we make a finding of emotional abuse, physical abuse, or neglectful supervision against a person responsible for a child's care, custody, or welfare in an investigation involving domestic violence?*

(a) If you are a victim of domestic violence, we will not make a finding of abuse or neglect against you solely because the domestic violence was committed in close physical proximity to the child. If the child is at risk of bodily injury or substantial risk of physical, mental, or emotional harm due solely to the violence committed against you, we will make a finding against you for failing to remove the child from that risk of harm only if, after considering the totality of the circumstances, we determine:

(1) you failed to take advantage of services or supports that would have protected the child;

(2) the services or supports were known to you; and

(3) the services or supports were reasonably available to you in the past or made available during the course of the investigation.

(b) If you are a perpetrator of domestic violence we will make a finding of abuse or neglect against you if you engage in conduct that is described by any of the definitions of abuse or neglect in this division. In particular, we will make a finding of neglectful supervision if you commit the act in such close physical proximity to the child that the child's location and the level of violence reasonably places the child at risk of bodily injury or substantial risk of immediate harm.

*§707.481. What are our responsibilities in receiving reports of child abuse and neglect?*

(a) The Statewide Intake division of the Texas Department of Family and Protective Services (DFPS) receives reports of child abuse and neglect 24 hours a day, seven days a week.

(b) DFPS must assist the public in understanding what to report and which protective interventions are available in response. If a report clearly does not involve child abuse or neglect or risk of abuse or neglect, DFPS may provide information and refer the reporter to other community services to help the child and family.

*§707.483. Are there certain allegations we do not classify as reports of abuse or neglect?*

(a) We will not classify reports about the following types of circumstances as allegations of abuse or neglect or risk of abuse or neglect:

(1) Truancy. Voluntary absence from school without a valid excuse.

(2) Runaway. A child who is voluntarily absent from the home without the consent of the parent or guardian.

(3) Children in need of supervision (CHINS). Children from ages 10 to 17 who are before a juvenile court for offenses under the Texas Family Code, §51.03(b).

(4) Latch-key children. School-age children left unattended part of the day, whose parents have taken appropriate precautions to assure the children's safety; and

(5) Harmful or violent children. Children who harm or commit violent acts against other children but are not members of the alleged victim's family or household, and who are not themselves abused or neglected.

(b) Notwithstanding subsection (a) of this section, if there are allegations in the report that otherwise meet the definition of abuse or neglect, we will investigate those allegations in accordance with this division.

*§707.485. What are the timeframes within which we must respond to a report of child abuse or neglect assigned for investigation?*

(a) The Texas Department of Family and Protective Services assigns priorities for reports of abuse and neglect based on the assessment of the immediacy of the risk and the severity of the possible harm to the child. Prior to initiating an investigation, we will review the intake report to determine if the initial priority and action recommended is appropriate or must be updated.

(1) Priority I reports concern children who appear to face an immediate risk of abuse or neglect that could result in death or serious harm.

(2) Priority II reports are all other reports of abuse or neglect that are not assigned a Priority I.

(b) Subject to the availability of funds, we must:

(1) Immediately respond to a report of abuse or neglect that is assigned a Priority I and involves circumstances in which the death of the child or substantial bodily harm to the child will imminently result unless we immediately intervene;

(2) Within 24 hours respond to a report of abuse or neglect that is assigned a Priority I, other than a report described in paragraph (1) of this subsection, by initiating an investigation; and

(3) Within 72 hours respond to a report of abuse or neglect that is assigned a Priority II by initiating an investigation or, pursuant to Texas Family Code §261.3015, by forwarding the report to specialized screening staff.

*§707.487. Do we notify law enforcement of all reports received of child abuse or neglect?*

Yes. We must notify appropriate law enforcement agencies of reports of child abuse or neglect within the following time frames:

(1) Within 24 hours of receiving a priority I report, a sexual abuse report, or a report alleging abuse or neglect in a public or private school. The initial notification may be provided using a method that is mutually agreed upon between DFPS and the law enforcement agency. This deadline applies even if subsequent information shows that the report is unfounded or does not qualify for priority I treatment. If we provide the initial notification orally, we must also provide a written notification within three days after receiving the report.

(2) We must send a written notification of all other reports within three days of receiving them.

(3) Reports submitted electronically are considered written notification for purposes of this section.

§707.489. *How do we respond to reports of child abuse or neglect?*

(a) When the Statewide Intake division of the Texas Department of Family and Protective Services receives a report of alleged abuse or neglect of a child, we may respond with any of the following protective interventions, as further described in this section:

- (1) Closure without assignment for investigation following screening;
  - (2) Administrative closure;
  - (3) An abbreviated investigation;
  - (4) A thorough investigation; or
  - (5) An alternative response.
- (b) Administrative closure.

(1) Under certain circumstances, we may administratively close a report which was initially assigned for investigation if we obtain additional information indicating that an investigation is no longer warranted. Criteria we consider when deciding to administratively close an investigation include, but are not limited to, situations in which:

(A) The allegations have already been investigated by us;

(B) The allegations have been refuted based on a credible source and all of the following criteria are met:

(i) There are no previous findings of abuse or neglect against the parent or caregiver in the current investigation or alternative response case;

(ii) We have not received any subsequent reports of abuse or neglect of any alleged victim, with the exception of reports that involve the same incidents and allegations as in the original report;

(iii) After contacting a professional or other credible sources with direct knowledge about the child's condition, we have determined that the child's safety can be assured without further assessment, response, services, or assistance; and

(iv) we determine that no abuse or neglect occurred.

(C) We do not have jurisdiction to conduct the investigation because:

(i) Another authorized entity, such as law enforcement or another state agency, has jurisdiction to conduct the investigation;

(ii) The alleged victim is not a child or was not born alive; or

(iii) The abuse or neglect, a danger, or risk of abuse or neglect is not occurring in Texas.

(D) The investigation was initiated on the basis of an anonymous report and after completing any necessary initial tasks, including any required interviews or collateral contacts, we determine that:

(i) There is no corroborating evidence; and

(ii) A parent has taken actions to protect the alleged victims from any identified dangers.

(2) If an investigation has been open for more than sixty days after the date of the intake, the supervisor must administratively close the investigation if all the following criteria are met:

(A) There are no previous findings of abuse or neglect against the parent or caregiver in the current investigation or alternative response case;

(B) We have not received any additional reports of abuse or neglect of any alleged victim, with the exception of reports that involve the same incidents and allegations as in the original report;

(C) After contacting a professional or other credible sources with direct knowledge about the child's condition, the supervisor determined that the child's safety can be assured without further investigation, response, services, or assistance;

(D) No abuse or neglect occurred;

(E) Closing the case would not expose the child to undue risk of harm; and

(F) The program director reviews and determines that administratively closing the case is appropriate.

(3) Exception. Notwithstanding the criteria in subparagraph (B) of paragraph 1 of this subsection, if we have made contact with the alleged victim or alleged perpetrator, the investigation is not eligible for administrative closure under subparagraph (B). However, the case may still be eligible for other types of administrative closure or abbreviated rule out, if applicable.

(c) Abbreviated investigation with a disposition of "ruled out".

(1) Cases assigned for investigation may be handled with an abbreviated investigation with findings of "ruled out", if we determine that no abuse or neglect has occurred and the child's safety can be assured without further investigation, response, services or assistance. We may submit an investigation as an abbreviated rule out, which does not require completing the formal risk assessment tool, when all of the following criteria in addition to any other criteria defined policy are met:

(A) There are no previous findings of abuse or neglect against the parent or caregiver in the current investigation or alternative response case;

(B) We have not received any subsequent reports of abuse or neglect of any alleged victim unless the new report involves the same incident(s) and allegation(s) under investigation; and

(C) The reporter is not anonymous.

(2) We must at a minimum perform the following tasks before submitting the investigation as an abbreviated rule out:

(A) Interview and visually inspect each alleged victim;

(B) Interview at least one parent or other person with primary or legal responsibility for each alleged victim;

(C) Complete a safety assessment and document whether any noted dangers are controlled by protective actions that have been or will be taken by the child's parent or other person with primary or legal responsibility for the child; and

(D) Conduct any required home visit.

(d) Thorough investigation.

(1) Except as provided in subsection (f) of this section and division 2 of this subchapter (relating to Alternative Response), we must complete a thorough investigation if we obtain information indicating that:

(A) There are dangers to the child because of abuse or neglect;



(B) Risk of abuse or neglect is indicated; or

(C) Based on information in the report and any initial contacts, it is impossible to determine whether or not there are dangers to the child because of abuse or neglect or whether risk of abuse or neglect is indicated.

(2) Before closing a thorough investigation, we must at a minimum perform the following tasks:

(A) Interview each alleged victim child;

(B) Interview at least one of the parents or other person with primary or legal responsibility for the victim child;

(C) Interview each alleged perpetrator;

(D) Interview other individuals who have information that is relevant or potentially relevant to the report of abuse or neglect;

(E) Complete a safety assessment and document whether any noted dangers are controlled by protective actions that have been or will be taken by the child's parent or other person with primary or legal responsibility for the child, unless the investigation relates to a deceased child and there is no other child in the home; and

(F) Assess the risk of future abuse or neglect, unless the investigation relates to a deceased child and there is no other child in the home.

(e) Alternative response. An alternative response is a protective intervention governed by division 2 of this subchapter and Texas Family Code, §261.3015, that involves an assessment of the family, including a safety assessment, and provision of necessary services and supports. Alternative response does not result in a formal finding of abuse or neglect or the designation of a perpetrator.

(f) Exceptions to required interviews. We are not required to conduct an interview to close an abbreviated or thorough investigation as described in subsections (c) and (d) of this section if we exhaust all reasonable efforts to conduct the interview but are unable to do so because:

(1) The person to be interviewed is unable to be interviewed because of age or other exceptional circumstance;

(2) The person to be interviewed, the person's parent or other legal guardian, or the attorney representing the person refuses to permit the interview;

(3) The alleged perpetrator has been arrested or is under investigation by a law enforcement agency and the interview would interfere with the investigation or violate the alleged perpetrator's rights; or, the alleged perpetrator is detained and the jail, prison, or other detention facility in which the alleged perpetrator is detained will not permit the interview; or

(4) The person to be interviewed has been interviewed by another entity and we accept the substitute interview. If the person, the person's parent or other legal guardian, or the attorney representing the person requests that the person also be interviewed by us, the investigator must conduct one supplemental interview.

*§707.493. When will we directly purchase medical examinations for children during an investigation of abuse and neglect?*

(a) Medical, psychological, or psychiatric examinations may be paid for by:

(1) Families who are willing to pay or to use family insurance;

(2) Local resources that make examinations available without cost; or

(3) Local funds.

(b) Medicaid may also pay for medical examinations when the child is eligible and has medical problems or injuries that require examination or treatment.

(c) If no other resources are available, we may directly purchase medical examinations of children during investigations of abuse and neglect as long as purchased medical examinations are performed by a licensed physician or dentist.

*§707.495. How do we make dispositions after completing the investigation?*

(a) At the end of the investigation, we must assign a disposition to each allegation identified for the investigation in order to:

(1) Specify the conclusions about the occurrence of abuse or neglect;

(2) Derive the overall disposition for the investigation; and

(3) Derive the overall role for each person with respect to the abuse or neglect that was investigated.

(b) We may make any of the following dispositions:

(1) Reason-to-believe. Based on a preponderance of the evidence, we conclude that abuse or neglect has occurred.

(2) Ruled-out. We determine, based on available information that it is reasonable to conclude that the abuse or neglect has not occurred.

(3) Unable to complete. We could not draw a conclusion whether alleged abuse or neglect occurred, because the family:

(A) Could not be located to begin the investigation or moved and could not be located to finish the investigation; or

(B) was unwilling to cooperate with the investigation.

(4) Unable-to-determine. We conclude that none of the dispositions specified in paragraphs (1)-(3) of this subsection are appropriate.

(5) Administrative closure. Information we received after a case was assigned for investigation reveals that continued intervention is unwarranted as outlined in §707.489 of this subchapter (relating to How do we respond to reports of child abuse or neglect?).

(c) The overall investigation disposition is the summary finding about the abuse or neglect that was investigated. The overall disposition is derived from the individual allegation dispositions in the following manner:

(1) Reason-to-believe. If any allegation disposition is "reason-to-believe", the overall case disposition is "reason-to-believe".

(2) Ruled out. If all allegation dispositions are "ruled out" or are a mixture of "ruled out" and "administrative closure", the overall case disposition is "ruled out".

(3) Unable to complete. If any allegation disposition is "unable to complete" and no allegation disposition is "reason-to-believe" or "unable to determine", the overall investigation disposition is "unable to complete".

(4) Unable to determine. If any allegation disposition is "unable to determine" and no allegation disposition is "reason to believe", the overall case disposition is "unable to determine".

(5) Administrative closure. Decisions with regard to administrative closure are made at the case level as specified in §707.489 of this subchapter. Therefore, all allegations must be disposed of by

indicating that administrative closure has been selected. If anyone allegation meets criteria for allegation dispositions as specified in paragraphs (1)-(4) of this subsection, a case is not eligible for administrative closure.

§707.497. *What roles can we assign to persons involved in a case after the investigation is complete?*

(a) We only investigate an individual as a possible perpetrator of child abuse or neglect if the individual is:

- (1) At least 10 years old; and
- (2) A member of the family or household.

(b) The overall role for a person at the end of the investigation is the finding of the person's involvement in the abuse or neglect that was investigated. After we have given a disposition to all allegations, the roles for the persons involved in the abuse or neglect are derived. The following are the roles that can be derived at the end of an investigation of child abuse or neglect:

(1) Designated victim. Based on a preponderance of the evidence, we conclude that the child has been abused or neglected as defined in Texas Family Code (TFC) §261.001(1) and (4).

(2) Designated perpetrator. Based on a preponderance of the evidence, we conclude that the individual is responsible for abuse or neglect of a child for whom that person has responsibility for care, custody, or welfare as defined in TFC §261.001(5)(A)-(C).

(3) Designated victim/perpetrator. Based on a preponderance of the evidence, we conclude that the individual:

(A) Is a child, age 10 years or older;

(B) Is a victim as described in paragraph (1) of this subsection and has also abused or neglected other children who are in the family or household; and

(C) Is named in the same investigation as the designated victim.

(4) Unknown (unable-to-determine). We could not determine whether the person was involved in the alleged abuse or neglect because the investigator could not determine whether or not the alleged abuse or neglect occurred.

(5) Unknown (unable to complete). We could not draw a conclusion whether alleged abuse or neglect involving the person occurred because the family:

(A) Could not be located to begin the investigation, or moved and could not be located to finish the investigation; or

(B) Was unwilling to cooperate with the investigation.

(6) No role. Either:

(A) The overall disposition for the investigation is ruled out or administrative closure, as defined in §707.495 of this subchapter (relating to How do we make dispositions after completing the investigation?), in which case all persons named in allegations are given the role of "no role";

(B) We have determined that based on the available information, it is reasonable to conclude that the individual was not a victim of child abuse or neglect or is not responsible for abuse or neglect of a child in the investigation; or

(C) The person was not alleged to have abused or neglected a child in the case.

§707.499. *Who will we notify of the investigation results?*

(a) Required notification in abbreviated ruled out and thorough investigations.

(1) We must notify the following parties about the findings of an abbreviated ruled out or thorough investigation unless one of the exceptions specified in subsection (d) of this section apply:

(A) Each parent or other person with primary or legal responsibility for each alleged victim or alleged perpetrator who is a minor;

(B) Each person identified as an alleged perpetrator. For an alleged perpetrator who is a minor, we may send the notice to the child's parents or other person with primary or legal responsibility for the child; and

(C) The reporter, if the reporter's identity is known.

(2) We must provide notice to the persons specified in paragraph (1) of this subsection within 15 days after the investigation is closed by the supervisor.

(b) Required notification in administratively closed investigations.

(1) We must notify the following parties about the findings of an investigation that was closed administratively unless one of the exceptions specified in subsection (d) of this section apply:

(A) Each parent or other person with primary or legal responsibility for each alleged victim or alleged perpetrator who is a minor; and

(B) The reporter, if the reporter's identity is known.

(2) We must provide notice to the parents or other person with primary or legal responsibility for each alleged victim or alleged perpetrator who is a minor no later than 24 hours after the investigation is closed by the supervisor and to the reporter within 15 days.

(c) Optional provision of investigation findings upon request.

(1) We may provide information about the investigation to each parent or other person with primary or legal responsibility for any child in the home under investigation, at the request of the parent or person with primary or legal responsibility of the child, unless one of the exceptions specified in subsection (d) of this section exists. We may provide information from the investigation to the extent we deem necessary for the protection and care of the child when such information is necessary to meet the child's needs.

(2) We must not release information that is subject to redaction under §700.204, subchapter B, chapter 700, of this title (relating to Redaction of Records Prior to Release).

(d) Exceptions to providing notification.

(1) During the investigation, we were unable to locate the person entitled to notification despite having made reasonable efforts to locate the person.

(2) Notwithstanding requirements to notify certain persons of investigation results, we will not provide the notice when we determine that the notice is likely to endanger the safety of any child in the home, the reporter, or any other person who participated in the investigation of the report. This safety exception does not apply to a designated perpetrator entitled to receive notice under subsection (f) of this section, or to a former alleged perpetrator entitled to receive notice under subsection (g) of this section.

(3) We may delay notification of a person entitled to notification under this section if a law enforcement agency requests the delay because timely notification would interfere with an ongoing criminal

investigation. We may delay notification only in those circumstances in which the law enforcement agency agrees to notify us at the earliest time that the delay is no longer needed. We must provide the notification within 15 days after the date on which we are notified that the law enforcement agency has withdrawn the request to delay the notification.

(4) We will not provide required notifications or optional information about findings under this section if an investigation is being closed administratively because the report was referred for investigation to another authorized entity, such as law enforcement or another state agency.

(e) Form of notification. Notifications about the findings of an investigation may be either written or oral, except the notifications in paragraphs (1)-(2) of this subsection must be provided in writing:

(1) Written notification of the designated perpetrator, or designated victim perpetrator; and

(2) Written notification of an alleged perpetrator when all allegations in the case involving the person as an alleged perpetrator have been ruled out.

(f) Required written notification of the designated perpetrator. We must give written notice of the findings of the investigation to everyone who has been identified as a designated perpetrator as specified in §707.497(b)(2) or (3) of this subchapter (relating to What roles can we assign to persons involved in a case after the investigation is complete?). For a designated perpetrator who is a minor, the notice is sent to the child's parents or other person with primary or legal responsibility for the child.

(g) Required written notification of an alleged perpetrator when all allegations involving the person as an alleged perpetrator have been ruled out. We must give written notice of the right to request removal of role information to each person who was identified as an alleged perpetrator when all the allegations in the case involving the person as an alleged perpetrator have been ruled out. If the person is a minor, we may send the notice to the minor's parents.

(h) Notifying the reporter. If the reporter is not a professional working with the family, notification to the reporter discloses only:

(1) That we investigated the report; and

(2) Whether we provided services to the family during the investigation or plan to provide services to the family after the investigation.

*§707.501. When do we conduct risk and safety assessments?*

(a) Overview. During an investigation, we must assess both the immediate safety of the children in the home and the risk of recurrence of abuse or neglect.

(1) Assessing safety. We conduct a formal safety assessment to assess the presence or absence of danger indicators in the home during each contact with the family to determine whether the child is safe in the home.

(2) Assessing risk. Unless the conditions specified in subsection (b) of this section exist, we conduct a formal risk assessment to assess the likelihood that abuse or neglect will reoccur in the foreseeable future.

(b) When we do not complete a formal risk assessment. When any of the following conditions exists, we are not in a position to assess the likelihood that abuse or neglect will reoccur in the foreseeable future:

(1) The disposition of the allegations of child abuse or neglect is "unable to complete", as defined in §707.495 of this subchapter (relating to How do we make dispositions after completing the investigation?);

(2) The preliminary investigation is closed administratively, as specified in §707.489(b) of this subchapter (relating to How do we respond to reports of child abuse or neglect?);

(3) The disposition of the allegations of child abuse or neglect is "ruled out" pursuant to an abbreviated investigation as specified in §707.489(c) of this chapter;

(4) The family has only one child, and the child has died;

(5) The investigation was conducted in a school and did not involve members of the child's family or household;

(6) The investigation was conducted on a relative or other household; or

(7) The investigation meets the criteria of a Baby Moses case under Subchapter D of Chapter 262, Texas Family Code.

(c) Conclusions about safety and risk assessments. After assessing both safety and risk, and identifying sources of strengths and protective actions in the family, we determine whether:

(1) The child should be removed;

(2) The family should be referred for family based safety services as specified in subchapter G, chapter 700 of this title (relating to Services For Families); and/or for immediate or short-term protective services as specified §707.503 of this subchapter (relating to When will we intervene for the purpose of providing immediate or short-term protection to a child?); or

(3) The case should be closed.

(d) We may close the case when either of the following circumstances exists:

(1) The family's level of risk is low or moderate and there are no unmanaged danger indicators in the home; or

(2) The family appears willing and able, through the use of family and community resources, to deal with the safety and risk factors in their lives to ensure the safety of the child(ren) for the foreseeable future.

(e) We may remove the child(ren) if the criteria for removal under Subchapter B of Chapter 262, Texas Family Code, is met or we may refer the case for family based safety services as specified in subchapter G, chapter 700 of this title if:

(1) There is a high or very high likelihood that abuse or neglect will reoccur in the foreseeable future or the child is not safe in the home because of unmanaged danger indicators;

(2) Safety or risk factors were identified; and

(A) The family appears unable or unwilling to utilize family and community resources in a manner that will ensure the safety of the child(ren) for the foreseeable future; or

(B) There are not sufficient strengths and/or protective actions, and available resources to provide for the safety of the child(ren) in the foreseeable future without intervention; or

(3) The family would benefit from family based safety services to help manage the risk to the child(ren) in the foreseeable future.

(f) We must ensure that the child receives immediate or short-term protective services as specified §707.503 of this subchapter if the

family cannot protect the child from abuse or neglect in the immediate or short-term future without assistance.

(g) Documentation of spouse or partner abuse. The investigator must document an occurrence or history of spouse or partner abuse during the risk assessment. The documentation contains information obtained during the investigation as it relates to principals within that case.

*§707.505. What are the requirements for an administrative review of investigation findings?*

(a) The purpose of an Administrative Review of Investigation Findings (ARIF) is to provide an informal review process for a person who has been designated as a perpetrator or victim/perpetrator of child abuse or neglect as specified in §707.497(b)(2) or (3) of this subchapter (relating to What roles can we assign to persons involved in a case after the investigation is complete?).

(b) To be eligible, you must request an ARIF, in writing, within 45 days after receiving notice of the findings of the investigation. If you are 18 years of age or older and are requesting an ARIF to challenge a reason-to-believe finding made against you when you were a minor, your request will be considered timely and we will grant your request if you have not previously had an ARIF and are not otherwise found ineligible.

(c) You will not be entitled to an ARIF for a finding of abuse or neglect if a court of competent jurisdiction has already issued a ruling consistent with that specific finding.

(d) Except as provided in subsection (f) of this section, within 45 days after the date we receive your request for an ARIF, we must:

(1) Conduct the ARIF; or

(2) Notify you that your request has been denied because you are not eligible for an ARIF, as specified in this section.

(e) After you submit a written request for an ARIF, we will contact you to schedule the review. If we are unable to make contact with you and you do not respond to the attempts to make contact within 30 days of the initial attempt, we will not proceed with the review and you will waive your right to an ARIF. If you subsequently contact us after the above-specified timeframe, we may reschedule the review if we determine that you had a good reason for exceeding the timeframe.

(f) We may postpone an ARIF when there is a pending civil or criminal suit or an ongoing criminal investigation relating to the same acts or omissions involved in the finding of abuse or neglect or we find that there is other good cause for extending the deadline. If we decide to postpone the ARIF, we will notify you in writing within 45 days after receiving your request for an ARIF. If the ARIF is postponed due to a pending civil or criminal suit or ongoing criminal investigation, the notification will indicate the length of time of the delay or specify that you must notify us when the court case has been completed or the criminal investigation has been closed, as appropriate. We will review your eligibility for an ARIF after the delay. If you are determined eligible for an ARIF, we must conduct it within 45 days from notification of the completion of the suit or criminal investigation that caused the postponement.

(g) The ARIF is conducted by a DFPS employee (the "resolution specialist") who was not involved in the investigation and did not directly supervise the investigation. The ARIF is an informal review in which the participants may appear, make statements, provide relevant written materials, and ask questions. You have the right to bring a legal representative and a support person to the review. The support person may not participate in the review. If you are a minor, your parent or guardian may also speak on your behalf during the review. Any

witnesses that you have must submit their statements in writing to the resolution specialist.

(h) The resolution specialist may review the investigation case record, ask questions, and gather other relevant information. The formal rules of evidence do not apply and the review does not include formal witness testimony. The resolution specialist may consider all allegations relating to the investigation, including allegations that were "reason-to-believe", "unable-to-determine", or "ruled-out" at the conclusion of the investigation, and the evidence gathered during the investigation and the ARIF process. The resolution specialist must confirm that decisions of "reason-to-believe" are supported by a preponderance of the evidence.

(i) After completing the ARIF, the resolution specialist must timely issue a written decision that upholds, reverses, or alters the original investigation findings. The resolution specialist only reviews and issues a written decision on findings pertaining to you. An original finding of "reason-to-believe" for abuse or neglect may be upheld or may be reversed to a finding of either "unable-to-determine" or "ruled-out". A finding may be altered with respect to the type of abuse or neglect found to have occurred. For example, an original finding of "reason-to-believe" for "physical abuse" of a child may be altered to a finding of "reason-to-believe" for "neglectful supervision" of the child.

(j) If the resolution specialist's decision reverses or alters any of the original investigation findings, we must change our records regarding the outcome of the investigation to reflect the resolution specialist's decision.

(k) Notwithstanding anything in this section, if you are entitled to an administrative hearing before the State Office of Administrative Hearings (SOAH), we may waive the ARIF and proceed directly to the SOAH hearing.

*§707.509. What standards for conducting investigations of abuse and neglect apply to the Investigations program?*

To encourage professionalism and consistency in the investigation of reports of child abuse and neglect, as specified in the Texas Family Code (TFC) §261.310, the Texas Department of Family and Protective Services adopts the following standards for individuals who investigate reports of child abuse and neglect:

(1) Each individual responsible for investigating reports of child abuse and neglect, or for conducting interviews during investigations of child abuse and neglect, must receive a minimum of 12 hours of professional training every year.

(2) The professional training curriculum for individuals who conduct investigations or investigation interviews must include information about:

(A) Abuse and neglect as defined in TFC §261.001 including the distinction between:

(i) Physical injuries resulting from abuse; and

(ii) Ordinary childhood injuries;

(B) Abuse involving mental or emotional injury as defined in TFC §261.001(1);

(C) Available treatment resources;

(D) The types of child abuse and neglect reported to DFPS, including information about the receipt of false reports;

(E) Forensic interviewing and investigatory techniques and the collection of physical evidence; and

(F) Federal child welfare laws.

(3) All investigatory interviews that are recorded should be recorded:

(A) Accurately, without interruption; and without alteration;

(B) Should be made on equipment that is capable of making an accurate recording; and

(C) Should be made by a person that is competent to make the recording.

(4) In accordance with Subchapter E of Chapter 264, Texas Family Code, investigators should:

(A) Utilize Children's Advocacy Centers when appropriate and follow protocols to minimize the number of interviews with a child; and

(B) Be thorough and exercise professional judgment and expertise in determining the nature, extent, and number of interviews and examinations of suspected child abuse victims.

(5) All documents generated during investigations must be maintained according to the Investigations published records retention schedule on the DFPS website, including:

(A) Original tape recordings of telephone intakes;

(B) Any recordings of interviews; and

(C) Worker case notes regarding the investigation.

(6) Investigators must make a reasonable effort to locate and notify each parent of an alleged victim of the report of abuse or neglect relating to the child victim.

*§707.511. On whom do we conduct criminal history records checks during the course of an investigation?*

(a) As provided in Government Code §411.114, we must obtain criminal history record information maintained by the Texas Department of Public Safety (DPS) regarding an alleged perpetrator unless the alleged perpetrator is a victim/perpetrator in the report.

(b) When necessary to complete a safety assessment, risk assessment, family assessment, or other assessment (including home studies or child care arrangements), we are entitled to obtain criminal history record information maintained by DPS regarding any of the following parties:

(1) Persons living in the residence in which the alleged victim resides;

(2) Persons providing, at the request of the child's parent, in-home care for an alleged child victim; and

(3) Persons providing, at the request of the child's parent, in-home care for a child, as long as the person provides written consent to the release and disclosure of the information.

(c) For purposes of this rule, the term "residence" means "household" as that term is defined in §707.451(a)(8) of this subchapter (relating to What terms and definitions are used in reports, investigations, and assessments of abuse and neglect?).

(d) In addition to criminal history record information that we obtain from DPS, we may also obtain information from the Federal Bureau of Investigation and any other criminal justice agency, subject to any limitations provided by law.

*§707.513. What provisions govern the release and maintenance of records generated in conjunction with an investigation conducted by Investigations?*

(a) Investigation records are confidential case records pursuant to the federal Child Abuse Prevention and Treatment Act and Texas Family Code (TFC) §261.201, and as further provided in subchapter B, chapter 700, of this title (relating to Confidentiality and Release of Records).

(b) We will withhold or release confidential case records that are gathered and maintained in response to a report of abuse or neglect of a child, as authorized by state and federal law, and in accordance with governing rules in subchapter B, chapter 700.

(c) We maintain investigation records in accordance with the Investigations published records retention schedule on the DFPS website.

*§707.515. How does the Texas Department of Family and Protective Services assign roles upon receipt of a report alleging child abuse or neglect?*

When a report of abuse or neglect is initially received by the Statewide Intake division of the Texas Department of Family and Protective Services (DFPS), each person named in the report is assigned one of the following roles:

(1) Alleged victim. An alleged victim is a child who is suspected of being a victim of abuse or neglect as defined in Texas Family Code (TFC) §261.001(1) and (4).

(2) Alleged perpetrator. An alleged perpetrator is a person responsible for the child's care, custody, or welfare as defined in TFC §261.001(5)(A)-(C), who is suspected of committing the alleged abuse or neglect.

(3) Alleged victim/perpetrator. An alleged victim/perpetrator is a child 10 years of age or older who is suspected of both:

(A) being a victim as described under paragraph (1) of this section; and

(B) abusing or neglecting other children in the family/household named in the same report.

(4) Unknown. A person with the role of unknown is a person whose actions with regard to the alleged abuse or neglect are not known by the reporter. The person may or may not have played a part in the suspected abuse or neglect.

(5) No Role. A person with the role of no role is a person, according to the reporter, who could clearly not have had a role in the alleged abuse or neglect.

*§707.517. When is a person alleged to have committed abuse or neglect of a child entitled to request that we remove information from our records regarding that person's role as an alleged perpetrator in an investigation?*

(a) Pursuant to Texas Family Code §261.315, you will be entitled to request removal of information from our records concerning your role as an alleged perpetrator in an investigation if all of the allegations against you in that investigation are ruled-out:

(1) At the conclusion of the investigation which has been approved for closure by a supervisor;

(2) As the result of an administrative review of investigation findings (ARIF) conducted pursuant to §707.505 of this subchapter (relating to What are the requirements for an administrative review of investigation findings?);

(3) As the result of a review conducted by the Office of Consumer Relations under division 3, subchapter I, chapter 702, of this title (relating to Office of Consumer Affairs Review of Perpetrator Designation);

(4) As the result of a due process hearing, when eligible, as provided in subchapter F, chapter 700, of this title (relating to Release Hearings); or

(5) As the result of any other final ruling which has the legal effect of ruling out all allegations against you from that investigation.

(b) Within 15 days following the conclusion of an investigation or other final ruling as described in subsection (a) of this section, we will mail a written notice to you informing you of your right to request removal of certain information and of the procedures which you must follow in order to exercise that right. If you are a minor, we will send the notice to your parents or other person with primary or legal responsibility.

(c) A request to remove role information shall not be deemed to be properly made unless you:

(1) Submit the request on a completed form prescribed by us and provided to you for this purpose, or submit a written request containing substantially equivalent information which allows us to locate the investigation in question and which clearly states the purpose of the request;

(2) Sign the request, or your parents or other person with primary or legal responsibility sign the request if you are a minor; and

(3) Mail or deliver the request to us to the address prescribed on the form for this purpose within 45 days after the mailing date of the notice required in subsection (b) of this section.

(d) Upon receipt of a request for removal of role information which meets all of the criteria set forth in subsection (c) of this section, we will initiate procedures to remove any information from our records which would tend to reveal that you were named as an alleged perpetrator of abuse and neglect in the investigation in which all allegations against you were ruled out. We will complete the process of removal of role information within 90 days from receipt of a properly submitted request.

(e) During the period of time following the receipt of a request properly made under subsection (c) of this section, and prior to the completion of the removal of information required in subsection (d) of this section, we will not release any information which is subject to removal under subsection (d) of this section to anyone who might otherwise be entitled to receive a copy of the investigation records, unless we are ordered to release that information pursuant to a valid court order.

(f) A request for removal of role information which does not meet the criteria set out in subsection (c) of this section will be denied. Notice of the denial and the reasons for the denial will be provided to you within 30 days of us receiving the request for removal.

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Tiffany Roper

General Counsel

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## DIVISION 2. ALTERNATIVE RESPONSE

**40 TAC §§707.549, 707.551, 707.553, 707.555, 707.557, 707.559, 707.561, 707.563, 707.565, 707.567**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

#### §707.551. *What is alternative response?*

Alternative response is a type of protective intervention conducted by the Investigations program of the Child Protective Investigations division of the Texas Department of Family and Protective Services (DFPS) in response to allegations of abuse or neglect of a child by a person responsible for the child's care, custody or welfare as defined in TFC §261.001(5)(A)-(C), that is an alternative to an abbreviated or thorough investigation as described in §707.489 of this subchapter (relating to How do we respond to reports of child abuse or neglect?). Cases that are handled with alternative response:

(1) do not result in a formal disposition of the allegations of abuse or neglect as provided in §707.495 of this subchapter (relating to How do we make dispositions after completing the investigation?) or in the designation of a perpetrator as described in §707.497 of this subchapter (relating to What roles can we assign to persons involved in a case after the investigation is complete?);

(2) do not result in the listing of any individual on the child abuse and neglect central registry described in subchapter C, chapter 702, of this title (relating to Child Abuse and Neglect Central Registry); and

(3) focus on short-term collaboration with and engagement of families in order to empower them to ensure the safety of their children.

#### §707.553. *Which cases may be conducted as an alternative response?*

(a) We may conduct an alternative response to any allegation of abuse or neglect that meets the criteria for investigation by us pursuant to Chapter 261, Texas Family Code, and division 1 of this subchapter (relating to Intake, Investigation, and Assessment), provided that:

(1) the case is assigned a priority other than Priority I;

(2) the case does not involve a child victim under the age of six, as further defined in policy. If a child under six is found to be living in a home after the alternative response case has been initiated, we will continue the alternative response unless there are allegations of physical or sexual abuse;

(3) there is no open investigation, Family Based Safety Services case, or conservatorship case involving the family; and

(4) the case is not excluded pursuant to subsection (b) of this section.

(b) We will not conduct or continue to conduct an alternative response if any of the following conditions are present:

(1) there is a current allegation of sexual abuse or risk of sexual abuse;

(2) the current report or alternative response involves a child fatality that is alleged to be the result of abuse or neglect:

(3) the current report or alternative response involves a family or household member who is a designated or sustained perpetrator of physical abuse that led to a child fatality in a previous investigation;

(4) there is a current allegation or other credible information indicating a risk of serious physical injury or immediate serious harm to a child who is the subject of the alternative response;

(5) An investigation is required to be conducted pursuant to Texas Family Code §261.406 and subchapter B of this chapter (relating to School Investigations) or pursuant to subchapter C of this chapter (relating to Child Care Investigations); or

(6) The alleged perpetrator is a foster parent or prospective adoptive parent.

(c) We may exclude a case for one of the conditions identified in subsection (b) of this section at the point the intake is received or screened or based on information discovered during the alternative response case.

§707.561. *What investigative actions may we take when conducting an alternative response?*

(a) When conducting an alternative response, we may take any protective action authorized for an investigation that is necessary for the protection of a child, including but not limited to:

- (1) removing the child;
- (2) facilitating a parental child safety placement;
- (3) obtaining a court order in aid of investigation; or
- (4) obtaining a court order to participate in services.

(b) We may take any appropriate protective action either prior to or following the transfer of the case to be handled as an investigation.

(c) We may contact and obtain information and records from any person we are authorized to obtain information or records from while conducting an investigation pursuant to division 1 of this subchapter (relating to Intake, Investigation, and Assessment). However, to the greatest extent possible while ensuring child safety, we attempt to obtain information and records in collaboration with the family and in a manner that is least intrusive to the family.

(d) We are not required to attempt to find or notify a parent who does not reside in the home of a family for whom we are conducting an alternative response.

§707.563. *Do we maintain written records from an alternative response?*

Yes. We must maintain a written record of an alternative response.

§707.565. *What provisions govern the release and maintenance of records generated in conjunction with an alternative response?*

(a) Records of an alternative response are confidential case records as provided by the federal Child Abuse Prevention and Treatment Act and Texas Family Code (TFC) §261.201, and as further provided in subchapter B, chapter 700, of this title (relating to Confidentiality and Release of Records).

(b) We will withhold or release confidential alternative response case records in the same manner as other records that are gathered or maintained in response to a report of abuse or neglect of a child, as authorized by state and federal law, and in accordance with governing rules in subchapter B, chapter 700.

(c) We maintain alternative response case records in accordance with the Investigations published records retention schedule on

the DFPS website. We may utilize information from an alternative response if alternative response case records are available and we receive a subsequent report of abuse or neglect involving a person who participated in an alternative response case.

(d) Notwithstanding any other provision of this chapter, we do not release alternative response case records in response to a request for information received pursuant to TFC §261.308(e).

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## SUBCHAPTER B. SCHOOL INVESTIGATIONS

**40 TAC §§707.597, 707.599, 707.601, 707.603, 707.605, 707.607, 707.609, 707.611, 707.613, 707.615, 707.617, 707.619, 707.621, 707.623, 707.625**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§707.605. *What do the following terms mean when used in this subchapter?*

(a) The following terms have the following meanings when used in this subchapter:

(1) Alleged perpetrator--A person who is alleged or suspected of being responsible for the abuse or neglect of a child.

(2) Alleged victim--A child who is alleged to be the victim of abuse or neglect.

(3) Child--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(4) Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(5) Reporter--An individual who makes a report to the Texas Department of Family and Protective Services or a duly constituted law enforcement agency alleging the abuse or neglect of a child. If more than one individual makes a report alleging abuse or neglect of the same child, all such individuals shall have the designation of a reporter.

(6) School personnel and volunteers--Persons who have access to children in a school setting and are providing services to or caring for the children. School personnel include but are not limited to

school employees, contractors, school volunteers, school bus drivers, school cafeteria staff, and school custodians.

(7) School setting--The physical location of a child's school or of an event sponsored or approved by the child's school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services. This does not include:

(A) school settings involving only children in facilities regulated by the Texas Health and Human Services Commission (HHSC) when HHSC contracts with the local school district to provide education services; or

(B) school settings that are a part of child care operations regulated by the Child Care Licensing division of HHSC.

(b) Terms used in this division that are not defined in this division shall have the meanings assigned to those terms in Chapters 101 and 261, Texas Family Code, and in division 1 of subchapter A of this chapter (relating to Intake, Investigation, and Assessment) unless the context clearly indicates otherwise.

*§707.607. How is child abuse and neglect defined for the purpose of a school investigation?*

(a) For the purpose of an investigation in a school setting, the terms abuse and neglect shall have the meaning assigned to those terms in the Texas Family Code §261.001(1) and (4), as those terms are further defined in division 1 of subchapter A of this chapter (relating to Intake, Investigation, and Assessment), unless the definition is clearly inapplicable to reports of abuse or neglect in school settings or as otherwise provided in this subchapter.

(b) Abuse and neglect in this context do not include the following:

(1) Use of restraints or seclusion that do not meet the statutory definitions of child abuse or neglect;

(2) Actions that school personnel or volunteers at the child's school reasonably believe to be immediately necessary to avoid imminent harm to the child or other individuals, if the actions:

(A) are limited only to those actions reasonably believed to be necessary under the existing circumstances; and

(B) do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, such as the use of restraints or seclusion as a substitute for lack of staff;

(3) Reasonable discipline.

(c) Notwithstanding subsection (b) of this section, if there are allegations in the report that otherwise meet the definition of "abuse" or "neglect" by school personnel or volunteers in a school setting, those allegations will be investigated in accordance with this subchapter.

*§707.609. When will a report of alleged abuse or neglect occurring in a school setting be assigned for investigation?*

(a) A report of alleged abuse or neglect occurring in a school setting will be assigned for investigation if the following criteria are met:

(1) The allegations meet the definitions of abuse or neglect contained in §707.607 of this subchapter (relating to How is child abuse and neglect defined for the purpose of a school investigation?);

(2) The alleged perpetrator is a person meeting the definition of school personnel or volunteers at the child's school;

(3) The alleged victim is a child or was a child at the time that the alleged abuse or neglect occurred;

(4) The alleged abuse or neglect occurred in a school setting;

(5) The alleged abuse or neglect occurred during the current school year or there is a likelihood that sufficient evidence can still be obtained to establish whether or not abuse or neglect occurred in a school setting; and

(6) The same allegations involving the school setting were not already investigated by us.

(b) A report of alleged abuse and neglect which does not meet the criteria for investigation specified in this section shall be referred to an appropriate law enforcement entity or other investigating agency in accordance with Texas Family Code §261.105.

(c) When we do not accept a report for investigation, we will notify the reporter verbally or in writing of the reason the report will not be investigated and that the reporter may discuss concerns about the decision with the supervisor.

*§707.611. Who do we notify when we receive a report of child abuse or neglect in a school setting?*

We must provide notification of all school-related reports of child abuse or neglect to the law enforcement entity with jurisdiction for criminal investigations in the geographical area where the alleged incident occurred, within the time frames set out in §707.487 of subchapter A of this chapter (relating to Do we notify law enforcement of all reports received of child abuse or neglect?).

*§707.613. What are the priorities and time frames for initiating school investigations?*

We must assign a priority to all reports accepted for investigation and must initiate an investigation within the corresponding time frame, as specified in §707.485 of subchapter A of this chapter (relating to What are the timeframes within which we must respond to a report of child abuse or neglect assigned for investigation?). Prior to initiating an investigation, we will review the intake report to determine if the initial priority and action recommended is appropriate or must be updated.

*§707.615. Which school personnel must we notify prior to initiating a school investigation?*

(a) Prior to conducting an investigation under this subchapter, we must notify the school principal (or the principal's supervisor if the school principal is an alleged perpetrator) of the fact that a report has been assigned for investigation, the nature of the allegations contained in the report, and the date and time we plan to visit the school campus to begin the investigation.

(b) We must also orally notify the superintendent of the school district about the investigation. If the alleged perpetrator is an employee of a charter school, we must orally notify the director of the charter school of the investigation. If the alleged perpetrator is an employee of a private school, we must orally notify the chief executive officer of the private school of the investigation.

(c) We must request that the school personnel notified of the investigation as provided in subsections (a) and (b) of this section not alert the alleged perpetrator or others regarding the report until we have had an opportunity to interview the alleged perpetrator.

*§707.617. How are school investigations conducted?*

(a) An investigation conducted under this subchapter shall include the following investigative steps unless the allegations of child abuse and neglect can be clearly confirmed or ruled-out without taking one or more of these steps:

(1) Obtain a full statement of the allegation from the reporter, as appropriate to the case.



(2) Interview and visually inspect each alleged victim, as appropriate in the case.

(3) Interview any other witnesses or persons who may have collateral information, including the child's parents or guardian.

(4) Interview the alleged perpetrator, if available.

(5) Obtain photographs, school records, or other pertinent physical evidence, if relevant to the investigation.

(6) Request that a parent of an alleged victim obtains a medical, psychological, or psychiatric examination of the child and that the records of such examination be provided to us, if necessary, to properly investigate the allegations in the case.

(7) Request that the alleged perpetrator submit to a medical, psychological, or psychiatric examination and that the records of such examination be provided to us, if necessary, to properly investigate the allegations in the case; and

(8) Cooperate with law enforcement in the event that law enforcement is conducting a joint investigation regarding the allegations.

(b) We will conduct a criminal history background check on the alleged perpetrator in accordance with Texas Government Code, §411.114, and §707.511 of subchapter A of this chapter (relating to On whom do we conduct criminal history records checks during the course of an investigation?).

(c) The Special Investigator who conducts the investigation must complete the investigation, reach a disposition for each allegation made in the report, and submit the investigation report and findings to a supervisor for approval within 30 calendar days after initiating the investigation unless an extension of time is approved by the supervisor due to extenuating circumstances. The supervisor must approve the investigation or return it to the Special Investigator for further action within 10 calendar days of receiving the investigative report. If the tenth day falls on a weekend or state holiday, the supervisor has until the next working day to complete the required review.

*§707.619. What procedures apply when we conduct an interview or examination during a school investigation?*

(a) School officials or other persons related to the school setting may not interfere with an investigation of a report of child abuse or neglect conducted by the Texas Department of Family and Protective Services, pursuant to Texas Family Code §261.303, Interference with Investigation; Court Order. Interviews and examinations in a school investigation may take place on or off the school premises, as deemed appropriate by us, pursuant to all applicable standards. We will notify appropriate school personnel prior to conducting an interview or visual inspection on school premises. We may request that school personnel or volunteers not be present during the interview or visual inspection of an alleged victim, an alleged perpetrator, an adult or child witness, or any other person who may have information relevant to the investigation if we determine that:

(1) The presence of school personnel or volunteers would compromise the integrity of the investigation; or

(2) A better interview or examination of the child would result without school personnel or volunteers being present.

(b) Notwithstanding subsection (a) of this section, if the school is not under the jurisdiction of the Texas Education Agency, we must have consent or a court order to conduct the interview and visual inspection of the child unless we have a reason to believe that the child is in immediate danger of physical or sexual abuse.

(c) We must comply with the requirements in §707.491(b) of subchapter A of this chapter (relating to What procedures apply when the investigator makes contact with and conducts interviews of parent(s) and alleged perpetrator(s) during an investigation?).

*§707.621. How do we make dispositions and assign roles in a case after completing the investigation?*

(a) At the conclusion of the investigation, we must assign an individual disposition to each allegation of abuse or neglect, as well as an overall disposition to the investigation.

(b) We use the following allegation dispositions for investigations in school settings:

(1) Reason-to-believe;

(2) Ruled-out;

(3) Unable to complete;

(4) Unable to determine; and

(5) Administrative closure.

(c) The overall investigation disposition is the summary finding about the abuse or neglect that was investigated. The overall disposition is determined in the following manner:

(1) Reason-to-believe. If any allegation disposition is "reason-to-believe", the overall investigation disposition is "reason-to-believe".

(2) Unable-to-determine. If any allegation disposition is "unable-to-determine" and no allegation disposition is "reason-to-believe", the overall investigation disposition is "unable-to-determine".

(3) Unable to complete. If any allegation disposition is "unable to complete" and no allegation disposition is "reason-to-believe" or "unable-to-determine", the overall investigation disposition is "unable to complete".

(4) Ruled-out. If all allegation dispositions are "ruled-out", the overall investigation disposition is "ruled out".

(5) Administrative closure. The overall disposition of an investigation is "administrative closure" if all individual allegations in the investigation are given the disposition of "administrative closure".

(d) The overall role for the alleged perpetrator and alleged victim at the end of an investigation in the school setting is the summary finding about the person's involvement in the abuse or neglect that was investigated. An individual's overall role is determined as follows:

(1) Designated perpetrator. When any allegation involving the alleged perpetrator is "reason-to-believe".

(2) Designated victim. When any allegation involving the alleged victim is "reason-to-believe".

(3) Unknown (unable-to-determine). When any allegation involving the person is "unable-to-determine" and no allegation involving the person is "reason-to-believe".

(4) Unknown (unable to complete). When any allegation involving the person is "unable to complete" and no allegation involving the person is "reason-to-believe" or "unable-to-determine".

(5) No role. When all allegations involving the person are "ruled-out" or "administrative closure".

*§707.623. Will we notify school officials once the investigation is completed?*

(a) Yes. After the completion of an investigation, we are statutorily required to provide a report of the investigation, redacted to remove the identity of the reporter, to either:

(1) The Texas Education Agency (Director of Education Investigations) for an investigation concerning an employee of a public or charter school; or

(2) The school's chief executive officer for an investigation concerning an employee of a private school, unless the chief executive officer is the alleged perpetrator.

(b) On request, we must also provide a redacted copy of the report to the following:

(1) State Board for Educator Certification;

(2) President of the local school board or local governing body for the school;

(3) The superintendent of the school district; and

(4) The school principal, unless the principal is the alleged perpetrator.

(c) If the overall investigation disposition is "reason-to-believe", the report must include information about the designated perpetrator's right to challenge the disposition through an administrative review of the investigation findings (ARIF), and through the Office of Consumer Relation's review of perpetrator designation conducted pursuant to division 3 of chapter 702 of this title (relating to Office of Consumer Affairs Review of Perpetrator Designation), if the finding is upheld at the ARIF. The report must also state that DFPS will notify any entity listed in subsections (a) and (b) of this section, that originally received a copy of the report of the investigation in the event that the dispositions are changed as a result of an ARIF or other challenge.

(d) Notwithstanding any other provision in this section, we are not required to provide notice to a school official if we administratively close a report of abuse or neglect prior to notifying school officials under §707.611 of this subchapter (relating to Who do we notify when we receive a report of child abuse or neglect in a school setting) that DFPS received a report of abuse or neglect in the school setting.

§707.625. *How is notice provided to non-school entities when a school investigation is completed?*

The Texas Department of Family and Protective Services must comply with the notification requirements contained in Chapter 261, Texas Family Code, and in §707.499 of subchapter A of this chapter (relating to Who will we notify of the investigation results?).

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## SUBCHAPTER C. CHILD CARE INVESTIGATIONS

## DIVISION 1. DEFINITIONS

### 40 TAC §707.701, §707.703

#### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§707.703. *What do the following terms mean when used in this subchapter?*

(a) The following terms have the following meanings when used in this subchapter:

(1) Alleged Perpetrator--a person being investigated by us because the person is alleged to have abused, neglected, or exploited a child in a child care operation.

(2) Caregiver--A person whose duties include the supervision, guidance, and protection of a child or children.

(3) Central registry--A Texas Department of Family and Protective Services (DFPS) database of persons who have been found by DFPS to have abused, neglected, or exploited a child, including abusing, neglecting, or exploiting a child in a child care operation. See subchapter C, chapter 702, of this title (relating to Child Abuse and Neglect Central Registry).

(4) Child--A person under 18 years of age.

(5) Child Care Investigations (CCI) --a program of the Child Protective Investigations division of the Department of Family and Protective Services that investigates allegations of child abuse, neglect, and exploitation in child care operations.

(6) Child Care Licensing (CCL) --a department of the Regulatory Services Division of the Texas Health and Human Services Commission that regulates child care operations under Chapter 42, Human Resources Code. CCL was formerly under the Texas Department of Family and Protective Services until September 1, 2017.

(7) Child care operation--a facility, family home, or other entity that is subject to regulation by CCL under Chapter 42, Human Resources Code, regardless of whether the operation has received the necessary permit to provide the child care under that chapter.

(8) Designated perpetrator--A person on the DFPS central registry found by us to have abused, neglected, or exploited a child in a child care operation, but who has not exhausted the right to a due process hearing. See division 7 of this subchapter (relating to Due Process Hearings).

(9) Finding of abuse, neglect, or exploitation--A determination that we made at the completion of an investigation based on the evidence gathered that a preponderance of the evidence supports the allegation(s) of child abuse, neglect, or exploitation in a child care operation.

(10) Intake Report--An allegation of child abuse, neglect, or exploitation in a child care operation.

(11) Parent--A child's biological mother or father, adoptive mother or father, or person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian. The term does not include a parent whose parental rights have been terminated.

(12) Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(13) Single-source continuum contractor (SSCC) --the entity that DFPS contracts with to provide the full continuum of foster care and case management services to children and families on behalf of Child Protective Services within a designated geographic area for purposes of implementing community-based care as defined in Texas Family Code §264.152(4).

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## DIVISION 2. OVERVIEW OF INVESTIGATION IN CHILD CARE OPERATIONS

**40 TAC §§707.711, 707.713, 707.715, 707.717, 707.719,  
707.721, 707.723, 707.725, 707.727, 707.729**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

*§707.713. What standards for conducting investigations of abuse, neglect, and exploitation apply to the Child Care Investigations program?*

To encourage professionalism and consistency in the investigation of reports of child abuse, neglect, and exploitation, as specified in the Texas Family Code (TFC) §261.310, the Texas Department of Family and Protective Services (DFPS) adopts the following standards for individuals who investigate reports of child abuse, neglect, and exploitation in a child care operation:

(1) Each individual responsible for investigating reports of child abuse, neglect, or exploitation in a child care operation, or for conducting interviews during such investigations, must receive at least 12 hours of professional training every year.

(2) The professional training curriculum for individuals who conduct investigations or investigation interviews must include information about:

(A) Abuse, neglect, and exploitation as defined in Texas Family Code (TFC) §261.001, including the distinction between:

- (i) physical injuries resulting from abuse; and
- (ii) ordinary childhood injuries;

(B) Abuse involving mental or emotional injury as defined in TFC §261.001(1) and division 5 of this subchapter (relating to Abuse, Neglect, and Exploitation);

(C) The types of abuse, neglect, and exploitation reported to DFPS;

(D) Forensic interviewing, including the collection of physical evidence and advanced training in investigative protocols and techniques; and

(E) Applicable federal child welfare laws.

(3) All investigatory interviews that are recorded should be recorded:

(A) Accurately, without interruption, and without alteration;

(B) Should be made on equipment that is capable of making an accurate recording; and

(C) Should be made by a person that is competent to make the recording.

(4) Individuals who investigate reports of child abuse should:

(A) Utilize Children's Advocacy Centers, as appropriate;

(B) Follow protocols to minimize the number of interviews with a child; and

(C) Coordinate with experts to be thorough and exercise professional judgment in determining the nature, extent, and number of interviews, observations, and examinations of suspected child abuse victims.

(5) All documents generated during investigations must be maintained according to the Child Care Investigations published records retention schedule on the DFPS website, including:

(A) Original tape recordings of telephone intakes;

(B) Any recordings of interviews; and

(C) Worker case notes regarding the investigation.

*§707.715. What are the timeframes within which we must respond to a report of child abuse, neglect, or exploitation assigned for investigation?*

(a) We assign priorities for reports of abuse, neglect, and exploitation based on the assessment of the immediacy of the risk and the severity of the possible harm to the child. Prior to initiating an investigation, we will review the intake report to determine if the initial priority and action recommended is appropriate or must be updated.

(1) Priority I reports concern:

(A) death or immediate risk of death; serious injury; or life-threatening abuse, neglect, or exploitation; or

(B) imminent risk of death, serious injury, or life-threatening abuse, neglect, or exploitation.

(2) Priority II reports are all other reports of abuse, neglect, or exploitation that are not assigned a Priority I.

(b) Subject to the availability of funds, we must:

(1) Immediately respond to a report of abuse, neglect, or exploitation that is assigned a Priority I and involves:

(A) the death of a child; or

(B) circumstances in which serious physical or emotional harm or death of a child will result unless we immediately intervene.

(2) Respond within 24 hours to a report of abuse, neglect, or exploitation that is assigned a Priority I and involves circumstances in which the threat of serious physical or emotional harm or death of a child is not immediate but may occur in the very near future unless we intervene.

(3) Respond within 72 hours to a report of abuse, neglect, or exploitation that is assigned a Priority II.

§707.719. *Must the child care operation allow us to visit the operation as part of the investigation?*

(a) Yes, pursuant to Texas Human Resources Code §42.04412 and Texas Family Code §261.303, the child care operation must not interfere with an investigation that we are conducting.

(b) If anyone at the child care operation refuses, prevents, or delays us from visiting and investigating all areas of the operation during the hours of operation, we may seek a court order granting us access to the operation and records maintained by the operation. In addition, Child Care Licensing may issue the child care operation a deficiency or take an enforcement action against the operation if the operation refuses, prevents, or delays our ability to conduct an investigation.

§707.727. *Will we investigate anonymous reports?*

Yes. We will investigate an anonymous report alleging abuse, neglect, and exploitation.

§707.729. *Will an abuse, neglect, and exploitation finding be posted on the Texas Health and Human Services' Search Texas Child Care website?*

A finding of an abuse, neglect, and exploitation investigation that we conducted is confidential and will not be posted on the Texas Health and Human Services' Search Texas Child Care website. However, we will provide our investigation findings, including any findings for anonymous reports, to Child Care Licensing (CCL) pursuant to Texas Human Resources Code (HRC) §40.042(f). If CCL cites an operation with any deficiency related to the abuse, neglect, or exploitation investigation, CCL will post the deficiency on the website. A CCL deficiency may be related to an abuse, neglect, or exploitation finding or to another minimum standards deficiency that we identified during the abuse, neglect, or exploitation investigation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2020.

TRD-202002543

Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: July 15, 2020

Proposal publication date: March 6, 2020

For further information, please call: (512) 438-3397



## DIVISION 3. NOTIFICATION

**40 TAC §§707.741, 707.743, 707.745, 707.747**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family

and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tiffany Roper

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3397



## DIVISION 4. CONFIDENTIALITY

**40 TAC §§707.761, 707.763, 707.765, 707.767, 707.769**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§707.763. *Are abuse, neglect, and exploitation investigations in child care operations confidential?*

(a) Abuse, neglect, and exploitation investigation records of child care operations are confidential pursuant to the federal Child Abuse Prevention and Treatment Act and Texas Human Resources Code (HRC) §40.005 and §42.004 and not available to the general public, except as provided under applicable federal or state law and as further described in the rules in this division. However, Child Care Licensing (CCL) maintains a monitoring file for each operation and will have access to the investigation records pursuant to HRC §40.042(f). The portions of the abuse, neglect, or exploitation investigation records that are maintained by CCL in the operation's monitoring file are not confidential and may be released to the public.

(b) Notwithstanding subsection (a) of this section, DFPS does not release any records until the investigation is complete.

(c) Records related to a child fatality that is the subject of an investigation may be released to the general public as provided under subchapter D, Release of Records Related to a Child Fatality, in chapter 702 of this title (relating to General Administration).

§707.765. *Who may obtain confidential abuse, neglect, and exploitation investigation information from the Child Care Investigation's file made confidential under the federal Child Abuse Prevention and Treatment Act and Texas Human Resources Code (HRC) §§40.005 and 42.004?*

(a) The following may obtain confidential abuse, neglect, and exploitation investigation information from us subject to the limitations described in §707.767 (relating to Are there any portions of the abuse, neglect, or exploitation investigation records that may not be released to anyone?) and §707.769 (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in the abuse, neglect, or exploitation investigation records maintained by us?) in this division:

- (1) Texas Department of Family and Protective Services (DFPS) staff, including volunteers, as necessary to perform their assigned duties;
- (2) Child Care Licensing (CCL) pursuant to HRC §40.042(f), in order to carry out its regulatory functions under HRC Chapter 42;
- (3) The parent of the child who is the subject of the investigation;
- (4) An attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim of child abuse, neglect, or exploitation;
- (5) The alleged perpetrator, or the parent of an alleged perpetrator that is a minor;
- (6) Law enforcement;
- (7) A member of the state legislature when necessary to carry out that member's official duties;
- (8) A child care operation cited for a deficiency by CCL as a result of the investigation;
- (9) A single-source continuum contractor (SSCC) for community-based care when:
  - (A) The SSCC subcontracts with the child care operation where the investigation occurred;
  - (B) The operation has signed a release of information; and
  - (C) CCL cited the operation for a deficiency as a result of the investigation;
- (10) An administrative law judge who conducts a due process hearing related to a finding of abuse, neglect, or exploitation or related to an enforcement action taken by CCL or another state agency as a result of the finding. See division 7 of this subchapter (relating to Due Process Hearings);
- (11) A judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse, neglect, or exploitation, if the judge:
  - (A) provides notice to DFPS and any other interested parties;
  - (B) after reviewing the information, including audio and/or videotapes, determines that the disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and
  - (C) includes in the disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation;
- (12) According to Texas Family Code (TFC) §162.0062, a prospective adoptive parent of a child who is the subject of the investigation or who is the alleged or designated perpetrator in the investigation;
- (13) A child care licensing agency or child welfare agency from another state that requests information on the alleged perpetrator as part of a background check or to assist in its own child abuse, neglect, or exploitation investigation; and
- (14) Any other person authorized by state or federal law to have a copy.

(b) Notwithstanding any other provision of this section, the parent of a child who is not the subject of the investigation or the alleged or designated perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the investigation record related to their child.

(c) A social study evaluator may obtain a complete, non-redacted copy of any investigative report regarding abuse, neglect, or exploitation that relates to any person residing in the residence subject to the child custody evaluation, as provided by TFC §107.111.

*§707.767. Are there any portions of the abuse, neglect, and exploitation investigation records that may not be released to anyone?*

(a) Except as described in subsection (b) of this section, we may not release the following portions of the abuse, neglect, and exploitation investigation records to anyone:

- (1) Any information that would interfere with an ongoing law enforcement investigation or prosecution;
- (2) Any information identifying the person who made a report that resulted in an investigation;
- (3) The location of a family violence shelter;
- (4) Information pertaining to an individual who was provided family violence services;
- (5) The location of a victims of trafficking shelter center, which would include:

(A) A general residential operation that provides trafficking victim services under 26 Texas Administrative Code (TAC) chapter 748, subchapter V (relating to Additional Requirements For Operations that Provide Trafficking Services); and

(B) A child-placing agency that provides trafficking victim services under 26 TAC Chapter 749, Subchapter V (relating to Additional Requirements For Child-Placing Agencies That Provide Trafficking Victims Services);

(6) Information pertaining to an individual who was provided services at a victims of trafficking shelter center, including a general residential operation or a child-placing agency that provides trafficking victim services;

(7) The identity of any child or information identifying the child in an abuse, neglect, or exploitation investigation, unless the requestor is:

(A) The child's parent or prospective adoptive parent; or

(B) The single-source continuum contractor (SSCC) for community-based care when:

(i) the SSCC subcontracts with the child care operation where the investigation occurred;

(ii) the operation has signed a release of information; and

(iii) CCL cited the operation for a deficiency as a result of the investigation;

(8) Foster home screenings, adoptive home screenings, and post-placement adoptive reports, unless:

(A) The requester is the person being evaluated; or

(B) The Department of Family and Protective Services (DFPS) Commissioner approves the release of a screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection; and

(9) Any other information made confidential under state or federal law.

(b) Notwithstanding any other provision in this section, DFPS may provide any of the above confidential information to the following, as specified:

(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) CCL in order to carry out its regulatory functions under Human Resources Code, Chapter 42;

(3) Law enforcement for the purpose of investigating allegations of child abuse, neglect, or exploitation; failure to report child abuse, neglect, or exploitation; or false or malicious reporting of alleged child abuse, neglect or exploitation;

(4) A member of the state legislature when necessary to carry out that member's official duties;

(5) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction; and

(6) A social study evaluator who has requested a complete, non-redacted copy of any investigative report regarding abuse, neglect, or exploitation that relates to any person residing in the residence subject to the child custody evaluations, as provided by Texas Family Code §107.111.

(c) Notwithstanding any other provision in this subchapter, Child Care Investigations staff, in consultation with the DFPS' Office of the General Counsel, may withhold any information in its records if the release of that information would endanger the life or safety of any individual.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tiffany Roper

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3397



## DIVISION 5. ABUSE, NEGLECT, AND EXPLOITATION

**40 TAC §§707.781, 707.783, 707.785, 707.787, 707.789, 707.791, 707.793, 707.795, 707.797, 707.799, 707.801, 707.803**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§707.783. *Who is considered a person responsible for a child's care, custody, or welfare for purposes of a child abuse, neglect, or exploitation investigation in a child care operation?*

(a) Texas Family Code §261.001(5) includes the following as a "person responsible for a child's care, custody, or welfare" in a child care operation:

(1) Foster parent of the child;

(2) Personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; and

(3) An employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Texas Human Resources Code.

(b) For purposes of paragraph (3) of subsection (a), "an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility" means any person working under the auspices of a child care operation and includes:

(1) Any employee or volunteer of the operation;

(2) Any person under contract with the operation;

(3) A director, owner, operator, or administrator of an operation;

(4) Anyone who has responsibility for the children in care;

(5) Anyone who has unsupervised access to the children in care;

(6) Anyone who regularly or routinely lives or is present at the operation; and

(7) Any other person permitted by act or omission to have access to children in care.

§707.787. *What is emotional abuse?*

(a) Emotional abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(2) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning; or

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in mental or emotional injury to a child.

(b) In this section, the following terms have the following meanings:

(1) "Mental or emotional injury" means:

(A) That a child of any age experiences any significant change in the child's physical health, intellectual development, or social behavior, including changes in sleeping and eating patterns, changes in school, or depression. The child does not have to experience physical injury or be diagnosed by a medical or mental health professional in order for us to determine that the child suffers from a mental or emotional injury. However, when assessing the child, we must consult with professional collaterals outside of the Texas Department of Family and

Protective Services that have witnessed and validated that the child is exhibiting behaviors that show an observable and material impairment as specified in paragraph (2) of this subsection. If a medical or mental health professional examines the child, we will consult with the medical or mental health professional prior to making a finding.

(B) For purposes of paragraph (3) of subsection (a), "mental or emotional injury" resulting from a person's current use of a controlled substance includes a child of any age experiencing interference with normal psychological development, functioning, or emotional or mental stability, as evidenced by an observable and substantial change in behavior, emotional response, or cognition, related to the person's current use of a controlled substance.

(2) "Observable and material impairment" means discernible and substantial damage or deterioration to a child's emotional, social, and cognitive development. It may include but is not limited to depression; anxiety; panic attacks; suicide attempts; compulsive and obsessive behaviors; acting out or exhibiting chronic or acute aggressive behavior directed toward self or others; withdrawal from normal routine and relationships; memory lapse; decreased concentration; difficulty or inability to make decisions; or a substantial and observable change in behavior, emotional response, or cognition.

*§707.789. What is physical abuse?*

(a) Physical abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident;

(2) Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical injury to a child; or

(4) Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code.

(b) In this section, the following terms have the following meanings:

(1) "Accident" means an unforeseen, unexpected, or unplanned act or event that occurs unintentionally and causes or threatens physical injury despite exercising the care and diligence that a reasonable and prudent person would exercise under similar circumstances to avoid the risk of injury.

(2) "Genuine threat of substantial harm from physical injury" means exposing the child to any risk of suffering a physical injury. This does not require actual physical contact or injury. It may include but is not limited to the following acts: striking, shoving, shaking, or hitting a child, whether intended as discipline or not.

(3) "Physical injury that results in substantial harm to the child" means any bodily harm, including but not limited to scratches; scrapes; cuts, welts, red marks; skin bruising; lacerations, pinch marks; sprains; dislocated, fractured, or broken bones; concussions; burns; and damage to internal organs. When determining whether the harm is substantial, we may consider factors including but not limited to the location of the harm; the child's age, physical condition, psychological functioning, and level of maturity; any special needs the child may have; and other relevant factors.

*§707.791. What is sexual abuse?*

(a) Sexual abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Sexual conduct harmful to a child's mental, emotional, or physical welfare, including:

(A) Conduct that constitutes the offense of continuous sexual abuse of young child or children under §21.02, Penal Code;

(B) Indecency with a child under §21.11, Penal Code;

(C) Sexual assault under §22.011, Penal Code; or

(D) Aggravated sexual assault under §22.021, Penal Code;

(2) Failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(3) Compelling or encouraging the child to engage in sexual conduct as defined by §43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of:

(A) Trafficking of persons under §20A.02(a)(7) or (8), Penal Code;

(B) Prostitution under §43.02(b), Penal Code; or

(C) Compelling prostitution under §43.05(a)(2), Penal Code;

(4) Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by §43.21, Penal Code, or pornographic; or

(5) Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by §43.25, Penal Code.

(b) In this section, the following terms have the following meanings:

(1) "Causing, permitting, encouraging, engaging in, or allowing" the photographing, filming, or depicting of, or sexual performance by, a child as described in paragraphs (4) and (5) of subsection (a) is not limited to actions the child was forced or coerced to participate in. The definition of sexual abuse is met even if the child voluntarily participates in the action.

(2) "Compelling or encouraging the child to engage in sexual conduct" as described in paragraph (3) of subsection (a) does not require that the child actually engage in sexual conduct. The definition of sexual abuse is met as long as there is a substantial risk of a child engaging in the sexual conduct.

(3) "Pornographic" or "pornography" means material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct.

(4) "Sexual conduct harmful to a child's mental, emotional or physical welfare" includes but is not limited to rape; incest; sodomy; inappropriate touching of the child's anus, breast, or genitals, including touching under or on top of the child's clothing; deliberately exposing one's anus, breast, or any part of the genitals to a child; touching the child in a sexual manner or directing sexual behavior towards the child; showing pornography to a child; encouraging a child to watch or hear sexual acts; compelling, encouraging, or permitting a child to engage in prostitution; watching a child undress, shower, or use the bathroom with the intent to arouse or gratify one's sexual desire; voyeurism; sex-

ually oriented acts, which may or may not include sexual contact or touching with intent to arouse or gratify the sexual desire of any person; and any sexually oriented act or practice that would cause a reasonable child under the same circumstance to feel uncomfortable or intimidated or that results in harm or substantial risk of harm to a child's growth, development, or psychological functioning.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2020.

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Tiffany Roper

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3397



## DIVISION 6. ADMINISTRATIVE REVIEWS

**40 TAC §§707.815, 707.817, 707.819, 707.821, 707.823, 707.825, 707.827, 707.829, 707.831**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

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Tiffany Roper

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3397



## DIVISION 7. DUE PROCESS HEARINGS

**40 TAC §§707.841, 707.843, 707.845, 707.847, 707.849, 707.851, 707.853, 707.855, 707.857, 707.859**

### STATUTORY AUTHORITY

The new sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202002548

Tiffany Roper

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3397





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

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## Proposed Rule Reviews

Texas Historical Commission

### Title 13, Part 2

The Texas Historical Commission files this notice of intent to review and consider for re-adoption, revision or repeal, repeal all rules in the following chapters of the Texas Administrative Code, Title 13, Part 2, Texas Historical Commission:

Chapter 21, History Programs

Chapter 24, Restricted Cultural Resource Information

Chapter 28, Historic Shipwrecks

Chapter 29, Management and Care of Artifacts and Collections

Pursuant to Texas Government Code 2001.039, the Texas Historical Commission will assess whether the reason(s) for initially adopting these rules continue to exist. The rules will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Commission and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*. Comments as to whether the reasons for initially adopting these rules continue to exist may be submitted to Esther Brickley, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276, or by email to [esther.brickley@thc.texas.gov](mailto:esther.brickley@thc.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202002693

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: July 1, 2020



## Adopted Rule Reviews

Texas Optometry Board

### Title 22, Part 14

The Texas Optometry Board readopts without change Texas Administrative Code, Title 22, Chapters 271, 272, 273, and 275, pursuant to the Texas Government Code, §2001.039. The agency proposed the review of the chapters in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1722). After reviewing the rules in Chapters 271, 272, 273, and 275, the agency finds that the reasons for initially adopting the rules continue to exist and readopts the rules. No comments were received.

The agency has proposed an amendment to 22 TAC §273.10 to remove an outdated section. The agency has adopted changes to 22 TAC §275.2 during the review process.

The following rules in Chapter 271 are being readopted: §271.1, Definitions; §271.2, Applications; §271.3, Jurisprudence Examination Administration; §271.5, Licensure without Examination; §271.6, National Board Examination; and §271.7, Criminal History Evaluation Letters.

The following rules in Chapter 272 are being readopted: §272.1, Open Records; §272.2, Historically Underutilized Businesses; and §272.3, Contract and Purchasing Procedures.

The following rules in Chapter 273 are being readopted: §273.1, Surrender of License; §273.2, Use of Name of Retired or Deceased Optometrist; §273.3, Contact Lenses as Prize or Premium; §273.4, Fees (Not Refundable); §273.5, Clinical Instruction and Practice Limited License for Clinical Faculty; §273.6, Licenses for a Limited Period; §273.7, Inactive Licenses and Retired License for Volunteer Charity Care; §273.8, Renewal of License; §273.9, Public Interest Information; §273.10, Licensee Compliance with Payment Obligations; §273.11, Public Participation in Meetings; §273.12, Profile Information; §273.13, Contract or Employment with Community Health Centers; and §273.14, License Applications for Military Service Member, Military Veteran, and Military Spouse.

The following rules in Chapter 275 are being readopted: §275.1, General Requirements; and §275.2, Required Education.

This concludes the review of Chapters 271, 272, 273, and 275.

TRD-202002658

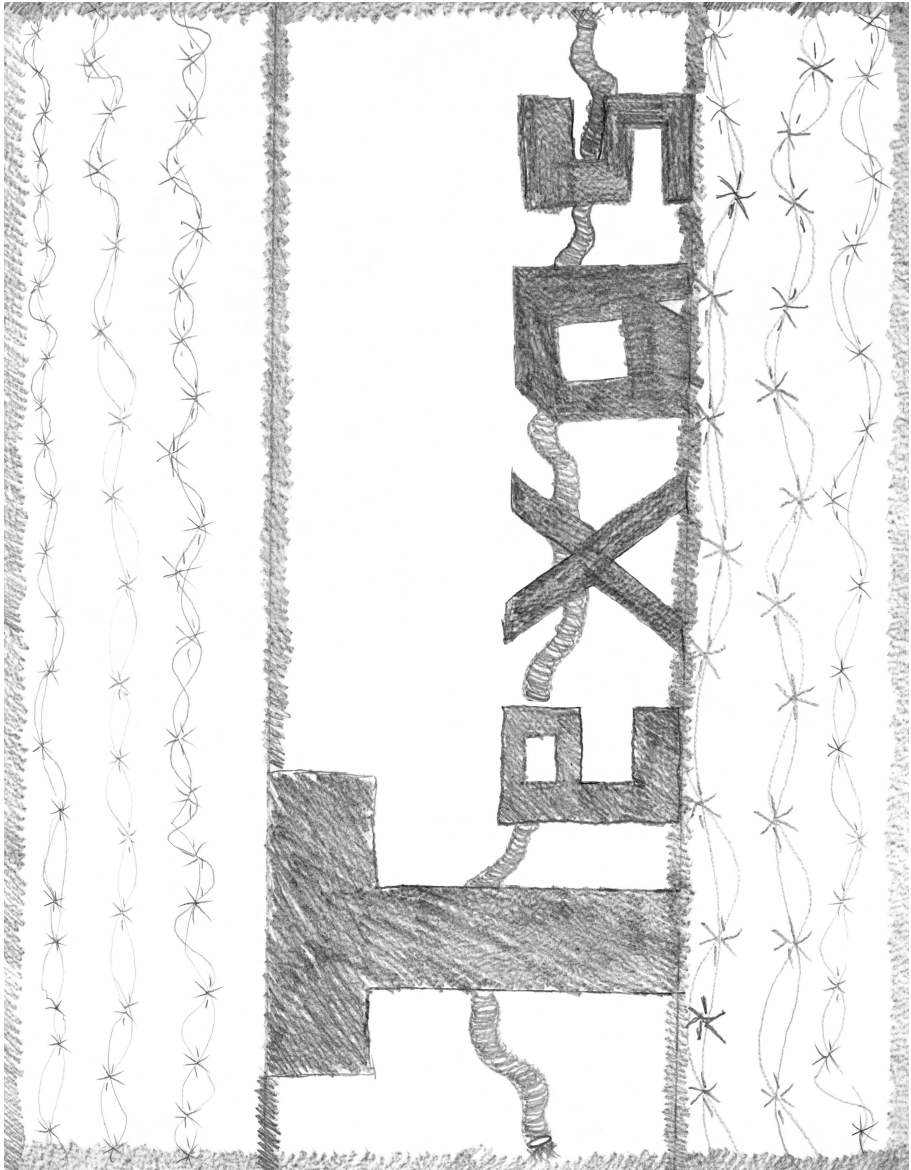
Chris Kloeris

Executive Director

Texas Optometry Board

Filed: June 29, 2020





# TABLES &

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# GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 4 TAC §40.6(b)(1)(C)

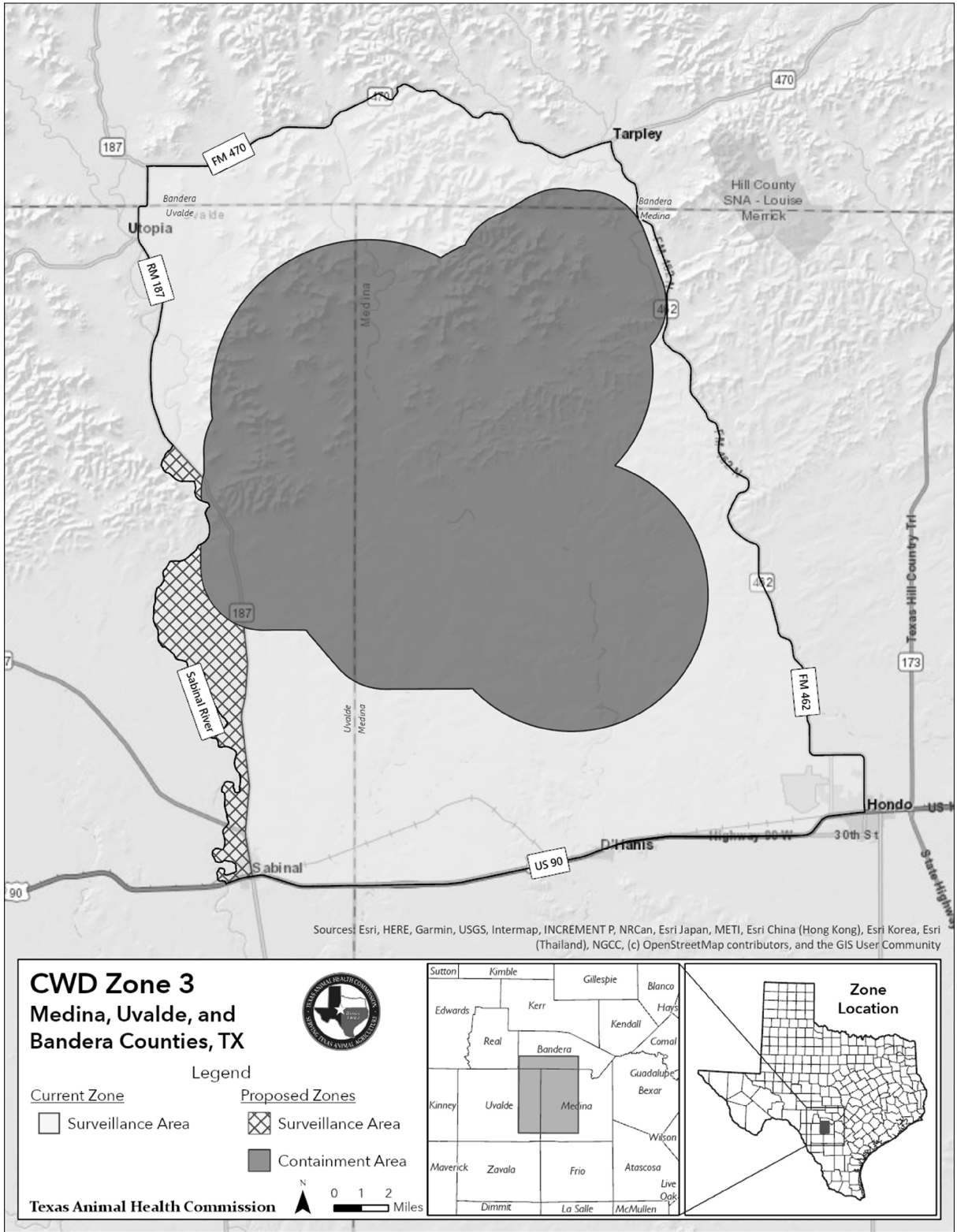


Figure: 22 TAC §470.1

<u>Board Rule</u>	<u>Revocation</u>	<u>Suspension</u>	<u>Probated Suspension</u>	<u>Reprimand</u>	<u>Administrative Penalty</u>
465.2				X	
465.4				X	
465.6(a) & (b)				X	
465.6(c)					X
465.8			X		
465.9(a), (d), (e), & (f)			X		
465.9(b)-(c) & (g)-(j)				X	
465.10			X		
465.11				X	
465.12(a) & (d)-(i)			X		
465.12(b) & (c)				X	
465.13(a)(1)-(2) & (b)(4)		X			
465.13(a)(4) & (b)(1)-(3)			X		
465.13(a)(3) & (b)(5)	X				
465.14				X	
465.15(a) & (b)(2)-(5)				X	
465.15(b)(1)	X				
465.16(a)				X	
465.16(b)-(e)			X		
465.17(a)(1)-(2)			X		
465.17(a)(3)	X				
465.17(b)				X	
465.18(a)-(c) & (e)-(h)			X		
465.18(d)				X	
465.20				X	
465.21			X		
465.22(a)(1)-(6) & (b)-(e)				X	
465.22(a)(7)		X			
465.32					X
465.33(e) as it relates to sexual harassment and sexual impropriety			X		
465.33(e) as it relates to a sexual relationships and (g)	X				
465.33(f)		X			
465.34				X	
465.35(a) & (b)				X	
465.38				X	

Figure: 22 TAC §801.305

<b>Rule</b>	<b>Action</b>
801.43(b) Report alleged violations or misrepresentation	Warning Letter
801.43(c) Identify license, status, or other restriction	Warning Letter
801.43(d) Make false statement	Level 5 Reprimand
801.43(g) Make reasonable effort to prevent other's false statement	Warning Letter
801.44(a) Provide services only in the context of a professional relationship	Level 5 Reprimand
801.44(b) Fail to provide written information	Level 5 Reprimand
801.44(c) Fail to obtain appropriate consent or custody order	Level 5 Reprimand
801.44(d) Fail to provide written information regarding confidentiality	Level 5 Reprimand
801.44(e) Refer for pay	Level 3 Administrative Penalty
801.44(f) Exploit trust	Level 4 Probated Suspension
801.44(g) Act to meet personal needs	Level 4 Probated Suspension
801.44(h) Provide services to family, friends, educational or business associates, or others	Level 5 Reprimand
801.44(i) Maintain professional boundaries with clients and former clients	Level 5 Reprimand
801.44(k) Protect individual from harm resulting from group interaction	Warning Letter
801.44(l) Avoid non-therapeutic relationship with clients and former clients	Conditional Letter of Agreement
801.44(m) Bill only for services actually rendered or as agreed in writing	Level 5 Reprimand
801.44(n) End professional relationship when client is not benefitting	Level 4 Probated Suspension
801.44(n) Provide written referral and facilitate transfer to appropriate care	Conditional Letter of Agreement
801.44(o) Technology-assisted services, provide license number and council's contact information	Warning Letter
801.44(p) Provided services within competency and professional standards	Level 4 Probated Suspension
801.44(q) Base services on client assessment, evaluation, or diagnosis	Level 4 Probated Suspension
801.44(s) Promote or encourage illegal use of alcohol or drugs	Level 1 Revocation
801.44(t) Provide services to client served by another	Level 5 Reprimand
801.44(u) Aid or abet or fail to report unlicensed practice	Level 2/3 Suspension

801.44(v) Enter a non-professional relationship with a client's family member or any person who has a personal or professional relationship with a client	Level 5 Reprimand
801.44(w) Provide services while impaired	Level 2/3 Suspension
801.45(b) Sexual contact with a protected person	Level 1 Revocation
801.45(c) Provide services to a former sexual partner	Level 1 Revocation
801.45(d) Therapeutic deception or sexual exploitation	Level 1 Revocation
801.46(a) Inform clients about testing as part of treatment	Warning Letter
801.46(c) Administer and interpret test with appropriate training, experience	Level 4 Probated Suspension
801.47 Use alcohol or drugs, adversely affecting provision of services	Level 2/3 Suspension
801.48(b) Disclose communication, record, or identity of a client	Level 4 Probated Suspension
801.48(c) Comply with statutes or rules, concerning confidential information	Level 4 Probated Suspension
801.48(d) Report or release information as required by statute	Level 4 Probated Suspension
801.48(d)(4) Report sexual misconduct per TCPRC 81.006	Level 5 Reprimand
801.48(e) Keep accurate records	Conditional Letter of Agreement
801.48(g) Maintain confidentiality in how client records are stored or disposed	Level 4 Probated Suspension
801.48(h) Plan for custody of records	Level 5 Reprimand
801.50 Appropriate use of assumed name	Warning Letter
801.53(a) Advertise with false information	Level 5 Reprimand
801.53(d) Advertisement must state license title	Warning Letter
801.53(e) Ad with confusing membership or certification outside field of therapy	Warning Letter
801.53(f) Advertisement must state provisional license	Warning Letter
801.53(g) Reasonable steps to correct or minimize misuse of license certificate or misrepresentation of licensee's services	Warning Letter
801.55(e) Dual relationship: Provide MFT and parenting coordination services	Level 4 Probated Suspension
801.56(d) Dual relationship: Provide MFT and parenting facilitation services	Level 4 Probated Suspension
801.57(d) Dual relationship: Provide any service and custody evaluation	Level 4 Probated Suspension
801.57(e) Offer expert opinion related to child custody	Level 2/3 Suspension
801.57(f) Failure to inform client and proper informed consent	Level 5 Reprimand

801.57(g) Associate must not conduct child custody or adoption evaluations	Level 4 Probated Suspension
801.58(d) Required training for technology-assisted services	Level 5 Reprimand
801.58(h) Failure to inform client and proper informed consent	Level 5 Reprimand
801.58(i) Meet legal requirements of health information privacy and security	Level 4 Probated Suspension
801.143(b) Supervisor may not be employed by supervisee	Level 5 Reprimand
801.143(c) Supervisor may not be related to supervisee	Level 5 Reprimand
801.143(d) Supervisor must timely process and maintain Associate's file	Conditional Letter of Agreement
801.143(e) Supervisor must submit timely written notice when supervision ends	Warning Letter
801.143(f)(1) Supervisor must ensure Associate adheres to all laws and rules	Warning Letter
801.143(f)(2) Supervisor/Associate dual relationship	Level 5 Reprimand
801.143(f)(4) Supervisor must implement Associate's written remediation plan	Level 5 Reprimand
801.143(f)(5) Supervisor must timely submit accurate experience documents	Level 5 Reprimand
801.143(i) Supervisor fails to renew and continues to represent as a supervisor	Level 5 Reprimand
801.143(j) Supervisor with status other than "current, active" or after supervisor status is removed and continues to supervise	Level 4 Probated Suspension
801.143(k) Disciplined supervisor must inform all Associates of council action, refund fees, and assist Associates to find alternate supervision	Level 5 Reprimand
801.143(l) Supervise without being currently approved supervisor	Level 4 Probated Suspension



Figure: 22 TAC §885.1(b)

<u>Fees</u>	<u>Total Fee</u>	<u>Base</u>	<u>Texas.gov</u>	<u>OPP</u>	<u>eStrategy</u>
<b><u>APPLICATION FEES</u></b>					
<b>Social Workers</b>					
LBSW or LMSW Application	\$ 109.00	\$ 100.00	\$ 4.00	\$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	\$ 129.00	\$ 120.00	\$ 4.00	\$ 5.00	
Upgrade from LBSW to LMSW	\$ 20.00	\$ 20.00			
Upgrade from LMSW to LMSW-AP/LCSW	\$ 20.00	\$ 20.00			
Independent Practice Recognition	\$ 20.00	\$ 20.00			
Supervisor Status Application	\$ 50.00	\$ 50.00			
Temporary License Application	\$ 30.00	\$ 30.00			
<b>Marriage and Family Therapists</b>					
Initial LMFT Associate Application	\$ 69.00	\$ 60.00	\$ 4.00	\$ 5.00	
Upgrade from LMFT Associate to LMFT	\$ 90.00	\$ 90.00			
LMFT by Endorsement Application	\$ 161.00	\$ 150.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 50.00	\$ 50.00			
<b>Professional Counselors</b>					
LPC Associate/LPC/Provisional License Application	\$ 221.00	\$ 210.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 50.00	\$ 50.00			
Art Therapy Designation	\$ 20.00	\$ 20.00			
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>					
LPA Application	\$ 325.00	\$ 320.00		\$ 5.00	
LP Application	\$ 450.00	\$ 445.00		\$ 5.00	
LP License Issuance Fee	\$ 381.00	\$ 381.00			
LSSP Application	\$ 280.00	\$ 275.00		\$ 5.00	
Temporary License Application	\$ 100.00	\$ 100.00			
<b><u>RENEWAL FEES</u></b>					

Figure: 22 TAC §885.1(b)

<b>Social Workers</b>										
LBSW/LMSW Renewal										
	\$	141.00	\$	135.00	\$	4.00	\$	2.00		
LMSW-AP/LCSW Renewal										
	\$	163.00	\$	155.00	\$	6.00	\$	2.00		
Additional Renewal Fee for Independent Practice Recognition										
	\$	20.00	\$	20.00						
Additional Renewal Fee for Supervisor Status										
	\$	50.00	\$	50.00						
<b>Marriage and Family Therapists</b>										
LMFT/LMFT Associate Renewal										
	\$	141.00	\$	135.00	\$	4.00	\$	2.00		
Additional Renewal Fee for Supervisor Status										
	\$	50.00	\$	50.00						
LMFT Associate Extension										
	\$	136.00	\$	135.00	\$	4.00	\$	2.00		
<b>Professional Counselors</b>										
LPC Renewal										
	\$	141.00	\$	135.00	\$	4.00	\$	2.00		
Additional Renewal Fee for Supervisor Status										
	\$	50.00	\$	50.00						
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>										
LPA Renewal										
	\$	238.00	\$	230.00	\$	6.00	\$	2.00		
LP Renewal										
	\$	424.00	\$	412.00	\$	10.00	\$	2.00		
LSSP Renewal										
	\$	141.00	\$	135.00	\$	4.00	\$	2.00		
Over 70 Renewal - Applicable only to licensees who turned 70 by 8/31/2020										
	\$	26.00	\$	20.00	\$	4.00	\$	2.00		
Additional Renewal Fee for HSP Designation										
	\$	40.00	\$	40.00						
<b>EXAMINATION FEES</b>										
<b>Social Workers</b>										
Jurisprudence Exam										
	\$	39.00			\$	5.00			\$	34.00
<b>Marriage and Family Therapists</b>										
Jurisprudence Exam										
	\$	39.00			\$	5.00			\$	34.00
<b>Professional Counselors</b>										

Figure: 22 TAC §885.1(b)

Jurisprudence Exam	\$	39.00		\$	5.00		\$	34.00
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>								
Jurisprudence Exam	\$	39.00		\$	5.00		\$	34.00
<b><u>MISCELLANEOUS FEES</u></b>								
Duplicate Renewal Permit or License	\$	10.00						
Written Verification of Licensure	\$	10.00						
Written State to State Verification of Licensure	\$	50.00						
Mailing List	\$	10.00						
Returned Check Fee	\$	25.00						
Criminal History Evaluation	\$	150.00						
Reinstatement of License	\$	500.00						
Request for Inactive Status	\$	106.00	\$ 100.00	\$	4.00	\$ 2.00		
Inactive Status Renewal (biennial)	\$	106.00	\$ 100.00	\$	4.00	\$ 2.00		
Request to Reactivate License from Inactive Status	equal to current renewal fee							
Late fee for license expired 90 days or less	equal to 1.5 times the base renewal fee							
Late fee for license expired more than 90 days, but less than one year	equal to 2 times the base renewal fee							



## Texas Animal Health Commission

### Administrative Penalty Policy

Effective Date: June 29, 2020

#### Penalty Policy

This penalty policy is established by the Texas Animal Health Commission pursuant to the Texas Agriculture Code, §161.148. This policy describes the specific ranges of penalties and sanctions that apply to specific alleged violations of the statutes and rules enforced by the Texas Animal Health Commission (hereinafter "TAHC" or "the Commission"). This policy also presents the criteria that are considered by the Commission's legal and compliance staff in determining the amount of an administrative penalty or the magnitude of a sanction to be pursued.

#### I. Content of the Penalty Policy

This policy contains a brief description of each individual violation that may be committed, a citation to the statute and rule provision for each violation, and a range of penalties and/or sanctions applicable to each violation. The violations are organized into levels, which denote the relative seriousness of the offenses. A range of penalties and sanctions is presented for each level of violation and organized by table. Specifically, a range is presented for the first, second, and third and subsequent occurrence of each class of violation. For purposes of this policy, a previous complaint alleging a violation of the statute or rules is counted as a "violation" only if it resulted in a formal disciplinary action by the Commission: an Agreed Order, a Final Order, Suspension or Revocation.

The administrative penalty amounts presented for each level of violation will be pursued on a "per violation" basis. In other words, if a Respondent commits three violations of the same class, he will be subject to a maximum penalty of three times the highest dollar amount specified in the range.

Where both a penalty and a sanction are provided, a connector of "and/or" indicates that the Commission has discretion to pursue only a penalty, only a sanction, or both a penalty and a sanction.

#### II. Statutes and Rules Referenced in the Penalty Policy

This penalty policy conforms with the statutes and rules currently in effect on the date the policy is published. The policy will be revised periodically to reflect changes in statutes and rules. The majority of the violations referenced in the policy will arise from the statute and rules specific to that program. The policy also contains some references to violations arising under TAHC's enabling statute, Chapter 161 of the Agriculture Code, and the rules attendant to that statute, Title 4 Texas Administrative Code, Chapters 31-60.

While this policy is intended to present a fairly comprehensive list of the violations, by section, that may be committed under the current statutes and rules, the policy does not in any way restrict or limit the Commission's authority to pursue violations that may have been omitted from the policy.

#### III. Applicability of the Penalty Policy

The purpose of the penalty policy is to establish a structure within which TAHC's legal and compliance staff will make decisions about the relief to be sought in their cases. The policy is not binding upon the Commission and Executive Director when acting as the final decision-makers in contested cases. The Commission and Executive Director are bound only by the limits of the law, specifically, Chapter 161 of the Texas Agriculture Code and the individual program statutes administered by TAHC.

TAHC's legal and compliance staff are generally expected to seek penalties and sanctions that are within the administrative penalty levels and ranges presented in this policy. Pursuit of a penalty or sanction outside the stated range is permitted only with the express approval of the Commission's General Counsel, when exceptional circumstances warrant a departure from the policy.

#### IV. Factors to be Considered by the Commission

In determining the amount of a proposed administrative penalty or the degree of a proposed sanction to be assessed within the administrative penalty levels and ranges presented, the Commission will consider the following factors:

- (1) The seriousness of the violation, including the nature, circumstances, extent and gravity of prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public.
- (2) Whether the violation was willful or intentional.
- (3) The economic harm to property or the environments caused by the violation.
- (4) The history of previous violations.
- (5) The amount necessary to deter future violations.
- (6) Efforts to correct the violation.
- (7) Any other matter that justice may require.

#### V. Administrative Penalty Levels and Ranges

**Figure 1: Administrative Penalty Levels and Ranges**

<b>Level 1 Penalties (L1)</b>	
1 <sup>st</sup> violation	Warning to \$150
2 <sup>nd</sup> violation	\$150 - \$300
3 <sup>rd</sup> & subsequent violations	\$300 - \$ 600 and/or suspension or revocation

<b>Level 2 Penalties (L2)</b>	
1 <sup>st</sup> violation	\$150 - \$300
2 <sup>nd</sup> violation	\$300 - \$600 and/or suspension or revocation
3 <sup>rd</sup> & subsequent violations	\$600- \$1,000 and/or suspension or revocation

<b>Level 3 Penalties (L3)</b>	
1 <sup>st</sup> violation	\$300 - \$600 and/or suspension or revocation
2 <sup>nd</sup> violation	\$600 - \$900 and/or suspension or revocation
3 <sup>rd</sup> & subsequent violations	\$1,000 and/or suspension or revocation

VI. Violations

**Figure 2: Violations**

<b>Violation Description</b>	<b>Texas Statute or Rule</b>	<b>Penalty Level</b>
<b>Chapter 31-Anthrax</b>		
Failure to prepare anthrax sample.	4 TAC 31.1	L2
Failure to maintain records	4 TAC 31.1	L2
Failure to maintain complete records	4 TAC 31.1	L1
Failure to comply with quarantine requirements	4 TAC 31.2	L1
Failure to properly dispose of animals that have died from anthrax	4 TAC 31.3	L2
<b>Chapter 34-Veterinary Biologics</b>		
Failure to obtain Executive Director approval prior to importing a veterinary biologic for sale, use, or distribution within the state.	4 TAC 34.2	L3
<b>Chapter 35- Brucellosis</b>		
Failure to comply with general brucellosis requirements - cattle	4 TAC 35.2	L2
Failure to collect blood sample	4 TAC 35.2(f)	L1
Failure to comply with identification requirements	4 TAC 35.2(q)	L1
Failure to maintain records	4 TAC 35.2(u)	L2
Failure to maintain complete records	4 TAC 35.2(u)	L1
Failure to comply with entry, movement or change of ownership requirements.	4 TAC 35.4	L1
Failure to dispose of equine brucellosis reactors	4 TAC 35.7	L3
Unauthorized collection of blood samples	4 TAC 35.43	L3
Failure to report test results	4 TAC 35.43	L2
Failure to report test results within 48 hours	4 TAC 35.43	L1
Failure to comply with identification or movement requirements for infected or exposed swine	4 TAC 35.44	L3
Failure to comply with procedures for handling infected, adjacent and high risk herds of swine	4 TAC 35.45	L3
Failure to comply with plans for eradicating brucellosis from infected swine herds	4 TAC 35.46	L2
Failure to provide assistance	4 TAC 35.47	L1
Failure to comply with conditions of validation or revalidation of swine herds	4 TAC 35.48	L1
Failure to comply with general brucellosis requirements - goats	4 TAC 35.61	L2
Failure to comply with general brucellosis requirements - cervidae	4 TAC 35.81	L2
<b>Chapter 37 Screwworms</b>		
Failure to comply with control and eradication requirements	4 TAC 37.1	L3
<b>Chapter 38 Trichomoniasis</b>		
Failure to comply with general requirements	4 TAC 38.2	L2
Failure to properly handle infected bull	4 TAC 38.2(d)(3)	L3
Failure to comply with identification requirements	4 TAC 38.2(b) or (d)	L1
Failure to comply with infected herd requirements	4 TAC 38.3	L3
Failure to comply with certified veterinary practitioner requirements	4 TAC 38.4	L2
Failure to comply with official laboratories requirements	4 TAC 38.5	L1
Failure to report test results	4 TAC 38.5	L2
Failure to report test results within 48 hours	4 TAC 38.5	L1
Failure to comply with official trichomoniasis tests requirements	4 TAC 38.6	L2
Failure to comply with herd certification program-breeding bulls	4 TAC 38.8	L2

<b>Chapter 39 Scabies and Mange Mites</b>		
Failure to properly treat infested or exposed livestock	4 TAC 39.2	L3
Failure to maintain records	4 TAC 39.2	L2
Failure to maintain complete records	4 TAC 39.2	L1
Failure to properly handle treated livestock	4 TAC 39.2	L2
Failure to comply with quarantine requirements	4 TAC 39.3	L3
Failure to comply with duties of owners and caretakers of livestock infested with or exposed to scabies or mange mites	4 TAC 39.4	L2
Failure to properly handle infested or exposed livestock at shows, fairs, or exhibitions	4 TAC 39.5	L1
Failure to comply with permitted dips for scabies and mange mite eradication requirements	4 TAC 39.6	L2
<b>Chapter 40 Chronic Wasting Disease</b>		
Failure to comply with general requirements	4 TAC 40.2	L2
Failure to comply with herd status requirements	4 TAC 40.2	L2
Failure to comply with carcass movement restrictions	4 TAC 40.4	L2
Failure to comply with surveillance and movement requirements for exotic CWD susceptible species	4 TAC 40.5	L2
Failure to comply with identification requirements	4 TAC 40.5(c)	L1
Failure to maintain records	4 TAC 40.5	L2
Failure to maintain complete records	4 TAC 40.5	L1
Failure to comply with CWD movement restriction zones requirements	4 TAC 40.6	L3
Failure to comply with Executive Director declaration of a CWD movement restriction zone requirements	4 TAC 40.7	L3
<b>Chapter 41 Fever Ticks</b>		
Failure to comply with livestock movement requirements	4 TAC 41.5	L2
Failure to comply with livestock movement restrictions	4 TAC 41.6	L3
Failure to comply with identification requirements	4 TAC 41.6(b) or 41.9(e-f)	L1
Failure to comply with movement restrictions on hides or carcasses	4 TAC 41.7	L2
Failure to comply with dipping, treatment, and vaccination requirements	4 TAC 41.8	L2
Failure to comply with vacation or inspection of a premise requirements	4 TAC 41.9	L2
Failure to properly handle conveyances, materials, hay, feed and other commodities	4 TAC 41.10	L2
Failure to comply with requirements for cattle or products imported from Mexico	4 TAC 41.12	L2
<b>Chapter 43 Tuberculosis</b>		
Failure to comply with tuberculosis general requirements	4 TAC 43.2	L2
Failure to comply with movement restrictions	4 TAC 43.2(b)	L3
Failure to maintain records	4 TAC 43.2(h)	L2
Failure to maintain complete records	4 TAC 43.2(h)	L1
Failure to comply with identification requirements	4 TAC 43.2(e) or (n)	L1
Failure to comply with approved feedyards or approved pens requirements	4 TAC 43.3	L3
Failure to comply with requirements for increased risk herds or animals	4 TAC 43.4	L3
Failure to comply with dairy calf ranch requirements	4 TAC 43.6	L2
Failure to comply with authorized calf ranch or authorized grower facility requirements	4 TAC 43.7	L3
Failure to maintain records	4 TAC 43.6 or 43.7	L2
Failure to maintain complete records	4 TAC 43.6 or 43.7	L1
Failure to comply with goat accredited herd plan requirements	4 TAC 43.11	L1
Failure to comply with cervidae general requirements	4 TAC 43.21	L2



Failure to comply with cervidae herd status plan requirements	4 TAC 43.22	L1
Failure to comply with movement restriction zone testing requirements	4 TAC 43.31	L2
<b>Chapter 44 Bovine Viral Diarrhea</b>		
Failure to comply with general requirements	4 TAC 44.2(a)	L1
<b>Chapter 45 Reportable Diseases</b>		
Failure to report reportable disease	4 TAC 45.2	L3
Failure to report reportable disease within 24 hours	4 TAC 45.2	L1
Failure to report required information	4 TAC 45.2	L2
Failure to report complete information	4 TAC 45.2	L1
<b>Chapter 47 Authorized Personnel</b>		
Failure to comply with authorized personnel requirements- unauthorized practice	4 TAC 47.2	L2
Failure to comply with training requirements	4 TAC 47.3	L2
Failure to comply with standards for authorized personnel	4 TAC 47.4	L2
Failure to comply with recordkeeping requirements	4 TAC 47.5	L2
Failure to maintain official documents	4 TAC 47.5	L2
Failure to maintain complete official documents	4 TAC 47.5	L1
Violation that is grounds for suspension or revocation	4 TAC 47.6	L3
Failure to comply with brucellosis program general requirements	4 TAC 47.12	L2
Failure to comply with brucellosis testing requirements	4 TAC 47.13	L2
Failure to comply with brucellosis calfhoo vaccination requirements	4 TAC 47.14	L2
Violation that is grounds for suspension or revocation of brucellosis authorized personnel status	4 TAC 47.15	L3
Failure to comply with CWD authorized personnel general requirements	4 TAC 47.22	L2
Failure to comply with training requirements	4 TAC 47.23	L1
Violation that is grounds for suspension or revocation	4 TAC 47.24	L3
<b>Chapter 49 Equine</b>		
Failure to comply with equine infectious anemia requirements	4 TAC 49.1	L2
Failure to comply with quarantine requirements	4 TAC 49.1 (g) or (i)	L3
Failure to properly handle reactors or exposed equine	4 TAC 49.1 (d), (f), (h) or (j)	L2
Failure to comply with change of ownership requirements	4 TAC 49.1(l)	L2
Failure to comply with testing requirements	4 TAC 49.1(n - q)	L1
Failure to comply with testing requirements-racetracks	4 TAC 49.1(r) or 49.5(d)	L2
Failure to maintain records	4 TAC 49.3(c-d)	L2
Failure to maintain complete records	4 TAC 49.3(c-d)	L1
Failure to comply with equine viral arteritis reporting or handling of infected equine requirements	4 TAC 49.4	L3
Failure to comply with piroplasmosis testing, Identification of infected equine requirements	4 TAC 49.5	L2
Failure to comply with piroplasmosis area or county test requirements	4 TAC 49.6	L2
<b>Chapter 50 Animal Disease Traceability</b>		
Failure to comply with approved tagging site requirements	4 TAC 50.2	L2
Failure to maintain records	4 TAC 50.2	L2
Failure to maintain complete records	4 TAC 50.2	L1
Failure to comply with cattle identification requirements	4 TAC 50.3	L1
<b>Chapter 51 Entry Requirements</b>		
Failure to comply with general requirements	4 TAC 51.2	L1
Failure to comply with entry requirements for shows, fairs or exhibitions	4 TAC 51.4	L1
Failure to comply with equine entry testing requirements-racetracks	4 TAC 51.4(b)(1)	L2
Failure to comply with movement of quarantined animal requirements	4 TAC 51.5	L3
Failure to comply with special requirements	4 TAC 51.6	L1
Failure to permit inspection or testing	4 TAC 51.6	L2

Failure to comply with all livestock -special requirements	4 TAC 51.7	L1
Failure to comply with all livestock special quarantine requirements	4 TAC 51.7(a) or (d)	L3
Failure to comply with cattle requirements	4 TAC 51.8	L1
Failure to comply with exotic livestock and fowl requirements	4 TAC 51.9	L1
Failure to comply with exotic livestock and fowl quarantine requirements	4 TAC 51.9(b)(1)	L3
Failure to comply with cervidae requirements	4 TAC 51.10	L1
Failure to comply with cervidae quarantine requirements	4 TAC 51.10	L3
Failure to comply with goat requirements	4 TAC 51.11	L1
Failure to comply with sheep requirements	4 TAC 51.12	L1
Failure to comply with equine requirements	4 TAC 51.13	L1
Failure to comply with swine requirements	4 TAC 51.14	L1
Failure to comply with poultry requirements	4 TAC 51.15	L1
Failure to comply with entry requirements by a dealer	4 TAC 51.2 - 51.15	L2
Failure to comply with quarantine requirements by a dealer	4 TAC 51.2 - 51.15	L3
<b>Chapter 53 Market Regulations</b>		
Failure to comply with facilities requirements	4 TAC 53.1(a-c)	L1
Failure to comply with release of animal requirements	4 TAC 53.2	L2
Failure to comply with quarantine or hold order requirements	4 TAC 53.3	L3
Failure to comply with market identification requirements	4 TAC 53.4	L1
Failure to maintain records	4 TAC 53.5	L3
Failure to maintain complete records	4 TAC 53.5	L2
<b>Chapter 54 Domestic and Exotic Fowl Registration</b>		
Failure to comply with registration requirements	4 TAC 54.2	L2
Failure to comply with program requirements	4 TAC 54.5	L2
Failure to permit inspection	4 TAC 54.5(b)	L2
Failure to report reportable disease	4 TAC 54.5(c)(2)	L3
Failure to timely report reportable disease	4 TAC 54.5(c)(2)	L3
Failure to comply with recordkeeping requirements	4 TAC 54.6	L2
Failure to maintain records	4 TAC 54.6 or 54.9	L2
Failure to maintain complete records	4 TAC 54.6 or 54.9	L1
Failure to permit inspection	4 TAC 54.6, 54.7, 54.9	L2
Failure to comply with movement and testing requirements	4 TAC 54.7	L2
Failure to comply with quarantine or hold order requirements	4 TAC 54.7(a)	L3
Failure to comply with live bird market system requirements	4 TAC 54.9	L2
<b>Chapter 55 Swine</b>		
Failure to comply with testing breeding swine prior to sale or change of ownership requirements	4 TAC 55.1	L1
Failure to comply with vaccine restrictions	4 TAC 55.2	L3
Failure to comply with feeding of garbage requirements	4 TAC 55.3	L1
Failure to comply with livestock markets handling swine requirements	4 TAC 55.4	L2
Failure to comply with identification requirements	4 TAC 55.4, 55.5 or 55.9	L1
Failure to comply with pseudorabies requirements	4 TAC 55.5	L2
Failure to comply with quarantine or hold order requirements	4 TAC 55.5(e)	L3
Failure to comply with slaughter plant requirements	4 TAC 55.7	L2
Failure to comply with feral swine requirements	4 TAC 55.9	L1
Failure to maintain records	4 TAC 55.8 or 55.9	L2
Failure to maintain complete records	4 TAC 55.8 or 55.9	L1
Failure to comply with feral swine requirements-authorized holding facility or hunting preserve	4 TAC 55.9(c) or (d)	L2
<b>Chapter 57 Poultry</b>		
Failure to comply with general requirements	4 TAC 57.11	L1
Failure to comply with quarantine requirements	4 TAC 57.11	L3
Failure to maintain records	4 TAC 57.12	L2

Failure to maintain complete records	4 TAC 57.12	L1
Failure to permit inspection	4 TAC 57.12	L2
<b>Chapter 58 Emergency Response and Management</b>		
Failure to comply with disease control requirements	4 TAC 58.2	L1
Failure to comply with general requirements	4 TAC 58.3	L3
Failure to maintain records	4 TAC 58.3	L2
Failure to maintain complete records	4 TAC 58.3	L1
Failure to permit inspection	4 TAC 58.3	L2
Failure to comply with establishment of quarantine requirements	4 TAC 58.11	L2
Failure to comply with livestock movement restriction requirements	4 TAC 58.21	L3
Failure to comply with disposal of diseased or exposed livestock requirements	4 TAC 58.31	L2
<b>Chapter 59 General Practices and Procedures</b>		
Failure to comply with Executive Order of a high risk disease movement restriction zone requirement	4 TAC 59.11	L3
Failure to comply with carcass disposal requirements	4 TAC 59.12	L2
<b>Chapter 60 Scrapie</b>		
Failure to comply with identification requirements	4 TAC 60.2	L1
Failure to maintain records	4 TAC 60.2	L2
Failure to maintain complete records	4 TAC 60.2	L1
Failure to comply with monitoring and surveillance requirements	4 TAC 60.4	L2
Failure to comply with movement restrictions or quarantine requirements	4 TAC 60.4 or 60.5	L3
Failure to comply with management of affected and source flocks, and exposed, high-risk, and suspect animal requirements	4 TAC 60.5	L2
Failure to comply with requirements for flock plans, post-exposure, pilot project flock plans and monitoring flock plans	4 TAC 60.6	L2
Failure to comply with exhibition requirements	4 TAC 60.7	L1
<b>Texas Agriculture Code Chapter 161 General Disease and Pest Control</b>		
Document to accompany shipment	161.006	L1
Disposal of diseased or exposed livestock or fowl	161.0415	L2
Sale and distribution of veterinary biologics	161.042	L3
Animal identification program	161.056	L1
Persons or laboratories performing equine infectious anemia tests.	161.0602	L2

TRD-202002535  
Mary Luedeker  
General Counsel  
Texas Animal Health Commission  
Filed: June 25, 2020

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### Office of the Attorney General

#### Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Texas Rain Holding Company, Inc.*; Cause No. D-1-GN-18-002749 in the 459th Judicial District Court, Travis County, Texas.

Background: Defendant Texas Rain Holding Company, Inc. operated a wastewater treatment plant near Lake Tawakoni in Hunt County, Texas, between 2014 and 2018. The State initiated the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ") against Defendant for unauthorized sewage discharges from the treatment plant and lift stations, in violation of Chapter 26 of the Texas Water Code and a TCEQ issued administrative order. When complaints increased and conditions at the treatment plant continued to deteriorate, the TCEQ appointed a temporary manager for the wastewater treatment plant in December 2018.

Proposed Settlement: The parties propose an Agreed Final Judgment which awards the State against Defendant \$143,000 in civil penalties, \$24,850 in unpaid administrative penalties, and \$30,000 in attorney's fees and costs.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, email: Ekaterina.DeAngelo@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202002531  
Lesley French  
General Counsel  
Office of the Attorney General  
Filed: June 25, 2020

## Comptroller of Public Accounts

### Notice of Coastal Protection Fee Reinstatement

The Comptroller of Public Accounts, administering agency for the collection of the Coastal Protection Fee, has received certification from the Commissioner of the General Land Office that the balance in the Coastal Protection Fund has fallen below the minimum amount allowed by law.

Pursuant to the Natural Resources Code, §40.155 and §40.156, the comptroller hereby provides notice of the reinstatement of the coastal protection fee effective August 1, 2020.

The fee shall be collected on crude oil transferred to or from a marine terminal on or after August 1, 2020, until notice of the suspension of the fee is published in the *Texas Register*.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found to be within the agency's authority to publish.

TRD-202002678  
William Hamner  
Special Counsel for Tax Administration  
Comptroller of Public Accounts  
Filed: June 30, 2020

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/06/20 - 07/12/20 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/06/20 - 07/12/20 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202002676

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: June 30, 2020

## Court of Criminal Appeals

### Availability of Grant Funds

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of developing a training program to educate and inform judges and their staffs on mental health care resources available in the State of Texas. Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act (Article IX, Section 18.95).

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to statewide professional associations and other entities whose purposes include providing continuing legal education, courses, and programs for judges and court staff, prosecuting attorneys, and criminal defense attorneys on mental health issues and pre-trial diversion. Judicial education shall include information for judges and staff on mental health care resources available in the court's geographic region. Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act (Article IV, Court of Criminal Appeals, Strategy B.1.1, Judicial Education, Rider 7).

The grant period is September 1, 2020, through August 31, 2021. The deadline for applications is August 15, 2020. Applicants may request application instructions by contacting the Judicial Education Section of the Texas Court of Criminal Appeals: 201 West 14th Street, Suite 103, Austin, Texas 78701, (512) 475-2312, [judicialeducation@txcourts.gov](mailto:judicialeducation@txcourts.gov).

TRD-202002603  
Megan Molleur  
Grant Attorney & Administrator  
Court of Criminal Appeals  
Filed: June 29, 2020

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 10, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **August 10, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2020-0346-PWS-E; IDENTIFIER: RN101247575; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$787; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ARLANXEO USA LLC; DOCKET NUMBER: 2020-0119-AIR-E; IDENTIFIER: RN100825363; LOCATION: West Orange, Orange County; TYPE OF FACILITY: synthetic rubber manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 19663, Special Conditions Number 1, Federal Operating Permit Number O2280, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$198,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$79,200; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Ash Grove Cement Company; DOCKET NUMBER: 2020-0415-AIR-E; IDENTIFIER: RN100225978; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: cement plant; RULES VIOLATED: 30 TAC §101.201(c) and §122.143(4), Federal Operating Permit (FOP) Number O1054, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 1, Special Conditions Number 1, FOP Number O1054, GTC and STC Number 12, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$9,393; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,757; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Beechwood Water Supply Corporation; DOCKET NUMBER: 2019-0951-MWD-E; IDENTIFIER: RN101610129; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.36(h) and (j)(2) and §305.125(1) and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011423001, Operational Requirements Number 4, by failing to install adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number

WQ0011423001, Effluent Limitations and Monitoring Requirements Number 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011423001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; 30 TAC §305.125(1) and TPDES Permit Number WQ0011423001, Sludge Provisions, Section IV, C, by failing to submit a complete annual sludge report to the TCEQ Beaumont Regional Office and the Water Quality Compliance Monitoring Team of the Enforcement Division by September 30th of each year; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011423001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1), (5), and (11)(C) and §319.7(a) and TPDES Permit Number WQ0011423001, Monitoring and Reporting Requirements Number 3.c.ii, by failing to properly record monitoring activities during effluent sampling; 30 TAC §305.125(1) and §319.11(c) and TPDES Permit Number WQ0011423001, Monitoring and Reporting Requirements Number 2.a, by failing to perform measurements, tests, and calculations in a representative manner; and 30 TAC §305.125(1) and (19) and §319.1 and TPDES Permit Number WQ0011423001, Permit Conditions Number 1.a, by failing to submit accurate discharge monitoring reports; PENALTY: \$26,861; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: BMC West, LLC; DOCKET NUMBER: 2020-0421-PST-E; IDENTIFIER: RN100608793; LOCATION: Austin, Travis County; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.8(c)(4) and (5)(A)(vii) and (B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of regulated substance into the USTs; PENALTY: \$3,420; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: City of Driscoll; DOCKET NUMBER: 2018-1440-MWD-E; IDENTIFIER: RN101612810; LOCATION: Driscoll, Nueces County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011541001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notification reports for effluent violations which deviate from the permitted effluent limitation by more than 40%; 30 TAC §305.125(1) and (5), and §317.3(b)(3) and (e)(5) and TPDES Permit Number WQ0011541001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and §317.4(b)(4) and TPDES Permit Number WQ0011541001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and §317.4(b)(4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011541001, Permit Conditions Number 2.g and Operational Requirements Number 1, by failing to prevent an unauthorized discharge of wastewater or any other waste; 30 TAC §305.125(1) and (11)(B) and §319.7(c) and TPDES Permit Number

WQ0011541001, Monitoring and Reporting Requirements Numbers 3.b and 3.c.vi, by failing to retain monitoring and reporting records at the facility or make them readily available for review by a TCEQ representative; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011541001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011541001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; PENALTY: \$21,849; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$17,696; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Double Oak Construction, Incorporated; DOCKET NUMBER: 2019-1513-WQ-E; IDENTIFIER: RN110478583; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC, §305.125(1), TWC, §26.121(a)(2), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15069R, Part III, Sections A, G.1, and G.4, by failing to prepare and implement a Stormwater Pollution Prevention Plan, which resulted in an unauthorized discharge; and 30 TAC §305.125(1) and TPDES General Permit Number TXR15069R, Part II, E.8.(g) and (h), by failing to correctly identify the receiving waters and classified segment number for each water body that receives discharges from the regulated construction activity on the Notice of Intent; PENALTY: \$10,925; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (254) 751-0335.

(8) COMPANY: ESPINOZA STONE, INCORPORATED; DOCKET NUMBER: 2020-0134-EAQ-E; IDENTIFIER: RN110880325; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: commercial site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$15,000; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: ETC Texas Pipeline, Ltd.; DOCKET NUMBER: 2020-0384-AIR-E; IDENTIFIER: RN100239698; LOCATION: Cayanosa, Pecos County; TYPE OF FACILITY: natural gas treating plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2351A, Special Conditions Numbers 18 (effective January 25th, 2019) and 19 (effective March 3rd, 2011), Federal Operating Permit (FOP) Number O3187, General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 7 and 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Tail Gas Incinerator firebox exit temperature at or greater than 1,000 degrees Fahrenheit; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3187, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$24,050; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: G-M Water Supply Corporation; DOCKET NUMBER: 2020-0414-PWS-E; IDENTIFIER: RN101261691; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressures and water outages; PENALTY: \$1,875; ENFORCEMENT COORDINATOR:

Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Midland City Center LLC; DOCKET NUMBER: 2020-0391-PST-E; IDENTIFIER: RN102379278; LOCATION: Laredo, Webb County; TYPE OF FACILITY: out-of-service underground storage tank facility; RULE VIOLATED: 30 TAC §334.54(d)(2)(B), by failing to ensure that any residue from stored regulated substances which remain in the temporarily out-of-service underground storage tanks did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; PENALTY: \$3,562; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: NAPCO Precast, LLC; DOCKET NUMBER: 2019-1657-WQ-E; IDENTIFIER: RN105451330; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG111534, Part III. Permit Requirements, Section A.1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (5) and §319.5(b) and TPDES General Permit Number TXR111534, Part III. Permit Requirements, Section A.1, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$5,052; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2020-0426-MWD-E; IDENTIFIER: RN106946486; LOCATION: Cleveland, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015192001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: REGAL OIL INCORPORATED dba Star Stop Food Mart 17; DOCKET NUMBER: 2020-0087-PST-E; IDENTIFIER: RN102391844; LOCATION: Junction, Kimble County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$11,275; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,510; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: Sequa Corporation; DOCKET NUMBER: 2019-1733-IWD-E; IDENTIFIER: RN100217926; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0002160000, Outfall Number 001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0002160000, Outfall Number 201, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number

WQ0002160000, Chronic Biomonitoring Requirements: Marine, Outfall Number 001, by failing to properly analyze effluent samples according to the permit; 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0002160000, 24-Hour Acute Biomonitoring Requirements: Marine, Outfall Number 001, by failing to collect and analyze effluent samples at the intervals specified in the permit; 30 TAC §305.125(1) and TPDES Permit Number WQ0002160000, Other Requirements Number 8.A, by failing to submit a Whole Effluent Toxicity (WET) Compliance Schedule Plan; and 30 TAC §305.125(1) and TPDES Permit Number WQ0002160000, Other Requirements Number 8.E, by failing to submit quarterly progress reports for attainment of the WET Limitations for Outfall Number 001; PENALTY: \$37,116; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: SOUTHEAST OIL COMPANY dba Sealy Shell; DOCKET NUMBER: 2020-0227-PST-E; IDENTIFIER: RN104502943; LOCATION: Sealy, Austin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1) and (2)(A) and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill and overflow prevention devices are maintained in good operating condition; PENALTY: \$5,397; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (210) 490-3096.

(17) COMPANY: T.O.F.S., LLC; DOCKET NUMBER: 2020-0106-SLG-E; IDENTIFIER: RN106901150; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: registered sludge transporter business; RULES VIOLATED: 30 TAC §312.142(c), by failing to maintain a copy of the sludge transporter registration in a vehicle used to collect or transport waste; 30 TAC §312.144(a), by failing to prominently mark vehicles used to collect and transport wastes; 30 TAC §312.144(f), by failing to prominently mark all discharge valves and ports on all closed vehicles, tanks, or containers used to transport liquid waste; 30 TAC §312.145(a), by failing to record all required information on trip tickets; and 30 TAC §312.145(b)(4), by failing to submit to the executive director an annual summary of sludge transport activities; PENALTY: \$8,188; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: Tarleton State University (PCW Number 1); DOCKET NUMBER: 2019-0680-AGR-E; IDENTIFIER: RN105915730; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §305.125(1) and §321.31(a), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0004920000, Part VI.A, by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state; 30 TAC §305.125(1), §321.31(a) and 321.40(f), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0004920000, Parts VI.A. and IX.S, by failing to prevent land application when the ground is frozen or saturated or during rainfall events; and 30 TAC §305.125(1) and §321.42(j)(2) and TCEQ Permit Number WQ0004920000, Part IX.S, by failing to prohibit the delivery of manure, litter, or wastewater to an operator of a third-party field once the soil test phosphorus analysis shows a level equal to or greater than 200 parts per million, or after becoming aware that the third-party field operator is not following appropriate provisions and/or the contract; PENALTY: \$2,814; ENFORCEMENT COORDINATOR: Had

Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Thomas Watson Company, LLC; DOCKET NUMBER: 2020-0416-AIR-E; IDENTIFIER: RN109408955; LOCATION: Cuero, DeWitt County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance dust conditions; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$11,125; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: Tradesman, L.L.C.; DOCKET NUMBER: 2020-0386-EAQ-E; IDENTIFIER: RN102565314; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: backfilling quarry; RULES VIOLATED: 30 TAC §213.4(j) and Edwards Aquifer Pollution Plan Number 13-04021801, Standard Conditions Number 4, by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$938; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Victoria City Power LLC; DOCKET NUMBER: 2020-0408-AIR-E; IDENTIFIER: RN109785006; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: fossil fuel electric power generation plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3977, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: West End Marina, Incorporated; DOCKET NUMBER: 2019-1641-PST-E; IDENTIFIER: RN101910214; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.606, by failing to maintain required operator training certification records on-site and make them available for inspection upon request by agency personnel; and 30 TAC §§334.10(b)(2), 334.49(e)(1), and 334.54(e)(4)(A), by failing to assure that all underground storage tank recordkeeping requirements are met; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: ZIGZAG ENTERPRISE, LLC dba QUICK & EASY 3; DOCKET NUMBER: 2020-0009-PST-E; IDENTIFIER: RN101868651; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with an underground storage tank (UST) system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 30 days between each monitoring); PENALTY: \$8,459; ENFORCEMENT COORDINATOR: Carlos Molina, (512)



239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202002669

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 30, 2020



## Enforcement Orders

An agreed order was adopted regarding City of Cotulla, Docket No. 2019-0492-MSW-E on June 30, 2020, assessing \$3,125 in administrative penalties with \$625 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., Docket No. 2019-0497-OSS-E on June 30, 2020, assessing \$508 in administrative penalties with \$101 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Blum, Docket No. 2019-0708-MWD-E on June 30, 2020, assessing \$4,575 in administrative penalties with \$915 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Nacogdoches, Docket No. 2019-0864-PWS-E on June 30, 2020, assessing \$1,224 in administrative penalties with \$244 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Richland Springs, Docket No. 2019-0972-MLM-E on June 30, 2020, assessing \$512 in administrative penalties with \$102 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MAS Katy Islamic Center, a subsidiary of Muslim American Society, Houston, Docket No. 2019-1116-PWS-E on June 30, 2020, assessing \$3,300 in administrative penalties with \$660 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Muehlstein Investments, Inc. dba Lone Oak Grocery and Market, Docket No. 2019-1131-PST-E on June 30, 2020, assessing \$4,108 in administrative penalties with \$821 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Zuriya Business LLC dba Longview Food Mart, Docket No. 2019-1143-PST-E on June 30, 2020, assessing \$5,940 in administrative penalties with \$1,188 de-

ferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas Environmental, LLC, Docket No. 2019-1252-MWD-E on June 30, 2020, assessing \$1,375 in administrative penalties with \$275 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lamar Consolidated Independent School District, Docket No. 2019-1325-MWD-E on June 30, 2020, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2019-1394-PWS-E on June 30, 2020, assessing \$2,726 in administrative penalties with \$545 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gallier Enterprises, Inc. and United States Border Patrol, Docket No. 2019-1412-PST-E on June 30, 2020, assessing \$5,988 in administrative penalties with \$1,197 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Azteca Milling, L.P., Docket No. 2019-1432-AIR-E on June 30, 2020, assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2019-1503-PWS-E on June 30, 2020, assessing \$3,370 in administrative penalties with \$674 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Geopolymer Solutions LLC, Docket No. 2019-1576-AIR-E on June 30, 2020, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Valero Refining-Texas, L.P., Docket No. 2019-1594-AIR-E on June 30, 2020, assessing \$4,613 in administrative penalties with \$922 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ETC Texas Pipeline, Ltd., Docket No. 2019-1681-AIR-E on June 30, 2020, assessing \$267 in administrative penalties with \$53 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu,



Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Whitestone Business, Inc. dba Park N Sak II, Docket No. 2019-1682-PST-E on June 30, 2020, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Mission, Docket No. 2019-1707-MLM-E on June 30, 2020, assessing \$3,378 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TRI-CON, INC. dba Exxpress Mart 20, Docket No. 2019-1713-PST-E on June 30, 2020, assessing \$6,900 in administrative penalties with \$1,380 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grand Harbor Water Supply Corporation, Docket No. 2019-1724-PWS-E on June 30, 2020, assessing \$205 in administrative penalties with \$41 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SBM Farms, LLC, Docket No. 2019-1727-AIR-E on June 30, 2020, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Tahoka, Docket No. 2019-1740-PWS-E on June 30, 2020, assessing \$609 in administrative penalties with \$121 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Diamond Shamrock Refining Company, L.P., Docket No. 2019-1765-AIR-E on June 30, 2020, assessing \$4,950 in administrative penalties with \$990 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cody Lewis dba Deer Springs Water, Docket No. 2019-1768-PWS-E on June 30, 2020, assessing \$305 in administrative penalties with \$61 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lion Elastomers LLC, Docket No. 2019-1771-AIR-E on June 30, 2020, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, En-

forcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cagle Fishing & Rental Tools, Inc., Docket No. 2019-1776-MSW-E on June 30, 2020, assessing \$1,312 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AVENUE TEXACO DISTRIBUTOR, INC. dba Avenue Fuel Distributors, Docket No. 2019-1786-PST-E on June 30, 2020, assessing \$2,525 in administrative penalties with \$505 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Austin White Lime Company, Docket No. 2020-0006-AIR-E on June 30, 2020, assessing \$3,533 in administrative penalties with \$706 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bonham, Docket No. 2020-0053-MWD-E on June 30, 2020, assessing \$6,187 in administrative penalties with \$1,237 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oro Resources, LLC, Docket No. 2020-0158-AIR-E on June 30, 2020, assessing \$1,188 in administrative penalties with \$237 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BAILEY BARK MATERIALS, INC., Docket No. 2020-0192-MLM-E on June 30, 2020, assessing \$1,950 in administrative penalties with \$390 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202002692

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2020



#### Enforcement Orders

An agreed order was adopted regarding the Town of Addison, Docket No. 2015-0549-WR-E on July 1, 2020, assessing \$34,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nueces County Water Control and Improvement District No. 5, Docket No. 2015-1160-MWD-E on July 1, 2020, assessing \$131,625 in administrative penalties with \$115,545 deferred. Information concerning any aspect of this order

may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Bandera Shell LLC dba Bandera Stop, Docket No. 2018-0246-PST-E on July 1, 2020, assessing \$11,374 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Santek Environmental of Texas, LLC dba Polk County Landfill and Polk County dba Polk County Landfill, Docket No. 2018-0842-MSW-E on July 1, 2020, assessing \$23,065 in administrative penalties with \$4,613 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA, Docket No. 2018-1265-MLM-E on July 1, 2020, assessing \$7,567 in administrative penalties with \$1,513 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Kenneth Marriot, Docket No. 2018-1505-MSW-E on July 1, 2020, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding A A & R Business Investments Inc dba Quick Step N Save, Docket No. 2019-0064-PST-E on July 1, 2020, assessing \$4,800 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Port O'Connor Improvement District, Docket No. 2019-0210-MWD-E on July 1, 2020 assessing \$34,650 in administrative penalties with \$6,930 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Bastrop, Docket No. 2019-0221-MLM-E on July 1, 2020, assessing \$83,025 in administrative penalties with \$16,605 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Port Arthur, Docket No. 2019-0375-MSW-E on July 1, 2020, assessing \$49,087 in administrative penalties with \$9,817 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding E. I. du Pont de Nemours and Company, Docket No. 2019-0503-AIR-E on July 1, 2020, assessing \$11,000 in administrative penalties with \$2,200 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sunwest Grocery, LLC, Docket No. 2019-0722-PST-E on July 1, 2020, assessing \$10,526 in administrative penalties with \$2,105 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Saratoga Services, Inc., Docket No. 2019-0875-WQ-E on July 1, 2020, assessing \$8,375 in administrative penalties with \$1,675 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Federal Bureau of Prisons, Docket No. 2019-0956-WQ-E on July 1, 2020, assessing \$26,250 in administrative penalties with \$5,250 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOUTH CENTRAL WATER COMPANY, Docket No. 2019-1033-MWD-E on July 1, 2020, assessing \$14,500 in administrative penalties with \$2,900 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SANR, INC. dba China Market, Docket No. 2019-1052-PST-E on July 1, 2020, assessing \$9,625 in administrative penalties with \$1,925 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegebe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2019-1072-AIR-E on July 1, 2020, assessing \$35,363 in administrative penalties with \$7,072 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Howard Pierce & Sons Stone Co., LLC, Docket No. 2019-1120-WQ-E on July 1, 2020, assessing \$10,000 in administrative penalties with \$2,000 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brenntag Southwest, Inc., Docket No. 2019-1125-AIR-E on July 1, 2020, assessing \$18,689 in administrative penalties with \$3,737 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Union Carbide Corporation, Docket No. 2019-1136-AIR-E on July 1, 2020, assessing \$600,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stephen D. Mundine, Docket No. 2019-1140-WQ-E on July 1, 2020, assessing \$10,000 in administrative penalties with \$2,000 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Felix Energy Holdings II, LLC, Docket No. 2019-1189-AIR-E on July 1, 2020, assessing \$50,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2019-1240-AIR-E on July 1, 2020, assessing \$30,844 in administrative penalties with \$6,168 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Valero Refining-Texas, L.P., Docket No. 2019-1261-AIR-E on July 1, 2020, assessing \$10,350 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Exxon Mobil Corporation, Docket No. 2019-1306-AIR-E on July 1, 2020, assessing \$19,938 in administrative penalties with \$3,987 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2019-1396-PWS-E on July 1, 2020, assessing \$441 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WWF Operating Company, LLC, Docket No. 2019-1403-WQ-E on July 1, 2020, assessing \$4,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2019-1491-AIR-E on July 1, 2020, assessing \$12,488 in administrative penalties with \$2,497 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ygriega Environmental Services, LLC, Docket No. 2019-1532-AIR-E on July 1, 2020, assessing \$12,375 in administrative penalties with \$2,475 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Frio LaSalle Pipeline, LP, Docket No. 2019-1566-AIR-E on July 1, 2020, assessing \$7,876 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CITGO Refining and Chemicals Company L.P., Docket No. 2019-1571-AIR-E on July 1, 2020, assessing \$10,695 in administrative penalties with \$2,139 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAM RAYBURN WATER, INC., Docket No. 2019-1692-PWS-E on July 1, 2020, assessing \$277 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202002695

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2020



### Notice of Water Quality Application

The following notice was issued on June 15, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

### INFORMATION SECTION

**Blue Sky Farms, LLC** for a Minor Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003077000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to reconfigure the land management units (LMUs) without changing the total land application area of 682 acres. LMU #7 - 76 acres, LMU #8 - 50 acres and 5 acres from LMU #6 were combined to form LMU #7 - 131 acres. LMU #3- 60 acres, LMU #4 - 42 acres and LMU #9 - 25 acres were reconfigured with the resulting acres: LMU #3 - 41 acres, LMU #4 - 58 acres and LMU #9 - 28 acres. The design calculations for the retention control structures ((RCSs) RCS #1 and #2) were revised due to the removal of previously proposed freestall, dry cow pen, shade areas and manure storage area from the drainage area of the RCSs which decreased the required capacity of RCS #1 from 41.28 ac-ft to 41.15 ac-ft and RCS #2 from 42.09 ac-ft to 32.02 ac-ft. Another proposed change is the addition of Well #14 (located in LMU #10) with a request for well buffer exception. The maximum capacity of 7,100 head, of which 3,100 head are milking cows, remains unchanged. The facility is located at 4611 South Farm-to-Market Road 219, Dublin, Erath County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-202002691

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2020

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## Texas Department of Insurance

### Company Licensing

Application to do business in the state of Texas for Grain Dealers Mutual Insurance Company, a foreign life, accident and/or health company. The home office is in Indianapolis, Indiana.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202002694

James Person

General Counsel

Texas Department of Insurance

Filed: July 1, 2020

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## Texas Lottery Commission

### Scratch Ticket Game Number 2235 "COWBOYS"

#### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2235 is "COWBOYS". The play style is "key number match".

#### 1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2235 shall be \$5.00 per Scratch Ticket.

#### 1.2 Definitions in Scratch Ticket Game No. 2235.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, FOOTBALL SYMBOL, TOUCH-DOWN SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2235 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
41	FRON
42	FRT0
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
FOOTBALL SYMBOL	WIN\$
TOUCHDOWN SYMBOL	WINALL
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$5,000	FVTH
\$100,000	100 <sup>TH</sup>

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2235), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2235-0000001-001.

H. Pack - A Pack of "COWBOYS" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all

of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "COWBOYS" Scratch Ticket Game No. 2235.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "COWBOYS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a Touchdown "TD" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
  2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
  3. Each of the Play Symbols must be present in its entirety and be fully legible;
  4. Each of the Play Symbols must be printed in black ink except for dual image games;
  5. The Scratch Ticket shall be intact;
  6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
  8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
  9. The Scratch Ticket must not be counterfeit in whole or in part;
  10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
  14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
  15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
  16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$5,000 and \$100,000 will each appear at least once, except on Tickets winning more than fifteen (15) times, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "TD" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "TD" (WINALL) Play Symbol will instantly win all twenty (20) prize amounts and will win only as per the prize structure.

K. The "TD" (WINALL) Play Symbol will never appear more than once on a Ticket.

L. The "TD" (WINALL) Play Symbol will never appear on a non-Winning Ticket.

M. On Tickets winning with the "TD" (WINALL) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

N. The "FOOTBALL" (WIN\$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "FOOTBALL" (WIN\$) Play Symbol will win the prize for that Play Symbol.

P. The "FOOTBALL" (WIN\$) Play Symbol will never appear more than once on a Ticket.

Q. The "FOOTBALL" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

R. The "TD" (WINALL) Play Symbol and the "FOOTBALL" (WIN\$) Play Symbol will never appear on the same Ticket.

S. On Tickets winning with the "FOOTBALL" (WIN\$) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

T. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20 and 50 and \$50).

U. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

V. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "COWBOYS" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COWBOYS" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COWBOYS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "COWBOYS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "COWBOYS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "COWBOYS" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the



Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 9,720,000 Scratch Tickets in the Scratch Ticket Game No. 2235. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2235 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	1,209,600	8.04
\$10.00	475,200	20.45
\$15.00	388,800	25.00
\$20.00	388,800	25.00
\$50.00	75,600	128.57
\$100	7,560	1,285.71
\$500	378	25,714.29
\$5,000	27	360,000.00
\$100,000	5	1,944,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2235 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2235, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002670  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: June 30, 2020



Scratch Ticket Game Number 2236 "HOUSTON TEXANS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2236 is "HOUSTON TEXANS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2236 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2236.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, FOOTBALL SYMBOL, GOALPOST SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2236 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
FOOTBALL SYMBOL	WIN\$
GOALPOST SYMBOL	WINX5
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$5,000	FVTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2236), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2236-0000001-001.

H. Pack - A Pack of "HOUSTON TEXANS" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "HOUSTON TEXANS" Scratch Ticket Game No. 2236.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HOUSTON TEXANS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "GOALPOST" Play Symbol, the player wins 5 TIMES the prize for

that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the

front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than four (4) times.

G. The "FOOTBALL" (WIN\$) and "GOALPOST" (WINX5) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "GOALPOST" (WINX5) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "HOUSTON TEXANS" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOUSTON TEXANS" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOUSTON TEXANS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "HOUSTON TEXANS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "HOUSTON TEXANS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "HOUSTON TEXANS" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 5,520,000 Scratch Tickets in the Scratch Ticket Game No. 2236. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2236 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	625,600	8.82
\$10.00	294,400	18.75
\$15.00	220,800	25.00
\$20.00	220,800	25.00
\$50.00	45,494	121.33
\$100	6,992	789.47
\$500	414	13,333.33
\$5,000	10	552,000.00
\$100,000	4	1,380,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.90. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2236 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2236, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002671  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: June 30, 2020



**Texas Department of Motor Vehicles**

Notice of Correction to 43 TAC Chapter 211 Proposed New Chapter

The Texas Department of Motor Vehicles (department) published proposed new chapter 211, Subchapter A, 43 TAC §§211.1 - 211.5 in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4298).

Due to an error by the department, proposed new 43 TAC §211.3 is missing proposed rule text language. As indicated on page 45 TexReg 4299 and page 45 TexReg 4300 of the preamble, the subsections state statutory requirements under Occupations Code §53.023 and §53.0231(b)(2)(B). This language should be included under subsections (e) and (f) to read as follows:

(e) When determining a person's present fitness for a license, the department shall also consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- (7) other evidence of the person's present fitness, including letters of recommendation.

(f) It is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in subsection (e) of this section.

TRD-202002577

Tracey Beaver  
General Counsel  
Texas Department of Motor Vehicles  
Filed: June 26, 2020

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 16, 2020, to adjust the high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates.

Docket Title and Number: Application of Five Area Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 50956.

Five Area requests a high-cost support adjustment increase of \$324,216. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months ending June 1, 2020, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50956.

TRD-202002675  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 30, 2020

◆ ◆ ◆  
**Notice of Petition for Recovery of Universal Service Funding**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on June 23, 2020, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Community Telephone Company, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406, Docket Number 50965.

The Application: Community Telephone Company, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Community Telephone for calendar year 2019. Community Telephone requests that the Commission allow recovery of funds from the TUSF in the amount of \$835,466 for calendar year 2019 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone

(TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50965.

TRD-202002674  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission  
Filed: June 30, 2020

◆ ◆ ◆  
**Texas Department of Transportation**

**Public Hearing Notice - Unified Transportation Program**

The Texas Department of Transportation (department) will hold a virtual public hearing on Tuesday, July 28, 2020 at 10:00 a.m. Central Standard Time (CST) via electronic means. Instructions for accessing the hearing will be published on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>. The purpose of the hearing is to receive public comments on the development of the 2021 Unified Transportation Program (UTP), including the highway project selection process related to the UTP.

Transportation Code, §201.991 provides that the department shall develop a UTP covering a period of 10 years to guide the development and authorize construction of transportation projects. Transportation Code, §201.602 requires the Texas Transportation Commission (commission) to annually conduct a hearing on its highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. The commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the project selection process and the development of the UTP.

Information regarding the proposed 2021 UTP and highway project selection process will be available on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>.

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division at (512) 486-5038 no later than Monday, July 27, 2020. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate are encouraged to contact the Transportation Planning and Programming Division at (512) 486-5038. Requests should be made at least two working days prior to the public hearing. Every reasonable effort will be made to accommodate these needs.

Interested parties who are unable to participate may submit written comments regarding the proposed 2021 UTP to the Texas Department of Transportation, Attention: Unified Transportation Program, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the proposed 2021 UTP through the on-

line comment form at <https://www.surveymonkey.com/r/2021UTP>, by e-mail to [UTP-PublicComments@txdot.gov](mailto:UTP-PublicComments@txdot.gov), or by phone at (800) 687-8108. In order to be considered, comments must be received by 4:00 p.m. on Monday, August 10, 2020.

TRD-202002526

Becky Blewett  
Deputy General Counsel  
Texas Department of Transportation  
Filed: June 24, 2020





## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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