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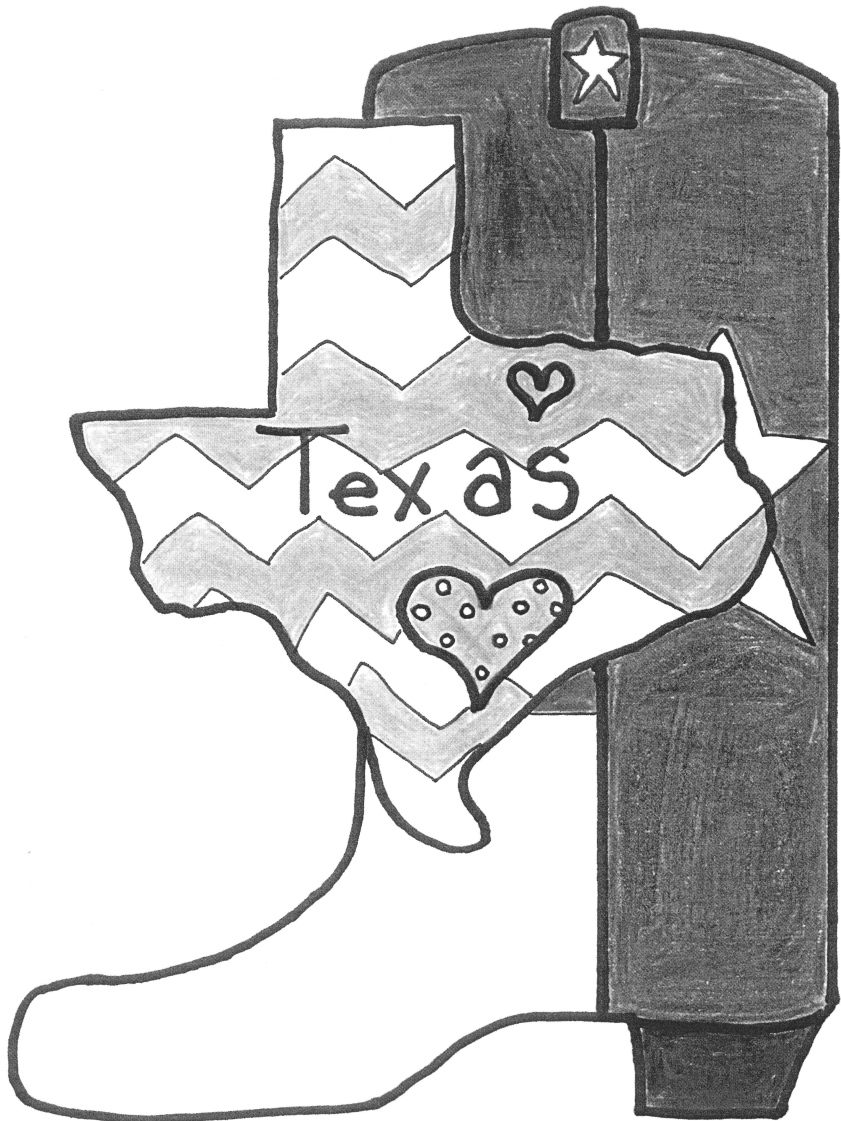
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THE GOVERNOR

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.

Appointments

Appointments for October 29, 2020

Appointed to the Commission on State Emergency Communications, for a term to expire September 1, 2021, Larry L. "Chip" VanSteenberg of Conroe, Texas (replacing William H. "Bill" Buchholtz of San Antonio, who resigned).

Appointments for November 2, 2020

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2023, Erin "Amanda" Bowdoin of Forney, Texas (Ms. Bowdoin is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2023, Lindsey R. Geeslin of Lorena, Texas (Ms. Geeslin is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2023, Emily R. Robinson of Pflugerville, Texas (replacing Susan M. "Susie" May of Austin, whose term expired).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2023, Rodrick D. Robinson of McKinney, Texas (Mr. Robinson is being reappointed).

Appointments for November 3, 2020

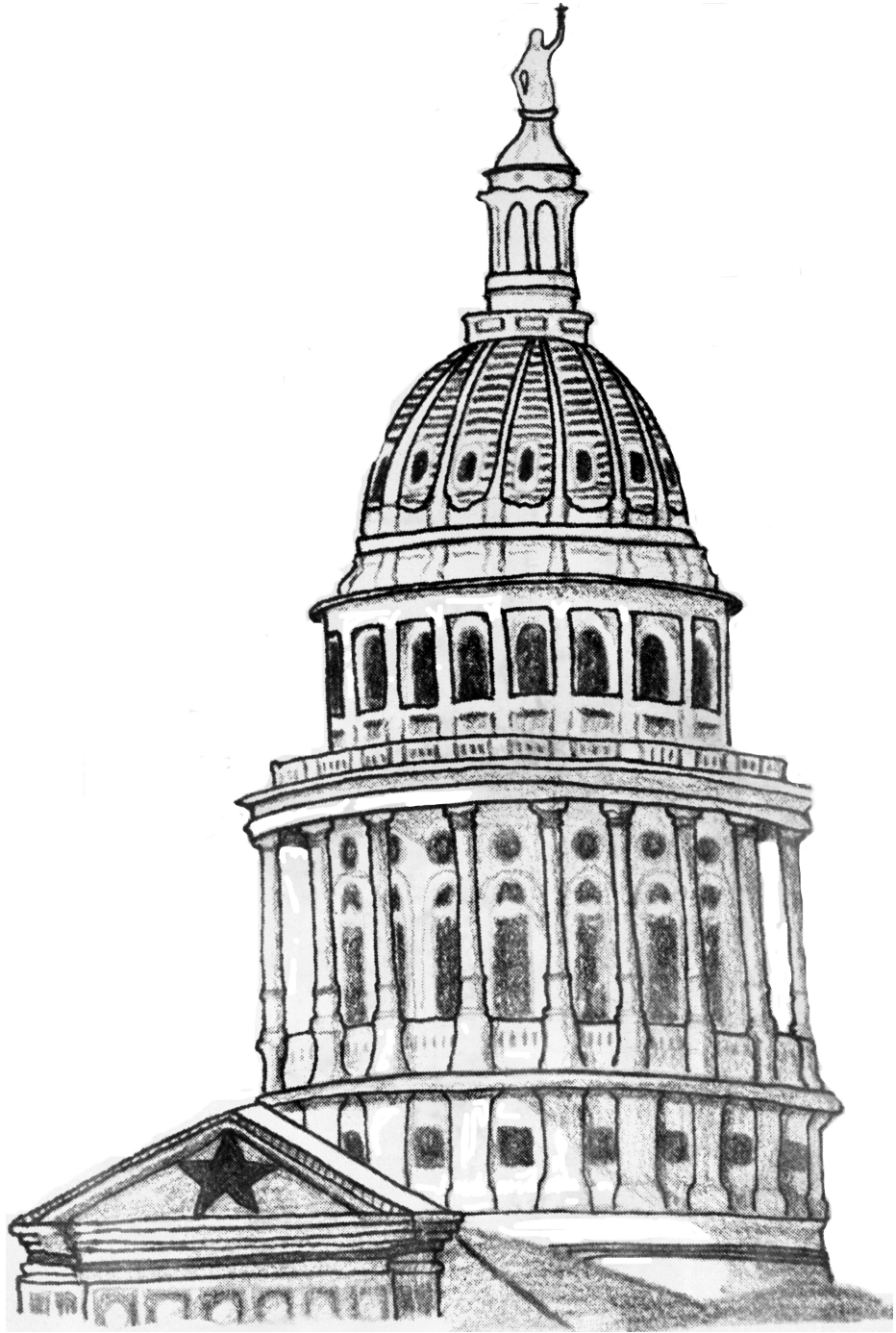
Appointed to the Board of the Texas Department of Motor Vehicles, for a term to expire February 1, 2021, Manuel R. "Manny" Ramirez of Fort Worth, Texas (replacing Joel W. Richardson of Canyon, who resigned).

Appointed to the Texas State Council for Interstate Adult Offender Supervision, for a term to expire February 1, 2025, Trent Peroyea of Austin, Texas (replacing Allegra Hill of Austin, who resigned).

Greg Abbott, Governor

TRD-202004646





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 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 November 3, 2020, at 12:01 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. On November 2, 2020, the Board adopted, on an emergency basis, amendments to 22 TAC §174.5. This rule is set to expire at 11:59 p.m. on January 1, 2021.

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 issuance of prescriptions including controlled substances for patients. Pursuant to the Governor's declaration of disaster issued on March 13, 2020, related to COVID-19, physicians can continue to provide telephone refills for prescriptions for established patients after having an in-person or two audio and video communications telemedicine medical services within the last 90 days. This waiver and emergency rule includes allowing a physician to issue a prescription for the treatment of chronic pain with scheduled medications.

The emergency amendment would allow physicians to utilize telemedicine to issue refill prescriptions for scheduled medications to established chronic pain patients, if the physician has, within the past 90 days, seen a patient in-person or via a telemedicine visit using two-way audio and video communication.

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 by telephone refill of an existing prescription is prohibited, unless: a patient is an established chronic pain patient of the physician and has been

seen by the prescribing physician or health professional defined under Chap 111.001(1) of Texas Occupations Code, in the last 90 days either:

(i) in-person; or

(ii) via telemedicine using audio and video two-way communication.

(B) The emergency amendment of this rule effective November 3, 2020 at 12:01 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 November 3, 2020.

TRD-202004621

Scott Freshour

General Counsel

Texas Medical Board

Effective date: November 3, 2020

Expiration date: January 1, 2021

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

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 14. FEDERALLY QUALIFIED HEALTH CENTER SERVICES

1 TAC §355.8261

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8261, concerning Federally Qualified Health Center Services Reimbursement.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Senate Bill 670, 86th Legislature, Regular Session, 2019, which requires HHSC to ensure that a federally qualified health center (FQHC) be reimbursed for a covered telemedicine medical service or telehealth service delivered by a health care provider to a Medicaid recipient. The proposed amendment will also clarify how rates are set for newly enrolled FQHCs that are authorized to be included on a consolidated cost report of another FQHC.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8261(b)(10)(A)(i) specifies that a new FQHC that is included on the cost report of another FQHC (i.e., part of a consolidated cost report) should be assigned the rate of the other FQHC.

The proposed amendment to §355.8261(b)(12) and §355.8261(b)(13) includes telemedicine and telehealth services in the definition of a "visit" and a "medical visit." This change increases transparency and provides additional detail on the existing reimbursement structure for FQHCs.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule amendment will be in effect, enforcing or administering the rules 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 the amendments will be in effect:

- (1) the proposed amendment will not create or eliminate a government program;
 - (2) implementation of the proposed amendment will not affect the number of employee positions;
 - (3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency;
 - (4) the proposed amendment will not require an increase or decrease in fees paid to the agency;
 - (5) the proposed amendment will not create a new rule;
 - (6) the proposed amendment will expand an existing rule; and
 - (7) the proposed amendment will not change the number of individuals subject to the rule.
- (8) HHSC has insufficient information to determine the proposed amendment's effects on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there is no adverse economic impact on small businesses, micro-businesses, and rural communities. There are no FQHCs in rural areas and no FQHCs are small businesses or micro-businesses.

LOCAL EMPLOYMENT IMPACT

The proposed rule amendment will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this amendment because the amendment is necessary to receive a source of federal funds. The amendment is also necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule amendment.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the amended section. The public benefit anticipated as a result of enforcing or administering the amendment will be an enhanced ability of FQHCs to provide healthcare to Medicaid recipients by ensuring that telehealth services are included in options for providing services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because the proposal does not impose any new costs or fees on persons required to comply.

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 Kevin Niemeier in HHSC Rate Analysis at (512) 730-7445.

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, 4900 North Lamar Blvd., Austin, TX 78714-9030; by fax to (512)-730-7475; or by email to RateAnalysis-Dept@hhsc.state.tx.us within 31 days of publication of this proposal in the *Texas Register*.

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) faxed or 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 postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 21R008" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.0216(i), which requires HHSC to adopt rules to implement the subsection; 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; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8261. *Federally Qualified Health Center Services Reimbursement.*

(a) Prospective Payment System (PPS) Methodology. Federally Qualified Health Centers (FQHCs) selecting the PPS methodology, in accordance with section 1902(bb) of the Social Security Act, as amended by the Benefits Improvement and Protection Act (BIPA) of 2000 (42 U.S.C. §1396a(bb)), effective for the FQHC's fiscal year that includes dates of service occurring January 1, 2001, and after, will be reimbursed a PPS per visit encounter rate for Medicaid covered services. FQHCs are reimbursed a prospective per visit encounter rate for a visit that meets the requirements of subsections (b)(12) and (13) of this section. The final base rate for each FQHC existing in 2000 was calculated based on one hundred percent (100%) of the average of the FQHC's reasonable costs for providing Medicaid covered services as determined from audited cost reports for the FQHC's 1999 and 2000 fiscal years. The final base rate was calculated by adding the total audited reimbursable costs as determined from the 1999 and 2000 cost reports and dividing by the total audited visits for these same two periods. The reimbursement methodologies described in subsection (b) of this section apply to the PPS methodology, except for the following:

(1) The effective rate for APPS described in subsection (b)(4) of this section does not apply to PPS. Increases in the final base rate or the effective rate for a PPS-reimbursed FQHC shall be the rate of change in the Medicare Economic Index (MEI) for primary care. If the increase in an FQHC's costs is greater than the MEI for PPS, an FQHC may request an adjustment of its effective rate as described in subsection (b)(6) of this section.

(2) State initiated reviews, described in subsection (b)(10)(D) of this section, are not applicable for providers who select the PPS methodology.

(b) Alternative Prospective Payment System (APPS) Methodology. FQHCs selecting the APPS methodology, in accordance with section 1902(bb) of the Social Security Act, as amended by the Benefits Improvement and Protection Act (BIPA) of 2000 (42 U.S.C. §1396a(bb)), effective for the FQHC's fiscal year that includes dates of service occurring January 1, 2001, and after, are reimbursed an APPS per visit encounter rate for Medicaid covered services at one hundred percent (100%) of reasonable costs. FQHCs are reimbursed a prospective per visit encounter rate for a visit that meets the requirements of paragraphs (12) and (13) of this subsection. The final base rate for each FQHC existing in 2000 was calculated based on one hundred percent (100%) of the average of the FQHC's reasonable costs for providing Medicaid covered services as determined from audited cost reports for the FQHC's 1999 and 2000 fiscal years. The final base rate was calculated by adding the total audited reimbursable costs as determined from the 1999 and 2000 cost reports and dividing by the total audited visits for these same two periods.

(1) Prior to the Health and Human Services Commission (HHSC) setting a final base rate pursuant to this section for each FQHC existing in 2000, each FQHC was reimbursed on the basis of an interim base rate. The interim base rate for each FQHC was calculated from the latest finalized cost report settlement, adjusted as provided for in paragraph (4) of this subsection. When HHSC determined a final base rate, interim payments were reconciled back to the beginning of the interim period. For FQHCs that agreed to the APPS methodology prior to August 31, 2010, adjustments were made to the FQHC's interim payments only if the interim payments were less than what would have occurred under the final base rate. Paragraph (10) of this subsection contains the interim and final base rate methodology for new FQHCs. The final base rate, as adjusted, applies prospectively from the date of the final approval. Payments made under the APPS methodology will be at least equal to the amount that would be paid under PPS.

(2) Reasonable costs, as used in setting the interim or final base rate or any subsequent effective rate, is defined as those costs that are allowable under Medicare Cost Principles, as outlined in 42 C.F.R. part 413, with no productivity screens and no per visit payment limit. Administrative costs will be limited to thirty percent (30%) of total costs in determining reasonable costs. Reasonable costs do not include unallowable costs.

(3) Unallowable costs are expenses that are incurred by an FQHC and that are not directly or indirectly related to the provision of covered services, according to applicable laws, rules, and standards. An FQHC may expend funds on unallowable cost items, but those costs must not be included in the cost report/survey, and they are not used in calculating an interim or final base rate determination. Unallowable costs include, but are not necessarily limited to, the following:

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who are not directly or indirectly related to the provision of covered services;

(B) personal expenses not directly related to the provision of covered services;

(C) management fees or indirect costs that are not derived from the actual cost of materials, supplies, or services necessary for the delivery of covered services, unless the operational need and cost effectiveness can be demonstrated;

(D) advertising expenses other than those for advertising in the telephone directory yellow pages, for employee or contract labor recruitment, and for meeting any statutory or regulatory requirement;

(E) business expenses not directly related to the provision of covered services. For example, expenses associated with the sale or purchase of a business or expenses associated with the sale or purchase of investments;

(F) political contributions;

(G) depreciation and amortization of unallowable costs, including amounts in excess of those resulting from the straight line depreciation method; capitalized lease expenses, less any maintenance expenses, in excess of the actual lease payment; and goodwill or any excess above the actual value of the physical assets at the time of purchase. Regarding the purchase of a business, the depreciable basis will be the lesser of the historical but not depreciated cost to the previous owner or the purchase price of the assets. Any depreciation in excess of this amount is unallowable;

(H) trade discounts and allowances of all types, including returns, allowances, and refunds, received on purchases of goods or services. These are reductions of costs to which they relate and thus, by reference, are unallowable;

(I) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers whether directly or indirectly related to covered services, except as permitted in 42 C.F.R. part 413;

(J) dues to all types of political and social organizations and to professional associations whose functions and purpose are not reasonably related to the development and operation of patient care facilities and programs or the rendering of patient care services;

(K) entertainment expenses, except those incurred for entertainment provided to the staff of the FQHC as an employee benefit. An example of entertainment expenses is lunch during the provision of continuing medical education on-site;

(L) board of director's fees, including travel costs and meals provided for directors;

(M) fines and penalties for violations of statutes, regulations, and ordinances of all types;

(N) fund raising and promotional expenses, except as noted in subparagraph (D) of this paragraph;

(O) interest expenses on loans pertaining to unallowable items, such as investments. Also the interest expense on that portion of interest paid that is reduced or offset by interest income;

(P) insurance premiums pertaining to items of unallowable costs;

(Q) any accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount;

(R) mileage expense exceeding the current reimbursement rate set by the federal government for its employee travel;

(S) cost for goods or services that are purchased from a related party and that exceed the original cost to the related party;

(T) out-of-state travel expenses not related to the provision of covered services, except out-of-state travel expenses for training courses that increase the quality of medical care and/or the operating efficiency of the FQHC;

(U) over-funding contributions to self-insurance funds that do not represent payments based on current liabilities;

(V) overhead costs beyond the thirty percent (30%) limitation established by HHSC.

(4) The effective rate for APPS - The effective rate is the rate paid to the FQHC for the FQHC's fiscal year. The effective rate shall be updated by the rate of change in the MEI plus (0.5) percent for each of the FQHC's fiscal years since the setting of its final base rate. If the increase in an FQHC's costs is greater than the MEI plus (0.5) percent for APPS, an FQHC may request an adjustment of its effective rate as described in paragraph (6) of this subsection. The effective rate shall be calculated at the start of each FQHC's fiscal year and shall be applied prospectively for that fiscal year. The effective rate for PPS is described in subsection (a)(1) of this section.

(5) PPS and APPS reimbursement methodology selection is determined as follows:

(A) Each new in-state FQHC will receive a letter from HHSC upon enrollment as a new provider along with the Federally Qualified Health Centers (FQHC) Prospective Payment System Form. This form must be signed by an authorized representative and returned to HHSC within thirty (30) days of the enrollment letter date. The form must indicate the selection as either the PPS or APPS reimbursement methodology. If HHSC does not receive the form within the specified time requirement, HHSC will select the PPS reimbursement methodology for this provider. For a provider that fails to return the form selecting the APPS reimbursement methodology, the provider may submit a written request along with the Federally Qualified Health Centers (FQHC) Prospective Payment System Form selecting the APPS reimbursement methodology. Upon approval by HHSC, the new selection will be effective the first day of the provider's next fiscal year.

(B) Each out-of-state FQHCs will receive the PPS reimbursement methodology. Out-of-state FQHCs may not select the APPS reimbursement methodology. HHSC will compute an effective rate based on reasonable costs provided by the FQHC on its most recent Medicare cost report, pursuant to paragraph (8)(A) and (B) of this subsection. The effective rate will reflect the rate that would have been calculated for an in-state FQHC based on the approved scope of services that an in-state FQHC could provide in Texas.

(C) When HHSC makes a change to the PPS or APPS reimbursement methodology, HHSC may require FQHCs to reselect the PPS or APPS reimbursement methodology, in accordance with the requirements of subparagraph (A) of this paragraph.

(6) A change of the effective rate is determined as follows:

(A) An adjustment, as described in paragraph (10)(C) of this subsection, will be made to the effective rate if the FQHC can show that it is operating in an efficient manner as defined in paragraph (7)(B) of this subsection, or show that the adjustment is warranted due to a change in scope as defined in paragraph (7)(A) of this subsection.

(B) HHSC also may adjust the effective rate of an FQHC on its own initiative, in accordance with paragraph (10)(D) of this subsection, if it is determined that a change of scope has occurred and an adjustment to the effective rate as defined in paragraph (7) of this subsection is warranted based on the audit of the cost report described in paragraph (8)(C) of this subsection.

(7) Any request to adjust an effective rate must be accompanied by documentation showing that the FQHC is operating in an efficient manner or that it has had a change in scope. A change in scope provided by an FQHC includes the addition or deletion of a service or a change in the magnitude, intensity or character of services currently offered by an FQHC or one of the FQHC's sites.

(A) A change in scope includes:

(i) an increase in service intensity attributable to changes in the types of patients served, including but not limited to, patients with HIV/AIDS, the homeless, the elderly, migrants, those with other chronic diseases or special populations;

(ii) any changes in services or provider mix provided by an FQHC or one of its sites;

(iii) changes in operating costs that have occurred during the fiscal year and which are attributable to capital expenditures, including new service facilities or regulatory compliance;

(iv) changes in operating costs attributable to changes in technology or medical practices at the FQHC;

(v) indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents; or

(vi) any changes in scope approved by the Health Resources and Service Administration (HRSA).

(B) Operating in an efficient manner includes:

(i) showing that the FQHC has implemented an outcome-based delivery system that includes prevention and chronic disease management. Prevention includes, but is not limited to, programs such as immunizations and medical screens. Disease Management must include, but not be limited to, programs such as those for diabetes, cardiovascular conditions, and asthma that can demonstrate an overall improvement in patient outcome;

(ii) paying employees' salaries that do not exceed the rates of payment for similar positions in the area, taking into account experience and training as determined by the Texas Workforce Commission;

(iii) providing fringe benefits to its employees that do not exceed fifteen percent (15%) of the FQHC's total costs;

(iv) implementing cost saving measures for its pharmacy and medical supplies expenditures by engaging in group purchasing; and

(v) employing the Medicare concept of a "prudent buyer" in purchasing its contracted medical services.

(8) Cost report forms and worksheets are required as follows:

(A) As-Filed Medicare Cost Report. The As-Filed Medicare Cost Report includes:

(i) CMS form 222-92 Independent Rural Health Clinic/Freestanding and Federally Qualified Health Center Worksheet, including the HCFA 339 Form.

(I) Worksheet S part 1 - Statistical Data;

(II) Worksheet S part 2 - Certification By Officer or Administrator;

(III) Worksheet S part 3 - Statistical Data for Clinics Filing Under Consolidated Cost Reporting;

(IV) Worksheet A page 1 - Reclassification and Adjustment of Trial Balance of Expenses;

(V) Worksheet A page 2 - Reclassification and Adjustment of Trial Balance of Expenses;

(VI) Worksheet A-1 - Reclassifications;

(VII) Worksheet A-2 - Adjustments to Expenses;

(VIII) Worksheet A-2-1, Parts I to III - Statement of Cost of Services from Related Organizations;

(IX) Worksheet B part I and II - Visits and Overhead Cost for RHC/FQHC Services; and

(X) Worksheet C part I and II - Determination of Medicare Reimbursement.

(ii) Texas Medicaid Supplemental Worksheets.

(I) Determination of FQHC Cost Based Rate;

(II) Exhibit 1 - Determination of FQHC Medicaid Reimbursable Cost - Rate Worksheet;

(III) Exhibit 2 - Visit Reconciliation - Employed Providers; and

(IV) Exhibit 3 - Visit Reconciliation - Contract Service Providers.

(iii) Trial Balance with account titles. If the provider's Trial Balance has only account numbers, a Chart of Accounts will need to accompany the Trial Balance.

(iv) A mapping of the Trial Balance that shows the tracing of each Trial Balance account to a line and column on Worksheet A pages 1 and 2.

(v) Documentation supporting the provider's reclassification and adjustment entries.

(vi) A Schedule of Depreciation of depreciable assets.

(vii) A listing of all satellites, if applicable.

(viii) Federal Grant Award notices or changes in scope approved by HRSA.

(ix) All items must be complete and accurate.

(B) Final Audited Medicare Cost Report. In-state providers must file the final audited cost report received from Medicare, as required in paragraph (9) of this subsection. The final audited Medicare cost report includes:

(i) A copy of the final audited CMS form 222-92 Independent Rural Health Clinic/Freestanding and Federally Qualified Health Center Worksheets, including the HCFA 339 Form filed with Medicare.

(ii) Texas Medicaid Supplemental Worksheets.

(I) Determination of FQHC Cost Based Rate;

(II) Exhibit 1 - Determination of FQHC Medicaid Reimbursable Cost - Rate Worksheet;

(III) Exhibit 2 - Visit Reconciliation - Employed Providers; and

(IV) Exhibit 3 - Visit Reconciliation - Contract Service Providers.

(iii) All items must be complete and accurate.

(C) Change of Effective Rate Cost Report. The change of effective rate cost report is used by in-state or out-of-state FQHCs that are requesting a change in their effective rate due to a change in scope or operating in an efficient manner. The cost report must contain at least six (6) months of financial information. The documents needed for in-state and out-of-state providers filing a change of effective rate cost report are the same as required for the as-filed cost report in paragraph (8)(A) of this subsection.

(D) Projected Cost Report. The projected cost report is used by in-state or out-of-state FQHCs that are requesting an initial interim rate. The cost report must contain at least twelve (12) months of projected financial information. The required documents are the same as required for the as-filed cost report in paragraph (8)(A) of this subsection, except that the information contained in clauses (iii), (iv) and (v) are not required.

(E) Low Medicare Utilization Cost Report. The low Medicare utilization cost report is used by in-state and out-of-state providers to meet the annual filing requirements for providers not required to file a full cost report with Medicare. A provider filing the Low Medicare Utilization cost report must complete and submit all required forms and supporting documentation described in paragraph (8)(A) of this subsection for all rate determination processes described in paragraph (10) of this subsection.

(F) If a provider fails to submit a required cost report, HHSC or its designee may delay or withhold vendor payment to the provider until a complete cost report has been received and accepted by HHSC or its designee.

(9) Cost Report Filing Requirement. Each FQHC must submit a copy of its Final Audited Medicare Cost Report, as described in paragraph (8)(B) of this subsection, to HHSC or its designee within thirty (30) days of receipt of the report from Medicare. An FQHC filing a Low Utilization Cost Report with Medicare may comply with this subsection by filing a copy of such cost report with HHSC annually, within thirty (30) days of filing the report with Medicare.

(10) FQHC rate determination process.

(A) New FQHC.

(i) If the owner of a new FQHC owns one or more FQHCs in Texas and will include the new facility on the Medicare cost report of another FQHC, then HHSC will apply the rate assigned to the other FQHC as the interim base rate of the new FQHC. If the owner of a new FQHC does not include the new facility on the Medicare cost report of another FQHC, the [A] new FQHC must file a projected cost report, pursuant to paragraph (8)(D) of this subsection, within 90 days of their designation as an FQHC to establish an initial interim base rate. The cost report must contain the FQHC's reasonable costs anticipated to be incurred during the FQHC's initial fiscal year. The initial interim base rate for this [a] new FQHC shall be set at the lesser of eighty percent (80%) of the anticipated reasonable costs determined from the projected cost report or eighty percent (80%) of the average rate paid to FQHCs on January 1 of the calendar year during which the FQHC first applies as a new FQHC [or for a change in scope, if applicable].

(ii) Each new FQHC must submit to HHSC or its designee an As-Filed Medicare Cost Report, pursuant to paragraph (8)(A) of this subsection, within five (5) calendar months after the end of the FQHC's first full fiscal year. HHSC will determine an updated interim base rate based on one hundred percent (100%) of the reasonable costs contained in the As-Filed Medicare Cost Report. An As-Filed Medicare Cost Report must reflect twelve (12) months of continuous service that meets the requirements of paragraph (7)(B) of this subsection. Interim rates will be adjusted prospectively until the Final Audited Medi-

care Cost Report reflecting twelve (12) months of continuous service is processed. HHSC will, within eleven (11) months of receipt of the As-Filed Medicare Cost Report reflecting twelve (12) months of continuous service determine the updated interim base rate.

(iii) Each new FQHC must submit to HHSC or its designee a Final Audited Medicare Cost Report, pursuant to paragraph (9) of this subsection. The Final Audited Medicare Cost Report settlement, reflecting twelve (12) months of continuous service, must be completed within eleven (11) months of receipt of a cost report. The rate established shall be the final base rate. HHSC will reconcile payments back to the beginning of the interim period applying the final base rate. If the final base rate is greater than the interim base rate, HHSC will compute and pay the FQHC a settlement payment that represents the difference in rates for the services provided during the interim period. If the final base rate is less than the interim base rate, HHSC will compute and recoup from the FQHC any overpayment resulting from the difference in rates for the services provided during the interim period. The final base rate is adjusted in accordance with paragraph (4) of this subsection to determine the effective rate.

(iv) If a new FQHC cost report described in clause (ii) or (iii) of this subparagraph does not meet the requirement of reflecting twelve (12) months of continuous service that meets the requirements of paragraph (7)(B) of this subsection, HHSC will prospectively establish the interim rate based on the lesser of the interim rate determined by the cost report or eighty percent (80%) of the average rate paid to FQHCs on January 1 of the calendar year during which the FQHC first applies as a new FQHC or for a change in scope, if applicable, adjusted by applicable increases.

(B) Change of Ownership. If an existing FQHC facility changes ownership, the new owner must notify HHSC of the ownership change within ten (10) calendar days of the change.

(i) If the new owner of an FQHC facility owns no other FQHC facility in Texas, HHSC will treat the FQHC facility as a new FQHC. HHSC will set an initial interim base rate equal to one hundred percent (100%) of the previous owner's effective rate, and will then follow the procedures under subparagraph (A)(ii) and (iii) of this paragraph.

(ii) If the new owner of an FQHC facility owns one or more FQHC facilities in Texas and will include the new facility on the Medicare cost report of another FQHC facility, then HHSC will apply the rate assigned to the other FQHC.

(iii) If the new owner of an FQHC facility owns one or more FQHC facilities in Texas, but will not include the new facility on the Medicare cost report of another FQHC facility, then HHSC will determine a rate for the facility in accordance with clause (i) of this subparagraph.

(iv) If the new owner is ultimately not allowed by Medicare to include its new FQHC facility on the Medicare cost report of the other FQHC facility that it owns, then HHSC will determine a rate for the facility in accordance with subparagraph (A) of this paragraph.

(C) Request for Change of Effective Rate.

(i) An FQHC that requests an adjustment of its effective rate due to a change in scope or operating in an efficient manner must file a Change of Effective Rate Cost Report described in paragraph (8)(C) of this subsection. The FQHC must include the necessary documentation to support a claim that the FQHC has undergone a change in scope or is operating in an efficient manner pursuant to paragraph (7) of this subsection. A cost report filed to request an adjustment in the effective rate may be filed at any time during an FQHC's

fiscal year, but no later than five (5) calendar months after the end of the FQHC's fiscal year. All requests for adjustment in the FQHC's effective rate must include at least six (6) months of financial data. Within sixty (60) days of receiving the Change of Effective Rate Cost Report described in paragraph (8)(C) of this subsection, HHSC or its designee will make a determination regarding a new interim base rate.

(ii) If HHSC determines through the review of the information provided in clause (i) of this subparagraph that an adjustment to the effective rate is warranted, HHSC will determine an interim base rate based on one hundred percent (100%) of the reasonable costs contained in the Change of Effective Rate Cost Report. Interim payments will be adjusted prospectively until the final audited cost report is processed.

(iii) The FQHC must submit to HHSC or its designee an As-Filed Medicare Cost Report, described in paragraph (8)(A) of this subsection, within five (5) calendar months after the end of the FQHC's fiscal year. HHSC and the FQHC will then follow the procedures under subparagraph (A)(ii) and (iii) of this paragraph.

(D) State Initiated Review.

(i) For an in-state FQHC that has chosen the APPS methodology, HHSC may prospectively reduce the FQHC's effective rate to reflect one hundred percent (100%) of its reasonable costs or the PPS effective rate, whichever is greater. After reviewing the Final Audited Medicare Cost Report described in paragraph (8)(B) of this subsection, HHSC will determine if an in-state FQHC is being reimbursed more than one hundred percent (100%) of its reasonable cost or the PPS effective rate, whichever is greater, through the following steps:

(I) Determine the reasonable cost per encounter from the Final Audited Medicare Cost Report;

(II) Determine the effective PPS rate per encounter as would have been applied to the FQHC if the FQHC had chosen PPS as described in subsection (a) of this section for the same time period corresponding to the FQHC's Final Audited Medicare Cost Report described in subclause (I) of this clause;

(III) Select the greater of subclause (I) or (II) of this clause;

(IV) If the result in subclause (III) of this clause is less than the APPS effective rate for this period, HHSC will set the result in subclause (III) of this clause as the new final base rate for this period;

(V) The prospective rate described in clause (iii) of this subparagraph will be determined by adjusting the new final base rate from subclause (IV) of this clause in accordance with paragraph (4) of this subsection to determine the effective rate.

(VI) The new final base rate from subclause (IV) of this clause and subsequent effective rates will not apply to claims for services provided prior to the implementation date described in clause (iii) of this subparagraph.

(ii) State initiated reviews will be based on a determined twelve (12) month time period and the most recent cost data received in accordance with paragraph (9) of this subsection. For any provider filing a Low Utilization Cost Report with Medicare in accordance with paragraph (9) of this subsection, upon request by HHSC, the provider must complete and submit the forms and worksheets described in paragraph (8)(A) of this subsection for the fiscal years ending within the determined twelve (12) month time period, even if the cost report was not required to be filed by Medicare.

(iii) HHSC will apply the state initiated rate reduction prospectively beginning on the first day of the month following forty-five (45) days after the date of the Final Base Rate Notification letter. The final base rate is adjusted in accordance with paragraph (4) of this subsection to determine the effective rate.

(iv) HHSC will not increase the effective rate for an FQHC based on the outcome of a state-initiated cost report audit. It is the responsibility of the FQHC to request HHSC to adjust the effective rate if the FQHC can show that it is operating in an efficient manner as defined in paragraph (7)(B) of this subsection, or can show a change in scope as defined in paragraph (7)(A) of this subsection.

(v) For PPS the state initiated reviews is not applicable, as described in subsection (a)(2) of this section.

(E) Final Base Rate Notification Letter. HHSC will provide to an FQHC written notification of any determined final base rate forty-five (45) days prior to implementation of the final base rate. The effective date of the final base rate is determined by the applicable FQHC Rate Determination Process described in subparagraph (A) - (D) of this paragraph.

(F) Request for Review of Final Base Rate. The FQHC may submit a written request for review of the final base rate within 30 days of the date of the Final Base Rate Notification Letter in the circumstances described in clauses (i) - (iii) of this subparagraph.

(i) The FQHC believes that HHSC made a mathematical error or data entry error in calculating the FQHC's reasonable cost. The request for review must include the supporting documentation of the perceived mathematical error or data entry error in calculating the final base rate. HHSC will evaluate the request for review and the merit of the supporting documentation. If HHSC determines the request for review merits a change in the final base rate, HHSC will adjust the final base rate to the effective date of the Final Base Rate Notification Letter.

(ii) The FQHC believes that the FQHC made an error in reporting its cost or data in the Texas Medicaid Supplemental Worksheets described in paragraph (8)(A) of this subsection that would result in a different calculation of the FQHC's reasonable cost. The request for review must include the corrected Texas Medicaid Supplemental Worksheets and supporting documentation of the correction of error in reporting of cost or data. If HHSC determines the request for review merits a change in the final base rate, HHSC may adjust the final base rate to the effective date of the Final Base Rate Notification Letter.

(iii) The FQHC believes that the FQHC made an error in reporting its cost or data in the Final Audited Medicare Cost Report described in paragraph (8)(B) of this subsection that would result in a different calculation of the FQHC's reasonable cost. The request for review must include the correspondence submitted to the Medicare fiscal intermediary to amend the Medicare cost report. HHSC will consider the request for review upon receipt of the provider amended Final Audited Medicare Cost Report and supporting documentation of the correction of error in reporting of cost or data. If HHSC determines the request for review merits a change in the final base rate, HHSC may adjust the final base rate to the effective date of the Final Base Rate Notification Letter.

(iv) HHSC will send the FQHC written notification of the results of its request for review.

(v) If the FQHC disagrees with the results of the review in clause (iv) of this subparagraph, the FQHC may formally appeal in accordance with §§357.481 - 357.490 of this title (relating to Hearings Under the Administrative Procedure Act).

(11) In the event that the amount paid to an FQHC by a managed care organization (MCO) or dental managed care organization (DMO) is less than the amount the FQHC would receive under PPS or APPS, whichever is applicable, the state will ensure the FQHC is reimbursed the difference on at least a quarterly basis. The state's supplemental payment obligation will be determined by subtracting the baseline payment under the contract for services being provided from the effective PPS or APPS rate without regard to the effects of financial incentives that are linked to utilization outcomes, reductions in patient costs, or bonuses.

(12) A visit is a face-to-face, telemedicine, or telehealth encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting nurse, a qualified clinical psychologist, clinical social worker, other health professional for mental health services, dentist, dental hygienist, or an optometrist. Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except where one of the following conditions exist:

(A) after the first encounter, the patient suffers illness or injury requiring additional diagnosis or treatment; or

(B) the FQHC patient has a medical visit and an "other" health visit, as defined in paragraph (13) of this subsection.

(13) A medical visit is a face-to-face, telemedicine, or telehealth encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, certified nurse midwife, or visiting nurse. An "other" health visit includes, but is not limited to, a face-to-face, telemedicine, or telehealth encounter between an FQHC patient and a qualified clinical psychologist, clinical social worker, other health professional for mental health services, a dentist, a dental hygienist, an optometrist, or a Texas Health Steps Medical Screen.

(c) Payment dispute.

(1) An FQHC that believes an MCO or DMO has improperly denied a claim for payment or has provided insufficient reimbursement may appeal to the MCO or DMO. The MCO or DMO must address provider appeals as required by Texas Government Code §533.005(a)(15) and (19) and its contractual obligations with HHSC.

(2) If the MCO or DMO is not able to resolve the appeal, the FQHC may submit a complaint to HHSC for review. If HHSC finds the MCO or DMO has not correctly reimbursed the FQHC in accordance with contractual obligations, HHSC may require the MCO or DMO to reimburse the FQHC and assess remedies against the MCO or DMO in accordance with HHSC's contract with the MCO or DMO.

(3) The state will ensure the FQHC is paid the full PPS or APPS encounter rate for all valid claims.

(4) This subsection applies to claims for services provided by an FQHC on an in-network or out-of-network basis.

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 November 2, 2020.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 13, 2020
For further information, please call: (737) 203-7842

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

13 TAC §17.2

The Texas Historical Commission (Commission) proposes amendments to §17.2, relating to Review of Work on County Courthouses, Title 13, Part 2, Chapter 17 of the Texas Administrative Code.

Section 17.2 outlines the definitions and the rules related to Texas Government Code §442.008, Review of Work on County Courthouses. The rules detail the process for reviewing work on county courthouses but does not currently include a definition of monument or outline a process for relocating or removing monuments from the protected courthouse square.

The proposed amendment will add a definition that clarifies what the Commission considers a monument and refers to a proposed rule §21.13 in Chapter 21 that details a process for relocating or removing monuments that the Commission has the authority to protect.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed. The proposed amendments allow the Commission to close inactive applications for tax credits under defined circumstances. Because the closure of an application does not ultimately affect whether the applicant may obtain the tax credit, there will be no impact on state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a more clearly defined process for the handling of applications.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §§2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSI-

NESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. Because the proposed amendments only allow for the administrative closure of pending applications, the amendments do not affect any applicant's ability to receive tax credits. Accordingly, there should be no impact to rural communities, small businesses, or micro-businesses.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission and the Texas Tax Code §171.909, which requires the Commission to adopt rules for the implementation of the rehabilitation tax credit program. The Commission interprets Texas Tax Code §171.909 as an authorization to administer the rehabilitation tax credit program, which includes the administrative closure of applications that are inactive due to applicant inaction.

Except as described herein, the proposed amended rule affects no other code, article, or statute.

§17.2. *Review of Work on County Courthouses.*

(1) Definitions. The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(A) Demolish--To remove, in whole or part. Demolition of historical or architectural integrity includes removal of historic architectural materials such as, but not limited to, materials in the following categories: site work, concrete, masonry, metals, carpentry, thermal and moisture protection, doors and windows, finishes, specialties, equipment, furnishings, special construction, conveying systems, mechanical and electrical.

(B) Sell--To give up (property) to another for money or other valuable consideration; this includes giving the property to avoid maintenance, repair, etc.

(C) Lease--To let a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent.

(D) Damage--To alter, in whole or part. Damage to historical or architectural integrity includes alterations of structural elements, decorative details, fixtures, and other material.

(E) Integrity--Refers to the physical condition and therefore the capacity of the resource to convey a sense of time and place or historic identity. Integrity is a quality that applies to location, design, setting, materials, and workmanship. It refers to the clarity of the historic identity possessed by a resource. In terms of architectural design, to have integrity means that a building still possesses much of its mass, scale, decoration, and so on, of either the period in which it was conceived and built, or the period in which it was adapted to a later style which has validity in its own rights as an expression of historical character or development. The question of whether or not a building possesses integrity is a question of the building's retention of sufficient fabric to be identifiable as a historic resource. For a building to possess integrity, its principal features must be sufficiently intact for its historic identity to be apparent. A building that is significant because of its historic association(s) must retain sufficient physical integrity to convey such association(s).

(F) Courthouse--The principal building(s) which houses county government offices and courts and its (their) surrounding site(s), including the courthouse square and its associated site features, such as hardscape, fences, lampposts and monuments[typically the courthouse square].

(G) Hardscape--Features built into a landscape made of hard materials such as wood, stone or concrete, such as but not limited to paved areas, roads, driveways, pools, fountains, concrete walkways, stairways, culverts or walls.

(H) Monuments--Includes markers and structures erected to commemorate or designate the importance of an event, person, or place, which may or may not be located at the sites they commemorate. Included in this category are certain markers erected by the commission and county historical commissions, and markers and statutory located on public grounds such as courthouse squares, parks, and the Capitol grounds.

(I) [~~(G)~~] Ordinary maintenance and repairs--Work performed to architectural or site materials which does not cause removal or alteration or concealment of that material.

(2) Procedure.

(A) Notice of alterations to county courthouse.

(i) A county may not demolish, sell, lease, or damage the historical or architectural integrity of any building that serves or has served as a county courthouse without notifying the commission of the intended action at least six months before the date on which it acts. Any alteration to the historical or architectural integrity of the exterior or interior requires notice to the commission.

(ii) If the commission determines that a courthouse has historical significance worthy of preservation, the commission shall notify the commissioners court of the county of that fact not later than the 30th day after the date on which the commission received notice from the county. A county may not demolish, sell, lease, or damage the historical or architectural integrity of a courthouse before the 180th day after the date on which it received notice from the commission. The commission shall cooperate with any interested person during the 180-day period to preserve the historical integrity of the courthouse.

(iii) A county proceeding with alterations to its courthouse in violation of Texas Government Code, §442.008 and this section may be subject to civil penalties under Texas Government Code, §442.011.

(iv) the relocation or removal of monuments from a courthouse square is governed by §21.13 of this title (relating to Removal of Markers and Monuments).

(B) Notice from the county to the commission. At least six months prior to the proposed work on a county courthouse, a letter from the county judge briefly describing the project should be submitted to the commission, along with construction documents, sketches or drawings which adequately describe the full scope of project work and photographs of the areas affected by the proposed changes.

(C) The commission will consider the opinions of interested parties with regard to the preservation of the courthouse per Texas Government Code, §442.008(b).

(D) Notice from the commission to the commissioner's court of the county. Written notice of the commission's determination regarding the historical significance of a courthouse for which work is proposed shall include comments pursuant to a review of the proposed work by the commission. Comments shall be made based on the Secretary of the Interior's Standards for the Treatment of Historic Properties 1992 or latest edition, which are summarized in clauses (i) - (iii) of this subparagraph:

(i) Definitions for historic preservation project treatment.

(I) Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

(II) Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

(III) Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

(IV) Reconstruction is defined as the act or process of depicting, by means of new construction, the form features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

(ii) General standards for historic preservation projects.

(I) A property shall be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment

and use have not been identified, a property shall be protected and, if necessary, stabilized until additional work may be undertaken.

(II) The historic character of a property shall be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

(III) Each property shall be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

(IV) Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

(V) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(VI) The existing condition of historic features shall be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material shall match the old in composition, design, color, and texture.

(VII) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(VIII) Archeological resources shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(iii) Specific standards for historic preservation projects. In conjunction with the eight general standards listed in clause (ii)(I) - (VIII) of this subparagraph, specific standards are to be used for each treatment type.

(I) Standards for rehabilitation.

(-a-) A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

(-b-) The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

(-c-) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.

(-d-) Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

(-e-) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(-f-) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and where possible, materials, replacement of missing features shall be substantiated by documentary and physical evidence.

(-g-) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(-h-) Archeological resources shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(-i-) New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(-j-) New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(II) Standards for restoration.

(-a-) A property shall be used as it was historically or be given a new use which reflects the property's restoration period.

(-b-) Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken.

(-c-) Each property shall be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features, from the restoration shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

(-d-) Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal.

(-e-) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved.

(-f-) Deteriorated features from the restoration period shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials.

(-g-) Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

(-h-) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(-i-) Archeological resources affected by a project shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(-j-) Designs that were never executed historically shall not be constructed.

(III) Standards for reconstruction.

(-a-) Reconstruction shall be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

(-b-) Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures shall be undertaken.

(-c-) Reconstruction shall include measures to preserve any remaining historic materials, features, and spatial relationships.

(-d-) Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property shall re-create the appearance of the non-surviving historic property in materials, design, color, and texture.

(-e-) A reconstruction shall be clearly identified as a contemporary re-creation.

(-f-) Designs that were never executed historically shall not be constructed.

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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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-6100



CHAPTER 21. HISTORY PROGRAMS
SUBCHAPTER B. OFFICIAL TEXAS
HISTORICAL MARKER PROGRAM

13 TAC §21.13

The Texas Historical Commission (Commission) proposes new §21.13, concerning historical marker and monument removal.

The new §21.13 provides a process for individuals, groups, and County Historical Commissions to request removal of Official Texas Historical Markers and monuments.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering this new rule, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be the provision of a procedure through which the public may voice concern and request removal of historical markers and monuments erected by the State of Texas.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §§2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government

and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. THC staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code, §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations;

will lead to an increase in fees paid to a state agency; will create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.006, which directs the Commission to coordinate the state historical marker program; Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program; Texas Government Code §442.0045, which reserves the removal of Official Texas Historical Markers to the Commission; and §§191.097 of title 9 of the Natural Resources Code, which provides for removal of State Antiquities Landmark designation.

CROSS REFERENCE TO STATUTE. No other statutes, articles, or codes are affected by these amendments.

§21.13. Removal of Markers and Monuments.

(a) Any individual, group, or county historical commission (CHC) may request removal of an Official Texas Historical Marker ("marker"), as defined in §21.3 of this title (relating to Definitions), or a monument ("monument") within the Commission's jurisdiction, as defined in §26.3 of this title (relating to Definitions).

(b) With the exception of monuments that are State Antiquities Landmarks or included within the boundaries of State Antiquities Landmarks, which shall follow procedures as described in §191.097

and §191.098 of Title 9 of the Natural Resources Code as well as applicable rules adopted thereunder, requests for removal of a historical marker or monument shall include:

(1) The name and contact information for the requesting individual, group, or CHC;

(2) The name and location of the marker or monument for which removal is requested;

(3) Justification for removal of the marker or monument;

(4) Narrative history and photographs of the marker or monument;

(5) Written owner consent for removal from the landowner for sites located on private land;

(6) A plan explaining how the marker or monument will be removed in such a way as to protect its condition and be delivered to a location approved by THC.

(c) Marker and monument removal requests shall be submitted to the Commission at 1511 Colorado St., Austin, TX 78701; by mail to P.O. Box 12276, Austin, TX 78711; or by email to thc@thc.texas.gov. The Commission will send a copy of the request and supporting materials to

(d) The County Historical Commission (CHC) for the county in which the marker or monument is located, return receipt requested. In the absence of a formally-established CHC, a copy will be submitted to the county judge, return receipt requested.

(e) The Commission's History Programs Committee ("Committee") shall consider requests for removal of markers and monuments that are not State Antiquities Landmarks or located within the boundaries of a State Antiquities Landmarks, including those also governed by §17.2 of this title (relating to Review of Work on County Court-houses) and §442.008(a) of Title 4 of the Government Code. A request shall be considered at the Committee's next scheduled meeting, provided that such meeting happens at least 20 days after the removal request is received by the Commission. If fewer than 20 days separates the receipt of the request and the next Committee meeting then the request shall be considered at the subsequent scheduled meeting.

(f) The Committee may choose to take public testimony on the request. If public testimony is invited, such testimony may be limited by the Committee chair to a period of time allocated per speaker.

(g) Upon consideration of a removal request, the Committee shall make a recommendation to the Commission on whether to approve or deny the removal request. The recommendation of the Committee shall be placed on the agenda of the full Commission meeting immediately following the Committee meeting for approval or denial.

(h) If the request is approved by the Commission, the person who submitted the removal request must arrange for removal of the marker or monument in such a way as to protect its condition, and deliver it to a location approved by THC at the requestor's expense.

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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CHAPTER 26. PRACTICE AND PROCEDURE
SUBCHAPTER D. HISTORIC BUILDINGS
AND STRUCTURES

13 TAC §26.21

The Texas Historical Commission (Commission) proposes amendments to §26.21, relating to the Issuance and Restriction of Historic Buildings and Structures Permits, Title 13, Part 2, Chapter 26 Subchapter D of the Texas Administrative Code.

Section 26.21 describes the process for issuance and restrictions of Historic Buildings and Structures Permits.

The proposed amendment clarifies that Historic Building and Structure permit applications may be sent to both the Antiquities Advisory Board (AAB) and the Commission following review by staff, will clarify the process. In addition, the amendment lengthens the amount of time the board must receive the application prior to review, while striking a provision for failure to respond in 60 days now that permit issuance may be contingent on Commission approval at quarterly meetings.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed. The proposed amendment clarifies who may be required to review a permit and the number of days in which the applications needs to be submitted. Because the person reviewing and the required submission day does not ultimately affect whether the applicant may obtain the tax credit, there will be no impact on state of local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a more clearly defined process for the handling of applications.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is re-

quired. As the proposed amendments only change the number of days in which a permit is submitted and who reviews the permit application, the amendments do not affect any applicant's ability to receive a permit. Accordingly, there should be no impact to rural communities, small businesses, or micro-businesses.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission, which grants the Commission the power to adopt rules to administer Chapter 26 of the Texas Government Code.

No other statutes, articles, or codes are affected by these amendments.

§26.21. Issuance and Restriction of Historic Buildings and Structures Permits.

(a) Issuance of permit. The commission shall review the permit application submitted pursuant to §26.20 of this title (relating to Application for Historic Buildings and Structures Permits) and may issue the permit, issue the permit with special conditions, request additional information for review, request a revised scope of work, or deny the permit application.

(1) Review by commission staff. Within 30 days of the receipt of a permit application, staff shall notify the applicant in writing that the permit application is complete and accepted for filing or that the permit application is incomplete and specify the additional information required for review, such as additional drawings, construction details, or product information. The commission will issue or deny the permit within 60 days of the receipt of a complete permit application, unless additional time is required for review by the Antiquities Advisory Board and/or the commission under paragraph (2) of this subsection. The commission will notify the permit applicant if more than 60 days is required to act on the application. Permits are issued by the commission and must be signed by the executive director, the director of the Division of Architecture, or a designated representative.

(2) Review by the Antiquities Advisory Board. The executive director may choose to submit the permit application to the

Antiquities Advisory Board for its consideration and potential recommendation to the commission for permitting. Permits that are denied by commission staff may be appealed by the applicant to the Antiquities Advisory Board. The board shall review such applications at its next scheduled meeting, provided it shall have a minimum of 30 [15] days to prepare for such review. Recommendations of the board shall be taken to the next scheduled meeting of the commission by the chair of the board or by one of the other commissioners who serve on the board for action thereon.

(3) The deadlines in this section may be extended for good cause. In the event a deadline is extended, the commission shall provide notice of the extension and the good cause to the applicant in writing. The applicant may complain directly to the executive director if the staff exceeds the established period for processing permits and may request a timely resolution of any dispute arising from the delay.

~~[(4) Failure to respond. If no response has been made by the commission within 60 days of receipt of any permit application, the permit shall be considered to be granted.]~~

(b) Terms and conditions. When a permit is issued, it will contain all standard and special terms and conditions governing the project work.

(c) Permit period. No permit will be issued for less than six months, nor more than ten years, but may be issued for any length of time within those limits as deemed necessary by the commission in consultation with the applicant and project architect.

(d) Transferal of permits. No permit issued by the commission will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual without the consent of the commission.

(e) Permit expiration. The expiration date is specified in each permit and is the date by which all project work must be complete, including submission of the required completion report and fulfillment of all terms and conditions of the permit. It is the responsibility of the permittee, project architect, and professional firm to meet any and all permit terms and conditions prior to the expiration date listed on the permit.

(1) Expiration notification. The permittee and project architect will be notified 60 days in advance of permit expiration.

(2) Expiration extension. The permittee or project architect must provide a written request to the commission if an extension of the final due date for completion of the permit is desired. The request must detail the reason(s) an extension is necessary and state when completion of the permit requirements is expected. The Division of Architecture (DoA) of the commission will review the extension request to determine whether an extension is warranted. Permit extensions will be issued by letter and may extend the permit completion due date once for no less six months and no more than ten years as deemed appropriate. Permit extensions requested for preparation of the completion report, following substantial completion of the permitted work, will be issued for no greater than nine months, unless authorized by the Antiquities Advisory Board. If an additional extension is subsequently requested, the DoA may issue the extension or request that the Antiquities Advisory Board review the request and make a recommendation to the commission regarding further extension. The commission may, by a majority vote of its members, approve or disapprove an additional extension of the final due date of an Antiquities Permit, provided that the following conditions are met:

(A) the permittee, project architect, and/or the professional firm listed on the permit must provide written documentation to

the Antiquities Advisory Board and give an oral presentation justifying why an additional permit due-date extension is warranted; and

(B) justification for the additional extension must show that the extension is needed due to circumstances beyond the control of the permittee, project architect, or professional firm. Examples include, but are not limited to: funding problems or death of the project architect.

(f) Expiration responsibilities. Professional firms must ensure that a project architect is assigned to a permit at all times, until all obligations under the permit have been fulfilled, regardless of whether the permit is active or has expired. Expired permits are considered to be in default and will be reported to the Antiquities Advisory Board. Commission staff or the board may request that the permittee, project architect, and/or professional firm appear and give an oral presentation regarding the need for an extension pursuant to subsection (e)(2) of this section, or the board may pursue other remedies as allowed under §26.24 of this title (relating to Compliance with Rules for Historic Buildings and Structures Permits).

(g) Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the commission's executive director, the director of the DoA, or their designated representative. This includes changes in the permitted project plans and specifications that could affect the integrity of the structure, building, or site.

(h) Permit hold or cancellation. The commission may place on hold or cancel a Historic Buildings and Structures Permit pursuant to §26.24 of this title under the following circumstances:

- (1) the death of the project architect;
- (2) failure of the permit applicant to fully fund the permitted project work;
- (3) project work undertaken does not comply with the terms, conditions and approved project documents under the permit; and/or
- (4) violation of §26.24 of this title.

(i) Institutions of higher education. If an institution of higher education notifies the commission that it protests the terms of a permit granted to an institution of higher education under this section, the matter becomes a contested case under the provisions of the Administrative Procedure Act, Texas Government Code §2001.051, et seq. The institution of higher education must notify the commission of its protest within 30 days of its receipt of notice of the terms of the permit to initiate a contested case. The hearing officer and the commission will follow the procedures and take into account the criteria listed in Texas Natural Resources Code, §191.021(c). Weighing these criteria against the criteria specified in §26.20(b) of this title (relating to Standards for the Treatment of Historic Properties), the commission shall include a requirement in a permit only if the record before the committee establishes by clear and convincing evidence that such inclusion would be in the public interest.

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 November 2, 2020.

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Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: December 13, 2020
For further information, please call: (512) 463-6100



SUBCHAPTER F. REMOVAL OF DESIGNATIONS

13 TAC §26.28

The Texas Historical Commission (Commission) proposes new Subchapter F and rule §26.28, related to removal of designations for privately or publicly owned landmarks, within Title 13, Part 2, Chapter 26 of the Texas Administrative Code.

Rule 26.28 creates a process for removal requests of State Antiquities Landmark designations by referral to the Antiquities Advisory Board and the Commission, with provisions for appropriate public notice and comment.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the new rule as proposed. Because the proposed new rule only clarifies the administration of duties already authorized under sections of the State Antiquities Code, Texas Government Code, Health and Safety Code, and Transportation Code, there will be no impact on state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a more clearly defined process for administrative procedures and exercise of authority.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing this new rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. The proposed new rule does not affect small businesses, micro-businesses, or rural communities because the new rule only clarifies the administrative procedures with which to carry out existing statutes.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employ-

ees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. This new rule is proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of that chapter. This rule is also authorized under Texas Government Code §442.0045 (included in HB 1422 from the 86th Legislative Session to be effective September 1, 2019), which allows the Commission to delegate its authority to the executive director by rule or order.

Except as described herein, the proposed new rule affects no other code, article, or statute.

§26.28. Removal of Designations for Privately or Publicly Owned Landmarks.

(a) The public or private owner of property on which a landmark is designated pursuant to this Chapter may apply to the commission for removal of the landmark designation. The application must be submitted to the commission on a form approved by the commission, and the commission will determine whether the application is complete. The application shall indicate the basis for the property's original designation as an archeological site, shipwreck, cache or collection, historic building or structure, or any combination thereof, per the criteria for evaluation specified in §§26.10 - 26.12 of this title (relating to Archaeology) and §26.19 of this title (relating to Criteria for Evaluating Historic Buildings and Structures).

(1) If the owner of the property is a public entity, or if the property was, at the time of its designation, owned by a public entity, the applicant owner must also give notice of the application at their own expense in a newspaper of general circulation published in the city, town, or county in which the building, structure or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(A) be printed in 12-point boldface type;

(B) include the exact location of the building or site;

and

(C) include the name of the applicant/owner of the building or site.

(2) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the

commission with the application form. This notification must be received by the commission a minimum of 60 days prior to a regularly scheduled public meeting of the commission at which the application may be considered. All decisions regarding when an application will be considered by the commission will be made by the executive director of the commission.

(3) Applications must be accompanied by a deed or other legal description of the property at issue.

(b) Evaluation. The executive director of the commission will determine whether the application is complete and acceptable, whether the property is eligible for landmark designation removal, and when the application will be placed on the agenda of one of the commission's public meetings. In support of such determinations, the commission's staff will review the property according to the criteria for evaluation specified in §§26.10 - 26.12 and §26.19 of this title.

(c) Notification of nomination. If the commission's staff wishes to apply to remove a property's landmark status, it must give the owner a written notification that an application will be considered by the commission at one of its regularly scheduled public meetings. This notification must be received by the owner a minimum of 15 days prior to the regularly scheduled public meeting of the commission at which the application is scheduled to be presented. The commission must also send the owner site information on the proposed application.

(d) Presentation of applications. For landmarks eligible for designation removal, commission staff will evaluate the application and make a recommendation on whether removal is appropriate. Applications and staff recommendations will be presented to the Antiquities Advisory Board. Written notice of the time and location for presentation to the Board will be sent to the owner. The Antiquities Advisory Board will review each application, the staff recommendations related to each application, and any testimony given by the owner of the property and the public at large. The Antiquities Advisory Board will then determine by majority vote whether or not the landmark has any further historical, archeological, educational or scientific value, and whether or not it is of sufficient value to warrant its further classification as a landmark. The Board will then pass on its recommendations regarding each application to the commission. The chair of the Antiquities Advisory Board, or one of the other commission members who serve on the Antiquities Advisory Board, will present the application and recommendations to the commission at one of its public meetings.

(e) Comment period. No vote on removal of designation may be taken by the commission for a minimum period of 30 days after the Antiquities Advisory Board presents its recommendation to the commission, during which time all concerned parties may present information to the commission in support of or against the application. Comments may be submitted to the commission at any time prior to the vote described in subsection (f) of this section, including during public testimony at the commission meeting where the vote will occur. Comments should address the property's merits in light of the criteria specified in §§26.10 - 26.12 and §26.19 of this title. This 30 day comment period may be waived by the commission on application by the owner if the commission finds that good cause exists.

(f) Presentation of application and vote. Unless waived by the commission pursuant to subsection (e) of this section, after the minimum comment period of 30 days has elapsed, the commission may consider the application for removal of designation at one of its public meetings. The owners of the property will be informed of the agenda by written notice at least 15 calendar days in advance of the meeting date. Any person may present information on the application or testify at the meeting when the final decision is to be made. The commission will then determine by majority vote whether or not the landmark

has any further historical, archeological, educational or scientific value, and whether or not it is of sufficient value to warrant its further classification as a landmark. The commission may vote to approve or to deny the request for removal of designation, to request further information, or to make any other decision.

(g) Notification of removal of designation. Written notification of the commission's decision regarding the removal of designation of a property as a landmark will be forwarded to the owner.

(h) Marker. If the commission approves an application to remove landmark designation, the owner must, within 30 days and at their own expense, remove any plaques or markers identifying the property as a State Antiquities Landmark, and deliver the same to the Texas Historical Commission at the address designated in the written notification provided by the commission.

(i) Recording. If the commission approves an application to remove landmark designation, it shall execute and record in the deed records of the county in which the site is located an instrument setting out the determination.

(j) Privileged or restricted information. The location of archeological sites is not public information. However, information on sites may be disclosed to qualified professionals as provided by Chapter 24 of this title (relating to Restricted Cultural Resource Information). In order to comply with Chapter 24, applications for removal of landmark status from designated archeological sites may vary from other applications submitted under this section.

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 November 2, 2020.

TRD-202004587

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: December 13, 2020

For further information, please call: (512) 463-6100



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION

STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1055

The Texas Education Agency (TEA) proposes an amendment to §97.1055, concerning accreditation status. The proposed amendment would modify the rule to indicate that TEA will not issue accreditation statuses in the 2020-2021 academic year due to the lack of accountability ratings for the prior academic year and that, for purposes of issuing lowered accreditation

statuses based on consecutive years of performance, the 2019 and the 2021 academic accountability ratings are consecutive.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1055(a)(1) requires the commissioner to annually assign each school district an accreditation status. Subsections (a)(1)(A) and (b)-(e) set forth the requirements a school district must meet each school year to receive the status of Accredited and states how the accreditation statuses of Accredited-Warning, Accredited-Probation, and Not Accredited-Revoked are determined. In years in which the applicable academic rating cannot be issued to school districts due to extraordinary public health and safety circumstances, the commissioner does not have both applicable ratings necessary to issue an Accreditation status, as required. Due to extraordinary public health and safety circumstances related to COVID-19 and the closure of schools during the state's testing window, academic accountability ratings were not issued for the 2019-2020 school year. The 2020 rating label issued to all districts and campuses is Not Rated: Declared State of Disaster.

The proposed amendment to §97.1055 would amend subsection (a)(9) to clarify that the academic accountability ratings issued for the 2018-2019 and 2020-2021 school years are consecutive when determining multiple years of academically unacceptable or insufficient performance. In addition, subsection (a)(11) would be amended to clarify that accreditation statuses issued for the 2019-2020 and 2021-2022 school years are consecutive.

The proposed amendment would add new subsection (a)(12) to clarify how a rating of Not Rated-Data Integrity or similar rating is issued to a school district will affect accreditation. When such a rating is issued, the commissioner may withhold or withdraw a previously issued accreditation rating. In the following school year, the commissioner will issue an accreditation rating based on the applicable school years.

The proposed amendment would also add new subsection (a)(13) to clarify that when there is a rating in only the financial accountability rating system or the academic accountability rating system, the commissioner may elect whether to consider the available rating when assigning a future accreditation status. This will allow the commissioner flexibility to determine the proper accreditation status when the district has a chain of failures in both accountability systems and breaks the chain when only one rating is available.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for governance and accountability, 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. During the first five years the proposed rulemaking would be in effect, it would limit and expand an existing regulation. The proposed amendment would limit the requirement that the agency issue accreditation statuses annually by enabling the agency not to assign statuses for the 2020-2021 school year due to the lack of academic accountability ratings for the 2019-2020 school year. The proposed amendment would expand the regulation by clarifying that academic accountability ratings for the 2018-2019 and 2020-2021 school years will be consecutive for the purposes of determining multiple years of unacceptable or insufficient academic performance and that the accreditation statuses issued for the 2019-2020 and 2021-2022 school years will be consecutive.

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 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. Cottrill 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 ensuring that school districts continue to receive an accreditation status on an annual basis and provide a clear process by which the agency will assign statuses in years in which the applicable ratings used to determine statuses are not issued. 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 new 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 November 13, 2020, and ends December 14, 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 November 13, 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/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.051, which requires the commissioner to determine accreditation statuses; and TEC, §39.052, which establishes the requirements for the commissioner to consider when determining accreditation statuses.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.051 and §39.052.

§97.1055. *Accreditation Status.*

(a) General provisions.

(1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.052(b) and (c). Each district shall be assigned a status defined as follows.

(A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:

(i) meets the standards determined by the commissioner under TEC, §39.052(b) and (c), and specified in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and

(ii) is not currently assigned an accreditation status of Accredited-Warning or Accredited-Probation.

(B) Accredited-Warning. Accredited-Warning means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.

(C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.

(D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section.

(2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.051 and §39.052, which are specified in §97.1053(a) of this title (relating to Purpose).

(3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.051 and §39.052, are to:

(A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section; and

(B) encourage other districts to improve their performance so as to retain their accreditation.

(4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39 or 39A, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.

(5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a

financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:

(A) specifically authorized by commissioner rule;

(B) timely requested under and in compliance with such rule; and

(C) applicable to the accreditation status under review.

(6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.

(7) The commissioner may withhold the assignment of an accreditation status to an open-enrollment charter school that is subject to TEC, §12.115(c) or §12.1141(d), or has otherwise surrendered its charter.

(8) An accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this chapter or other applicable law.

(9) For purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2010-2011 school year and for the 2012-2013 school year are consecutive. An accreditation status assigned for the 2012-2013 school year shall be based on assigned academic accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section. Additionally, for purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2018-2019 school year and for the 2020-2021 school year are consecutive. An accreditation status assigned for the 2020-2021 school year shall be based on assigned academic and financial accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.

(10) If a lowered accreditation status is assigned and a sanction is imposed, the subsequent issuance of a new accreditation status does not affect the commissioner's authority to proceed with the previously imposed sanction.

(11) Accreditation statuses are consecutive if they are not separated by an accreditation period in which the TEA assigned accreditation statuses to districts and charter schools generally. For example, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2012-2013 school year, then the accreditation statuses issued for the 2011-2012 school year and for the 2013-2014 school year are consecutive. Additionally, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2020-2021 school year, then the accreditation statuses issued for the 2019-2020 school year and for the 2021-2022 school year are consecutive.

(12) If a rating of Not Rated-Data Integrity or similar rating is issued to a school district, the commissioner may withhold the assignment of an accreditation status or withdraw a previously issued accreditation status. For purposes of determining multiple years of unacceptable or insufficient performance, the rating issued for the prior and subsequent school year are consecutive. The next accreditation status assigned shall be based on assigned accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.

(13) When an accreditation status is withheld because either a financial or academic accountability rating is not available or the district is not rated due to data integrity, the commissioner may, but is not required to, consider the rating that is issued when assigning subse-

quent accreditation statuses in order to achieve the purposes specified in §97.1053(a) of this title. If the commissioner elects not to consider a rating, then the previous and subsequent rating is consecutive.

(b) Determination of Accredited-Warned status.

(1) A district shall be assigned Accredited-Warned status if the district is assigned:

(A) for two consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System);

(B) for two consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title (relating to Financial Accountability Ratings);

(C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;

(ii) the reporting of data under TEC, §48.008, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title (relating to Results Driven Accountability [Performance-Based Monitoring Analysis System]) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(c) Determination of Accredited-Probation status.

(1) A district shall be assigned Accredited-Probation status if the district is assigned:

(A) for three consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;

(B) for three consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;

(C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;

(ii) the reporting of data under TEC, §48.008, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(d) Determination of Not Accredited-Revoked status; Revocation of accreditation.

(1) The accreditation of a district shall be revoked if the district is assigned:

(A) for four consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;

(B) for four consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;

(C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding paragraph (1) of this subsection, the commissioner may abate the assignment of a Not Accredited-Revoked status, issue another accreditation status, or elect to appoint a board of managers to govern the district in lieu of revoking the district's accreditation if the commissioner determines that revocation of the district's accreditation is not reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(3) Notwithstanding this section, if the commissioner appoints a board of managers under paragraph (2) of this subsection or as a result of a special accreditation investigation, the commissioner shall assign the district accreditation statuses during the period of the appointment of the board of managers as follows.

(A) In the school year following the appointment of the board of managers, the commissioner shall assign the district an accreditation status of Accredited.

(B) In the school years following the issuance of the accreditation rating under subparagraph (A) of this paragraph, the commissioner shall assign the accreditation status as provided by subsections (a)-(d) of this section. However, the commissioner shall not consider any academic rating that was issued for a school year in which the district was operated, in whole or in part, by the suspended board of trustees. The commissioner shall also not consider any financial accountability rating that was issued based on financial data from a fiscal year in which the district was operated, in whole or in part, by the suspended board of trustees. Notwithstanding this provision, the commissioner may consider academic or financial ratings attributable to performance that occurred in a school year in which the district was operated, in whole or in part, by the suspended board of trustees if the commissioner, in his sole discretion, determines such consideration is necessary to achieve the purposes of TEC, §39.051 and §39.052.

(C) For any district subject to this paragraph, the commissioner may lower the district's accreditation rating to Not Accredited-Revoked at any time if the commissioner determines that the district is not making acceptable progress to correct its academic or financial performance and that closure and annexation is necessary to achieve the purposes of TEC, §39.051 and §39.052, unless the district has earned an Accredited status absent the application of subparagraph (A) or (B) of this paragraph.

(D) For purposes of this subsection, the period of appointment of the board of managers includes any school year in which any member of the board of managers serves, including the school year during which the appointment of the board of managers expires.

(4) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;

(ii) the reporting of data under TEC, §48.008, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that require revocation of the district's accreditation.

(5) Notwithstanding paragraph (3) of this subsection, a district's accreditation shall be revoked if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(6) The commissioner's decision to revoke a district's accreditation may be reviewed under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings). If, after review, the decision is sustained, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.

(7) Issuance of an accreditation status of Not Accredited-Revoked does not invalidate a diploma awarded, course credit earned, or grade promotion granted by a school district before the effective date of the annexation of the district.

(e) Legal compliance. In addition to the district's performance as measured by ratings under §97.1001 and §109.1001 of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.052(b)(2). Notwithstanding satisfactory or above satisfactory performance on other measures, a district's accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:

(1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;

(2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and

(3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.052(b)(2).

(f) Required notification of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked status.

(1) A district assigned an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.

(2) The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the commissioner. The district's notice shall use the format and language determined by the commissioner.

(3) Notice under this subsection must:

(A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website,

with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and

(B) appear in a newspaper of general circulation, as defined in §97.1051 of this title (relating to Definitions), in the district for three consecutive days as follows:

(i) from Sunday through Tuesday of the second week following assignment of the status; or

(ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or

(C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district; or

(D) not later than 30 calendar days after the status is assigned, be presented as a discussion item in a public meeting of the board of trustees conducted at a time and location that allows parents of students enrolled in the district and property owners in the district to attend and provide public comment.

(4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:

(A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and

(B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or

(C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts; or

(D) copies of the notice required by paragraph (3)(D) of this subsection and copies of the board of trustees meeting notice and minutes for the board meeting in which the notice was presented and publicly discussed.

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 November 2, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 457-1497



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 170. PRESCRIPTION OF CONTROLLED SUBSTANCES

SUBCHAPTER D. ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

22 TAC §170.10

The Texas Medical Board (Board) proposes new Subchapter D, of 22 TAC Chapter 170 entitled Electronic Prescribing of Controlled Substances, and new §170.10, Electronic Prescribing of Controlled Substances.

New §170.10 proposes to outline the process and circumstances in which a physician may obtain a waiver from controlled substance e-prescribing requirements, in accordance with Texas Health and Safety Code §481.0756, as set forth by H.B. 2174 (86th Leg. (2019)).

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to clarify the process and circumstances in which a physician may obtain a waiver from controlled substance e-prescribing requirements consistent with rules proposed by the Texas Pharmacy Board in the October 2, 2020 Texas Register issue, in compliance with the statutory mandate under Section 481.0756 of the Texas Health and Safety Code.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

(1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;

(2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;

(3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and

(4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the

first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

- (1) The proposed amendments will not create or eliminate a government program.
- (2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed amendments will not require an increase or decrease in fees paid to the agency.
- (5) The proposed amendments will create a new regulation.
- (6) The proposed amendments will not expand, limit or repeal an existing regulation as described above.
- (7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.
- (8) The proposed amendments will not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Health and Safety Code §481.0756, as set forth by H.B. 2174 (86th Leg. (2019)). The new rule is further authorized under Texas Occupations Code. §153.001.

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

§170.10. Electronic Prescribing of Controlled Substances.

(a) A physician shall comply with all federal and state laws relating to prescribing of controlled substances in Texas, including requirements concerning electronic prescribing under Code of Federal Regulations, Title 21, Part 1311, and Texas Health and Safety Code, §§481.074 - 481.075.

(b) A prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued:

- (1) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure; or
- (2) by a physician or physician's delegate to be dispensed by a pharmacy located outside this state.

(c) A physician may apply for a waiver from the electronic prescribing requirement by:

- (1) submitting a waiver request and providing required information using a form approved by the Board; and
- (2) demonstrating circumstances necessitating a waiver from the requirement, including:

(A) economic hardship, as determined by the Board on a physician-by-physician basis, taking into account factors including:

(i) any special situational factors affecting either the cost of compliance or ability to comply;

(ii) the likely impact of compliance on profitability or viability; and

(iii) the availability of measures that would mitigate the economic impact of compliance;

(B) technological limitations not reasonably within the control of the physician; or

(C) other exceptional circumstances demonstrated by the physician.

(3) A waiver may be issued to a physician for a period of one year as specified under Section 481.0756(f) of the Texas Controlled Substances Act. A waiver shall expire one calendar year from the date the waiver is issued. A physician may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

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 October 30, 2020.

TRD-202004562
Scott Freshour
General Counsel

Texas Medical Board

Earliest possible date of adoption: December 13, 2020

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



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.420

The Texas Behavioral Health Executive Council proposes new §781.420, relating to Licensing Persons with Criminal Convictions.

Overview and Explanation of the Proposed Rule. The proposed 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.

If a rule will pertain to the qualifications necessary to obtain a license 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 amendment pertains to licensing persons with criminal convictions as social workers; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule 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 rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule 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 rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules by aligning with current legal standards. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule 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 rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule 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 rule 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 rule 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 rule 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 rule 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 rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a govern-

ment program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it clarifies a rule that was repealed so it may better align with current legal standards; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does 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 rule. 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 rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, 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 rules@bhec.texas.gov.

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 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 this rule 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 rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this 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.

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

§781.420. Licensing of Persons with Criminal Convictions.

The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

- (1) offenses listed in Article 42A.054 of the Code of Criminal Procedure;
- (2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;
- (3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (4) any criminal violation of Chapter 505 (Social Work Practice Act) of the Occupations Code;
- (5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (6) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);
- (7) any offense involving the failure to report abuse or neglect;
- (8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;
- (9) any criminal violation of Section 22.041 (abandoning or endangering a child) of the Penal Code;
- (10) any criminal violation of Section 21.15 (invasive visual recording) of the Penal Code;
- (11) any criminal violation of Section 43.26 (possession of child pornography) of the Penal Code;
- (12) any criminal violation of Section 22.04 (injury to a child, elderly individual, or disabled individual) of the Penal Code;
- (13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and
- (14) 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 October 30, 2020.

TRD-202004541

Darrell D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: December 13, 2020

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

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 112. SCOPE OF LIABILITY FOR COMPENSATION

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §§112.101, 112.102, 112.203, 112.301, and 112.401 concerning the scope of liability for compensation. These proposed amendments will conform DWC's rules to statutory changes made by House Bill 1665, 86th Legislature, Regular Session (2019).

EXPLANATION. DWC proposes to delete the headings for Subchapters B, C, D, and E in Chapter 112 to simplify how the rules are organized and make them easier to access and more-user friendly. Only the headings used for Subchapters B, C, D, and E will be deleted. The sections in Subchapters B, C, D, and E will not be deleted.

Section 112.101 addresses Agreement Regarding Workers' Compensation Insurance Coverage Between General Contractors and Subcontractors. This proposal amends §112.101(a), (b), (c)(2), (d), and (e) to replace "shall" with "must." The proposal also amends §112.101(d) to add "insurance" before "carrier" and §112.101(e) to remove "the" before "Texas" and the comma after "Code." The proposal also amends the title of §112.101 to replace "Regarding" with "regarding" and "Between" with "between." These amendments are nonsubstantive but clarify the meaning of the rules and conform them to current agency style.

Section 112.102 addresses Agreement between Motor Carriers and Owner Operators. This proposal amends §112.102(b), (d), (e), and (f) to replace "shall" with "must." The proposal also amends §112.102(f) to remove "the" before "Texas," as well as "Workers' Compensation Act" and the comma after "§406.005." The proposal adds "Labor Code" after "Texas." These amendments are nonsubstantive but clarify the meaning of the rules and conform them to current agency style.

Section 112.203 addresses Exception to Application of Agreement To Affirm Independent Relationship for Certain Building and Construction Workers. This proposal amends §112.203(a) to remove "the Commission and" from the hiring contractor filing requirements. It is consistent with Labor Code changes in HB 1665, 86th Legislature, Regular Session (2019) that now require a copy of a subsequent hiring agreement, to which the joint agreement does not apply, to be filed with DWC only on DWC's request. This amendment is necessary to reflect DWC's intent that the agreement no longer must be filed with DWC. DWC also proposes amending §§112.203(b) and 112.203(d) to replace "Commission" with "division." These amendments are necessary to reflect DWC's current agency name and are con-

sistent with the amendments DWC made to Chapter 112 in 2018. The proposal also amends the title of §112.203 to replace "To" with "to." This amendment is nonsubstantive but conforms it to current agency style.

Section 112.301 addresses Labor Agent's Notification of Coverage. This proposal amends the title of §112.301 to "Labor Agent's Notification of Coverage for Certain Farm or Ranch Employees." This amendment adds clarity to the section title in the absence of subchapter titles.

Section 112.401 addresses Election of Coverage by Certain Professional Athletes. This proposal amends §112.401(e) to expand the acceptable ways to deliver the agreement or contract between a professional athlete and a franchise. The proposal amends §112.401(b) to replace "Texas Workers' Compensation Commission" with "Texas Department of Insurance, Division of Workers' Compensation" and §112.401(d) to replace "Commission" with "division." The proposal also amends the required language of the agreement or contract between a professional athlete and a franchise. These proposed amendments are non-substantive changes to DWC rules and are necessary to reflect the division's current name and conform this section to current agency style. The proposed amendments to the required language of the agreement or contract between a professional athlete and a franchise will be effective March 1, 2021.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Joseph McElrath, deputy commissioner of Business Process, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. McElrath does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. McElrath expects that administering the proposed amendments will have the public benefit of ensuring that DWC's rules conform to the Texas Labor Code.

Mr. McElrath expects that the proposed amendments will not increase the cost to comply with Labor Code §406.145 because they do not impose requirements beyond those in the statute. Labor Code §406.145 permits a hiring contractor and an independent subcontractor to enter into a joint agreement declaring the subcontractor an independent contractor, not an employee of the hiring contractor, for workers' compensation insurance purposes. HB 1665 amended §406.145(f) to remove the requirement that a hiring contractor and an independent contractor file the joint agreement with DWC. The bill also included a new requirement that a copy be sent to DWC only when requested. These amendments result in cost savings to system participants by removing existing reporting requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro-businesses, or on rural communities. Instead, the proposed amendments result in cost savings to system participants, including small

or micro-businesses, by removing existing reporting requirements. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal imposes a possible cost on regulated entities. However, no additional rule amendments are required under Government Code §2001.0045 because proposed §112.203 is necessary to implement legislation. The proposed rule implements Labor Code §406.145 enacted by HB 1665. Although there may be some costs associated with proposed §112.401, DWC proposes that the amendments to the language of the agreement or contract between a professional athlete and a franchise be effective March 1, 2021, so that the franchises have the flexibility to implement the changes in a cost-effective way. No additional rule amendments are required under Government Code §2001.0045 because proposed §§112.301 and 112.401 reduce the burden and responsibilities these rules impose on the regulated entities.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

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

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. The proposed amendments to §112.401(b) make stylistic changes to the required language of the agreement or contract between a professional athlete and a franchise. These proposed amendments are nonsubstantive changes to DWC rules. Further, DWC proposes that these amendments be effective March 1, 2021, so that the franchises have the flexibility to implement the changes in a cost-effective way. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on December 14, 2020. Send your comments to RuleComments@tdi.texas.gov; or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers'

Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The request for public hearing must be separate from any comments and received by DWC no later than 5:00 p.m., Central time, on December 14, 2020. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

28 TAC §112.101, §112.102

STATUTORY AUTHORITY. DWC proposes amended Subchapter B under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; Labor Code §406.122, Status as Employee; and Labor Code §406.123, Election to Provide Coverage; Administrative Violation.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.122 states that a subcontractor and the subcontractor's employees are not employees of a general contractor if the subcontractor and general contractor have entered into a written agreement where the subcontractor assumes the responsibilities of an employer. The section further provides that an owner operator and the owner operator's employees are not employees of a motor carrier if the owner operator and motor carrier have entered into an agreement where the owner operator assumes the responsibilities of an employer.

Labor Code §406.123 provides that a general contractor and a subcontractor may enter into certain agreements and requires the general contractor to file a copy of the agreement with their insurance carrier. The general contractor must file a copy with the division only if they are a certified self-insurer. The section further allows motor carriers and owner operators to enter into agreements where the motor carrier agrees to provide workers' compensation insurance to the owner operator.

CROSS-REFERENCE TO STATUTE. Sections 112.101 and 112.102 implement Labor Code §406.123, enacted by HB 7, 79th Legislature, Regular Session (2005).

§112.101. Agreement regarding [Regarding] Workers' Compensation Insurance Coverage between [Between] General Contractors and Subcontractors.

(a) An agreement between a general contractor and a subcontractor made in accordance with [the] Texas Labor Code[;] §406.123(a), (d), (e), or (l) must [shall]:

(1) - (6) (No change.)

(b) The workers' compensation insurance coverage provided by the general contractor under the agreement will [shall] take effect no sooner than the date [on which] the agreement was executed, and deductions for the premiums must [shall] not be made for coverage provided before [prior to] that date.

(c) If a person who is covered by a subcontractor agreement signed under this section is found to be an employee of the general contractor, the person:

(1) (No change.)

(2) must [shall] receive a refund from the general contractor for all amounts improperly deducted as premium.

(d) The general contractor must [shall] maintain the original and file a legible copy of the agreement with the general contractor's workers' compensation insurance carrier within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. If a general contractor and subcontractor enter into a written agreement in which the subcontractor assumes the responsibilities of an employer as provided in [the] Texas Labor Code[;] §406.122(b), the general contractor must [shall] provide a copy of the agreement to its insurance carrier within 10 days of execution. After January 1, 1993, a general contractor who is a certified self-insurer must [shall] file a copy of the agreement with the division within 10 days of the date of execution. The filing must [~~Filing shall~~] be made in the form and manner prescribed by the division.

(e) The general contractor must [shall be required to] give the subcontractor's employees the notice required under [the] Texas Labor Code[;] §406.005 when such an agreement is made.

(f) (No change.)

§112.102. Agreements between Motor Carriers and Owner Operators.

(a) (No change.)

(b) An agreement made under subsection (a) of this section must [shall] be made at or before the time the contract for the work is made and must [shall]:

(1) - (5) (No change.)

(c) (No change.)

(d) An agreement made under subsection (c) of this section must [shall] be made at or before the time the contract for the work is made and must [shall]:

(1) - (5) (No change.)

(e) The workers' compensation insurance coverage provided by the motor carrier under the agreement must [shall] take effect no sooner than the date [on which] the agreement was executed, and deductions for the premiums must [shall] not be made for coverage provided before [~~prior to~~] that date.

(f) The motor carrier must [shall] be required to give the owner operator's employees the notice required under [the] Texas Labor Code [Workers' Compensation Act,] §406.005[;] when such an agreement is made.

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 October 27, 2020.

TRD-202004498

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: December 13, 2020

For further information, please call: (512) 804-4703

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28 TAC §112.203

STATUTORY AUTHORITY. DWC proposes amended §112.203 under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; Labor Code §406.122, Status as Employee; Labor Code §406.123, Election to Provide Coverage; Administrative Violation; Labor Code §406.144, Election to Provide Coverage; Agreement; and Labor Code §406.145, Joint Agreement.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.122 states that a subcontractor and the subcontractor's employees are not employees of a general contractor if the subcontractor and general contractor have entered into a written agreement where the subcontractor assumes the responsibilities of an employer. The section further provides that an owner operator and the owner operator's employees are not employees of a motor carrier if the owner operator and motor carrier have entered into an agreement where the owner operator assumes the responsibilities of an employer.

Labor Code §406.123 provides that a general contractor and a subcontractor may enter into certain agreements and requires the general contractor to file a copy of the agreement with their insurance carrier. The general contractor must file a copy with the division only if they are a certified self-insurer. The section further allows motor carriers and owner operators to enter into agreements where the motor carrier agrees to provide workers' compensation insurance to the owner operator.

Labor Code §406.144 states a hiring contractor is not responsible for providing workers' compensation insurance coverage for an independent contractor unless the hiring contractor and independent contractor enter into an agreement under which the hiring contractor, for the purpose of providing workers' compensation insurance coverage, is the employer of the independent contractor.

Labor Code §406.145 permits a hiring contractor and an independent subcontractor to enter into a joint agreement declaring the subcontractor as an independent contractor and not an employee of the hiring contractor for workers' compensation purposes. The joint agreement applies to each hiring agreement between the parties until the first anniversary of its filing date unless a later hiring agreement expressly states the joint agreement does not apply.

CROSS-REFERENCE TO STATUTE. Section 112.203 implements Labor Code §406.145, enacted by HB 1665, 86th Legislature, Regular Session (2019).

§112.203. Exception to Application of Agreement to [Te] Affirm Independent Relationship for Certain Building and Construction Workers.

(a) If a subsequent hiring agreement is made that expressly states that the joint statement made under §112.202 of this title (relating to Joint Agreement To Affirm Independent Relationship for Certain Building and Construction Workers) does not apply to that hiring agreement, the hiring contractor must [shall] maintain the original and file a legible copy of the agreement with [the Commission and] the hiring contractor's insurance carrier. Nothing in this section otherwise nullifies the joint statement as it applies to other hiring agreements made during the term of the joint statement.

(b) The notification must [shall] be filed in the form and manner prescribed by the division [Commission] and must [shall]:

(1) - (4) (No change.)

(c) If a person who is covered by an independent contractor agreement signed under this section is found to be an employee of the hiring contractor, the person:

(1) (No change.)

(2) must [shall] receive a refund from the hiring contractor for all amounts improperly deducted as premium.

(d) The notification [notice] must [shall] be provided in the form and manner prescribed by the division [Commission,] no later than 10 days from the date the subsequent hiring agreement was executed. An agreement is not considered filed if it is illegible or incomplete.

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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Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: December 13, 2020

For further information, please call: (512) 804-4703

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28 TAC §112.301

STATUTORY AUTHORITY. DWC proposes amended §112.301 under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; and Labor Code §406.163, Liability of Labor Agent; Joint and Several Liability.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.163 states that a labor agent must notify each person the agent contracts with whether the agent has workers' compensation insurance coverage. If the agent has workers' compensation insurance coverage, they must present evidence of the coverage to each person the agent contracts with.

CROSS-REFERENCE TO STATUTE. Section 112.301 implements Labor Code §406.163, enacted by HB 752, 73rd Legislature, Regular Session (1993).

§112.301. Labor Agent's Notification of Coverage to Certain Farm or Ranch Employees.

(a) A labor agent must [shall] notify each person [with whom] the labor agent contracts with to provide the services of migrant and seasonal workers whether or not the labor agent has workers' compensation insurance coverage.

(b) The notification must [shall] be in writing and must [shall] be given at the time the contract for the services of the migrant or seasonal workers is made. The notification must [shall] be signed and dated by both parties and each party must [shall] retain a copy of the notice.

(c) If the labor agent does have workers' compensation insurance coverage, the labor agent must [shall] present evidence of the workers' compensation insurance coverage to each person [with whom] the agent contracts with to provide the services of migrant and seasonal workers. The evidence of coverage must [shall] be in writing and must [shall] be presented at the time the notification of coverage is made. Each party must [shall] retain a copy of the evidence of coverage with the copy of the notice. A certificate of insurance is [shall be] considered adequate evidence of coverage.

(d) The notice and evidence of coverage, if applicable, must [shall] be given each time a labor agent makes a contract with a person to provide migrant or seasonal workers. Any notice and evidence of coverage provided for a prior contract between the parties is [shall be] considered insufficient to meet the requirements of this section.

(e) If coverage is terminated during the period of the contract for employment, the labor agent must [shall] notify:

- (1) - (2) (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.

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28 TAC §112.401

STATUTORY AUTHORITY. DWC proposes amended §112.401 under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; and Labor Code §406.095, Certain Professional Athletes.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.095 states a professional athlete employed under a contract for hire or a collective bargaining agreement, who sustains an injury in the course and scope of the athlete's employment, must elect to receive either the benefits available under this subtitle or the benefits under the contract or agreement. Labor Code §406.095(b) states the commissioner by rule will establish the procedures and requirements for an election under this section.

CROSS-REFERENCE TO STATUTE. Section 112.401 implements the Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

§112.401. Election of Coverage by Certain Professional Athletes.

(a) A professional athlete employed by a franchise with workers' compensation insurance coverage and subject to [the] Texas Labor Code[;] §406.095[;] must [shall] elect to receive either the benefits available under the Act or the equivalent benefits available under the athlete's contract or collective bargaining agreement. The election must [shall] be made not later than the 15th day after the athlete sustains an injury in the course and scope of employment. If the athlete fails to make an election, the athlete will be presumed to have elected the option which provides the highest benefits.

(b) When a contract is signed by a professional athlete, the employer must [shall] give the athlete a copy of the following statement: "(Name of employer) has workers' compensation coverage from (name of insurance carrier). If the benefits available to you under your contract and any applicable collective bargaining agreement are equivalent to or greater than those available to you under [the] Texas Labor Code[;] §406.095, you are required to elect whether to receive the benefits available to you under the Act or the benefits available to you under your contract and any applicable collective bargaining agreement. You must make this election no later than 15 days after sustaining an injury. If you elect to receive the benefits available to you under your contract and any applicable collective bargaining agreement, you cannot obtain workers' compensation income or medical benefits if you are injured. You can get more information about your workers' compensation rights and the benefits available to you under the Act from any office of the Texas Department of Insurance, Division of Workers' Compensation, [Commission,] or by calling 1-800-252-7031."

(c) The election must [shall] be in writing and must [shall]:

- (1) - (3) (No change.)

(d) If the athlete elects to receive the benefits available under the Act, a legible copy of the election must [shall] be provided to the division [Commission] in the form and manner prescribed by the division [Commission,] within 10 days of the date of execution. A copy must also be provided to the franchise's workers' compensation insurance carrier within 10 days of the date of execution. The franchise must [shall] maintain the original election and provide a copy to the athlete.

(e) If the athlete elects to receive the benefits available under the contract and any agreement, the election must [shall] be filed with the franchise's workers' compensation insurance carrier [by personal delivery or registered or certified mail] within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. Both the athlete and the franchise must [shall] keep a copy of the election.

(f) (No change.)

(g) The 2020 amendments on the language of the agreement or contract between a professional athlete and a franchise are effective March 1, 2021.

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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Kara Mace

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.591

The Comptroller of Public Accounts proposes amendments to §3.591, concerning margin: apportionment. The amendments implement House Bill 500, 83rd Legislature, 2013, effective January 1, 2014 and House Bill 2896, 84th Legislature, 2015, effective January 1, 2018. The amendments also update the section to reflect current guidance and improve readability.

Throughout the section, where applicable, the comptroller adds titles to statutory citations; replaces the term intangibles with intangible assets; replaces the term receipts with gross receipts; replaces the term gross receipts everywhere with gross receipts from an entity's entire business; references other relevant sections; replaces the term apportioned with sourced; replaces the term legal domicile of payor with location of payor; replaces the term revenue with gross receipts; and makes minor revisions to improve readability.

The comptroller amends subsection (b)(1) to remove circular language.

The comptroller removes subsection (b)(2), the definition of commercial domicile, and renumbers the subsequent paragraphs as necessary. The definition of commercial domicile is no longer necessary as the term is no longer used in this section.

The comptroller amends renumbered subsection (b)(3) to revise the definition of gross receipts to reflect that certain non-receipt items excluded when calculating total revenue are not used in

calculating gross receipts. Any item of revenue excluded from total revenue is not included in computing gross receipts under Tax Code, §171.1055(a). For most entities, gross receipts will equal the amount reported in total revenue unless the taxable entity has excluded non-receipt items from total revenue that must be added back when computing gross receipts, including: \$500 per pro bono services case; the actual cost of uncompensated care; the direct cost of providing waterway transportation; the direct cost of providing agricultural aircraft services and the cost of a vaccine. For example, under Tax Code, §171.1011(g-3) (Determination of Total Revenue from Entire Business), an attorney may exclude \$500 from total revenue for handling a pro bono case. Since the \$500 is not a receipt, there is no exclusion for pro bono work when calculating gross receipts.

The comptroller adds new language to renumbered subsection (b)(4) specifying that the federal tax year beginning on January 1, 2007, is the operative federal tax year for references to the Internal Revenue Code (IRC). The new language replaces the reference to Tax Code, §171.0001 (General Definitions).

The comptroller adds new subsection (b)(5) to define inventory. This definition is based on the discussion of inventory from IRC §1221(a)(1) and incorporates the guidance provided by STAR Accession No. 201311792L (November 21, 2013).

The comptroller amends subsection (b)(6) concerning investments to make clear that inventory is not included in investments. The definition incorporates the guidance provided by STAR Accession No. 201311792L.

The comptroller amends subsection (b)(7) concerning the definition of legal domicile to remove the definition of principal place of business and define the term separately in subsection (b)(9).

The comptroller adds new subsection (b)(9) to define principal place of business for all taxable entities. The comptroller removes the principal place of business definition from the definition of legal domicile in subsection (b)(7) and replaces the current definition with a definition based on the United States Supreme Court decision, *Hertz Corp. v. Friend*, Case No. 08-1107, slip op. at 1 (2010) where the court concluded that "...'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities."

The comptroller adds new subsection (b)(10) to define regulated investment company. The definition is consistent with the language in Tax Code, §171.106(b) (Apportionment of Margin to this State). Subsequent paragraphs are renumbered accordingly.

The comptroller adds new subsection (b)(14) to define Texas gross receipts pursuant to Tax Code, §171.103 (Determination of Gross Receipts from Business Done in this State for Margin).

The comptroller amends subsection (c)(1) to provide guidance from Tax Code, §171.106(b) relating to the sourcing of receipts from services provided to a regulated investment company. New subparagraphs (A) and (B) provide guidance on how to determine Texas gross receipts and gross receipts from an entity's entire business, respectively, for a regulated investment company.

The comptroller amends subsection (c)(2) to track the statutory language in Tax Code, §171.106(c) relating to the sourcing of receipts from services provided to an employee retirement plan. New subparagraphs (A) and (B) provide guidance on how to determine Texas gross receipts and gross receipts from an entity's entire business, respectively, for an employee retirement plan.

The comptroller amends subsection (d)(1) to delete the reference to §3.595 (relating to Margin: Transition) as the transition period is no longer within the statute of limitations and §3.595 has been repealed.

The comptroller amends subsection (d)(2) to add language to limit the filing of an initial report to taxable entities with a beginning date prior to October 4, 2009, pursuant to §3.584(c)(1) (relating to Margin: Reports and Payments). The comptroller also adds reporting requirements for taxable entities with a beginning date on or after October 4, 2009, consistent with §3.584(c)(2).

The comptroller amends subsection (d)(5) to explain that exclusions under §3.587 of this title (relating to Margin: Total Revenue) that are non-receipt items are not deducted from receipts.

The comptroller amends the title to subsection (e) to more accurately reflect the contents of the subsection.

The comptroller deletes the original language in subsection (e)(1) concerning bad debt recoveries. The comptroller determines the guidance unnecessary and intends no change in policy by this deletion.

The comptroller adds language to subsection (e)(1) to consolidate the sourcing rules for receipts from advertising, which are currently addressed in subsection (e)(20) for newspapers or magazines, (e)(22) for radio/television, and (e)(26) for advertising services in other media. The proposed new language in subsection (e)(1) will provide a uniform sourcing rule across all media and will be consistent with the amendments to the general rule for sourcing receipts from services in subsection (e)(26), which states that a service is performed at the location of the receipt-producing, end-product act.

The comptroller restructures subsection (e)(2) concerning capital assets and investments into two new subparagraphs. The comptroller proposes to revise its treatment of the sale of investments and capital assets. Consistent with the Texas Supreme Court decision in *Hallmark Marketing Co. v. Hegar*, 488 S.W.3d 795 (Tex. 2016), net losses are no longer included in gross receipts. In addition, for reports originally due on or after January 1, 2021, net gains and losses will be determined on a sale-by-sale basis.

Under the current rule, gains and losses during an accounting period are offset to determine a "net" amount. The comptroller adopted this rule to comply with the holding in *Calvert v. Electro-Science Investors, Inc.*, 509 S.W.2d 700 (Tex. Civ. App. - Austin 1974, no writ). See Tex. Comp. of Pub. Accts., Rule 026.02.12.013(2)(k) (1975) (STAR Accession No. 7601R1000B02). In its *Electro-Science* opinion, the Court of Appeals held that the plain meaning of "net gain" in the apportionment statute required that "gains and losses be offset against one another in order that a net figure be obtained."

However, more recently, in *Hallmark Marketing Co. v. Combs*, No. 13-14-00093-CV (Tex. App. - Corpus Christi-Edinburg 2014) (mem. op.), rev'd on other grounds, 488 S.W.3d 795 (2016), the Court of Appeals found that the statute was ambiguous:

"The ambiguity arises because it is unclear, by examining only the plain language of the statute, what the term "net gain" means. On the one hand, "net gain" may refer to the particular gain or loss that results from each individual sale when proceeds are offset by costs. ... On the other hand, "net gain" may instead refer to the taxpayer's cumulative gain or loss on its various investment and capital asset sales made throughout the year."

The Texas Supreme Court reversed the Court of Appeals' *Hallmark* decision on other grounds, holding that "we do not need to relitigate the question in order to determine Hallmark did not have a net gain under any calculation." 488 S.W.3d at 799.

In the process of revising its rule to comply with the Supreme Court's determination that net losses may not be included in gross receipts, the comptroller has also evaluated its rule regarding the calculation of net gains and losses. The comptroller has concluded that the only reasonable interpretation is that net gains and losses should be determined separately for each sale of a capital asset or investment.

The objective of the apportionment statute is to apportion an entity's total revenues based on the entity's business activity in Texas relative to the entity's entire business activity. The apportionment statute uses an entity's gross receipts as a proxy for business activity. Given this objective, it makes no sense to negate gains from one transaction with losses from another, resulting in one business activity essentially negating another.

Suppose a real estate investment company sold two Texas investment properties, with the loss on one sale equaling the gain on the other. If the loss offsets the gain for apportionment purposes, the company will have no Texas receipts and a zero Texas apportionment factor even though it had substantial business activity in the State. The comptroller has concluded that the Legislature could not have intended that absurd result. Rather, the only reasonable interpretation of legislative intent is the opposite -- the Legislature provided that only the net gain from a sale would be included in the calculation to prevent losses from being used to offset gains.

Accordingly, new subparagraph (A), which includes the statutory language from Tax Code, §171.105(b), also includes several clauses. New clause (i) provides the comptroller's revised interpretation; an entity's net gain or net loss is determined separately for each sale of a capital asset or investment. New clause (ii) provides the comptroller's previous interpretation of the provision and limits its applicability to reports originally due prior to January 1, 2021. New clause (iii) provides an example of the comptroller's revised interpretation and clause (iv) provides an example of the comptroller's previous interpretation.

New subparagraph (B) contains language from the original subsection (e)(2) on the sourcing of gains from the sale of intangible assets. The comptroller adds information on the sourcing of gains from the sale of capital assets and investments that are real property or tangible personal property.

In subsection (e)(3), the comptroller replaces the sourcing rules for receipts from the sale of computer software services and programs with the sourcing rules for receipts from the sale of computer hardware and digital property and adds new subparagraphs (A) through (J). The title is changed accordingly.

In new subparagraph (A), the comptroller treats the sale of software installed on computer hardware as part of the sale of the computer hardware.

In new subparagraph (B), the comptroller treats the lease of software installed on computer hardware as part of the leasing of the computer hardware.

In new subparagraph (C), the comptroller treats the sale of digital property on fixed physical media (such as compact discs) as the sale of tangible personal property. This treatment is consistent with the treatment of other intellectual property that is sold in non-digital fixed physical media (such as books).

In new subparagraph (D), the comptroller treats the lease of digital property on fixed physical media (such as compact discs) as the lease of tangible personal property.

In new subparagraph (E), the comptroller treats the sale of digital property transferred by means other than fixed physical media as the sale of intangible property, which is sourced to the location of the payor. This treatment is consistent with the former paragraph (e)(3) regarding computer software.

In new subparagraph (F), the comptroller treats the receipts from the delivery of digital property as a service as receipts from providing services.

In new subparagraph (G), the comptroller treats the receipts from the delivery of digital property as part of an internet hosting service as receipts from providing internet hosting services.

In new subparagraph (H), the comptroller treats the receipts from the use of digital property as receipts from the use of an intangible asset.

New subparagraphs (I) and (J) are examples of sourcing receipts from digital property. The examples illustrate that digital products lie at the intersection of multiple sourcing provisions, resulting in a complex roadmap for sourcing. Because the sourcing is dictated by statute, the complexity is unavoidable. However, many of the sourcing routes may lead to the same destination. For example, at least with regard to receipts received from individual consumers, the location where tangible personal property is delivered, the location where a service is performed, the location where the customer is located, and the location of the payor, may all be in the same state.

The comptroller moves subsection (e)(7) concerning the deemed sales of assets under IRC, §338 to new subsection (e)(22). The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends renumbered subsection (e)(7) concerning dividends and/ or interest to move the guidance related to interest to subsection (e)(12) and to retitle the paragraph accordingly. Subsection (e)(7) now contains guidance on dividends only.

The comptroller adds new subsection (e)(10) to provide guidance for sourcing receipts from the settlement of hedging contracts and other financial derivatives for risk management purposes. These types of investments are intangibles and the receipts are sourced to the location of the payor.

The comptroller adds new subsection (e)(12) to incorporate and reorganize the interest language moved from renumbered subsection (e)(7).

The comptroller amends renumbered subsection (e)(13) concerning Internet access fees to provide the comptroller's policy on sourcing receipts from internet hosting services to the location of the customer, pursuant to House Bill 500, 83rd Legislature, 2013, codified as Tax Code, §171.106(g), effective for reports originally due on or after January 1, 2014, and adds subparagraphs (A) through (E).

New subparagraph (A) defines "internet hosting service" using the language from Tax Code, §151.108(a), which Tax Code, §171.106(g) references.

New subparagraph (B) gives non-exhaustive examples of internet hosting services. These examples extend beyond what might be ordinarily considered as internet hosting services.

However, the statutory definition extends beyond the ordinary meaning, as was noted by the analysis of the same definition that was proposed in House Bill 416 during the same legislative session. House Research Organization Analysis of House Bill 416, 83rd Legislature, 2013 ("A growing number of companies offering cloud computing services and products likely would fall under the definition of web hosting in the bill."). House Bill 500's specific exclusion of telecommunications service, which would not ordinarily be considered as an Internet hosting service, indicates that the Legislature was aware of the broad sweep of the definition. The specific meaning dictated by the legislation "elevate[s] the Legislature's substituted meaning even when it departs from the term's ordinary meaning." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 442 (2009).

New subparagraph (C) gives non-exhaustive examples that are not internet hosting services.

New subparagraph (D) lists factors for distinguishing the purchase of access to computer services over the internet from the purchase or lease of digital property over the internet. The factors are taken from the Internal Revenue Service Notice of Proposed Rulemaking regarding "Classification of Cloud Transactions and Transactions Involving Digital Content," 84 Fed. Reg. 40317 (Aug. 14, 2019).

New subparagraph (E) provides guidance for determining the physical location of the customer. The statute refers to "the customer to whom the service is provided." The comptroller has concluded from these references that the "customer" means the purchaser, or the designee of the purchaser, that consumes the service. Thus, in a resale situation, the service provider should source the revenue to the customer's customer that actually receives the service.

The statute provides no further instruction for determining the location of the customer. New subparagraph (E) enables taxpayers to determine the most reasonable sourcing method based on the available information. The method will be subject to audit review for reasonableness under the circumstances.

The comptroller amends renumbered subsection (e)(14) addressing leases and subleases to standardize the language used throughout the section. The comptroller amends subparagraphs (C) - (E) to improve readability.

The comptroller amends renumbered subsection (e)(15) to improve readability.

The comptroller amends the title of renumbered subsection (e)(16) to include all loan servicing and adds two subparagraphs. New subparagraph (A) contains the original guidance for sourcing gross receipts from servicing loans secured by real property, pursuant to Tax Code, §171.103(a)(2). New subparagraph (B) provides guidance on sourcing gross receipts from servicing other loans that are not secured by real property.

The comptroller amends the title of renumbered subsection (e)(17) to reflect that the content applies only to loans and securities treated as inventory of the seller. The comptroller amends subparagraph (A) to state that loans and securities held by a taxable entity for investment or risk management purposes are not inventory. The comptroller adds references to information on sourcing receipts from the sale of loans and securities. The comptroller amends subparagraph (B) to reflect that the guidance applies to original reports due on or after January 1, 2008, pursuant to STAR Accession No. 201005671L (May 28, 2010).

The comptroller removes subsection (e)(20) concerning the sourcing of receipts from newspaper and magazine advertising from and incorporates the information into new subsection (e)(1) to consolidate sourcing rules for advertising.

The comptroller amends subsection (e)(21) on the sourcing of receipts from the licensing of intangibles to improve the readability of subparagraph (B) and add examples taken from *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432 (Tex. 2011) in new subparagraph (C).

The comptroller moves the information on the sourcing of receipts from radio and television advertising from subsection (e)(22) to new subsection (e)(1) to consolidate sourcing rules for advertising. The comptroller moves information on sourcing receipts from qualified stock purchases under IRC, §338(h)(10) from subsection (e)(7) to subsection (e)(22). The comptroller retitles subsection (e)(22) to more accurately reflect the contents and amends the language to improve readability.

The comptroller amends subsection (e)(24) to improve readability.

The comptroller amends subsection (e)(25) to update the percentage that is applied to securities sold through an exchange when a buyer cannot be identified in order to use more current population data for Texas and the United States. The Comptroller's Revenue Estimating Division provided the current data.

The comptroller amends subsection (e)(26) to provide additional guidance on the sourcing of receipts from services and reorganizes the paragraph.

The statutory apportionment formula for the margin tax is based on "each service performed in this state," with a proviso that receipts from servicing loans secured by real property are apportioned based on the location of the property. Historically, the comptroller has interpreted the statute largely by ad hoc adjudications of specific cases, which were sometimes followed by codifications of specific outcomes for specific industries. See, *Southwestern Bell Tel. Co. v. Combs*, 270 S.W.3d 249, 266 at n. 39 (Tex. App. - Amarillo 2008, pet. denied). The current rule has special provisions for internet access fees, fees for loan servicing of real property, newspaper and magazine advertising revenue, radio and television advertising revenue, services procurement, telephone companies, and transportation companies. The proposed rule largely retains or consolidates these special provisions, and adds a new special provision for internet hosting services as a result of the 2013 legislation.

Subsection (e)(26) remains as the generic rule for apportioning all other service receipts. It has changed little over the years and provides little guidance. The current subsection tracks the statutory declaration that receipts from services are apportioned to the location where the service is performed and adds a second sentence: "If services are performed inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services rendered in Texas." Although this sentence explains the manner of apportionment "if" services are performed inside and outside Texas, neither the sentence nor the rest of the subsection text explains *when* services are considered to be performed inside and outside Texas.

In Comptroller's Decision No. 10,028 (1980), the comptroller added some additional meaning to the generic apportionment rule for services (emphasis added):

"To accomplish the goal of giving independent meaning and significance to the receipts factor from sales of services of a cor-

poration, the phrase 'services performed within Texas' as used in Art. 12.02(1)(b)(ii) must be construed as 'units of service sold, the performance of which occurs within Texas,' thereby shifting the focus geographically from every activity performed by a corporation that generates service receipts, to those *specific, end-product acts for which a customer contracts and pays to receive*. If no distinction between *receipt-producing activities versus non-receipt-producing, albeit essential, support activities* were made, no independent meaning could be given to the 'receipts from sales of services' factor, since the determination of the dollar amount of such services performed within Texas would always be ascertained by looking at other factors, such as the property and payroll located in Texas, on the theory that no activity of a corporation that generates service receipts is any more important than any other activity, since all are essential to the end-product performance of the service that is sold."

The agency has cited this decision on a number of occasions, and the courts have acknowledged that the decision represents a "longstanding interpretation" of the agency. *Westcott Communications, Inc. v. Strayhorn*, 104 S.W.3d 141, 146 (Tex. App. - Austin 2003, pet. denied); *Hegar v. Sirius XM Radio, Inc.*, No. 03-18-00573-CV (Tex. App. - Austin 2020).

Comptroller's Decision No. 10,028 distinguishes between receipts-producing activities and non-receipts producing, albeit essential support activities and focuses on the end-product acts for which a customer contracts and pays to receive. The proposed rule expounds upon these principles.

The proposed rule may be inconsistent with some prior rulings. However, the objective of the proposed rule is to provide a consistent application of the statute in conformity with the concepts of Comptroller's Decision No. 10,028, even if not consistent with every individual ruling. The comptroller will supersede prior inconsistent rulings.

The comptroller amends subsection (e)(26) to add language concerning location of performance for services to subparagraph (A). The new language reflects current guidance that a service is performed at the location where the receipts-producing, end-product act occurs. New clauses (i)-(iii) are added to provide examples. The comptroller amends subparagraph (B) to provide additional guidance for determining the fair value of services performed in Texas. New clauses (i)-(iii) give examples. The comptroller amends subparagraph (C) to contain information originally provided in subparagraph (A). New subparagraph (D) contains information originally provided in subparagraph (B). New subparagraph (E) contains information originally provided in subparagraph (C).

The comptroller amends subsection (e)(27) to provide guidance on the sourcing of receipts from the sale of a membership interest in a single member limited liability company and delete the guidance regarding service procurement. Renumbered subsection (e)(13) on Internet hosting and subsection (e)(26), the general rule for services, cover the sourcing of receipts from service procurement.

The comptroller amends the title of subsection (e)(30) to accurately reflect that it applies to all taxable entities providing telecommunication services.

The comptroller adds new subsection (e)(31) concerning sourcing of broadcasting receipts to implement House Bill 2896, which enacted Tax Code, §171.106(h). The language in this paragraph tracks the statutory language. Subsequent paragraphs are renumbered accordingly.

The comptroller amends renumbered subsection (e)(33) to retitle the paragraph to accurately reflect that it applies to transportation services, to simplify the sourcing of transportation receipts, and to provide guidance on intrastate transportation. Subparagraph (A) rewords the sourcing policy for transportation receipts and includes guidance on intrastate transportation. Subparagraph (B) provides the alternate sourcing method based on mileage that is no longer applicable for reports due on or after January 1, 2021. The comptroller will supersede prior inconsistent rulings.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by updating the rule to more clearly state comptroller interpretation of statute and to reflect statutory changes enacted by the Legislature. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.106 (Apportionment of Margin to This State).

§3.591. *Margin: Apportionment.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capital asset--Any asset~~[, other than an investment,]~~ that is held for use in the production of income, and that is subject to depreciation, depletion or amortization.

~~[(2) Commercial domicile--The principal place from which the trade or business of the entity is directed.]~~

(2) [(3)] Employee retirement plan--A plan or other arrangement that qualifies under Internal Revenue Code (IRC), §401(a) (Qualified pension, profit-sharing, and stock bonus plans), or that satisfies the requirement of IRC, §403 (Taxation of employee annuities), or a government plan described in IRC, §414(d) (Definitions and special rules).

(3) [(4)] Gross receipts--Revenue as determined [The amount determined as total revenue] under §3.587 of this title (relating to Margin: Total Revenue), except as provided in subsection (e)(2) (concerning capital assets and investments) and subsection (e)(17) ((concerning loans and securities) of this section. Non-receipt items excluded from total revenue under §3.587 of this title are not included in the calculation of total revenue under that section and are not deducted from gross receipts. These non-receipt items include the exclusion [except for a taxable entity taking a deduction] for uncompensated care, the \$500 exclusion per [or] pro bono services case, the exclusion for the direct cost of providing waterway transportation, the exclusion for the direct cost of providing agricultural aircraft services, and the exclusion for the cost of a vaccine. See subsection (d)(5) of this section for gross receipts that are excluded from the apportionment calculation. [or an entity for which subsection (e)(16) of this section applies.]

(4) [(5)] Internal Revenue Code--The Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007, not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period [a specified tax year as provided by Tax Code, §171.0001].

(5) Inventory--Property held primarily for sale to customers in the ordinary course of a trade or business. Securities and loans held for investment, hedging, or risk management purposes are not inventory.

(6) Investment--Any non-cash asset that is not a capital asset or inventory.

(7) Legal domicile--The legal domicile of a corporation or limited liability company is its state of formation. The legal domicile of a partnership, trust, or joint venture is the principal place of business of the partnership, trust, or joint venture. [The principal place of business of a partnership, trust, or joint venture is the location of its day-to-day operations. If the day-to-day operations are conducted equally or fairly evenly in more than one state, then the principal place of business is the commercial domicile.]

(8) Location of payor--The legal domicile of the payor.

(9) Principal place of business--The place where an entity's management directs, controls, and coordinates the entity's activities.

(10) Regulated investment company--Any domestic corporation defined under IRC, §851(a) (Definition of regulated investment company), including a taxable entity that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company.

(11) [(9)] Security--An instrument defined under IRC [Internal Revenue Code], §475(c)(2) (Mark to market accounting method for dealers in securities). This term [; and] includes instruments described by §475(e)(2)(B), (C), and (D) of that code.

(12) [(10)] Tax reporting period--The period upon which the tax is based under Tax Code, §171.1532 (Business on Which Tax on Net Taxable Margin Is Based) or §171.0011 (Additional Tax).

(13) [(11)] Taxable entity--Any entity upon which tax is imposed under Tax Code, §171.0002(a) (Definition of Taxable Entity) and not specifically excluded under Tax Code, §171.0002(b) or §171.0002(c). See also §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities).

(14) Texas gross receipts--The portion of a taxable entity's gross receipts that is from business done in Texas.

(c) Apportionment formula. Except as provided in paragraphs (1) and (2) of this subsection, a [A] taxable entity's margin is apportioned to Texas [this state] to determine the amount of franchise tax due by multiplying the taxable entity's margin by a fraction, the numerator of which is the taxable entity's Texas gross receipts [from business done in this state] and the denominator of which is the taxable entity's gross receipts from its entire business [~~except as provided by this subsection~~].

(1) Regulated investment company services. A taxable entity's margin derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, is apportioned to Texas by multiplying that portion of the taxable entity's total margin by a fraction: [~~Taxable entities that have margin that is derived, directly or indirectly from the sale of services to or on behalf of a regulated investment company as defined by IRC, §851(a), should refer to Tax Code, §171.106(b), relating to the apportionment of gross receipts from services for regulated investment companies.~~]

(A) the numerator of which is the average of the sum of shares owned at the beginning of the year and the sum of the shares owned at the end of the year by the investment company shareholders whose principal place of business is in this state or, if the shareholders are individuals, are residents of this state; and

(B) the denominator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by all investment company shareholders.

(2) Employee retirement plan services. A taxable entity's margin derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan is apportioned to Texas by multiplying that portion of the taxable entity's total margin by a fraction: [~~Taxable entities that have margin that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan, as defined in subsection (b)(3) of this section, should refer to Tax Code, §171.106(c), relating to the apportionment of gross receipts from services for employee retirement plans.~~]

(A) the numerator of which is the average of the sum of beneficiaries domiciled in Texas at the beginning of the year and the sum of beneficiaries domiciled in Texas at the end of the year; and

(B) the denominator of which is the average of the sum of all beneficiaries at the beginning of the year and the sum of all beneficiaries at the end of the year.

(d) General rules for reporting gross receipts.

(1) A taxable entity that files an annual report must report gross receipts based on the business done by the taxable entity beginning with the day after the date upon which the previous report was based, and ending with the last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due. [~~If the taxable entity has not filed a previous report and must file an annual report, see §3.595 of this title (relating to Margin: Transition).~~]

(2) A taxable entity with a beginning date prior to October 4, 2009 that files an initial report must report gross receipts based on its activities commencing with the beginning date, as described in §3.584 of this title (relating to Margin: Reports and Payments), and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report. A taxable entity with a beginning date on or after October 4, 2009 that files a first annual report must report gross receipts based on its activities commencing with the beginning date and ending on the last

accounting period ending date for federal income tax purposes in the same calendar year as the beginning date.

(3) Taxable entities that are members of an affiliated group that are part of a unitary business must file a combined franchise tax report. See §3.590 of this title (relating to Margin: Combined Reporting), for determining gross receipts for a combined report.

(4) When a taxable entity computes gross receipts for apportionment, the taxable entity is deemed to have elected to use the same methods that the taxable entity used in filing its federal income tax return.

(5) Any item of revenue that is excluded from total revenue under Texas law or United States law is excluded from gross receipts from an entity's entire business [~~everywhere~~] and Texas gross receipts [~~in Texas~~] as provided by Tax Code, §171.1055(a) (Exclusion of Certain Receipts for Margin Apportionment). For example, any amount that is excluded from total revenue under the IRC [~~Internal Revenue Code~~], §78 (Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit) or §§951 - 964(26 U.S. Code Subpart F - Controlled Foreign Corporations), is excluded from gross receipts. Non-receipt items that are excluded from total revenue under §3.587 of this title, such as \$500 per pro bono services case; the actual cost of uncompensated care; the direct cost of providing waterway transportation; the direct cost of providing agricultural aircraft services and the cost of a vaccine, are not deducted from gross receipts under this section. See subsection (b)(3) of this section, concerning definition of gross receipts. For example, under Tax Code, §171.1011(g-3) (Determination of Total Revenue from Entire Business), an attorney may exclude \$500 from total revenue for handling a pro bono case. Since the \$500 is not a receipt, there is no exclusion for pro bono work when calculating gross receipts. Therefore, if a taxable entity starts with its total revenue amount to calculate its gross receipts, the taxable entity must add back the \$500 per pro bono services case.

(6) A taxable entity that uses a 52 - 53 week accounting year end and that has an accounting year that ends during the first four days of January of the year in which the report is originally due may use the preceding December 31 as the date through which margin is computed.

(7) Any item of allocated revenue excluded under §3.587(c)(9) of this title is excluded from Texas gross receipts and gross receipts from an entity's entire business [~~everywhere~~].

(e) Computation and sourcing [~~Treatment of specific items in the computation~~] of gross receipts.

(1) Advertising services. Gross receipts from the dissemination of advertising are sourced to the locations of the advertising audience. The locations of the advertising audience should be determined in good faith using the most reasonable method under the circumstances, considering the information reasonably available. The method should be consistently applied from year to year and supported by records retained by the service provider. Locations that may be reasonable include the physical locations of the advertising, advertising audience locations recorded in the books and records of the service provider, and locations listed in published rating statistics. If the locations of nationwide advertising audiences cannot otherwise be reasonably determined, then 8.7% of the gross receipts are sourced to Texas [~~Bad debt recoveries. Bad debt recoveries are gross receipts~~].

(2) Capital assets and investments.

(A) Only the net gain from the sale of a capital asset or investment is included in gross receipts. A net loss from the sale of a capital asset or investment is not included in gross receipts.

(i) The net gain or net loss is determined separately for each sale of a capital asset or investment.

(ii) For reports originally due prior to January 1, 2021, a taxable entity must add the [Except as provided by paragraph (16) of this subsection,] net gains and losses from sales of investments and capital assets [must be added] to determine the total gross receipts from such transactions. If both Texas and out-of-state sales have occurred, then a separate calculation of net gains and losses on Texas sales must be made. [If the combination of net gains and losses results in a net loss, the taxable entity should net the loss against other receipts, but not below zero. In no instance shall the apportionment factor be greater than 1.]

(iii) Example 1. During a report year, a real estate investment company sells two Texas investment properties, reporting a gain on sale of one property and a loss on the sale of the other property. The company should include the net gain on the profitable sale in gross receipts from its entire business but should not include the net loss on the unprofitable sale. The company should not offset the net loss against the net gain. To determine Texas gross receipts, the company should include only the net gain on sale of the Texas investment property in Texas gross receipts and would not include the net loss on the sale of the other Texas investment property.

(iv) Example 2. The facts are the same as in Example 1, except the real estate investment company also had net gains and net losses from the sale of out-of-state properties and net gains and net losses from the out-of-state sale of capital assets. For reports originally due prior to January 1, 2021, the real estate investment company must offset all of the net losses from these sales against all of the net gains and, if the result is a net gain, include only the net gain in gross receipts from its entire business. If the result is a net loss, the net loss is not included in gross receipts from its entire business. To determine Texas gross receipts, the company should offset the net loss from the sale of the one Texas property against the net gain from the sale of the other Texas property. If the result is a net gain, only the net gain is included in Texas gross receipts. If the result is a net loss, the net loss is not included in Texas gross receipts.

(B) The net gain from the sale of a capital asset or investments is sourced based on the type of asset or investment sold. The net gain from the sale of an intangible asset is sourced to the location of the payor as provided in paragraph (21)(B) of this subsection, concerning gross receipts from the sale of intangible assets, and paragraph (25) of this subsection, concerning securities, of this subsection. [Net gain on sales of intangibles held as capital assets or investments is apportioned to the location of the payor.] Examples of intangible assets [intangibles] include, but are not limited to, stocks, bonds, commodity contracts [commodities], futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill, and general receivable rights. The net gain from the sale of real property is sourced as provided in paragraph (23) of this subsection, concerning real property. The net gain from the sale of tangible personal property is sourced as provided in paragraph (29) of this subsection, concerning tangible personal property.

(3) Computer hardware and digital property, software services and programs. Gross receipts from the sale of computer software services are apportioned to the location where the services are performed. Gross receipts from the sale of a computer program (as the term "computer program" is defined in §3.308 of this title (relating to Computers—Hardware, Software, Services and Sales)), are receipts from the sale of an intangible asset and are apportioned to the legal domicile of the payor.]

(A) Gross receipts from the sale of computer hardware together with any software installed on the hardware are sourced as the sale or lease of tangible personal property under paragraph (29) of this subsection.

(B) Gross receipts from the lease of computer hardware together with any software installed on the hardware are sourced as the leasing of tangible personal property under paragraph (14)(B) of this subsection.

(C) Gross receipts from the sale of digital property (computer programs and any content in digital format that is either protected by copyright law or no longer protected by copyright law solely due to the passage of time) that is transferred by fixed physical media are sourced as the sale of tangible personal property under paragraph (29) of this subsection.

(D) Gross receipts from lease of digital property that is transferred by fixed physical media are sourced as the leasing of tangible personal property under paragraph (14)(B) of this subsection.

(E) Gross receipts from the sale or lease of digital property that is transferred by means other than by fixed physical media are sourced as the sale of intangible property under paragraph (21)(B) of this subsection.

(F) Gross receipts from the delivery of digital property as a service are sourced under paragraph (26) of this subsection, unless otherwise provided in this subsection.

(G) Gross receipts from the delivery of digital property as part of an internet hosting service are sourced as internet hosting receipts under paragraph (13) of this subsection.

(H) Gross receipts from the use (as opposed to the sale or licensing) of digital property are sourced under paragraph (21)(A) of this subsection.

(I) Example 1. Movie Studio produces a copyrighted movie in digital format and successively sells the theatrical rights to Movie Theater Chain Company, the broadcast rights to Cable Company, the internet streaming rights to Internet Company A, the internet rental rights to Internet Company B, the digital versatile disc (DVD) sale rights to DVD Company, DVD rental rights to Kiosk Company, and the permanent download sale rights to Download Company. In each instance, Movie Studio's receipts are from the right to use its copyrighted digital property and sourced to where the copyright is used under paragraph (21)(A) of this subsection. Movie Theater Chain Company receipts from ticket sales are from the sale of a service and sourced to the audience location under paragraph (26)(A)(i) of this subsection. Cable Company subscription receipts from broadcasting the movie are from the sale of a service and sourced to the audience location under paragraph (26)(A)(i) of this subsection. Internet Company A's subscription receipts for its streaming service using its website are from an internet hosting service and sourced to the location of the customer under paragraph (13) of this subsection. Internet Company B's receipts from the rental (access for a limited time) of the movie using the company's website are from an internet hosting service and sourced to the location of the customer under paragraph (13) of this subsection. DVD Company's receipts from the sale of DVDs are from the sale of tangible personal property and sourced under paragraph (29). Kiosk Company's receipts from the rental of DVDs are from the rental of property and sourced to the location of the property under paragraph (14). Download Company's receipts from the sale of permanent downloads of the movie are from the sale intangibles and sourced to the location of payor under paragraph (21)(B) of this subsection.

(J) Example 2. Software Company designs bookkeeping software for personal use. Software Company licenses the software

to Computer Company to include in the software sold with its computers. Software Company sells digital versatile discs (DVDs) of the bookkeeping software to Retail Company for resale to end users. Software Company sells downloads of its bookkeeping software directly to end users. Software Company sells an on-line version of its bookkeeping software in which end users can enter and store data on-line using the Software Company's website for a periodic fee. Software Company receipts from licensing the software to Computer Company are from the use of its digital product and sourced to the location of use under paragraph (21)(A) of this subsection. Computer Company's receipts from the sale of computers with pre-loaded software are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Software Company's receipts from the sale of DVDs to Retail Company are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Software Company's receipts from the sale of downloads to end users are from the sale of intangible property and sourced to the location of payor under paragraph (21)(B) of this subsection. Software Company's receipts from the sale of its on-line version are from the sale of an internet hosting service and sourced to the location of the customer under paragraph (13) of this subsection.

(4) Condemnation. Gross receipts [Revenues] from condemnation [that result from the taking] of property are sourced [gross receipts that are apportioned based on] to the location of the property condemned.

(5) Debt forgiveness. If a creditor releases any part of a debt, then the amount that the creditor forgives is a gross receipts that is sourced [apportioned] to the legal domicile of the creditor.

(6) Debt retirement. Gross receipts [Revenues] from the retirement of a taxable entity's own indebtedness, such as through the taxable entity's purchase of its own bonds at a discount, [are gross receipts that] are sourced [apportioned] to the taxable entity's legal domicile. The indebtedness is treated as an investment in the determination of the amount of gross receipts.

~~(7) Deemed sales of assets under Internal Revenue Code, §338. Amounts that are deemed to have been received by the target taxable entity are treated as sales of assets by the target taxable entity, and are apportioned according to rules that otherwise apply to sales of such assets under Tax Code, Chapter 171, or this section. For the purposes of this paragraph, the purchaser of the target's stock is considered the purchaser of the assets.]~~

~~(7) [(8)] Dividends[, and/ or interest].~~

(A) Dividends that are recognized as a reduction of the taxpayer's basis in stock of a taxable entity for federal income tax purposes are not gross receipts. Dividends that exceed the taxpayer's basis for federal income tax purposes that are recognized as a capital gain are treated as dividends for apportionment purposes.

(B) The following are excluded from Texas gross receipts and gross receipts from an entity's entire business [everywhere]:

(i) dividends from a subsidiary, associate, or affiliated taxable entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States;

(ii) Form 1120, Schedule [schedule] C special deductions that are excluded from total revenue; and

(iii) dividends [and/or interest] on federal obligations that are excluded from total revenue.[,]

~~(iv) interest that is exempt from federal income tax.]~~

(C) Dividends [and/or interest] that are received from a corporation or other sources are sourced [apportioned] to the location [legal domicile] of the payor.

(D) Dividends [and/or interest that are] received from a national bank are sourced [apportioned] to Texas if the bank's principal place of business is located in Texas. Dividends [and/or interest that are] received from a bank that is organized under the Texas Banking Code are sourced [apportioned] to Texas.

~~(E) A banking corporation may exclude from its Texas gross receipts interest that is earned on federal funds and interest that is earned on securities that are sold under an agreement to repurchase and that are held in a correspondent bank that is domiciled in Texas, but the banking corporation must include the interest in its gross receipts everywhere.]~~

(8) [(9)] Exchanges of property. Exchanges of property are included in gross receipts to the extent that the exchange is recognized as a taxable transaction for federal income tax purposes. Such exchange must be included in gross receipts based on the gross exchange value, unless otherwise required under this section.

(9) [(10)] Federal enclave. Gross receipts [All revenues] from a taxable entity's sales, services, leases, or other business activities that are transacted on a federal enclave that is located in Texas are sourced to Texas [receipts], unless otherwise excepted by this section.

(10) Financial derivatives. Gross receipts from the settlement of financial derivatives contracts, including hedges, options, swaps, futures, and forward contracts, and other risk management transactions are sourced to the location of the payor.

(11) Insurance proceeds.

(A) Business interruption insurance proceeds are gross receipts when the proceeds are intended to replace lost profits. Such receipts are Texas gross receipts when [apportioned to] the location [legal domicile] of the payor is in Texas [of the proceeds].

(B) Gross receipts [Revenues] from fire and casualty insurance proceeds are sourced [apportioned] to the location of the damaged or destroyed property.

(12) Interest.

(A) Except as provided in subparagraph (B) of this paragraph, interest received is sourced to the location of the payor.

(B) Interest received from a national bank is a Texas gross receipt if the bank's principal place of business is located in Texas. Interest received from a bank that is organized under the Texas Banking Code is a Texas gross receipt.

(C) The following are excluded from Texas gross receipts and gross receipts from an entity's entire business:

(i) interest on federal obligations that is excluded from total revenue; and

(ii) interest that is exempt from federal income tax.

(D) A banking corporation may exclude from its Texas gross receipts interest that is earned on federal funds and interest that is earned on securities that are sold under an agreement to repurchase and that are held in a correspondent bank that is domiciled in Texas, but the banking corporation must include the interest in its gross receipts from an entity's entire business.

(13) [(12)] Internet hosting service. [access fee. A fee that is charged to obtain access to the World Wide Web in Texas is a Texas gross receipt.] For reports originally due on or after January 1, 2014,

receipts from Internet hosting are Texas gross receipts if the customer is located in Texas.

(A) Internet hosting service means providing to an unrelated user access over the Internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider.

(B) Internet hosting includes real-time, nearly real-time, and on-demand access over the Internet to computer services such as:

- (i) data storage and retrieval;
- (ii) video gaming;
- (iii) database search services;
- (iv) entertainment streaming services;
- (v) processing of data; and
- (vi) marketplace provider services.

(C) Internet hosting does not include:

- (i) telecommunications service;
- (ii) cable television service;
- (iii) Internet connectivity service;
- (iv) Internet advertising service; or
- (v) Internet access solely to download digital content for storage and use on the customer's computer or other electronic device.

(D) The purchase of access over the Internet to computer services is distinguished from the purchase or lease of computer hardware or digital property by taking into account all relevant factors, the relevance of which may vary depending upon the circumstances. Some relevant factors indicating the purchase of access to a computer service rather than the purchase or lease of computer hardware or digital property include:

- (i) the customer is not in physical possession of the property;
- (ii) the customer does not control the property, beyond the customer's network access and use of the property;
- (iii) the provider has the right to determine the specific property used in the transaction and replace such property with comparable property;
- (iv) the property is a component of an integrated operation in which the provider has other responsibilities, including ensuring the property is maintained and updated;
- (v) the customer does not have a significant economic or possessory interest in the property;
- (vi) the provider bears any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract;
- (vii) the provider uses the property concurrently to provide significant services to entities unrelated to the customer;
- (viii) the provider's fee is primarily based on a measure of work performed or the level of the customer's use rather than the mere passage of time; and

(ix) the total contract price substantially exceeds the rental value of the property for the contract period.

(E) The customer location is determined by the physical location where the purchaser or the purchaser's designee consumes the service. The location should be determined in good faith using the most reasonable method under the circumstances, considering the information reasonably available. Receipts from some services may be sourced to multiple customer locations or to multiple customers. Locations that may be reasonable under the circumstances include the customer's principal place of business, the customer's business unit that is using the computer services, the delivery addresses for individual units of service provided to the customer, the primary place or places of consumption by the customer, the service address of the customer, the billing address of the customer, or a combination of methods. Examples:

(i) An individual purchases access to a dating application. The most reasonable customer location for consumption of the service may be the billing address of the individual in the absence of information regarding the individual's physical address.

(ii) A benefactor purchases access to a computer service for a charitable organization. The customer is the purchaser's designee for consuming the service - the charitable organization. The most reasonable customer location for consumption of the service may be the physical address of the charitable organization.

(iii) An intermediary purchases access to a computer service for resale to a third party. The customer is purchaser's designee for consuming the service - the third party. The most reasonable customer location for consumption of the service may be the physical location of the third party, if known.

(iv) A law firm purchases access to a database search program for attorneys in multiple offices. The customers are the purchaser's designees for consuming the service - its attorneys. The most reasonable customer locations for consumption of the service may be physical addresses of each office, with the access fee sourced proportionately based on the number of attorneys in each office.

(v) A retailer with multiple sales outlets purchases access to point of sales software that reports to the retailer's central office. The most reasonable customer locations for consumption of the service may be the physical addresses of the central office and each designated point of sale, with the access fee sourced proportionately between the central office and each designated point of sale.

(vi) A retailer with multiple sales outlets purchases access to federal income tax preparation software. The most reasonable customer location for consumption of the service may be the principal place of business of the retailer.

(vii) An individual pays a fee to an Internet ride-sharing service connecting the individual with a driver at a particular location. The most reasonable customer location for consumption of the service may be the physical address of rendezvous point for the ride.

(14) [(13)] Leases and subleases.

(A) Gross receipts [Revenues] from the lease, [or] sublease, [(or) rental, or subrental()] of real property are sourced [apportioned] to the location of the property.

(B) Gross receipts [Revenues] from the lease, [or] sublease, [(or) rental, or subrental()] of tangible personal property are sourced [apportioned] to the location of the property. If the property is used both inside and outside Texas, then lease payments are sourced [apportioned] based on the number of days that the tangible personal

property was used in Texas divided by the number of days that the tangible personal property was used everywhere. If the amount [of revenue that is] due under the lease is based on mileage, then the lease payments are sourced [apportioned] based on the number of miles in Texas divided by the number of miles everywhere.

(C) If a lump sum is charged for the lease, sublease, rental, or subrental of more than one item of [leased or subleased (or rented or subrented)] property, and the items are [that is] located both inside and outside Texas, the lump-sum is sourced to Texas [then the allocation of such revenue is] based on a ratio of the fair rental value of the items located in Texas [each item of property] to the fair value of the items located outside of Texas.

(D) Gross receipts [Revenues] from the lease, [or] sublease, [(or) rental, or subrental] of a vessel that engages in commerce are sourced [apportioned] to Texas based on the number of days that the vessel is engaged in commerce in Texas waters divided by the number of days that the vessel is engaged in commerce everywhere.

(E) Gross receipts from [H] a lease, sublease, rental, or subrental of real property or tangible personal property that is treated as a sale for federal income tax purposes[, then the receipts from the transaction] are sourced [apportioned] in the same manner as a sale. Any portion of the payments that the contracting parties designate as interest is sourced as provided in paragraph (12) of this subsection, concerning interest [receipts].

(15) [(14)] Litigation awards. Litigation [Revenues that are realized from litigation] awards are gross receipts that are sourced [apportioned] to the location [legal domicile] of the payor [of the proceeds]; however, if the litigation awards are intended to replace receipts for which another [apportionment] rule [is] provided in this section applies, then the gross receipts are sourced [apportionment must be made] in accordance with that rule. For example, if a taxable entity sues a Delaware corporation to recover on a sale of goods delivered to a Texas location, then a judgment for the amount of that sale would not convert the receipts from Texas gross receipts to Delaware receipts. See subsection (f) of this section, for the sourcing [apportionment] of receipts from judgments, compromises, or settlements that relate to natural gas production.

(16) [(15)] Loan servicing [of real property].

(A) Gross receipts [Receipts] from [the] servicing [of] loans secured by real property are sourced [apportioned] to the location of the collateral real property that secures the loan being serviced.

(B) Gross receipts from servicing loans that are not secured by real property are sourced as provided in paragraph (26) of this subsection, concerning services.

(17) [(16)] Loans and securities treated as inventory of the seller.

(A) Gross proceeds from the sale of [H] a loan or security [is] treated as inventory of the seller for federal income tax purposes are included in gross receipts even though the tax basis is not included in total revenue under §3.587(e)(4) of this title. Securities and loans held for investment or risk management purposes are not inventory. Gross receipts from the sale of a loan or security treated as inventory of the seller are sourced to the location of the payor as provided in paragraph (25) of this subsection, concerning securities. See paragraph (2) of this subsection, concerning capital assets and investments, or paragraph (10) of this subsection, concerning financial derivatives, for the treatment of gains and losses from sales of loans and securities not treated as inventory of the seller. [; the gross proceeds of the sale of that loan or security are considered gross receipts.]

(B) If [For reports originally due on or after January 1, 2010, if] a lending institution categorizes a loan or security as "Securities Available for Sale" or "Trading Securities" under Financial Accounting Standard No. 115, the gross proceeds of the sale of that loan or security are considered gross receipts. In this subparagraph, "Financial Accounting Standard No. 115" means the Financial Accounting Standard No. 115 in effect as of January 1, 2009, not including any changes made after that date.

(18) [(17)] Membership or enrollment fees paid for access to benefits. Membership or enrollment fees paid for access to benefits are [should be considered] gross receipts from the sale of an intangible asset and are sourced [apportioned] to the location [legal domicile] of the payor.

(19) [(18)] Mixed transactions. If a transaction involves elements of both a sale of tangible personal property and a service, but no documentation exists to show separate charges for the tangible personal property [sale] and service elements, then the comptroller may determine the amounts that are allocable to each element based on fair values or on any available evidence.

(20) [(19)] Net distributive income. The net distributive income or loss from a passive entity that is included in total revenue is sourced [apportioned] to the principal place of business of the passive entity.

[(20) Newspapers or magazines. All advertising revenues of a newspaper or magazine, including those revenues derived from out-of-state advertisements, are apportioned to Texas based on the number of newspapers or magazines distributed in Texas. All other receipts must be apportioned in accordance with the apportionment rules otherwise set out in this section. For example, receipts from sales of newspapers or magazines are to be apportioned based on paragraph (29) of this subsection.]

(21) Patents, copyrights, and other intangible assets [rights].

(A) Gross receipts [Receipts] from the use of intangible assets [intangibles].

(i) Revenues from a patent royalty are included in Texas receipts to the extent that the patent is utilized in production, fabrication, manufacturing, or other processing in Texas.

(ii) Revenues from a copyright royalty are included in Texas receipts to the extent that the copyright is utilized in printing or other publication in Texas.

(iii) Gross receipts [Revenues] that the owner of a patent, copyrighted material, trademark, franchise, or license receives from licensing the use of the patent, copyrighted material, trademark, franchise, or license are sourced to [included as] Texas [receipts] to the extent the patent, copyrighted material, trademark, franchise or license is used in Texas.

(iv) Royalties from an affiliated taxable entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States are excluded from Texas gross receipts and gross receipts from an entity's entire business [everywhere].

(B) Gross receipts from the sale of intangible assets. Except as otherwise provided in this section, gross receipts from the sale of intangible assets [Sales. Sales of intangibles] are sourced to the [apportioned based on the] location of payor.

(C) Examples.

(i) Example 1. The owner of seismic data grants a license to an oil company to access the seismic data. Even though a license is part of this transaction, the receipts are from the use of the underlying intangible property, the seismic data (which cannot be copyrighted), not from the use of a license. Accordingly, the receipts are sourced under subparagraph (B) of this paragraph to the location of the payor.

(ii) Example 2. An inventor licenses a patent to a manufacturer. When the manufacturer licensee thereafter produces the patented item, it uses the patent, and its payments to the inventor, owner of the patent, are receipts from the use of a patent under subparagraph (A) of this paragraph. The receipts that the inventor receives are included in Texas receipts to the extent that the patent is used in production, fabrication, manufacturing, or other processing in Texas.

(iii) Example 3. The owner of copyrighted material grants a license to a publisher to publish the copyrighted material. When the publisher publishes the copyrighted material, it uses the copyright, and its payments to the owner are receipts from the use of a copyright under subparagraph (A) of this paragraph. The receipts that the copyright owner receives from the use of its copyright is included in Texas receipts to the extent the copyright is used in Texas.

(22) Qualified stock purchase under IRC, §338(h)(10) (Certain stock purchases treated as asset acquisitions). Receipts that are treated as receipts from the sale of assets by the target taxable entity under IRC, §338(h)(10) are sourced according to the rules that apply to sales of such assets. For the purposes of this paragraph, the purchaser of the target's stock is considered the purchaser of the assets. [Radio/television. All advertising revenues of a radio or television station that broadcasts or transmits from a location in Texas constitute Texas receipts, even though some of the listening or viewing audiences are located outside Texas. All other receipts must be apportioned in accordance with the apportionment rules otherwise set out in this section.]

(23) Real property. Gross receipts [Revenues] from the sale, lease, rental, sublease, or subrental of real property, including mineral interests, are sourced [apportioned] to the location of the property. Royalties from mineral interests are considered revenue from real property.

(24) Sales taxes. State or local sales taxes that are imposed on the customer, but are collected by a seller are not included in the seller's gross receipts [of the seller]. However, discounts that a seller is allowed to take in remittance of the collected sales tax are gross receipts to the seller.

(25) Securities. Gross receipts [Receipts] from the sale of securities are sourced to [apportioned based on] the location of the payor. If securities are sold through an exchange, and the payor [buyer] cannot be identified, then 8.7% [7.9%] of the revenue is a Texas gross receipt.

(26) Services. Except as otherwise provided in this section, gross receipts [Receipts] from a service are sourced [apportioned] to the location where the service is performed. [If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas.]

(A) Location of performance. Except as provided in other subparagraphs, a service is performed at the location of the receipts-producing, end-product act or acts. If there is a receipts-producing, end-product act, the location of other acts will not be considered even if they are essential to the performance of the receipts-producing acts. If there is not a receipts-producing, end-product act, then the locations of all essential acts may be considered. Examples: [Taxable

entities that have margin that is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company should refer to Tax Code, §171.106(b), for information on apportionment of such margin.]

(i) Admission fees, subscription fees, or other charges for an audience to observe live or pre-recorded performances are sourced to the locations where the recipients observe the performance. The location where the live performance was rehearsed, the location where the pre-recorded performance was recorded, and the location where the admission fee or other charge was paid are not determinative.

(ii) Gross receipts from the architectural design of a structure, are sourced to the location or locations where the architect performed the work. The delivery location of any tangible work product, such as a blueprint, is not determinative. However, if the tangible work product of the architect is considered to be the sale of tangible personal property rather than the sale of a service, such as the sale of house plan books, the gross receipts are sourced as provided in paragraph (29) of this subsection, concerning tangible personal property.

(B) If services are performed both inside and outside Texas for a single charge, then receipts from the services are Texas gross receipts on the basis of the fair value of the services that are performed in Texas. In determining fair value, the relative value of each service provided on a stand-alone basis may be considered. Units of service, such as hours worked, may also be considered. The cost of performing a service does not necessarily represent its value. If costs are considered, costs should be limited to costs directly related to the service and not overhead costs. Examples: [Taxable entities that have margin that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan as defined in subsection (b)(3) of this section, should refer to the Tax Code, §171.106(e), for information on apportionment of such margin.]

(i) A law firm with offices in Texas and Louisiana charges a client by the hour. Hours billed for work conducted in Texas are Texas gross receipts.

(ii) A law firm with offices in Texas and Louisiana charges a client a lump sum fee of \$5,000 to draft a document. Attorneys in the Texas office recorded 20 hours on the project, and attorneys in the Louisiana office recorded 5 hours on the project at the same billing rate. Texas gross receipts are \$4,000. If the law firm does not record hours worked on a project, other measures of direct cost may be considered.

(iii) A Texas-based landscaper provides grounds maintenance services at its client's four offices in Texas, and one office in Oklahoma, for an annual fee of \$50,000. The landscape services at each of the locations are substantially the same. Texas gross receipts are \$40,000. Although the cost of performing the landscaping maintenance service at the Oklahoma office is higher than the cost of performing the service at the other locations because of the additional travel cost, the additional cost is not considered.

(C) Taxable entities that have margin that is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company should refer to subsection (c)(1) of this section for information on apportionment of such margin [Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not Texas receipts].

(D) Taxable entities that have margin that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan should refer to sub-

section (c)(2) of this section for information on apportionment of such margin.

(E) Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not Texas gross receipts.

(27) Single member limited liability company (SMLLC). For purposes of this section, the sale of a SMLLC by its sole owner is the sale of a membership interest in the SMLLC. The membership interest is an intangible asset, and receipts from the sale of a SMLLC are sourced to the location of payor. [Services procurement. Revenue for the procurement of services are apportioned to the place where the service procurement is performed.]

(28) Subsidies or grants. Proceeds of subsidies or grants that a taxable entity receives from a governmental agency are gross receipts, except when the funds are required to be expended dollar-for-dollar (i.e., passed through) to third parties on behalf of the agency. Receipts from a governmental subsidy or grant are sourced [apportioned] in the same manner as the item to which the subsidy or grant was attributed. For example, receipts from [if a taxable entity qualifies for] a grant to conduct research for the government[; then the receipts from that grant] are receipts from a service and are sourced [apportioned] to the location where the research is performed.

(29) Tangible personal property. Examples of transactions that involve the sale of tangible personal property and result in Texas gross receipts include, but are not limited to, the following:

(A) the sale of tangible personal property that is delivered in Texas to a purchaser. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or transportation vehicles that the purchaser leases or owns. FOB point, location of title passage, and other conditions of the sale are not relevant to the determination of Texas gross receipts;

(B) the sale of tangible personal property that is delivered in Texas to an employee or transportation agent of an out-of-state purchaser. A carrier is an employee or agent of the purchaser if the carrier is under the supervision and control of the purchaser with respect to the manner in which goods are transported;

(C) the sale and delivery in Texas of tangible personal property that is loaded into a barge, truck, airplane, vessel, tanker, or any other means of conveyance that the purchaser of the property leases and controls or owns. The sale of tangible personal property that is delivered in Texas to an independent contract carrier, common carrier, or freight forwarder that a purchaser of the property hires results only in gross receipts everywhere if the carrier transports or forwards the property to the purchaser outside this state;

(D) the sale of tangible personal property with delivery to a common carrier outside Texas, and shipment by that common carrier to a purchaser in Texas;

(E) the sale of oil or gas to an interstate pipeline company, with delivery in Texas;

(F) the sale of tangible personal property that is delivered in Texas to a warehouse or other storage facility that the purchaser owns or leases;

(G) the sale of tangible personal property that is delivered to and stored in a warehouse or other storage facility in Texas at the purchaser's request, as opposed to a necessary delay in transit, even though the property is subsequently shipped outside Texas;

(H) the drop shipment of tangible personal property in Texas. A drop shipment is a shipment of tangible personal property

from a seller directly to a purchaser's customer, at the request of the purchaser, without passing through the hands of the purchaser. This results in Texas gross receipts for the seller and the purchaser.

(30) Telecommunication services [Telephone companies].

(A) Gross receipts [Revenues] from telephone calls that both originate and terminate in Texas are sourced to Texas [receipts].

(B) Gross receipts [Revenues] from telephone calls that originate in Texas but terminate outside of Texas or that originate outside of Texas but terminate in Texas are not sourced to [excluded from] Texas [receipts].

(C) Gross receipts [Revenues] from telecommunication services other than those services in subparagraph (A) or (B) of this paragraph are sourced to Texas [receipts] if the services are performed in Texas. For example, a telephone company that provides a long distance carrier access to the telephone company's local exchange network in Texas is performing a service in Texas. Any fee that the telephone company charges the long distance carrier for access to the local exchange network in Texas is a Texas receipt regardless of whether the access is related to an interstate call. A fee that is charged to obtain access to a local exchange network in Texas and that is based on the duration of an interstate telephone call are not sourced to [may be excluded from] Texas [receipts].

(31) Television broadcaster licensing income. For reports originally due on or after January 1, 2018, a broadcaster's gross receipts from licensing income from broadcasting or otherwise distributing film programming by any means are sourced to Texas if the legal domicile of the broadcaster's customer is in this state. In this subparagraph, the following words and terms shall have the following meaning:

(A) Broadcaster--A taxable entity, not including a cable service provider or a direct broadcast satellite service, that is a television station licensed by the Federal Communications Commission, television broadcast network, cable television network, or television distribution company.

(B) Customer--A person, including a licensee, who has a direct connection or contractual relationship with a broadcaster under which the broadcaster derives revenue.

(C) Film programming--All or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience.

(D) Programming--Includes news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(32) [(31)] Texas waters. Gross receipts [Revenues] from transactions that occur in Texas waters are sourced to Texas [receipts]. Texas waters are considered to extend to 10.359 statute miles, or nine nautical miles, from the Texas coastline.

(33) [(32)] Transportation services. [companies. Transportation companies must report Texas receipts from transportation services in intrastate commerce by:]

(A) Gross receipts from the transportation of goods or passengers are sourced to Texas by including gross receipts from the transportation of goods or passengers that both originates and terminates in Texas. [the inclusion of revenues that are derived from the transportation of goods or passengers in intrastate commerce within Texas; or]

(B) For reports originally due prior to January 1, 2021, Texas gross receipts may also be calculated by the multiplication of total transportation receipts by total mileage in the transportation of

goods and passengers that move in intrastate commerce within Texas divided by total mileage everywhere.

(f) Natural gas production.

(1) Gross receipts [Revenues] that a gas producer realizes from the contract price of gas that the gas producer produces and that the purchaser takes pursuant to the terms of sales [~~are gross receipts and~~] are sourced [apportioned] to Texas, if the gas is delivered in Texas.

(2) Gross receipts [Revenues] that a gas producer realizes from a purchaser's payment under a sale or purchase contract for gas to be produced even if no gas is produced and delivered to the purchaser, [~~are gross receipts and~~] are sourced [apportioned] to the location [legal domicile] of the payor.

(3) Gross receipts [Revenues] that a gas producer realizes from a purchaser's payments to terminate a gas purchase contract [~~are gross receipts and~~] are sourced [apportioned] to the location [legal domicile] of the payor.

(4) Gross receipts [Revenues] that a gas producer realizes from a contract amendment that relates to the price of the gas sold are treated as gross receipts from the sales of gas and are sourced [apportioned] to Texas if delivery is made to a location in Texas. Gross receipts [Revenues] that the gas producer realizes from a contract amendment that relates to a provision other than the price of gas sold [~~are gross receipts and~~] are sourced [apportioned] to the location [legal domicile] of the payor.

(5) Gross receipts [Revenues] that a gas producer realizes from litigation awards for a breach of contract, reimbursements for litigation-related expenses (e.g., documented attorney's fees or court costs), or interest (upon which the parties have agreed, that the records of the producer reflects, or in an amount that a court has ordered) [~~are gross receipts and~~] are sourced [apportioned] to the location [legal domicile] of the payor.

(6) Gross receipts [Revenues] that a gas producer realizes from a judgment, compromise, or settlement relating to the recovery of a contract price of gas produced [~~are gross receipts and~~] are sourced [apportioned] to Texas to the extent the contract specified delivery to a location in Texas. Gross receipts [Revenues] that a gas producer realizes from a judgment, compromise, or settlement that relates to several claims or causes of action shall be prorated based upon the documented amounts due under the contract for each claim or cause of action according to the records of the producer. For example, a settlement sum of \$100,000 for a pricing dispute of \$25,000 and for failure to pay for gas not taken in the amount of \$225,000, would result in receipts of \$10,000 from gas sales (100,000 X 25,000/250,000) and receipts from other business of \$90,000 (100,000 X 225,000/250,000). Records of the producer shall include, but are not limited to the following: contracts, settlement agreements, accounting records and entries, court pleadings and worksheets, including calculations reflecting settlement amounts.

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 November 2, 2020.

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William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§148.45, 148.47, 148.48, 148.50, 148.52

The Texas Board of Pardons and Paroles proposed amendments to 37 TAC Chapter 148, §§148.45, 148.47, 148.48, 148.50 and 148.52, concerning sex offender conditions of parole or mandatory supervision.

The amendments to §§148.45, 148.47, 148.48 and 148.50 are proposed to provide edits for clarity, uniformity, and consistency throughout the rules and to correct grammatical errors. The amendments to §148.52 include changes related to responsibilities in the hearing process.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that during the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. The amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.036(b), 508.0441, 508.045, and 508.228, Government Code. Section

508.036(b) authorizes the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441 authorizes the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision and to act on matters of release to parole or mandatory supervision. Section 508.045 authorizes a parole panel to grant or deny parole, revoke parole or mandatory supervision, and conduct revocation hearings. Section 508.228 authorizes a parole panel to impose sex offender conditions after a hearing for offenses where a sex offense occurred during the commission of the offense.

No other statutes, articles, or codes are affected by these amendments.

§148.45. Witnesses.

(a) The Hearing Officer may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the Hearing Officer exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms) and includes:

- (A) the releasee;
- (B) the releasee's attorney; and

(C) no more than one representative of the [Texas Department of Criminal Justice Parole] Division [~~(TDCJ PD)~~] who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) In the event that it appears to the satisfaction of the Hearing Officer that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the Hearing Officer, in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the Hearing Officer specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, and upon good cause determined by the Hearing Officer, may present testimony by written statement.

§148.47. Evidence.

(a) No later than five (5) days prior to the scheduled hearing, all parties shall submit all documents that will be introduced into evidence at the hearing to the other party and the Hearing Officer.

(b) All parties shall have an opportunity to present evidence in the form of testimony and written documentation. The Hearing Officer shall determine the order of presentation of evidence.

(c) The Texas Rules of Evidence shall apply. When necessary to ascertain facts not reasonably susceptible of proof under these rules, evidence not admissible [~~there under~~] thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(d) The Hearing Officer shall give effect to the rules of privilege recognized by law.

(e) Relevant testimony shall be confined to the subject of the pending matter. In the event any party at a hearing shall pursue a line

of questioning that is, in the opinion of the Hearing Officer, irrelevant, incompetent, unduly repetitious, or immaterial, such questioning shall be terminated.

(f) Relevant staff reports may be admitted as evidence in any hearing.

(g) Evidence may be stipulated by agreement of all parties.

(h) Objections may be made and shall be ruled upon by the Hearing Officer, and any objections and the rulings thereon shall be noted in the record.

§148.48. Record.

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant [TDCJ PD] Division documents, staff memoranda or reports submitted to or considered by the Hearing Officer involved in making the decision; and any decision, opinion, or report by the Hearing Officer presiding at the hearing.

(b) All hearings shall be electronically recorded in their entirety.

(c) The hearing record is made a part of the official parole record maintained by the TDCJ Parole Division. All requests for copies of the hearing report or hearing recording shall be addressed to the TDCJ Parole Division.

§148.50. Procedure after Waiver of Hearing.

(a) The parole panel may accept a waiver of the hearing provided that a waiver of the hearing includes the following:

(1) information that releasee was served with written notice of the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender conditions may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the parole panel or designee of the Board specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision maker; and

(F) opportunity to waive in writing the right to a hearing.

(2) information [TDCJ PD] Division relied upon to identify the releasee as a sex offender.

(b) After reviewing the waiver of the right to a sex offender condition hearing and receipt of supporting documentation of evidence of the releasee's sexual deviant behavior in the offense for which the releasee is currently on supervision, the parole panel or designee of the Board must determine that, by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control. The parole panel shall make final disposition of the case by taking one of the following actions:

(1) impose sex offender conditions; or

(2) deny imposition of sex offender conditions.

§148.52. Hearing.

(a) The [parole panel or] designee of the Board shall conduct the hearing for the purpose of determining whether sex offender conditions may be imposed as a special condition of release.

(b) The [parole panel or] designee of the Board must determine, as shown by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control.

(c) At the close of the hearing, or within a reasonable time thereafter, the [parole panel or] designee of the Board shall collect, prepare and forward to the parole panel:

(1) all documents;

(2) a summary report of the hearing with a written statement as to the evidence relied upon to make a finding or no finding that the releasee constitutes a threat to society by reason of his/her lack of sexual control; and

(3) the recording of the 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 October 29, 2020.

TRD-202004526

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: December 13, 2020

For further information, please call: (512) 406-5478



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 803. SKILLS DEVELOPMENT FUND

The Texas Workforce Commission (TWC) proposes following new section of Chapter 803, relating to the Skills Development Fund:

Subchapter A. General Provisions Regarding the Skills Development Fund, §803.4

TWC proposes amendments to the following sections of Chapter 803, relating to the Skills Development Fund:

Subchapter A. General Provisions Regarding the Skills Development Fund, §§803.1 - 803.2

Subchapter B. Program Administration, §803.11 and §§803.13 - 803.15

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 803 rule changes is to implement statutory changes related to the Skills Development Fund (SDF) program.

House Bill (HB) 700, 86th Texas Legislature, Regular Session (2019), amended sections of Texas Labor Code Chapter 303,

relating to the SDF program. The bill amended §303.001(a) to add Local Workforce Development Boards (Boards) to the list of entities that are eligible to use SDF grants as an incentive to provide customized assessment and training.

Additionally, HB 108, 85th Texas Legislature, Regular Session (2017), amended the Texas Labor Code to add §303.0031 regarding the use of SDF grants to encourage employer expansion and recruitment. The section allows SDF grants to provide "an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to this state, with a focus on recruiting employers that will provide complex or high-skilled employment opportunities in this state."

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

Texas Government Code §2001.039 requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or re adopting the rules continue to exist. TWC finds that the rules in Chapter 803 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, proposes to re adopt Chapter 803, Skills Development Fund, with amendments described in this proposed rulemaking.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

TWC proposes the following amendments to Subchapter A:

§803.1. Scope and Purpose

Section 803.1(a) is amended to provide a broad statement on the purpose of the SDF. This language reflects the statutory purpose in the Texas Labor Code, §303.001 and includes business expansion and relocation purpose in the Texas Labor Code, §303.003. The amended language removes references to required partnerships for community-based organization as this eligibility requirement is described in §803.2.

Section 803.1(a) is also amended to add Boards to the list of entities eligible to receive SDF grants to provide customized assessment and training pursuant to Texas Labor Code §303.001.

TWC notes that Texas Government Code §2308.264 prohibits Boards from directly providing workforce training or one-stop workforce services unless the Board requests and is approved for a waiver based on the lack of an existing qualified alternative for delivery of workforce services in the local workforce development area (workforce area). Chapter 303 (as amended by HB 700) allows Boards to apply for and use SDF funds:

--as an incentive to provide customized training;

--to develop customized training; and

--to sponsor small and medium-sized business networks and consortiums for job training purposes.

Chapter 303 does not state that Boards must provide the training directly and, therefore, does not conflict with §2308.264.

Section 803.1(a) is also amended to add "A&M" to complete the name of the Texas Engineering Extension Service, which reflects the language in Texas Labor Code §303.001.

§803.2. Definitions

Definitions in §803.2 are amended as follows:

--Section 803.2(1) is amended to include a Board as a design partner in the definition of a "customized training project."

--Section 803.2(2) is amended to include a Board in the definition of a "grant recipient."

--Section 803.2(4) is amended to remove "person" to alleviate any ambiguity or confusion with the word in the definition of Private Partner.

--Section 802.2(7) is amended to add "A&M" to the defined term "Texas Engineering Extension Service."

--Section 803.2(9) is amended to include a Board contractor in the definition of a "training provider."

§803.4. Use of Funds to Encourage Employer Expansion and Recruitment

New §803.4 is added to implement Texas Labor Code §303.0031, relating to the use of the SDF to support employers expanding in or relocating to Texas. The rule language reflects the statutory language in §303.0031.

Section 803.4(a) reflects the statutory language in the Texas Labor Code that the SDF may be used to provide an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to Texas, with a focus on recruiting employers that will provide complex or high-skilled employment opportunities in the state.

New §803.4(b) reflects the statutory language in the Texas Labor Code that the SDF grant funds may be used to:

--provide leadership and direction to, and connections among, out-of-state employers, economic development organizations, Boards, public community colleges, and public technical colleges to support employers' recruitment and hiring for complex or high-skilled employment positions as necessary to facilitate the employers' relocation to or expansion of operations in Texas; and

--award grants to public community colleges or public technical colleges that provide workforce training and related support services to employers that commit to establishing a place of business in Texas.

New §803.4(c) reflects the statutory language in the Texas Labor Code that the SDF grant funds may be used to develop:

--customized workforce training programs for an employer's specific business needs;

--fast-track curriculum;

--workforce training--related support services for employers; and

--instructor certification necessary to provide workforce training.

New §803.4(d) reflects the statutory language in the Texas Labor Code that SDF grant funds may also be used to acquire training equipment necessary for instructor certification and employment. The rule language clarifies that the use of funds for this purpose is permitted only for SDF grants that are funded under §803.4 to support employers expanding in or relocating to Texas.

Section 303.0031 allows TWC to require grant recipients, as a condition of receiving grant funds under this section, to agree to repay the amount received and any related interest if TWC

determines that the grant funds were not used for the purposes for which the funds were

awarded. New §803.4(e) includes this option.

SUBCHAPTER B. PROGRAM ADMINISTRATION

TWC proposes the following amendments to Subchapter B:

§803.11. Grant Administration

Section 803.11(3) is amended to correct the citation for Agency Monitoring Activities to Chapter 802, Subchapter D.

§803.13. Program Objectives

Section 803.13(2) is amended to promote collaboration of workforce activities in workforce areas as an SDF program objective. The amended language removes collaboration solely with Boards and expands the promotion of collaboration and awareness of workforce activities to a broader partnership of entities.

§803.14. Procedure for Requesting Funding

Section 803.14 is amended to remove the language stating that SDF applicants obtain the review and comments of the Board in the applicable workforce areas where there is a significant impact on job creation or incumbent worker training.

TWC notes that collaboration between grant applicants and Boards during the SDF project development review and evaluation process ensures that the needs of local industry and the workforce are being met effectively and efficiently. Collaboration among separate grant applicants during the project development phase ensures that potential SDF projects do not provide duplicative services.

However, with the passage of HB 700, which allows Boards to apply for SDF grants, TWC acknowledges that non-Board grant applicants may have concerns about requiring another potential grant applicant to review and comment on the application before submitting it to TWC--specifically that this may appear to provide a Board with a potential advantage in the development of the Board's SDF application.

Accordingly, §803.14(a) is amended to remove the requirement that Boards review and comment on SDF applicants before the application is submitted to TWC.

Section 803.14(f)(6) is amended to include Boards, along with the entities currently in rule, in the signed agreement outlining each entity's roles and responsibilities if a grant is awarded.

Section 803.14(f)(8) is amended to require grant applicants to include a comparison of costs per trainee for customized training projects for similar Board instruction in the grant application in order to align with the current requirement for comparison of costs with instruction at community and technical colleges or TEEX.

§803.15. Procedure for Proposal Evaluation

Section 803.15(b) is amended to remove the requirement that TWC must notify the Board in the applicable workforce area when it is evaluating an SDF application. The amended section adds the requirement that TWC must notify all eligible grant applicants when it is evaluating an SDF application. The intent of the amended language is that this notification is to promote collaboration and awareness of potential workforce activities in the workforce area.

TWC Chapter 802, Subchapter G, Corrective Actions, allows TWC to impose corrective actions when a Board or TWC

grantee--defined in §802.2(1) to include SDF grantees--has failed to comply with contract requirements.

TWC contends that if an entity has failed to comply with past contract requirements and continues to be on corrective action for this noncompliance at the time of the entity's application, the entity should not be eligible for an SDF grant. Therefore, §803.15(d) is added to prohibit SDF applicants on corrective action as described in Chapter 802, Subchapter G, from receiving an SDF grant.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement statutory changes related to the SDF.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or

limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rule will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has 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 proposed rules will be to implement statutory changes related to the SDF.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on January 7, 2020. TWC also conducted a conference call with Board executive directors and Board staff on January 17, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

40 TAC §§803.1, 803.2, 803.4

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§803.1. *Scope and Purpose.*

(a) Purpose. The purpose of the Skills Development Fund is to develop customized training projects for businesses and trade unions and to support employers expanding or relocating to Texas by enhancing [enhance] the ability of public community and technical colleges, Local Workforce Development Boards (Boards), and the Texas A&M Engineering Extension Service (TEEX) to respond to industry and workforce training needs and to develop incentives for Boards, public community and technical colleges, TEEX, or community-based organizations [only in partnership with the public community and technical colleges or TEEX] to provide customized assessment and training in a timely and efficient manner.

(b) Goal. The goal of the Skills Development Fund is to increase the skills level and wages of the Texas workforce.

§803.2. *Definitions.*

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Customized training project--A project that:

(A) provides workforce training, with the intent of either adding to the workforce or preventing a reduction in the workforce, and is specifically designed to meet the needs and special requirements of:

(i) employers and employees or prospective employees of the private business or business consortium; or

(ii) members of the trade union; and

(B) is designed by a private business or business consortium, or trade union in partnership with:

(i) a public community college;

(ii) a technical college;

(iii) TEEX;

(iv) a Board; or

(v) [(iv)] a community-based organization only in partnership with the public community and technical colleges or TEEX.

(2) Grant recipient--A recipient of a Skills Development Fund grant that is:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a Board; or

(E) [(D)] a community-based organization only in partnership with the public community and technical colleges or TEEX.

(3) Non-local public community and technical college--A public community [college] or technical college providing training outside of its local taxing district.

(4) Private partner--A [person] sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with:

(A) a public community college;

(B) a technical college;

(C) TEEX; or

(D) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(5) Public community college--A state-funded, two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical, and academic courses for certification or associate's degrees.

(6) Public technical college--A state-funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate's degrees.

(7) Texas A&M Engineering Extension Service (TEEX)--A higher education agency and service established by the Board of Regents of the Texas A&M University System.

(8) Trade union--An organization, agency, or employee committee in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(9) Training provider--An entity or individual that provides training, including:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a community-based organization only in partnership with the public community [college] or technical college or TEEX; or

(E) An individual [a person], sole proprietorship, partnership, corporation, association, consortium, governmental subdivision, or public or private organization with whom a Board, public community or technical college, or TEEX has subcontracted to provide training.

§§803.4. *Use of Funds to Encourage Employer Expansion and Recruitment.*

(a) Pursuant to Texas Labor Code §303.0031, the Skills Development Fund may be used to provide an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to Texas, with a focus on recruiting employers that will provide complex or high-skilled employment opportunities in the state.

(b) Grant funds under this section may be used to:

(1) provide leadership and direction to, and connections among, out-of-state employers, economic development organizations, Boards, public community and technical colleges to support employers' recruitment and hiring for complex or high-skilled employment positions as necessary to facilitate the employers' relocation to or expansion of operations in Texas; and

(2) award grants to public community or technical colleges that provide workforce training and related support services to employers that commit to establishing a place of business in Texas.

(c) Grant funds under this section may be used only to develop:

(1) customized workforce training programs for an employer's specific business needs;

(2) fast-track curriculum;

(3) workforce training--related support services for employers; and

(4) instructor certification necessary to provide workforce training.

(d) Notwithstanding the use of funds restrictions in §803.3(d)(2), grant funds may also be used to acquire training equipment necessary for instructor certification and employment.

(e) As a condition of receiving grant funds under this section, grant recipients shall agree to repay the amount received and any related interest if the Agency determines that the grant recipients did not use the funds for the purposes for which the funds were awarded.

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 October 30, 2020.

TRD-202004542

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: December 13, 2020

For further information, please call: (512) 689-9855



SUBCHAPTER B. PROGRAM ADMINISTRATION

40 TAC §§803.11, 803.13 - 803.15

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§803.11. Grant Administration.

Grant recipients must enter into an agreement with the Agency to comply with contract requirements that include, but are not limited to:

(1) submitting all required reports, including financial and performance reports, in the format and time frame required by the Agency;

(2) maintaining fiscal data needed for independent verification of expenditures of funds received for the customized training project;

(3) cooperating and complying with Agency monitoring activities as required by Chapter 802, Subchapter D, [Chapter 800, Subchapter H] of this title (relating to Agency Monitoring Activities); and

(4) submitting contract completion reports:

(A) The final payment is contingent upon the executive director's, or designee's, determination that a project has met the training objectives, outcomes, and requirements (an attrition rate of up to 15% of the total number of trainees in the contract is allowed).

(B) The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.

§803.13. Program Objectives.

The [following are the] program objectives in administering the Skills Development Fund are:

(1) to [Tø] ensure that funds from the program are spent in all local workforce development areas (workforce areas) of this state and expand the state's capacity to respond to workforce training needs;

(2) to promote collaboration and awareness of potential workforce activities in workforce areas [Tø develop projects in workforce areas through collaboration with the Boards];

(3) to [Tø] develop projects that, at completion of the training, will result in wages equal to or greater than the prevailing wage of individuals [persons] with similar knowledge and experience in that occupation in the local labor market for the participants in the customized training project;

(4) to [Tø] prioritize the processing of grant requests from workforce areas where the unemployment rate is higher than the state's annual average unemployment rate; [and]

(5) to [Tø] sponsor creation and attraction of high-value, high-skill jobs for the state that will facilitate the growth of industry and emerging occupations; and[-]

(6) to [Tø] the greatest extent practicable, [the Agency will] award Skills Development Fund grants as follows:

(A) Approximately 60 percent [%] of the funds may be for job retention training.[-]; and]

(B) The remaining funds may be for training for job creation.

§803.14. Procedure for Requesting Funding.

(a) A [After obtaining the review and comments of the Board in the applicable workforce area(s), where there is a significant impact on job creation or incumbent worker training, a] private partner or a trade union, together with a Board, public community or technical college, or TEEX, shall present to the executive director, or designee, a proposal requesting funding for a customized training project or other appropriate use of the fund.

(b) TEEX, or the public community or technical college that is a partner to a training proposal for a grant from the Skills Development Fund, may be non-local.

(c) The training proposal shall not duplicate a training project available in the workforce area in which the private partner or trade union is located.

(d) Proposals shall disclose other grant funds sought or awarded from the Agency or other state and federal entities for the proposed job training project.

(e) Applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. For the purposes of this subsection, "concurrent proposal" shall mean:

(1) a proposal for the Skills Development Fund that has been submitted and is pending at the time an applicant submits a proposal for the Texas Enterprise Fund; or

(2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time an applicant submits a proposal for the Skills Development Fund.

(f) Proposals shall be written and contain the following information:

(1) The number of proposed jobs created and/or retained;

(2) A brief outline of the proposed training project, including the skills acquired through training and the employer's involvement in the planning and design;

(3) A brief description of the measurable training objectives and outcomes;

(4) The occupation and wages for participants who complete the customized training project;

(5) A budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the private partner is willing to commit to the project;

(6) A signed agreement between the private partner or trade union and the Board, public community or technical college, or TEEEX outlining each entity's roles and responsibilities if a grant is awarded;

(7) A statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training project will be provided that is not being met by an existing institution or program in the workforce area;

(8) A comparison of costs per trainee for the customized training project and costs for similar instruction at the public community or technical college, [or] TEEEX, and the Board;

(9) A statement describing the private partner's or trade union's equal opportunity employment policy;

(10) A list of the proposed employment benefits;

(11) An indication of a concurrent proposal as required by subsection (e) of this section; and

(12) Any additional information deemed necessary by the Agency to complete evaluation of a proposal.

§803.15. *Procedure for Proposal Evaluation.*

(a) The executive director, or designee, shall evaluate each proposal considering the purposes listed in §803.3(a) of this subchapter, the program objectives listed in §803.13 of this subchapter, and procedures in §803.14 of this subchapter, along with the prevailing wage for occupations in the local labor market area, the financial stability of the private partner, the regional economic impact, and any other factors unique to the circumstances that the Agency determines are appropriate.

(b) The Agency shall notify all eligible grant applicants [~~the Board in the applicable workforce area~~] when the Agency is evaluating a proposal so as to promote collaboration and awareness [~~inform the Board~~] of potential workforce activities in the workforce area.

(c) If the Agency determines that a proposal is appropriate for funding through the Skills Development Fund, the executive director[;] or designee[;] shall enter into a contract with the grant recipient on behalf of the Agency.

(d) Skills Development Fund applicants on corrective action pursuant to Chapter 802, Subchapter G, shall not be eligible to receive a Skills Development Fund grant.

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 October 30, 2020.

TRD-202004543

Dawn Cronin

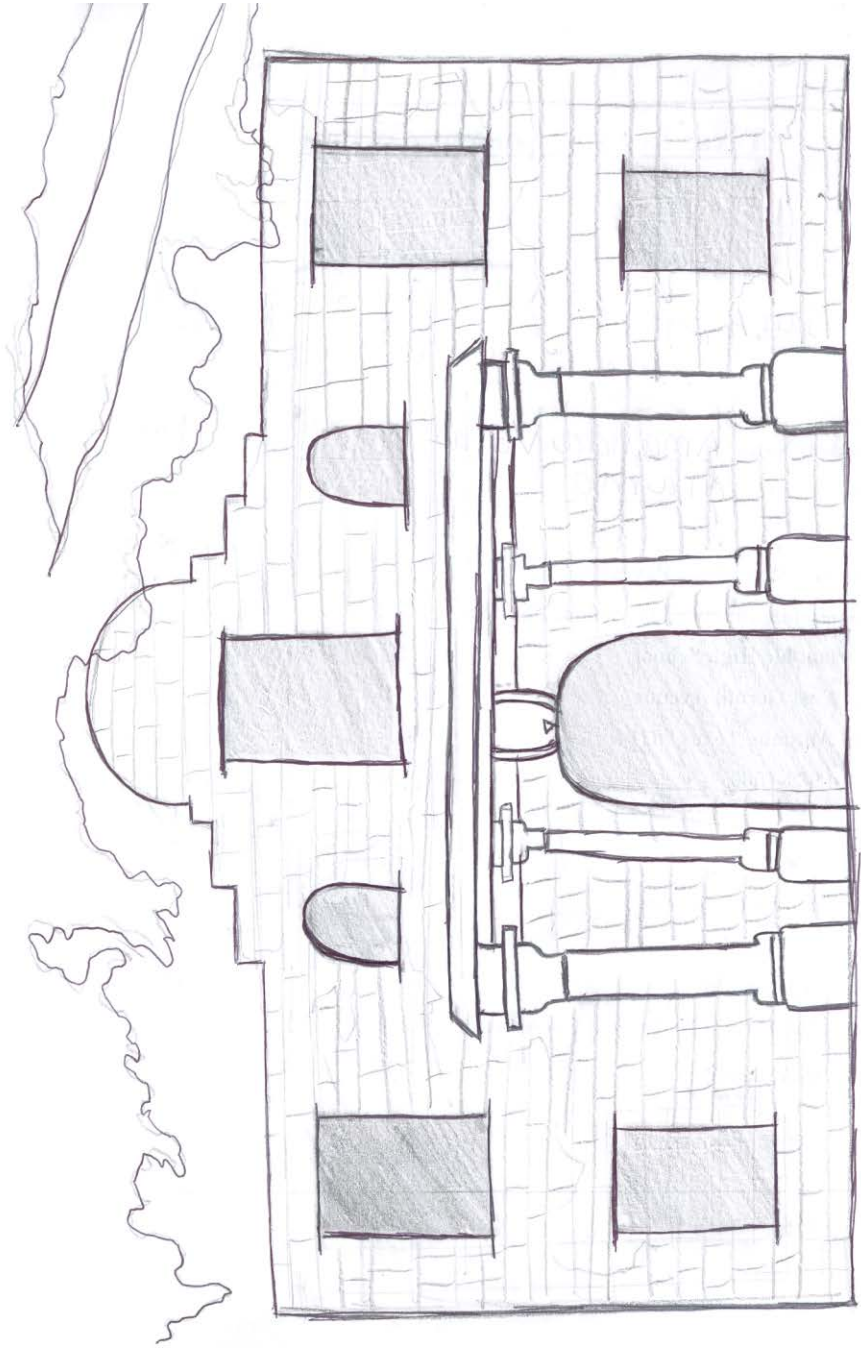
Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: December 13, 2020

For further information, please call: (512) 689-9855





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.420

The Texas State Board of Social Worker Examiners withdraws the proposed new §781.420, which appeared in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4931).

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

TRD-202004529

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: October 30, 2020

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



PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.4

The Council on Sex Offender Treatment withdraws the emergency adoption of the amendment to §810.4, which appeared in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3951).

Filed with the Office of the Secretary of State on November 2, 2020.

TRD-202004589

Aaron Pierce, PhD, LPC, LSOTP-S

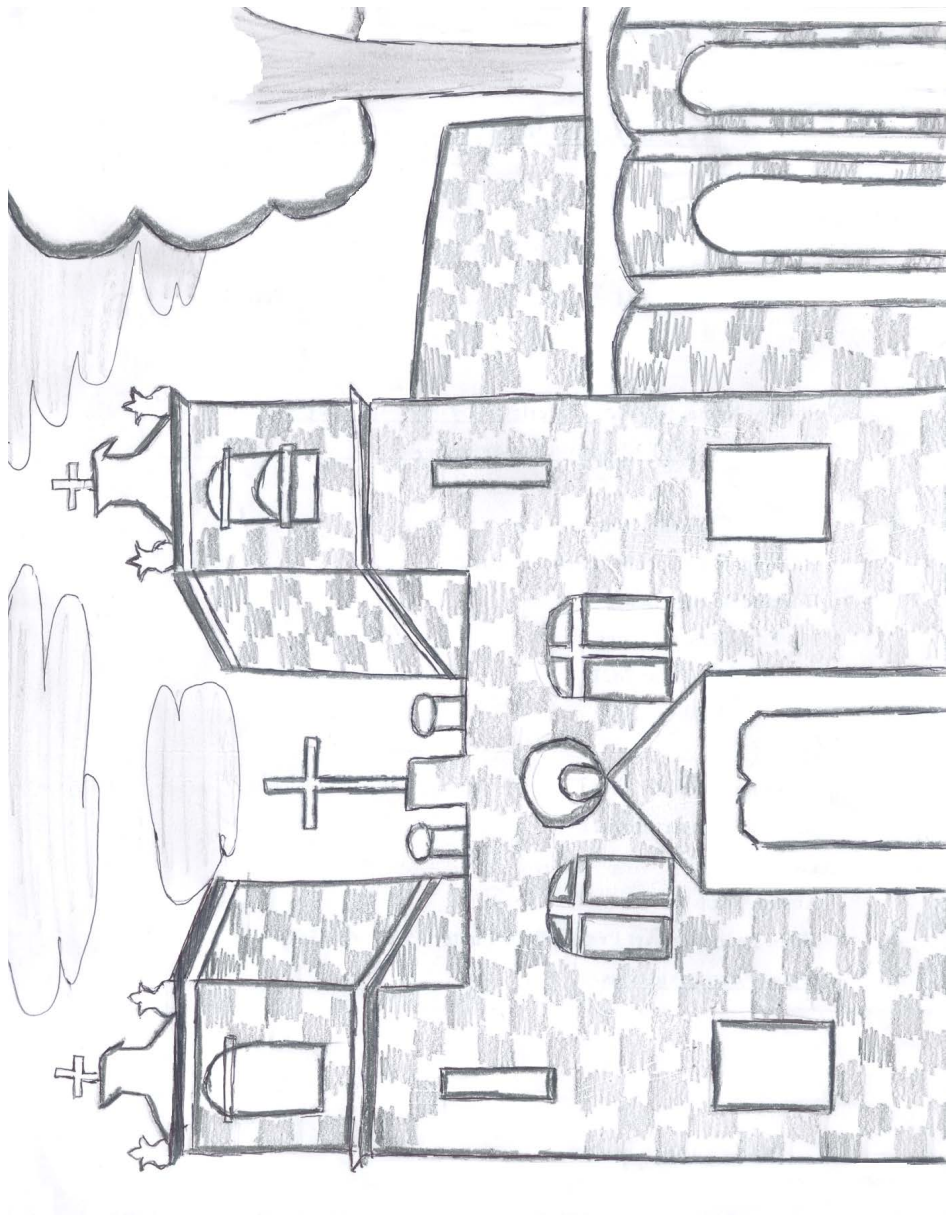
Chair

Council on Sex Offender Treatment

Effective date: November 2, 2020

For further information, please call: (512) 231-5721





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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.3

The Texas Historical Commission (Commission) adopts amendments to §16.3 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code, relating to Historic Sites. The amendments are adopted with changes to the proposed text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5082) as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division. The amended rule will be republished.

The rule amends the current two-phase process and creates a three-phase process within the updated State Historic Sites Historic Properties Collection Plan for the evaluation of a historic property. The amendments provide the criteria to be used in preliminary staff evaluations and defines a process to more effectively evaluate properties and contain costs.

There were no comments received during the posting period.

Section 16.3 of Chapter 16 (Title 13, Part II of the Texas Administrative Code), relating to Historic Sites, is adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.072(c), which allows the commission to enter into agreements; and Texas Government Code §§442.101(a), 442.101(b), and 442.101(c), which allow the Commission to adopt policies and procedures by rule to contract for services necessary to carry out its responsibilities regarding historic sites.

Texas Government Code §§442.072(c), 442.101(a), 442.101(b), 442.101(c), and 442.106 allow the commission to contract for services, and specifically for concessions, necessary to carry out its responsibilities regarding historic sites. No other statutes, articles, or codes are affected by this amendment.

§16.3. *Addition of Historic Sites to the Texas Historical Commission Historic Sites Program.*

(a) Criteria. The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process as posted on the Texas Historical Commission's (Commission) website at thc.texas.gov detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a three-step process as follows.

(1) In phase one, staff will determine if the property should be recommended to be added to the Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues:

(A) Where is the property located?

(B) What is the current condition of the property?

(C) What improvements would need to be made to meet THC standards for visitor access, experience, and safety?

(D) What is the importance of the property in Texas and/or American History?

(E) What is the estimation of the property's value, strategically, operationally and culturally?

(F) Are there resources such as artifact collections or endowment that accompany the property?

(G) Are there resources available to adequately interpret the property's themes and stories to the public?

(H) Are the necessary resources available to preserve and care for the property's physical infrastructure and collections?

(I) Does THC have the financial and FTE resources to operate the property?

(J) What is the property's potential for the generation of sustainable visitation and revenue?

(2) Phase 2. If the property is recommended for additional study, a staff committee will be assigned to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the evaluation process.

(3) Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) Phase 3. Upon positive action by the Commission on the recommendation noted in paragraph (2) of this subsection, the staff will prepare or have prepared a management plan in phase three for the site's evaluation including:

(A) Evaluation of the site, including but not limited to buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Required staffing and services for operation of the site, including ongoing costs of preservation, operation, maintenance and marketing.

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Required staffing and consultant services for development of the site.

(F) Projected audience/annual visitation, sources of funding to support programming including community partnerships, potential earned revenue, philanthropic and endowment.

(5) The management plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, or a property that is needed to support the operations of the state historic site as a program support facility, may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

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 November 2, 2020.

TRD-202004580

Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-7948



CHAPTER 21. HISTORY PROGRAMS

SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.6

The Texas Historical Commission (Commission) adopts amendments to 13 TAC §21.6, related to Recorded Texas Historic Landmarks (RTHL) designation. These amendments add detailed language to define conditions of and which buildings, structures, or objects on a property apply to the Recorded Texas Historic Landmarks (RTHL) designation. The amendments also define when a RTHL designation is recorded and becomes effective. The amendments are adopted without changes to the proposed text, as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4873). The rule will not be republished.

The amendments to §21.6 add detailed language to define conditions of and which buildings, structures, or objects on a prop-

erty apply to the Recorded Texas Historic Landmarks (RTHL) designation. The amendments also define when a RTHL designation is recorded and becomes effective.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program; and Texas Government Code §442.006(d), which establishes Recorded Texas Historic Landmark designation requirements.

No other statutes, articles, or codes are affected by these amendments.

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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Mark Wolfe

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Texas Historical Commission

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CHAPTER 22. CEMETERIES

13 TAC §22.4

The Texas Historical Commission (Commission) adopts amendments to §22.4, related to Cemeteries. These amendments remove duplicative language regarding how the Commission assesses verification of the existence of a cemetery. The amendments are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4875). The rule will not be republished.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.017(d), which allows for the adoption of rules necessary to identify and preserve abandoned cemeteries.

No other statutes, articles, or codes are affected by these amendments.

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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Mark Wolfe

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance. The amendment is adopted without changes to the proposed text as published in the August 28, 2020 issue of the *Texas Register* (45 TexReg 6013) and will not be republished. The amendment adopts by reference the *2020-2021 Student Attendance Accounting Handbook*. Although changes were not made to the text of §129.1025, the handbook adopted by reference in the rule includes changes to Sections 3 and 5 at adoption.

REASONED JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the FSP eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes Foundation School Program (FSP) resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook for the 2020-2021 school year. The adopted handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2020-2021 Student Attendance Accounting Handbook* include the following.

Section 1, Overview

Language was added to recognize the authority of the commissioner to waive requirements for average daily attendance (ADA) and specify the necessity for a local education agency to meet the prerequisites for receipt of such a waiver.

Section 2, Audit Requirements

Texas Education Code (TEC), Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports

that contain false information. TEC, §44.008, authorizes the commissioner to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language was added to include additional requirements for reporting eligible days and other reporting elements that pertain to attendance data reported in the Student Detail Reports, Campus Summary Reports, and District Summary Reports.

Language was added to include documentation to support a student's economically disadvantaged status as required documentation to be submitted in the event of an audit.

Section 3, General Attendance Requirements

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language was added to specify that official attendance can be taken by a paraprofessional who meets educational aide certification requirements.

Language was added to state that the attendance data reported in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) for students who attend magnet programs or magnet campuses must be reported for the campus that provides half-day or full-day instruction and also state that attendance must not be reported for a student's home campus if the student receives instruction at a different campus that houses the magnet program. For campuses that house multiple programs, such as a magnet program, attendance is counted for all students on the campus.

In response to public comment, language was added to Section 3 at adoption to clarify the selection of an alternative official attendance-taking time.

Section 4, Special Education

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following change implements reporting for special education to account for attendance and funding.

Language was revised to define/clarify specific report names/titles used to report student data to TSDS PEIMS.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

Language was added to state that students in Grades 7-12 are eligible for CTE contact hours when enrolled in a course referenced by 19 TAC Chapter 127, Subchapter B, or 19 TAC Chapter 130 that grants high school credit.

Language was added to state that school districts may receive state weighted funding for all CTE innovative courses approved by TEA for students in Grades 7-12.

Language was added to state that a district is eligible to receive funding in the amount of \$50 for each student full-time equivalent (FTE) enrolled in two or more advanced CTE courses, identified as Level 3 or Level 4 in a statewide CTE program of study, for a total of three or more credits.

Language was revised to clarify that the CTE contact hours must not be claimed when a student receiving CTE services is placed in a disciplinary setting.

Language was added to state that for districts providing block schedules, the classroom component must address all the Texas Essential Knowledge and Skills (TEKS) for the course. The new language also states that the training site will provide students with a variety of learning experiences that will give them the broadest possible understanding of the business industry.

Language was added to the special instructions for districts operating block schedules that in a practicum instructional arrangement, related classroom instruction must average one class period per week during the school year.

The entire Section 5.9, Career and Technical Education for Disabled (CTED) Courses, was deleted.

In response to public comment, language was added to Section 5 at adoption to include district consideration for student and teacher safety, and functional use of space when determining the number of students to enroll in a course.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language was added to state that in cases where a parent indicates more than one language in the Home Language Survey (HLS), it is the district's responsibility to contact the parent and explain to the parent that the question is asking which language is used in the home most of the time and seek clarification in a language the parent understands.

Language was added to state that the parent may request a correction on the HLS only if the student has not yet been assessed for English proficiency.

Language was added to state that if the sending district cannot find the original HLS, a new HLS should not be administered if there is sufficient Language Proficiency Assessment Committee (LPAC) documentation, such as Texas English Language Proficiency Assessment System (TELPAS) scores and/or TSDS PEIMS data, from the sending district that shows the student was identified as an English learner.

Language was added to clarify that eligible students who are no longer being served in the program must be assessed annually in the TELPAS until the student meets reclassification criteria.

Section 7, Prekindergarten (Pre-K)

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for prekindergarten to account for attendance and funding.

Language was added to specify that if a child is automatically eligible for a four-year-old prekindergarten program due to being eligible and enrolled in a three-year-old prekindergarten program, a district should still ensure the child is appropriately coded as economically disadvantaged or identified as limited English proficient (LEP).

Language was added to specify that a uniform definition has been established for "homeless children and youth" and "homeless child" as used in the prekindergarten statute that is aligned with the criteria found in 42 U.S.C., §1143a, within the TEC.

Section 9, Pregnancy-Related Services (PRS)

TEC, Chapter 48, including §42.152, authorizes funding under certain circumstances for students who are pregnant. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for PRS to account for attendance and funding.

Language was added to state that a special education student who qualifies for PRS may also receive homebound instruction on campus if the district has an approved on-campus instruction waiver. In such an instance, the Admission, Review, and Dismissal (ARD) committee would change the student's coding to reflect homebound setting, even though the student would be served on campus.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 42, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language was revised to clarify that the rules for Early College High School (ECHS); Pathways in Technology Early College High School (P-TECH); and Texas Science, Technology, Engineering, and Mathematics (T-STEM) programs prohibit requiring a student enrolled in an ECHS course for high school graduation credit to pay for tuition, fees, or required textbooks.

Language was added to state that for funding purposes, the Optional Flexible School Day Program attendance for a student for a 12-consecutive-month school year cannot exceed the equivalent of one student in ADA with perfect attendance.

Language was added to state that each online dropout recovery education program course is considered 60 minutes of daily classroom time for purposes of the two-through-four-hour rule.

Language was added to state that TEA determines ADA eligibility using course completion data. If a student did not complete an online dropout recovery education program course, TEA will make adjustments to the student's ADA eligibility and resulting

adjustments to the district's FSP funding will be made in the following school year.

Section 12, Virtual, Remote, and Electronic Instruction

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for the TXVSN to account for attendance and funding.

Language was added to clarify the definition of *successful completion* as completion of the TXVSN semester course and demonstrated academic proficiency with a passing grade sufficient to earn credit for the online semester course and that course credit for high school graduation may be earned only if the student received a grade that is the equivalent of 70 on a scale of 100 based upon the essential knowledge and skills for each course.

Language was added to include live audio/video streaming as examples of technology that may be used to provide remote instruction that is not delivered through the TXVSN.

Language was revised to state that for computing CTE contact hours relating to on-campus online classes not provided through the TXVSN, a student must be regularly scheduled for and attending the online state-approved technology application course in cybersecurity included in the cybersecurity pathway.

Language was revised to clarify that for self-paced computer courses, a certified teacher must be present for the duration of the instructional period and for the duration of the course.

Glossary

The definition of *homeless students* was revised to include the uniform definition in TEC.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 28, 2020, and ended September 28, 2020. Following is a summary of the public comments received and corresponding responses.

Section 3 - General Attendance

Comment: A school district employee requested that an example be added to describe that a student's home district may provide remote homebound instruction to the student while the student is in a hospital in another district or city. The commenter stated that the example should indicate that the student's home district and the district that the hospital is located in would agree which district provides the student instruction. The commenter also stated that doing so will allow a student to remain enrolled in the home district without having to enroll and then unenroll when returning to the home district.

Agency Response: The agency agrees that the home district may provide instruction to a student from the district who is hospitalized outside of the home district. At adoption, Section 3 of the 2020-2021 SAAH has been updated to include an example for students who receive instruction and are hospitalized in another district/city outside of the home district during the student's hospital stay.

Comment: Three school district employees requested that rule language be added for young adults ages 18-21 (18+) participating in transition programs for students who receive special education services to be able to count at least 20 work hours

per week for funding purposes. The commenters stated that the hours the young adults work do not coincide with the traditional school schedule of Monday through Friday, 8:00 a.m. to 3:00 p.m. and consideration should be given to the young adults participating in the program who work evenings and weekends. The commenters stated that in Section 3.2.2 of 2020-2021 SAAH, the funding requirements for full- and half-day funding do not recognize that students in 18+ programs may not participate in work-based learning for 2-4 hours each day to be considered half- or full-funding eligible; however, students may accumulate up to 20 hours per week in work-based learning opportunities and should generate funding based on cumulative and not daily instruction opportunities. The commenters also recommended that districts that offer 18+ transition programs for students who receive special education services should be able to count a cumulative total of up to 20 hours within a school week for funding eligibility.

Agency Response: The agency disagrees that additional rule language should be added for funding purposes. The 2020-2021 SAAH includes language that allows students participating in an 18+ transition program to generate full-day or half-day funding for work-based learning opportunities that count toward the 2 through 4-hour rule. Specifically, Section 3.2.2, Funding Eligibility #3, of the 2020-2021 SAAH states that to be eligible to generate FSP funding, a student must participate in work-based learning opportunities for at least two hours (half-day attendance) or at least four hours (full-day attendance). Work-based learning opportunities include internships, externships, apprenticeships, and mentorships. (This is not an exhaustive list of work-based learning opportunities.) The funding allowability is for students who participate in a work-based learning opportunity during regular school hours.

Comment: A school district employee requested that Section 3.6.2 of the 2020-2021 SAAH be clarified to indicate the difference between selecting the official attendance-taking time and the alternative attendance.

Agency Response: The agency agrees and has modified Section 3.6.2 of the 2020-2021 SAAH at adoption to include terminology to differentiate selection of the official attendance-taking time and the alternative attendance taking time.

Section 5 - Career and Technical Education (CTE)

Comment: A school district employee requested that language be added to Section 5.3.1 that addresses the safety and space considerations for the number enrolled in a CTE course.

Agency Response: The agency agrees. At adoption, language was added in Section 5.3.1 of the 2020-2021 SAAH to state that, in determining the number of students to enroll in any course, districts must consider the subject to be taught, the teaching methodology to be used, safety of students and teachers, functional use of available space, and any need for individual instruction.

Comment: A school district employee commented that examples in 5.12.4, 5.12.6, and 5.12.8 are missing the length of time for the class period. Specifically, the commenter stated the examples are missing the time for the assigned code V1 and that the code should be added to the example.

Agency Response: The agency agrees. At adoption, the examples in 5.12.4, 5.12.6, and 5.12.8 of the 2020-2021 SAAH were modified to refer to the V codes table in Section 5.5, CTE Codes,

that lists the average minutes per day for CTE courses and the corresponding CTE codes.

Comment: Twelve school district employees and three individuals commented in opposition to removing information related to CTED courses. One of the commenters additionally stated that while they understand the importance of providing the least restrictive environment for all students, there are some educational settings and situations where a CTED class is the best option. One commenter stated that removing CTED would impact many students who cannot be served in mainstream classrooms due to physical limitations. One commenter stated that students served in CTED courses learn real life skills they could use on a job site and in a home setting. Another commenter stated that the proposed change would affect the commenter's district disproportionately because it has a high number of special education students enrolled in a CTED program.

Agency Response: The agency disagrees that references to the CTED courses should remain. The CTED course codes were eliminated several years ago. All students must have access to all of the curriculum in the least restrictive environment. A student should be placed in appropriate CTE courses with accommodations or modifications to provide the most appropriate instructional setting based on the needs of the student determined by the admission, review, and dismissal committee.

Comment: A school district employee commented that example 14 in Section 5.12.14 should be deleted because it is covered elsewhere in the 2020-2021 SAAH.

Agency Response: The agency disagrees and has maintained language as proposed. The example in 5.12.14 and other examples in the 2020-2021 SAAH are provided to assist districts and charter schools with an understanding of various scenarios they may encounter.

Comment: A school district employee commented that the requirements for Career Preparation in Section 5.7.1 of 2020-2021 SAAH should be the same as for Practicum courses in 5.7.2. The commenter further stated that the classroom requirement should not be one hour per day for Career Preparation and a combination for practicum courses. Also, the representative commented that Career Preparation courses and practicum courses should be a combination of two hours per day for two credits and three hours per day for three credits.

Agency Response: The agency disagrees that the requirements for Career Preparation and Practicums should be changed and has maintained the 1-hour-per-day classroom instruction requirement for Career Preparation courses. The Career Preparation courses provide opportunities for students to participate in a work-based learning experience that combines classroom instruction with business and industry employment experiences (paid or unpaid). The goal is to prepare students with a variety of skills for a changing workplace. The work-based learning experience may not always be aligned to the student's program of study. One hour of classroom instruction is required per day (on average) to develop general employability skills over the period of the school year.

Section 6 - Bilingual/English as a Second Language (ESL)

Comment: A school district employee commented that Section 6.2.1 of the 2020-2021 SAAH states that parents can request a change in the HLS and omits the two-week enrollment requirement for the HLS.

Agency Response: The agency disagrees and has maintained language as proposed. Section 6.2.1 of the 2020-2021 SAAH does not refer to parents requesting a change to the HLS or a two-week enrollment requirement for the HLS. Instead, Section 6.2 #1, provides that parents may request a correction to the HLS only if the child has not been assessed for English proficiency and that the procedures must be completed within four weeks of a student's initial enrollment in a Texas public school.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by the TEC, Chapter 48; TEC, §25.081, as amended by HB 3, 86th Texas Legislature, 2019, which states that for each school year, each school district must operate for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, as amended by HB 3, 86th Texas Legislature, 2019, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 48, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that the commissioner shall adopt rules, take action, and require reports consistent with the TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that average daily

attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; and TEC, §48.108, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.081, as amended by HB 3, 86th Texas Legislature, 2019; 25.0812; 25.087; 29.0822; and 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, and 48.108, as added or transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER A. LICENSING

22 TAC §203.8

The Texas Funeral Service Commission (Commission) adopts amendments to §203.8(g), relating to the number of in person continuing education hours that need to be completed by the time of license renewal. The amended section is adopted without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6570). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The adopted amendments/peel to Chapter 203, Subchapter A are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules. The adopted amendments also address challenges arising from the COVID-19 pandemic by removing the requirement of in-person continuing education requirements and only requiring 16 hours of continuing education units (CEU).

PUBLIC COMMENTS: There have been no comments submitted regarding this adoption.

CHANGES TO PUBLISHED TEXT: The amended section is adopted, in part, to correct the details of the number of specific CEU that are required to be completed for license renewal, with regard to the modality of the CEU hours. Since the onset of the COVID-19 health crisis, in-person continuing education hours cannot be completed without risk to the presenter and the participants. Therefore, it is the position of the Commission

to remove the in-person continuing education hour requirement and only require a total of 16 hours of CEU be completed prior to a license renewal. This adoption has no impact on the requirements presented in §203.8(f).

STATUTORY AUTHORITY: This proposal is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Commission to adopt rules considered necessary for carrying out the Commission's work; (2) Texas Occupations Code §651.2, which authorizes the Commission to renew licenses; (3) Texas Occupations Code §§651.255-651.256, which outline exams required to be licensed as a funeral director or embalmer; (4) Texas Occupations Code §651.259, which authorizes the Commission to reciprocate licenses from other states; (5) Texas Occupations Code §651.265, which authorizes the Commission to renew licenses in active/inactive status; (6) Texas Occupations Code §651.266, which authorizes the Commission to adopt rules related to continuing education; (7) Texas Occupations Code §651.3045, which authorizes the Commission to offer education waivers to certain applicants; and (8) Texas Occupations Code Chapter 55, which outlines requirements for occupational licensing of military members, veterans and spouses.

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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Glenn A. Bower

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Texas Funeral Service Commission

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For further information, please call: (512) 936-2469



22 TAC §203.16

The Texas Funeral Service Commission (Commission) adopts amendments to §203.16, relating to Consequences of Criminal Convictions. The amended section is adopted without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6572). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The amended section is adopted, in part, to bring the rule in alignment with Texas Occupation Code §53.021. The Texas State Auditor Office and the Office of the Attorney General have placed requirements on all the state agencies to bring their rules in alignment with Occupations Code §53.021 so that the individual agency rules do not conflict or contradict the state code.

PUBLIC COMMENTS: There have been no comments submitted regarding this adoption.

STATUTORY AUTHORITY: This proposal is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, (2) Texas Occupations Code Chapter 53, which outlines how a licensing agency may review criminal backgrounds of applicants and li-

censees in accordance with changes made when the 86th Texas Legislature enacted HB 1342 and SB 1217; and (3) the authority of the Commission to issue licenses pursuant to Texas Occupations Code §§651.251-253.

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 November 2, 2020.

TRD-202004573

Glenn A. Bower

Executive Director

Texas Funeral Service Commission

Effective date: November 22, 2020

Proposal publication date: September 18, 2020

For further information, please call: (512) 936-2469



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 Texas Administrative Code §361.6 without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4474).

REASONED JUSTIFICATION

The board sets license fees in amounts that are reasonable and necessary to cover the cost of administering Texas Occupations Code Chapter 1301. The amendment to §361.6, concerning fees, is in response to a need to remove barriers for those who may wish to establish a plumbing business. Fees for Journeyman and Master Plumber licenses in Texas are significantly lower than the national average. The Responsible Master Plumber endorsement is in addition to the cost of a Master Plumber license and establishes that a Master Plumber holds the required insurance and license to contract and offer to perform plumbing work for the general public.

PUBLIC COMMENT

The Board published the proposed amendments to 22 Texas Administrative Code §361.6 in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4474). No comments were received. A public hearing in accordance with Texas Government Code §2001.029 was not required.

STATEMENT OF AUTHORITY

Amended §361.6 is adopted under the authority of §1301.251(2) of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law) and under the authority of, and to implement Plumbing License Law §1301.253, concerning fees. This adoption affects the Plumbing License Law.

No other statute is affected by the adoption of 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.

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

TRD-202004527

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: November 18, 2020

Proposal publication date: July 24, 2020

For further information, please call: (512) 936-5200



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§681.2, 681.4, 681.5, 681.9, 681.11

The Texas Behavioral Health Executive Council adopts amended §§681.2, 681.4, 681.5, 681.9, and 681.11, relating to General Provisions. Sections 681.4, 681.5, 681.9, and 681.11 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4876) and will not be republished. In response to public comments requesting the definition for Recognized Religious Practitioner not be repealed, §681.2 is being changed and adopted as republished below.

Reasoned Justification.

The amended 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 amended rules are the definitions for the rules in Chapter 681 and pertain to the general operations for the Texas State Board of Examiners of Professional Counselors; 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 Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

American Art Therapy Association - §681.2(9)

Texas Association of Psychological Associates - §681.2(18)

Texas Counseling Association - §681.2(19)

Summary of comments against the rule.

A commenter recommends including art therapy in the definition for counseling-related field in §681.2(9) for consistency and clarity.

Commenters expressed their disapproval of the change of the term LPC Intern to LPC Associate, as listed in §681.2(18), pertaining to definitions, and reflected elsewhere throughout these rules. Commenters felt the term associate would be misleading or confusing, and felt the term intern was more accurate.

Commenters requested the definition for Recognized Religious Practitioner not be repealed from §681.2. A commenter opined that this definition was important because it provided notice that in order for individuals to meet this exemption, in their provision of counseling related support, they need to be affiliated with a legally recognized religious organization. Commenters also felt retaining this definition would maintain consistency with other rules.

A commenter questioned why §681.2 retained the definition for the Board when, as the commenter opined, the Executive Council has replaced it.

A commenter was concerned that changing the requirement that a consent for services must be signed, to it must be executed, would cause confusion in §681.2.

A commenter opined that removing the requirement for a quorum and the use of Robert's Rules of Order when the Board took action in §681.4 was not a good thing, and the commenter believes that it removes some due process.

List of interested groups or associations for the rule.

Texas Counseling Association - §681.2(18)

Summary of comments for the rule.

Commenters expressed their support for the change of the term LPC Intern to LPC Associate, as listed in §681.2, pertaining to definitions, and reflected elsewhere throughout these rules. Commenters felt the term associate will be more accurately reflect an individual's skills and qualifications to practice.

Agency Response.

The Executive Council declines to include art therapy in the definition for counseling-related field in §681.2(9) because art therapy is already defined in §681.2(3).

The Executive Council believes LPC Associate will more accurately reflect an individual's skills and qualifications to practice, and therefore will proceed with adopting the change in §681.2(18), and all other corresponding rules where this term is used.

The Executive Council agrees there will be a benefit to keeping the definition for Recognized Religious Practitioner listed in §681.2(19), and agrees not to repeal the definition. The Executive Council also acknowledges that §801.2(22) contains an almost identical definition, so keeping the definition will also be helpful for clarity and consistency.

The Executive Council declines to delete the definition of the Board in §681.2(4) because the Board still exists and was not replaced as the commenter asserts.

The Executive Council declines to change the term executed back to signed in §684.2(7), pertaining to consent form. This amendment was discussed at the Board's July 9, 2020, public meeting, and the intent of this change was to make this definition clearer. The Executive Council agrees that this change provides greater clarity and therefore adopts this rule without any changes.

The Executive Council declines to make any changes to §681.4, pertaining to transaction of official business. A quorum of Board members is still required by this rule, as well as by other applicable Texas statutes. Additionally, the Board is not required to adopt Robert's Rules of Order and sees no benefit in doing so, therefore the Executive Council declines to amend this rule as requested.

Statutory Authority.

The 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 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 §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §503.2015 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 adopts 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 503 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

§681.2. *Definitions.*

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accredited school--An institution of higher education accredited by a regional 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--The Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.

(3) Art therapy--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

(4) Board--The Texas State Board of Examiners of Professional Counselors.

(5) Client(s)--A person(s) who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(6) Consent for services--Process for receiving permission from the legally authorized person who agrees to services.

(7) Consent Form--A document executed by the legally authorized person to ensure the client is aware of fees and arrangements for payment; counseling purposes, goals, and techniques; restrictions placed on the license by the Council; limits on confidentiality; intent of the licensee to use another individual to provide counseling treatment intervention to the client; supervision of the licensee by another licensed health care professional including the name, address, contact information, and qualifications of the supervisor; and the name, address, and telephone number of the Council for the purpose of reporting violations of the Act or this chapter.

(8) Council--The Texas Behavioral Health Executive Council.

(9) Counseling-related field--A mental health discipline using human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(10) Executive Director--The executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.

(11) Direct client contact--Time spent counseling clients.

(12) Health care professional--Any person licensed, certified, or registered by the state in a health related profession.

(13) Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

(14) Jurisprudence exam--The Texas State Board of Examiners of Licensed Professional Counselors Jurisprudence exam. An online exam based upon the statutes and rules relating to the practice of counseling.

(15) License--An LPC license, LPC license with art therapy specialty designation, or LPC Associate license issued by the Council.

(16) Licensee---A person who holds an LPC license, LPC license with art therapy specialty designation, or LPC Associate license.

(17) LPC--Licensed Professional Counselor. A person holding an LPC license as a professional counselor with authority to practice in independent practice.

(18) LPC Associate--Licensed Professional Counselor Associate. A person who holds an LPC Associate license to practice counseling only under a board Council-approved supervisor and not as an independent practitioner.

(19) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, L1.6033-2(g)(i)(2012);

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(20) Supervisor--An LPC approved by the Council as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements) to supervise an LPC Associate.

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 October 30, 2020.

TRD-202004558

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



22 TAC §§681.10, 681.12 - 681.17

The Texas Behavioral Health Executive Council adopts the repeal of §§681.10, 681.12 - 681.17, relating to the Board, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4879). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

Texas Counseling Association - §681.13 and §681.16

Summary of comments against the rule.

Commenters requested §681.13, pertaining to impartiality and non-discrimination for Board determinations, not be repealed. Commenters opined that even though other laws would prohibit the Board from failing to be impartial or non-discriminatory, the commenters felt it would be beneficial to retain this rule.

Commenters requested §681.16, pertaining to petition for adoption of a rule, not be repealed. Commenters opined that keeping this rule will allow such petitions to be submitted directly to the Board, instead of first through the Executive Council.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to retain §681.13. The Executive Council has already adopted a rule that addresses Council and Board member recusals, if one cannot be impartial, see §881.5.

And the Executive Council has already adopted and posted its Compact with Texans which states the agency's commitment to non-discrimination and reasonable accommodations.

The Executive Council declines to retain §681.16. The Executive Council has already adopted a rule that addresses petitions for rulemaking, see §881.21. Additionally, the Executive Council has already proposed an amendment to §881.21 which states that agency staff will submit to the appropriate member board for review and consideration petitions for rulemaking which involves any matters set forth in §507.153(a) of the Tex. Occ. Code.

Statutory Authority.

The repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously

voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 October 30, 2020.

TRD-202004544

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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

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SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

22 TAC §681.31

The Texas Behavioral Health Executive Council adopts the repeal of §681.31, relating to authorized counseling methods and practices, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4880). The rule will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 October 30, 2020.

TRD-202004545

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



SUBCHAPTER B. RULES OF PRACTICE

22 TAC §§681.31, 681.41 - 681.47, 681.49 - 681.53

The Texas Behavioral Health Executive Council adopts new §§681.31, 681.41 - 681.47, and 681.49 - 681.53, relating to Rules of Practice. Sections 681.31, 681.42 - 681.47, and 681.49 - 681.53 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4881) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §681.41 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.

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 new rules pertain to the scope of practice, standards of care, and ethical practice for professional counselors; 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 Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter requested §681.31 be amended to include EMDR as a counseling method.

A commenter requested §681.41 be amended to include what the Board will do when unlicensed practice is reported, that the rule is too vague regarding a licensee's duty to make reasonable attempts to remove misleading information, that the duty to update the informed consent with a client should also require a client's signature, and that employees of an agency should be required to maintain records the same as other licensees.

A commenter requested §681.41, pertaining to general ethical requirements, be amended to include prohibitions against licensees discriminating against clients. The commenter opines that it is imperative that the citizens of Texas know that their LPC will not discriminate in the provision of their services.

A commenter wondered about having to list the supervisor's address on the supervisee's cards and marketing. Presumably this comment concerns §§681.41(e) and 681.49.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter appreciated the changes made to the required time period for the retention of records, the commenter opined that this will better match HIPAA requirements. Presumably this comment concerns §681.41(r). The commenter also stated that having the supervisor's name in a different font style or size should be fine as long as it is not 6 point font or smaller, which is the commenter's understanding. Presumably this comment concerns §681.49(h).

Agency Response.

The Executive Council declines to amend §681.31 to specifically list EMDR as a counseling method. The rule is not intended to be an exhaustive list of all counseling methods, techniques, and modalities; and at this time there is not a need to add to the list of examples in this rule.

The Executive Council declines to amend §681.41 as requested. The Executive Council will process complaints filed in accordance with its rules, see §§884.10 - 884.12, and it is unnecessary to list the same in §681.41. The Executive Council does not agree that the rule is too vague in its requirements for licensees to take reasonable action to address misleading information. What a reasonable action will be would have to be determined on a case-by-case basis, depending upon the facts of each scenario, and it would not be possible to create an exhaustive list of all reasonable actions a licensee could or should take given the wide variety of factual scenarios a licensee could encounter regarding misleading information. The Executive Council declines to add any additional requirements to §681.41 that would require additional signatures to a new or amended consent form when changes are made. The rule already requires an informed consent to be executed by the client, and the licensee must then provide written notification of any changes, but the Executive Council does not see then need to require the consent form to be executed again each time a change has to be made. The Executive Council declines to make any changes regarding record maintenance for employees of agencies in §681.41. The employers of licensees would, in all likelihood, be covered by other state and federal laws regarding the maintenance of records and licensees are still required to create appropriate records regarding their services. When a client receives ser-

vices from an agency, such as a hospital, they will typically then return to that agency for their records instead of reaching out to all the individual licensees the client may have seen at the agency, or hospital. Requiring a licensee employed by a hospital to maintain their own set of records would be duplicative and unnecessary.

The Executive Council declines to amend §681.41 to add prohibitions against discriminatory conduct as requested. The current proposal does not address the issues the commenter requests added to the rule, therefore adding any such change would be a substantive change requiring re-proposal. Chapter 503 of the Tex. Occ. Code is the Licensed Professional Counselor Act. This Act, as well as Chapter 507 of the Tex. Occ. Code, grants the Executive Council the legal authority to adopt rules pertaining to LPCs. The Executive Council does not have the legal authority to adopt beyond the scope and authority of these statutes. At this time, it is not clear that the Executive Council has the legal authority to adopt rules as the commenter has requested, therefore the agency must decline, at this time, to amend the rule as requested. Current §882.36 requires licensees to comply with all state and federal laws affecting a licensee's practice. Therefore if a licensee violates the Civil Rights Act, the Americans with Disabilities Act, or any other such law prohibiting discrimination then a licensee could be cited for violating §882.36.

Per §681.41(e) a supervisor's address must be listed in an informed consent, but §681.49(h), pertaining to advertising, does not require a supervisee's marketing to list the supervisor's address, it only requires the supervisor's name to be listed. The Executive Council makes no changes to these rules, it appears the commenter's question and concern about having to list the supervisor's address on the supervisee's cards and marketing has already been addressed.

The Executive Council appreciates the commenters supportive comments for the changes to §681.41(r) regarding the required time period for the retention of records, this was done to align with other rules; and the Executive Council appreciates the commenter's support for repealing the restrictions on font size and style when listing a supervisor and supervisee, per §681.49(h).

Statutory Authority.

The 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 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 §503.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §503.2015 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 adopts 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 503 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

§681.41. General Ethical Requirements.

(a) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

- (1) the effectiveness of services;
- (2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or
- (3) the practice or field of counseling.

(b) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(c) A licensee must discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee must take immediate and reasonable action to correct the ideas held.

(d) A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take immediate and reasonable action to correct the statement.

(e) Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:

- (1) fees and arrangements for payment;
- (2) counseling purposes, goals, and techniques;
- (3) any restrictions placed on the license by the Council;
- (4) the limits on confidentiality;
- (5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client;
- (6) supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;

(7) the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and

(8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

(f) A licensee must inform the client in writing of any changes to the items in subsection (e) of this section, prior to initiating the change.

(g) Technological means of communication may be used to facilitate the therapeutic counseling process.

(h) In accordance with §503.401(a)(4) of the Act, a licensee must not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage.

(i) A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code Chapter 164, will not be considered as a violation of state law relating to illegal remuneration.

(j) A licensee must not engage in activities for the licensee's personal gain at the expense of a client.

(k) A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee must first inform the client of the licensee's personal and/or business interest therein. A licensee must not exert undue influence in promoting such activities, services or products.

(l) A licensee must set and maintain professional boundaries.

(m) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(2) A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(3) A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate there has been no exploitation and the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

(5) The licensee must not provide counseling services to previous or current:

- (A) family members;

- (B) personal friends;
- (C) educational associates; or
- (D) business associates.

(6) The licensee must not give or accept a gift from a client or a relative of a client valued at more than \$50, borrow or lend money or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.

(7) The licensee must 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.

(n) The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.

(o) A licensee may take reasonable action to inform 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.

(p) The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:

- (1) within a group; or
- (2) individual counseling.

(q) For each client, a licensee must keep accurate records of:

- (1) signed informed consent, signed written receipt of information, or, in the case of involuntary treatment, a copy of the appropriate court order
- (2) intake assessment;
- (3) dates of counseling treatment intervention;
- (4) principal treatment methods;
- (5) progress notes;
- (6) treatment plan; and
- (7) billing information.

(r) In the absence of applicable state and federal laws, rules or regulations, records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client, or five (5) years after the client reaches the age of majority, whichever is greater.

(s) Records created by licensees during the scope of their employment by agencies or institutions that maintain client records are not required to comply with (q) and (r) of this section.

(t) Billing Requirements.

(1) A licensee must bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(2) Relationships between a licensee and any other person used by the licensee to provide services to a client must be so reflected on billing documents.

(3) Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(4) A licensee may not knowingly overcharge a client.

(5) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.

(u) A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.

(v) Prior to the commencement of counseling 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, as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.

(w) A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.

(x) Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.

(y) A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.

(z) A licensee must not knowingly overtreat a client.

(aa) A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.

(bb) A licensee must report to the Council knowledge of any unlicensed practice of counseling.

(cc) A licensee or an applicant must not participate in the falsification of any materials submitted to the Council.

(dd) A licensee must not provide services while impaired by a physical, mental, or medical condition or by medication, drugs or alcohol.

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 C. CODE OF ETHICS

22 TAC §§681.41 - 681.51

The Texas Behavioral Health Executive Council adopts the repeal of §§681.41 - 681.51, relating to code of ethics, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4891). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter wondered if there could be some other requirement than having to list a licensee's full legal name on marketing materials to protect the privacy of licensees. Presumably this comment concerns §681.48.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council is adopting the repeal of §681.48, but licensees are still required, per §882.30, to display their license which will have their full name listed. Additionally, any informed consent must include the licensee's name, per §681.2(7). While the Executive Council believes the privacy of licensees is important, the agency also believes it is important that clients know who they are receiving services from, and so a client can file a complaint against a licensee if needed. Therefore, the Executive Council declines to make any rule changes that the commenter is requesting.

Statutory Authority.

The repeal 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 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 §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 C. APPLICATION AND LICENSING

22 TAC §§681.71 - 681.73, 681.81 - 681.83, 681.91, 681.93, 681.101, 681.114, 681.141 - 681.143, 681.145, 681.147

The Texas Behavioral Health Executive Council adopts new §§681.71 - 681.73, 681.81 - 681.83, 681.91, 681.93, 681.101,

681.114, 681.141 - 681.143, 681.145, and 681.147, relating to Application and Licensing. Sections 681.71 - 681.73, 681.82, 681.91, 681.93, 681.101, 681.114, 681.141 - 681.143, 681.145, and 681.147 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4892) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §681.81 and §681.83 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.

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 new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for professional counselors; 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 Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

American Art Therapy Association - §§681.73(b), 681.82(c), and 681.83(b)

Summary of comments against the rule.

Commenters pointed out that the American Art Therapy Association is in the process of phasing out its approval process for graduate art therapy educational programs, and the Accreditation Council for Art Therapy Education is taking its place; so the commenters request a change or update to §681.73(b).

A commenter requested changes to §681.82(c) to add language to clarify that a professional art therapy license in good standing issued by another jurisdiction will also be deemed as having met all academic requirements if the state license requires a graduate degree from an approved/accredited art therapy program that is substantially equivalent to §681.82 or if it meets the requirements of §681.73.

A commenter requested changes to §681.83(c) to clarify that the additional coursework requirement in that subsection would not apply to applicants holding graduate degrees from approved/accredited degree programs in art therapy.

A commenter opined that §681.91(d) is being interpreted to require LPC-As to be W-2 employees of an LPC-S, and not allowing LPC-As to be independent contractors.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council appreciates the comments regarding §681.73(b) and may initiate rule making proceedings in the future; but since the American Art Therapy Association is still in the process of phasing out its approval of graduate art therapy educational programs the Executive Council declines to make any changes to this rule at this time.

The Executive Council declines to make the requested changes to §681.82(c) and §681.83(c). Art therapy is a specialty designation for a person who holds a license as a professional counselor, see §503.303 of the Tex. Occ. Code. Therefore one must first qualify for an LPC before an art therapy designation can be granted, and therefore by statute the requested revisions to the rules cannot be made.

The Executive Council declines to make any changes to §681.91(d). The only change made from the prior version of §681.91(d) was changing the word intern to associate. No new prohibit against the use of independent contractors was added to this rule. The specific prohibition the commenter opines about is not specifically listed or contained in §681.91(d), therefore no change is needed.

Statutory Authority.

The 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 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 §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §503.2015 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 adopts 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 503 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

§681.81. General Academic Requirements.

(a) The Council will accept as meeting academic requirements graduate degrees from accredited schools that meet the requirements of §681.82 of this title (relating to Academic Requirements) and §681.83 of this title (relating to Academic Course Content).

(b) Degrees and course work received at foreign universities will be acceptable only if such course work would be counted as transfer credit by an accredited school. The applicant must provide the Council with documents and evidence to establish his or her formal education is equivalent to at least a master's degree granted by an accredited school. In order to meet this requirement the applicant must comply with Council §882.11 of this title (relating to Applicants with Foreign Degrees).

(c) Applicants must provide upon request a course description from an official school catalog or bulletin or a course syllabus to substantiate the relevance of the course to the academic requirements of §681.83 of this title.

(d) The Council will not consider undergraduate level courses as meeting any academic requirements for licensure unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school.

(e) The Council will consider courses for which an applicant's official transcript indicates a passing grade or credit was earned.

(f) In evaluating transcripts, the Council will consider a quarter hour of academic credit as two-thirds of a semester hour.

§681.83. Academic Course Content.

(a) An applicant who holds a graduate degree in counseling from an accredited school is presumed to have satisfied the academic course content requirements described in this section.

(b) An applicant who holds a graduate degree in a counseling-related field must complete at least one course in each of the following areas:

(1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through adulthood;

(2) abnormal human behavior - the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques - the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;

(4) counseling theories - the major theories of professional counseling;

(5) counseling methods or techniques - the methods or techniques used to provide counseling treatment intervention including:

(A) counseling individuals; and

(B) the theory and types of groups, including dynamics and the methods of practice with groups;

(6) research - the methods of research which may include the study of statistics or a thesis project;

(7) life style and career development - the theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(8) social, cultural, and family issues - the studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles;

(9) professional orientation - the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention; and

(10) practicum (internship) - supervised practicum experience primarily counseling in nature which includes:

(A) At least 300 clock-hours, of which at least 100 hours must be direct client counseling.

(B) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.

(c) The remaining courses needed to meet the 48/60 graduate semester hour requirement must be counseling-related course work in areas directly supporting the development of an applicant's professional counseling skills and must be courses related primarily to professional counseling.

(d) As of August 1, 2017, the following courses must be taken in addition to those outlined in subsection (b) of this section, to meet the 60 semester hour requirement:

(1) addictions counseling; to include, but not limited to, gambling, sexual, eating, alcohol, or drug;

(2) an additional course in counselor ethics; to include records management, an overview of business/family law and professional practice, and the study of current Council rules;

(3) couples, marriage, or family counseling; and

(4) a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications.

(e) Passing the National Counselor Exam or National Clinical Mental Health Counselor Exam does not guarantee that Texas state licensure requirements have been satisfied.

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. APPLICATION PROCEDURES

22 TAC §§681.71 - 681.73

The Texas Behavioral Health Executive Council adopts the repeal of §§681.71 - 681.73, relating to application procedures, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4898). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 nec-

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

In accordance with §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

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. SCHEDULE OF SANCTIONS

22 TAC §§681.201, 681.203 - 681.205

The Texas Behavioral Health Executive Council adopts new §§681.201 and 681.203 - 681.205, relating to Schedule of Sanctions. Sections 681.201, 681.204, and 681.205 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4900). These rules will not be republished. Section 681.203 is adopted with changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4900) due to a grammatical error. This rule 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.

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 new rules pertain to a schedule of sanctions for professional counselors; 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 Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter asked where does the \$5,000 fine in §681.203 go? The commenter requested that the fine be used for a victim compensation for treatment.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

Typically, administrative penalties that are collected by a state agency are paid to the State of Texas. Section 503.407 of the Tex. Occ. Code allows the Executive Council to order a license holder to pay a refund to consumers, but there is no statutory authority for this agency to create a victims' compensation fund for treatment. Therefore the Executive Council declines to amend the rule as requested.

Statutory Authority.

The 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 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 §503.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §503.2015 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 adopts 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 503 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

§681.203. Severity Levels for the Schedule of Sanctions.

(a) The following are the severity levels for the schedule of sanctions:

(1) Level One--revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two--extended suspension of license. 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. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) Level Four--probated suspension of license. 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 and/or rule violations.

(b) Licensees who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received from a consumer.

(c) Supervisors who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received by the supervisor to his or her LPC Associate(s).

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 E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §§681.81 - 681.83

The Texas Behavioral Health Executive Council adopts the repeal of §§681.81 - 681.83, relating to academic requirements for licensure, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4902). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§681.91, §681.93

The Texas Behavioral Health Executive Council adopts the repeal of §681.91 and §681.93, relating to experience requirements for licensure, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4903). The repealed rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal

to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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. LICENSURE EXAMINATIONS

22 TAC §§681.101 - 681.103

The Texas Behavioral Health Executive Council adopts the repeal of §§681.101 - 681.103, relating to licensure examinations, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4904). The repealed rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter is concerned that the repeal of §681.103 will place limits on the amount of times an applicant can retake an examination for licensure.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to retain this rule or make the commenter's requested changes. Rule §681.103 must be repealed because it has already been replaced by rule §882.6, regarding limitation on number of examination attempts. While rule §882.6 does state an application will be denied if an examination is failed three times, the rule allows for applicants to reapply to take the examination but to do so a detailed study plan designed to address the known or suspected areas of deficiency is required and must be approved by the relevant member board.

Statutory Authority.

The repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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



SUBCHAPTER H. LICENSING

22 TAC §§681.111 - 681.114

The Texas Behavioral Health Executive Council adopts the repeal of §§681.111 - 681.114, relating to licensing, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4905). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §§681.121, 681.123 - 681.126

The Texas Behavioral Health Executive Council adopts the repeal of §§681.121, 681.123 - 681.126, relating to regular license renewal; inactive and retirement status, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4907). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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



SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§681.141 - 681.143, 681.145 - 681.147

The Texas Behavioral Health Executive Council adopts the repeal of §§681.141 - 681.143 and 681.145 - 681.147, relating to continuing education requirements, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4908). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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



SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §§681.161, 681.162, 681.164 - 681.172

The Texas Behavioral Health Executive Council adopts the repeal of §§681.161, 681.162, and 681.164 - 681.172, relating to

complaints and violations, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4909). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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



SUBCHAPTER L. FORMAL HEARINGS

22 TAC §§681.181, 681.182, 681.184

The Texas Behavioral Health Executive Council adopts the repeal of §§681.181, 681.182, and 681.184, relating to formal hearings, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4911). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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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Texas State Board of Examiners of Professional Counselors

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SUBCHAPTER M. SCHEDULE OF SANCTIONS

22 TAC §§681.201 - 681.204

The Texas Behavioral Health Executive Council adopts the repeal of §§681.201 - 681.204, relating to schedule of sanctions, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4912). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

Texas Counseling Association - §681.202

Summary of comments against the rule.

Commenters recommend retaining §681.202, pertaining to relevant factors which are considered when assessing a rule violation. Commenters believed that this rule should be retained for clarity in the sanctioning process, and believes this information should be available to licensees and the general public since both can benefit for this information.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to retain §681.202. The Executive Council has already adopted a rule that addresses the same issues and subject matter that this prior rule dealt with, see §884.20 pertaining to disciplinary guidelines which applies to all rule violations.

Statutory Authority.

The repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 N. PARENTING COORDINATION AND FACILITATION AND CHILD CUSTODY AND ADOPTION EVALUATIONS

22 TAC §§681.251 - 681.253

The Texas Behavioral Health Executive Council adopts the repeal of §§681.251 - 681.253, relating to parenting coordination and facilitation and child custody and adoption evaluations, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4913). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 781. SOCIAL WORKER LICENSURE SUBCHAPTER A. GENERAL PROVISIONS 22 TAC §§781.101, 781.102, 781.202, 781.203, 781.205 - 781.209

The Texas Behavioral Health Executive Council adopts amended §781.101 and §781.102 and new §§781.202 - 781.203, and §§781.205 - 781.209, relating to General Provisions. Sections 781.101, 781.102, 781.202, 781.203, and 781.205 - 781.209 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4915). The rules will not be republished.

Reasoned Justification.

The amended and 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.

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 amended and new rules are the definitions for the rules in Chapter 781 and pertain to the general operations for the Texas State Board of Social Worker Examiners; 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 Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

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 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 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 §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 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 adopts 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 com-

plied with Chapters 505 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

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



SUBCHAPTER B. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.201 - 781.223

The Texas Behavioral Health Executive Council adopts the repeal of §§781.201 - 781.223, relating to code of conduct and professional standards of practice, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4919). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 B. RULES OF PRACTICE

22 TAC §§781.301 - 781.313, 781.316 - 781.323

The Texas Behavioral Health Executive Council adopts new rules §§781.301 - 781.313 and 781.316 - 781.323, relating to Rules of Practice. Sections 781.301 - 781.303, 781.306 - 781.311, 781.313, and 781.316 - 781.323 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4921) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §§781.304, 781.305, and 781.312 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.

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 new rules pertain to the scope of practice, standards of care, and ethical practice for social workers; 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 Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

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 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 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 §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 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 adopts 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 505 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

§781.304. *Relationships with Clients.*

(a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.

(b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

(c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of seven years after the date of termination of services for an adult client or

five years beyond the age of 18 years of age for a minor, whichever is greater.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products or services offered by an organization or agency; or the practice or field of social work.

(i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the Council.

(j) A licensee shall provide social work intervention only in the context of a professional relationship.

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.

(l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

(m) The licensee shall not accept from or give to a client any gift with a value in excess of \$25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.

(n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not intentionally borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.

(o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.

(r) 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 the client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

§781.305. Sexual Misconduct.

(a) Definitions.

(1) Sexual contact--Any touching or behavior that can be construed as sexual in nature or as defined by the Texas Penal Code, §21.01, relating to assault.

(2) Therapeutic deception--A licensee's act or statement representing that sexual contact or sexual exploitation between the

licensee and a client or client group is a valid part of the treatment process.

(3) Sexual exploitation--A pattern, practice or scheme of exploitation, which may include, but is not limited to, sexual contact with a client.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a client or former client; a supervisee of the licensee; or a student at an educational institution at which the licensee provides professional or educational services.

(c) A licensee shall not practice therapeutic deception of a client or former client.

(d) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred. It is also not a defense that the licensee terminated services with the person before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred.

(e) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred with the client's consent; outside appointments with the client; or off the premises the licensee used for appointments with the client.

(f) A licensee shall report sexual misconduct in accordance with Texas Civil Practice and Remedies Code, Chapter 81, relating to sexual exploitation by a mental health services provider. If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(2) the Council if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider.

(3) Before making a report under this subsection, the licensee shall inform the alleged victim of the licensee's duty to report and shall determine if the alleged victim wants to remain anonymous.

(4) A report under this subsection shall contain information necessary to identify the licensee; identify the alleged victim, unless the alleged victim has requested anonymity; express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and provide the alleged perpetrator's name.

(g) The following may constitute sexual exploitation if done for sexual arousal, sexual gratification, or sexual abuse of either the social worker or a person who is receiving or has received the licensee's professional services as a social worker:

(1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature;

(2) any behavior, gestures, comments, or expressions which may reasonably be interpreted as inappropriately seductive or sexual, including making sexual comments about a person's body or making sexually demeaning comments about an individual's sexual orientation, or making comments about potential sexual performance

except when the comment is pertinent to issues of sexual function or dysfunction in counseling;

(3) initiating conversation about the licensee's sexual problems, preferences, or fantasies; or requesting details of sexual history or sexual likes and dislikes when those details are not necessary for counseling;

(4) kissing or fondling, or making any other deliberate or repeated comments, gestures, or physical acts of a sexual nature, even if they are not sexually intimate;

(5) making a request to date;

(6) exposing genitals, anus or breasts; or

(7) encouraging another person to masturbate in the licensee's presence; or the licensee masturbating in front of another person.

§781.312. *Licensees and the Council.*

(a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter and Council rules and statutes.

(b) A social worker shall report alleged misrepresentations or violations of this chapter to the Council.

(c) The licensee shall report any and all employment setting changes to the Council within 30 days.

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

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



SUBCHAPTER C. THE BOARD

22 TAC §§781.301 - 781.317

The Texas Behavioral Health Executive Council adopts the repeal of §781.301 - 781.317, relating to the Board, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4930) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 October 29, 2020.

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Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 18, 2020

Proposal publication date: July 17, 2020

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



SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §§781.401 - 781.406, 781.411, 781.412, 781.414, 781.418, 781.419, 781.508 - 781.510, 781.514

The Texas Behavioral Health Executive Council adopts new §§781.401 - 781.406, 781.411, 781.412, 781.414, 781.418, 781.419, 781.508 - 781.510, and 781.514, relating to Application and Licensing. Sections 781.402, 781.403, 781.405, 781.406, 781.412, 781.414, 781.418, 781.419, 781.508 - 781.510, and 781.514 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4931) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §§781.401, 781.404, and 781.411 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.

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 new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for social workers; 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 Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

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 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 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 §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 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 adopts 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 505 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

§781.401. *Qualifications for Licensure.*

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

- (1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of Council-approved supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for specialty recognitions.

(1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.

(B) While fully licensed as a social worker, has had 3000 hours of Council-approved supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Advanced Generalist examination administered nationally by the ASWB.

(2) Independent Non-clinical Practice.

(A) Is currently licensed in the State of Texas as an LBSW or LMSW.

(B) While fully licensed as a social worker has had 3000 hours of Council-approved supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.

(c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

§781.404. *Recognition as a Council-approved Supervisor and the Supervision Process.*

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a Council-approved supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor;

(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council-approved supervisor; or

(6) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.

(4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.

(5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.

(6) The Council-approved supervisor must submit required documentation and fees to the Council.

(7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Advanced Practitioner specialty recognition, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the Advanced Practitioner specialty recognition; non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise: an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(10) A Council-approved supervisor who wishes to provide any form of Council-approved or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce

such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory agreement, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor may not supervise an individual who is related within the second degree of affinity or consanguinity.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) The Council may deny, revoke, or suspend Council-approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.

(O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status.

(11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked, with a base line of one hour of supervision for every 40 hours worked. If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected. The plan must be approved by the Council.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW or LMSW-AP or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, super-

vision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. A month is a 30-day period or the length of the actual calendar month, whichever is longer.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Council-approved supervised professional experience towards licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition) of this title and all other applicable laws and rules.

(12) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

(c) A licensee who submits one of the following: a Clinical Supervision Plan, a Non-Clinical Supervision Plan, or a Council-Ordered Supervision Plan, to the Council for approval, shall receive a written

response from the Council of either approval or deficiency related to the plan. If no written response is received by the licensee within four weeks of submission of the plan, it is the responsibility of the licensee who has submitted the plan to follow-up with the Council office related to receipt and/or status of the plan within 60 days of submission. If written approval or deficiency is sent to the last known address of the licensee, a Council response related to acceptance of the plan shall be considered to have been sent. Supervision and supervised experience hours are not acceptable to meet minimum requirements towards licensure or specialty recognition or to satisfy the terms of a Council order if not accrued under a Council-approved plan without explicit authorization from the Council.

§781.411. Temporary License.

(a) Prior to examination, a licensure applicant may obtain a temporary social work license as long as the applicant meets all the requirements, except the licensing examination, for the license category the applicant seeks.

(b) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.

(c) The temporary license is valid until the licensee attempts the appropriate examination or the end of the six-month issuance of the temporary license.

(d) A person holding a temporary license must display the license at the licensee's place of business and must use the appropriate licensed title or initials followed by the word "Temporary" in all professional use of the licensee's name.

(e) Should the applicant take and fail the examination, the temporary license is no longer valid. The applicant must immediately cease and desist from using the temporary license and title, and return the license certificate and certificate card to the Council.

(f) Should the applicant pass the examination, the Council will issue the license or specialty recognition. A temporary license holder who has passed the licensing examination continues to be temporarily licensed until the Council issues a regular license or the temporary license expires.

(g) A person who failed the examination and is without a valid temporary license may retake the examination under §781.412 of this title (relating to Examination Requirement).

(h) A temporary license will not be granted to an applicant who has held a temporary license for the same license category previously within his/her lifetime.

(i) An applicant for LCSW or specialty recognition is not eligible for a temporary or provisional license.

(j) Applicants requesting a temporary license must submit the application form and fee required by 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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Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
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Proposal publication date: July 17, 2020
For further information, please call: (512) 305-7706



SUBCHAPTER D. LICENSES AND LICENSING PROCESS

22 TAC §§781.401 - 781.419

The Texas Behavioral Health Executive Council adopts the repeal of §§781.401-781.419, relating to licenses and licensing process, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4939) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 nec-

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

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 State Board of Social Worker Examiners

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



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §§781.801, 781.803 - 781.805

The Texas Behavioral Health Executive Council adopts new §§781.801 and 781.803 - 781.805, relating to Schedule of Sanctions. Sections 781.801 and 781.804 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4941) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §781.803 and §781.805 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 coun-

selors, 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 new rules pertain to a schedule of sanctions for social workers; 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 Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

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 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 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 §505.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 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 adopts 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 505 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts 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.

§781.803. Severity Levels.

The following are severity levels for the schedule of sanctions:

(1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require suspension of licensure for a period of not less than one year. The Council may also impose an administrative penalty of not less than \$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require suspension of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate. The Council may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The Council may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

§781.805. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Act and these rules.

Figure: 22 TAC §781.805

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 October 29, 2020.

TRD-202004540

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 18, 2020

Proposal publication date: July 17, 2020

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



SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.501 - 781.517

The Texas Behavioral Health Executive Council adopts the repeal of §§781.501 - 781.517, relating to licensing renewal and continuing education, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4943). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 October 30, 2020.

TRD-202004533

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §§781.601 - 781.610

The Texas Behavioral Health Executive Council adopts the repeal of §§781.601 - 781.610, relating to complaints and violations, without changes as published in the July 17, 2020, issue

of the *Texas Register* (45 TexReg 4944). The adopted repeals will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 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 adopts 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 neces-

sary 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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-202004534

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



SUBCHAPTER G. FORMAL HEARINGS

22 TAC §§781.701 - 781.704

The Texas Behavioral Health Executive Council adopts the repeal of §§781.701 - 781.704, relating to formal hearings, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4946). The repeals will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 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 adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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-202004535

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §§781.801 - 781.808

The Texas Behavioral Health Executive Council adopts the repeal of §§781.801 - 781.808, relating to Sanction Guidelines, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4947). The repeals will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these 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 adopted 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.

List of interested groups or associations against the rule repeal.

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 repeal 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 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 §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 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 require-

ments for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts 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.

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 October 30, 2020.

TRD-202004536

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.4

The Council on Sex Offender Treatment (Council) adopts an amendment to Title 22, Texas Administrative Code, §810.4, concerning License Issuance and/or Renewal, in order to provide licensed sex offender treatment providers with the flexibility to obtain additional online continuing education hours for renewal requirements. The amendment to §810.4 is adopted without changes to the proposed text as published in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5501). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The Council is required to adopt rules for procedures and eligibility and other requirements for renewal of a sex offender treatment provider license, including requirements related to continuing education.

At its regularly scheduled meeting on June 12, 2020, the Council approved the amendment to §810.4(7) to increase the maxi-

mum number of allowable online continuing education hours for license renewal from six hours to 12 hours. Online hours accrued to satisfy the continuing education ethics requirement do not count toward the maximum of 12 online hours.

COMMENTS

The 31-day comment period ended September 8, 2020.

During this period, the Council received comments regarding the proposed rule from two commenters. A summary of comments relating to the rule and Council's responses follows:

Comment: One commenter was in agreement with the rule change.

Response: No change was made as a result of this comment.

Comment: One commenter was opposed to limiting the number of online continuing education unit hours to just 12 hours. The commenter also stated that due to the current COVID-19 pandemic, it may be difficult for professionals to attend live events.

Response. The Council disagrees and declines to revise the rule in response to this comment.

STATUTORY AUTHORITY

The amendment is authorized by Texas Occupations Code, §110.158, which authorizes the Council to adopt rules necessary for the performance of its duties; and §110.302, which requires the Council to adopt licensing requirements for sex offender treatment providers.

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 November 2, 2020.

TRD-202004579

Aaron Pierce, PhD, LPC, LSOTP-S
Chair

Council on Sex Offender Treatment

Effective date: November 22, 2020

Proposal publication date: August 7, 2020

For further information, please call: (512) 231-5721



TITLE 34. PUBLIC FINANCE

PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 123. ACTUARIAL TABLES AND BENEFIT REQUIREMENTS

The Board of Trustees (Board) of the Texas Municipal Retirement System (TMRS or the System) adopts the repeal of current 34 TAC Chapter 123 (Chapter 123), relating to actuarial tables and benefit requirements, as published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6320). The repeals will not be republished.

TMRS repeals the following rules: 34 TAC §123.1, Actuarial Tables; 34 TAC §123.2, Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit; 34 TAC §123.3,

Month of Credited Service and Year of Credited Service Defined; 34 TAC §123.4, Interest in Calculations of Benefits Based on Completed Service; 34 TAC §123.5, Requirement of Spousal Consent; 34 TAC §123.6, Retirement Benefit Calculation; 34 TAC §123.7, Authority to Make Actuarial Changes; 34 TAC §123.8, Updated Service Credit Calculations.

The Board of TMRS adopts new Chapter 123, relating to actuarial tables and benefit requirements, §§123.1 - 123.8 and §§123.10 - 123.18 without changes to the proposed text as published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6320). These rules will not be republished. Section 123.9 has been corrected to change "joint and survivor option" to "joint-and-survivor option". This rule will be republished. TMRS adopts the following rules: 34 TAC §123.1, Definitions; 34 TAC §123.2, Bona Fide Termination of Employment; 34 TAC §123.3, Return to Work; 34 TAC §123.4, Month of Credited Service and Year of Credited Service Defined; 34 TAC §123.5, Restricted Prior Service Credit; 34 TAC §123.6, Updated Service Credit Calculations; 34 TAC §123.7, Requirement of Spousal Consent; 34 TAC §123.8, Effect of Divorce; 34 TAC §123.9, Post-Retirement Contributions; 34 TAC §123.10, Payments Due on Death of Retiree or Annuitant; 34 TAC §123.11, Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit; 34 TAC §123.12, Affidavits of Heirship for Determination of Payments Due Heirs; 34 TAC §123.13, Beneficiary Causing Death of Member or Annuitant; 34 TAC §123.14, Certain Convicted Elected Officials Ineligible for Retirement Annuity; 34 TAC §123.15, Calculation of Member Supplemental Death Benefits; 34 TAC §123.16, Retiree Supplemental Death Benefit; 34 TAC §123.17, Actuarial Tables; 34 TAC §123.18, Authority to Make Actuarial Changes.

BACKGROUND AND PURPOSE

New Chapter 123 is adopted to provide clarification relating to the actuarial tables and benefit requirements under existing benefit plans of TMRS, and to implement and administer certain provisions of Senate Bill 1337 (SB 1337) which was enacted by the 86th Legislature (2019), the TMRS Act (defined below), and Texas Government Code §810.003, relating to Certain Elected Officials Ineligible for Retirement Annuity. Statutes specific to TMRS are found in Title 8, Subtitle G, Chapters 851 through 855, Texas Government Code (the TMRS Act). In addition, Chapter 123 is adopted as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

Three new Chapter 123 rules (in new §123.17 - Actuarial Tables, §123.11 - Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit, and §123.6 - Updated Service Credit Calculations) have been renumbered but otherwise are unchanged from prior rules. The new rules: add definitions for "compensation," "department" and "spouse" (in §123.1); clarify the requirements of bona fide termination of employment for the payment of benefits and describe consequences in the absence of a bona fide termination (in §123.2); clarify various provisions regarding return to work by a retiree, including the suspension of an annuity in certain circumstances (in §123.3); amend the current service credit rule to clarify that service credit will not be granted after termination of employment, unless reemployed by a participating municipality (in §123.4); clarify that restricted prior service credit is used when calculating vesting status of a member and allow the use of a United States Department of Defense certificate or TMRS records of previously refunded service credit to verify service in connection with applications for restricted prior service credit (in §123.5); clarify when spousal consent is not re-

quired, allow reliance on certification of marital status by a member or retiree, and modernize certain exceptions to spousal consent (in §123.7); clarify the effect of divorce with respect to TMRS participants and beneficiary designations (in §123.8); clarify how post-retirement contributions will be handled (in §123.9); clarify who is paid amounts due a deceased retiree or annuitant (in §123.10); allow the use of affidavits for the determination of heirs of a deceased retiree, deceased non-vested member and in various other circumstances and specify the requirements for such affidavits (in §123.12); clarify matters regarding when the System may pay and may not pay benefits where a member's or retiree's death was caused by another person (in §123.13); and clarify how supplemental death benefits are calculated or payable for certain circumstances (in §§123.15 and 123.16).

Additionally, to implement SB 1337, §123.18 repeals several subsections that are no longer necessary regarding authority to make actuarial changes. Further, §123.14 is adopted pursuant to the authority granted to the Board by Section 810.003(j) of the Texas Government Code relating to Certain Elected Officials Ineligible for Retirement Annuity.

No comments were received regarding the adoption of the repeal and new Chapter 123.

34 TAC §§123.1 - 123.8

STATUTORY AUTHORITY

The repeal of existing Chapter 123 is adopted under Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System and Government Code §2001.039, which grants the Board the authority to review and repeal rules after assessment of whether the reasons for initially adopting the rule continue to exist.

CROSS-REFERENCE TO STATUTES

Texas Government Code: §§804.051, 810.003, 851.001, 852.103, 852.104, 852.108, 852.109, 853.001, 853.305, 853.401 - 853.404, 854.002 - 854.004, 854.006, 854.104, 854.203, 854.501, 854.504, 854.603 - 854.605, 855.110, 855.402, and 855.407.

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 October 30, 2020.

TRD-202004563

Christine M. Sweeney
Chief Legal Officer

Texas Municipal Retirement System

Effective date: November 19, 2020

Proposal publication date: September 11, 2020

For further information, please call: (512) 225-3710



34 TAC §§123.1 - 123.18

STATUTORY AUTHORITY

New Chapter 123 is adopted pursuant to the authority granted under the following provisions of the TMRS Act or the Government Code in addition to Government Code §855.102: (i) Gov-

ernment Code §804.051, which allows the Board to adopt rules to require spousal consent for the selection of any retirement or death benefit other than a benefit payable to the spouse as beneficiary on death of the member or retiree; (ii) Government Code §810.003, which requires the Board to adopt rules and procedures to implement the ineligibility of an elected official convicted of a qualifying felony to receive a service retirement annuity from a public retirement system as set forth in the statute; (iii) Government Code §853.004, which allows the Board to adopt rules necessary or desirable to implement TMRS Act Chapter 853, Creditable Service; (iv) Government Code §854.003, which allows the Board to adopt rules necessary to comply with distributions requirements required for a qualified plan set forth in the Internal Revenue Code; (v) Government Code §854.603, which allows the Board to adopt rules to require proof of compensation and periods of employment for purposes of certain member supplemental death benefits; and (vi) Government Code §855.110, which allows the Board to adopt rules and policies relating to certain actuarial matters.

CROSS-REFERENCE TO STATUTES

Texas Government Code: §§804.051, 810.003, 851.001, 852.103, 852.104, 852.108, 852.109, 853.001, 853.305, 853.401 - 853.404, 854.002 - 854.004, 854.006, 854.104, 854.203, 854.501, 854.504, 854.603 - 854.605, 855.110, 855.402, and 855.407.

§123.9. Post-Retirement Contributions.

(a) If a contribution that would otherwise be credited to the member's individual account in the system is deposited after the member's effective retirement date for services performed before the effective retirement date, the retirement annuity shall be recalculated in accordance with this section.

(b) The following deposits shall be treated as additional accumulated contributions for purposes of recalculating the retirement annuity:

(1) employee contributions attributable to compensation for services performed while a member of the system but deposited within 2 months after the effective retirement date of the member; and

(2) employee contributions attributable to compensation for services performed while a member of the system but deposited within 2 months after the death of a deceased member.

(c) A retirement annuity subject to this section will be recalculated as of the effective retirement date by taking into account the additional accumulated contributions and the related increases in current service credit and matching credit. The recalculated retirement annuity will be based on the age of the retiree (and the age of the beneficiary in the case of a joint-and-survivor option) as of the effective retirement date.

(d) The recalculated retirement annuity is payable only prospectively beginning with the month following the month in which the retirement system receives the deposit.

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 October 30, 2020.

TRD-202004565

Christine M. Sweeney
Chief Legal Officer
Texas Municipal Retirement System
Effective date: November 19, 2020
Proposal publication date: September 11, 2020
For further information, please call: (512) 225-3710





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.

Adopted Rule Reviews

Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission (hereafter referred to as the Commission) readopts Texas Administrative Code, Title 13, Part 2, for Chapter 21 (History Programs); Chapter 24 (Restricted Cultural Resource Info); Chapter 28 (Historic Shipwrecks); and Chapter 29 (Management/Care of Artifacts & Collections) as part of its rule review process.

This rule review was completed pursuant to Texas Government Code, §2001.039. The commission has assessed whether the reason(s) for adopting or re-adopting these chapters continues to exist. The notice of a proposed rule review was published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4803).

The commission received no comments related to the review of the above-noted chapters.

The commission finds that the reasons for initially adopting these rules continue to exist and re-adopts Chapter 21; Chapter 24; Chapter 28; and Chapter 29 in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 13 TAC Chapter 21; 24; 28; and 29.

TRD-202004588

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: November 2, 2020



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

28 Texas Administrative Code Chapters 126, 127, and 128

The Texas Department of Insurance, Division of Workers' Compensation (DWC) completed its rule review of 28 TAC Chapters 126, 127, and 128 in their entirety. DWC conducted the rule review under Texas Government Code Section 2001.039.

Notice of the review was published on May 15, 2020, in the *Texas Register* (45 TexReg 3337). There was no request for a public hearing.

The comment period ended June 8, 2020. DWC received four comments. No comments suggested repealing a rule in its entirety.

- The first comment was from the Office of Injured Employee Counsel (OIEC), which supported readopting the chapters with amendments.

OIEC suggested amending average weekly wage, required medical exam, and designated doctor rules.

- The second comment was from Texas Medical Association (TMA), which supported readopting Chapters 126, 127, and 128 with amendments. TMA suggested:

-- amending Chapter 126 to require that a treating or referral doctor performing a post-designated doctor exam have the same minimum qualifications as the designated doctor;

-- amending Chapter 127 to require a designated doctor's automatic removal if the exam will exceed the doctor's scope of practice;

-- requiring out-of-state doctors to have the same qualifications as designated doctors in Texas; and

-- amending Chapter 127 to limit the scope of administrative violations to only DWC rules and place limits on sanctions for designated doctors' actions.

- The third comment was from Texas Association of School Boards, Risk Management (TASB). TASB suggested amending Chapter 127 to:

-- require that a designated doctor accept medical record packets from insurance carriers through secure methods and send confirmation that the designated doctor has received the insurance carrier's medical packet; and

-- permanently exempt a designated doctor from recertification if the doctor has maintained their designated doctor certification for 20 years.

- The fourth comment was from an insurance carrier representative, Roy Leatherberry, who suggested amending:

-- Chapter 126 to acknowledge existence of networks; update references to OIEC, DWC, and their staff; clarify and update dispute resolution processes, procedures, and Subsequent Injury Fund reimbursement for direct payment of benefits for minors, advances of benefits due to hardship, and statutory maximum medical improvement extensions; and amend the limits to initial choice of treating doctor with consideration of Labor Code Chapter 413; and

-- Chapter 128 to update multiple employment filing and payment requirements and address limits to the identity of nonclaim employers.

As a result of the rule review, DWC finds that the reasons for initially adopting the rules in 28 TAC Chapters 126, 127, and 128 continue to exist and readopts these rules in accordance with the requirements of Texas Government Code Section 2001.039.

TRD-202004629

Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 3, 2020



Texas Department of Transportation

Title 43, Part 1

Notice of Readoption

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Title 43 TAC, Part 1, Chapter 2, Environmental Review of Transportation Projects, Chapter 7, Rail Facilities, Chapter 26, Regional Mobility Authorities, Chapter 28, Oversize and Overweight Vehicles and Loads, Chapter 30, Aviation, and Chapter 31, Public Transportation.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the July 31, 2020 issue of the *Texas Register* (45 TexReg 5365).

This concludes the review of Chapters 2, 7, 26, 28, 30, and 31.

TRD-202004525

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: October 29, 2020



TABLES & 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.

Figure: 22 TAC §781.805

DISCIPLINARY ACTIONS (reported to the National Practitioner Databank)

Level 5: Reprimand (Administrative Penalty: not less than \$250; no more than \$1,000 per day)

- _____ Failure to inform consumer of all required items, provide a written explanation of treatment and charges (§§781.301(6); 781.303(7); 781.304(a); 781.309(5); and 781.313(b))
- _____ Failure to discourage others from making exaggerated or false claims (§781.304(i))
- _____ Failure to protect individual from harm resulting from individual or group setting (§781.304(o))
- _____ Failure to inform client about testing as part of treatment (§781.307(a))
- _____ Appropriate, reproduce, or modify published tests or parts thereof without publisher's permission (§781.307(b))
- _____ Failure to report name or address change to the Council within 30 days of change (§781.312(c))
- _____ Failure to set and maintain proper supervisor-supervisee relationship (§781.404(b)(10)(E) and (L))
- _____ Failure to ensure supervisee knows of, and complies with, all Council rules (§781.404(b)(10)(K))
- _____ Failure to develop and implement written supervision remediation plan (§781.404(b)(11)(G))
- _____ Failure to keep accurate records, keep records for appropriate retention period (§§781.304(f); 781.309(1) and (4))
- _____ Failure to assess proper fee(s), maintain accurate billing records (§§781.304(g); 781.310(d))
- _____ Failure to establish a plan for custody of records when professional services cease (§781.309(3))
- _____ Failure to maintain written release of information in permanent record, review and update (§781.311(e))
- _____ Failure to maintain and timely submit accurate supervised experience records (§781.404(b)(10)(A))
- _____ Make misleading, exaggerated, or false claims (§§781.301(2); 781.304(h); 781.306(a) and (b); 781.316(a), (c), and (d))
- _____ Failure to base all services on an assessment, evaluation or diagnosis of the client; evaluate client's condition without personally interviewing client or disclosing that a personal interview has not been completed (§§781.301(5); 781.303(3))
- _____ Failure to maintain client confidentiality except when disclosure is prescribed by statute or Council rules (§§781.301(7); 781.309(6); 781.311(b) and (g))
- _____ Failure to set and maintain professional boundaries and avoid dual relationships (§§781.301(8); 781.304(e), (l), and (q))
- _____ Failure to evaluate a client's progress on a continuing basis to guide service delivery and make use of supervision and consultation as indicated by client's needs (§781.301(12))
- _____ Failure to inform other provider when providing concurrent therapy (§781.303(1))
- _____ Failure to obtain informed consent (or court order) with all related items (§781.303(9))
- _____ Engage in activities for personal needs or for personal gain; promotion of personal or business activities that are unrelated to the current professional relationship (§781.304(d) and (p))
- _____ Accept from or give gift to a client with a value in excess of \$25.00 (§781.304(m))
- _____ Failure to comply with Texas Health and Safety Code concerning access to mental health records; release information only with a written permission signed by client or client guardian (§781.311(c) and (d))
- _____ Failure to report alleged violation to the Council (except sexual misconduct)

(§781.312(b))

- _____ Failure to assume responsibility for human subject's emotional, physical, and social welfare when conducting research (§781.317(a))
- _____ Failure to provide written information to parties in child custody or adoption evaluations (§781.322(h)(1) and (2))
- _____ Charge or collect a fee or anything of value from employee or contract employee for supervision (§781.404(b)(10)(C))
- _____ Provide supervision to an individual who is related within the second degree of affinity or consanguinity (§781.404(b)(10)(F))
- _____ Failure to develop and update supervision plan (§781.404(b)(10)(P))
- _____ Failure to terminate non-beneficial counseling relationship; transfer client to appropriate care (§§781.301(13); 781.303(2))

Level 4: Probated Suspension (Admin Penalty: not less than \$250; no more than \$2,000 per day)

- _____ Refusing to serve a client based solely on basis of prohibited discrimination (§781.301(1))
- _____ Failure to practice within scope of competency and accepted professional standards as appropriate to client's needs (§§781.301(3), 781.302(d), (e), and (g)-(i); 781.303(4); 781.321(ff); 781.322(i))
- _____ Exploiting a position of trust with client or former client (§781.301(11))
- _____ Failure to assume responsibility for clients during bartering of services (§781.303(8))
- _____ Entering into a business relationship with a client (§781.304(c))
- _____ Failure to provide services in the context of a professional relationship (§781.304(j))
- _____ Borrowing or lending money or items of value to clients or relatives of clients (§781.304(n))
- _____ Failure to report alleged sexual misconduct to the Council (§781.305(g)(1)-(4))
- _____ Failure to administer or interpret test only with training and experience (§781.307(c))
- _____ Failure to retain and dispose of client records in ways that maintain confidentiality (§781.309(2))
- _____ Knowingly or flagrantly overcharging; bill for improper, unreasonable or unnecessary services (§781.310(c) and (e))
- _____ Failure to report information concerning abuse or neglect of minors, elderly, or disabled; report exploitation by a mental health services provider (§781.311(f)(1-4))
- _____ Failure to ensure subject's identity and confidentiality when obtaining data from a professional relationship for purposes of research (§781.317(b))
- _____ Providing therapy or any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case (§§781.320(e); 781.321(d); 781.322(f))
- _____ Failure to supervise only supervisees within scope of competency (§781.404(b)(1))
- _____ Failure to clearly indicating services, licensure category, and that supervisee is under supervision on billing documentation (§781.404(b)(10)(H))
- _____ Failure to address issues outlined in Council ordered supervision (§781.404(b)(12)(B))

Level 3: Suspension (less than a year, Admin Penalty: not less than \$250; no more than \$3,000 per day)

- _____ Practice while impaired by alcohol or drugs or use any illegal drug; promote, encourage, or concur in the illegal use or possession of alcohol or drugs (§§781.301(10) and 781.308)
- _____ Offer to pay or agree to accept any remuneration for securing or soliciting clients or patronage (§§781.304(b); 781.310(a) and (b))

- _____ Provide expert opinion or recommendation without conducting appropriate child custody evaluation (§781.322(g))
- _____ Failure to maintain qualifications of supervisory status while providing supervision (§781.404(b)(9))
- _____ Provide supervision without having met all requirements for current, valid Council-approved supervisor status (§781.404(b)(10)(J))
- _____ Failure to inform all supervisees of termination of supervisor status and help them to find alternate supervision (§781.404(b)(10)(M))

Level 2: Suspension (one year or more, Admin Penalty: not less than \$250; no more than \$4,000 per day)

Level 1: Revocation (Admin Penalty: not less than \$250; no more than \$5,000 per day)

- _____ Engage in sexual misconduct; therapeutic deception (§§781.301(9); 781.305(b) and (c))
- _____ Aid or abet unlicensed practice (§781.303(5))
- _____ Participate in falsifying documents submitted to the Council (§781.303(6))
- _____ Continue to supervise or fail to refund all supervisory fees paid after termination or expiration of supervisor status (§781.404(b)(10)(N) and (O))

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and 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 and Texas Health and Safety 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: *Texas Commission on Environmental Quality v. Union Pacific Railroad Company, Billy F. Woodward, Sue H. Woodward, Jesse L. Myrow, Wesley R. Myrow, Donald L. Shoemaker, and Marsha L. Shoemaker*; Cause No. D-1-GN-17-003918 in the 250th Judicial District Court of Travis County, Texas.

Background: The State filed the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ") on August 8, 2017, for a Superfund cost recovery action seeking to recover cleanup costs incurred at the Woodward Industries, Inc. Proposed State Superfund Site in Nacogdoches County, Texas. East Texas Wood Treating Company, and subsequently Woodward Industries, conducted wood treatment operations at the Site. As a result of these operations, the soil at the Site became contaminated with pentachlorophenol. In 1982, Woodward Industries, Inc., discontinued wood treatment operations at the Site. The TCEQ conducted multiple remedial investigations of the Site between April 2009 and August 2010 and on July 11, 2011, the TCEQ began conducting removal and clean-up actions.

This suit was brought against seven current and former owners and operators of the Site. The proposed settlement includes Bill F. Woodward, Deceased, by and through his wife, Sue H. Woodward, Individually and as Executrix of the Estate of Bill F. Woodward ("Woodward"), and results in a contribution of \$2,400.00.

Proposed Settlement: The parties propose an Agreed Final Judgment which includes a contribution from Woodward in the amount of \$2,400.00 for the TCEQ's response costs. Of this sum, the amount of \$1,920.00 shall be designated as reimbursement for the TCEQ's response costs and the amount of \$480.00 shall be designated as attorneys' fees.

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: Tyler J. Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; by fax to (512) 320-0911; or by email to Tyler.Ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202004645

Lesley French
General Counsel
Office of the Attorney General
Filed: November 4, 2020

Office of Consumer Credit Commissioner

Correction of Error

On October 16, 2020, the Office of Consumer Credit Commissioner filed the adoption of new 7 TAC §89.805 for publication in the October 30, 2020, issue of the *Texas Register*. This filing was assigned docket number TRD-202004330. Due to an error by the Texas Register, the adoption was published with the wrong effective date. The correct effective date for new 7 TAC §89.805 is December 1, 2020.

TRD-202004620

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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/09/20 - 11/15/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/09/20 - 11/15/20 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 11/01/20 - 11/30/20 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/20 - 11/30/20 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-202004613

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 3, 2020

Texas Council for Developmental Disabilities

Input on 2022 - 2026 State Plan

The Texas Council for Developmental Disabilities (TCDD) is seeking public comment on the draft goals and objectives for its 2022 - 2026 State Plan. The plan will guide TCDD activities and priorities over the next five years. TCDD will use the plan to determine which grant projects to fund and which issues will be the focus of public policy

work. TCDD strives to create change so that people with developmental disabilities (DD) have opportunities for independence and productivity and to be fully included in their communities. To accomplish this, TCDD works to develop a comprehensive system of service and supports in Texas and to assist communities to build the capacity to support people with DD.

To view the draft goals and objectives and to offer public comment, visit the TCDD website at www.tedd.texas.gov.

TRD-202004641

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: November 4, 2020

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ 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 **December 16, 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 **December 16, 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: Arkema Incorporated; DOCKET NUMBER: 2020-0961-AIR-E; IDENTIFIER: RN104150123; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: acrylic acids production plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 260, Special Conditions Number 1, Federal Operating Permit Number O1988, General Terms and Conditions and Special Terms and Conditions Number 22, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,963; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BADESHA ENTERPRISE LLC dba Grand Central Express; DOCKET NUMBER: 2020-0626-PST-E; IDENTIFIER: RN102249281; LOCATION: Gainseville, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$7,761; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Baker Petrolite LLC; DOCKET NUMBER: 2020-0908-AIR-E; IDENTIFIER: RN100223536; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical product manufacturing; RULES VIOLATED: 30 TAC §101.201(c) 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), New Source Review Permit Number 3836, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,538; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: CYRUS 10 INVESTMENTS LLC; DOCKET NUMBER: 2020-0728-PST-E; IDENTIFIER: RN100896877; LOCATION: Houston, Harris County; TYPE OF FACILITY: an out-of-service underground storage tank system; RULES VIOLATED: 30 TAC §334.54(b)(1) and (2), by failing to assure that the vent lines are kept open and functioning, and failing to assure that all piping, pumps, manways, and ancillary equipment is capped, plugged, locked, and that all tank access points are otherwise secured to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.605(d), by failing to re-train Class A and Class B operators by January 1, 2020, with a course submitted to and approved by TCEQ after April 1, 2018, regardless of the three-year re-training requirement; PENALTY: \$3,825; ENFORCEMENT COORDINATOR: Ken Moller, (512) 534-7550; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2020-0784-AIR-E; IDENTIFIER: RN102550167; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 49167, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: Ennis ISD; DOCKET NUMBER: 2020-1355-PST-E; IDENTIFIER: RN102017456; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: bus barn; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: HB Estates Water Supply Corporation; DOCKET NUMBER: 2020-0980-PWS-E; IDENTIFIER: RN101240851; LOCATION: Hitchcock, Galveston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) for

Stage 2 Disinfection Byproducts at Site 1 during the fourth quarter of 2019 and the first quarter of 2020; 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for TTHM, based on the locational running annual average; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12447 for calendar year 2019; PENALTY: \$1,725; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Kairos Homes, LLC; DOCKET NUMBER: 2019-1406-WQ-E; IDENTIFIER: RN110806296; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; and TWC, §26.121, by failing to prevent the unauthorized discharge of sediment into or adjacent to any water in the state; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: KG Company & Services, LLC; DOCKET NUMBER: 2020-0702-SLG-E; IDENTIFIER: RN110517398; LOCATION: Spring, Harris County; TYPE OF FACILITY: sludge transporter; RULES VIOLATED: 30 TAC §312.143(a) and TWC, §26.121(a)(1), by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the (Texas) facility has written authorization by permit or registration issued by the executive director to receive wastes; and 30 TAC §312.145(a), by failing to record all required information on trip tickets; PENALTY: \$18,203; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: LAMARQUE TRUCK STOP, LLC dba LaMarque Buzzy Bee; DOCKET NUMBER: 2020-1010-PST-E; IDENTIFIER: RN101781102; LOCATION: La Marque, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (B), and TWC, §26.3475(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 monitor the USTs installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: LAMESA ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2020-0701-PWS-E; IDENTIFIER: RN104580758; LOCATION: Midland, Midland County; TYPE OF FACILITY: drive in movie theatre; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$4,712; ENFORCEMENT COORDINATOR: Carlos

Molina, (512) 239-2557; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(12) COMPANY: Magna Properties, Ltd.; DOCKET NUMBER: 2020-0787-PWS-E; IDENTIFIER: RN105736474; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; PENALTY: \$50; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 850-9479; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Maltais, David Paul; DOCKET NUMBER: 2020-1323-WOC-E; IDENTIFIER: RN111070173; LOCATION: Clyde, Callahan County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: P & K Stone, LLC; DOCKET NUMBER: 2020-0620-WQ-E; IDENTIFIER: RN107948994; LOCATION: Chico, Wise County; TYPE OF FACILITY: limestone extraction and processing; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05CI18, Part III, Section A(4)(d)(3), by failing to install and maintain best management practices at the site; and 30 TAC §305.125(1) and TPDES General Permit Number TXR05CI18, Part III, Section A(5)(b), by failing to maintain monitoring and reporting records at the site and make them readily available for review by a TCEQ representative for a period of three years; PENALTY: \$1,025; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2019-1794-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 5920A and PSDTX103M4, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1626, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 3.A and 29, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent an excess opacity event; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 5920A and PSDTX103M4, SC Number 1, FOP Number O1626, GTC and STC Number 29, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(c) and §122.143(4), FOP Number O1626, GTC and STC Number 2.F, and 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 §101.201(f) and THSC, §382.085(b), by failing to provide the requested additional information for an emissions event within the time established in the request; PENALTY: \$35,923; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$14,369; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Property Works of Central Texas LLC; DOCKET NUMBER: 2020-0581-MSW-E; IDENTIFIER: RN111017893; LOCATION: Manchaca, Travis County; TYPE OF FACILITY: land clearing and wood recycling facility; RULE VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the

commencement of recycling activities; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(17) COMPANY: Republic Plastics, Ltd.; DOCKET NUMBER: 2020-0861-AIR-E; IDENTIFIER: RN100851211; LOCATION: McQueeney, Guadalupe County; TYPE OF FACILITY: plastics manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 40212, Special Conditions Number 1, Federal Operating Permit (FOP) Number O2680, General Terms and Conditions (GTC) and Special Terms and Conditions Number 5, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O2680, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit the deviation report no later than 30 days after the end of each reporting period; PENALTY: \$15,750; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Tynan Water Supply Corporation; DOCKET NUMBER: 2020-0497-MWD-E; IDENTIFIER: RN103051710; LOCATION: Tynan, Bee County; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014123001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0014123001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$6,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(19) COMPANY: Venator Chemicals LLC; DOCKET NUMBER: 2020-0950-IWD-E; IDENTIFIER: RN101502128; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: industrial chemical manufacturing plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001878000, Outfall Numbers 001 and 002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$12,375; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202004605

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 3, 2020



Enforcement Orders

An agreed order was adopted regarding City of Mount Calm, Docket No. 2019-1290-MWD-E on November 3, 2020, assessing \$6,250 in administrative penalties with \$1,250 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 Brown County Water Improvement District No. 1, Docket No. 2019-1666-SLG-E on November 3, 2020, assessing \$2,550 in administrative penalties with \$510 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 Hanson Aggregates LLC, Docket No. 2019-1680-WQ-E on November 3, 2020, assessing \$6,375 in administrative penalties with \$1,275 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 Undine Texas Environmental, LLC, Docket No. 2020-0110-MWD-E on November 3, 2020, assessing \$4,814 in administrative penalties with \$962 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 ARYHARSH CORPORATION dba Alvin Drive In, Docket No. 2020-0182-PST-E on November 3, 2020, assessing \$4,193 in administrative penalties with \$838 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 Linde Gas North America LLC, Docket No. 2020-0216-AIR-E on November 3, 2020, assessing \$7,500 in administrative penalties with \$1,500 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 Windy Hill Utility Co. LLC, Docket No. 2020-0222-MWD-E on November 3, 2020, assessing \$6,250 in administrative penalties with \$1,250 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 SOUTHWESTERN PUBLIC SERVICE COMPANY, Docket No. 2020-0248-WDW-E on November 3, 2020, assessing \$6,000 in administrative penalties with \$1,200 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 Santa Rita Commercial, LLC, Docket No. 2020-0277-EAQ-E on November 3, 2020, assessing \$3,750 in administrative penalties with \$750 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 Johnny Berlanga, Docket No. 2020-0329-WOC-E on November 3, 2020, assessing \$806 in administrative penalties with \$161 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforce-

ment Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2020-0340-PWS-E on November 3, 2020, assessing \$2,593 in administrative penalties with \$518 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 Tradesman, L.L.C., Docket No. 2020-0386-EAQ-E on November 3, 2020, assessing \$938 in administrative penalties with \$187 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 G-M Water Supply Corporation, Docket No. 2020-0414-PWS-E on November 3, 2020, assessing \$1,875 in administrative penalties with \$375 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 Quadvest, L.P., Docket No. 2020-0426-MWD-E on November 3, 2020, assessing \$2,875 in administrative penalties with \$575 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 City of Clyde, Docket No. 2020-0452-MWD-E on November 3, 2020, assessing \$2,750 in administrative penalties with \$550 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 Texas Department of Transportation, Docket No. 2020-0520-PST-E on November 3, 2020, assessing \$3,750 in administrative penalties with \$750 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 Moms 8 Enterprises Inc., Docket No. 2020-0529-PST-E on November 3, 2020, assessing \$3,385 in administrative penalties with \$677 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 Eagle Sindh Inc. dba Ross 2, Docket No. 2020-0582-PST-E on November 3, 2020, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, 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 Sunoco, LLC dba Ozona Fullock, Docket No. 2020-0587-PST-E on November 3, 2020, assessing \$6,750 in administrative penalties with \$1,350 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 Rural Bardwell Water Supply Corporation, Docket No. 2020-0605-PWS-E on November 3, 2020, assessing \$825 in administrative penalties with \$165 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 SOUTHWESTERN MOTOR TRANSPORT, Inc., Docket No. 2020-0686-PST-E on November 3, 2020, assessing \$3,375 in administrative penalties with \$675 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 GCM The Big Store Inc. dba Winnie Food Mart, Docket No. 2020-0694-PST-E on November 3, 2020, assessing \$3,375 in administrative penalties with \$675 deferred. 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.

A field citation was adopted regarding Jose L. Alaniz Jr., Docket No. 2020-0704-WOC-E on November 3, 2020, assessing \$175 in administrative penalties. Information concerning any aspect of this citation 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 City of De Leon, Docket No. 2020-0712-MWD-E on November 3, 2020, assessing \$2,875 in administrative penalties with \$575 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 Legacy Reserves Operating LP, Docket No. 2020-0759-AIR-E on November 3, 2020, assessing \$2,813 in administrative penalties with \$562 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.

A field citation was adopted regarding Joe Young, Docket No. 2020-0765-WR-E on November 3, 2020, assessing \$875 in administrative penalties. Information concerning any aspect of this citation 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 Guinn Enterprises, Inc., Docket No. 2020-0832-AIR-E on November 3, 2020, assessing \$938 in administrative penalties with \$187 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.

A field citation was adopted regarding Eddie Clark Contractors, LLC, Docket No. 2020-0863-WQ-E on November 3, 2020, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Aguado Stone Incorporated, Docket No. 2020-0930-WR-E on November 3, 2020, assessing \$350 in administrative penalties. Information concerning any aspect of this

citation 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.

A field citation was adopted regarding CLIFF STEPHENSON, Docket No. 2020-1002-OSS-E on November 3, 2020, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202004637

Kyle Lucas

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: November 4, 2020



Enforcement Orders

An agreed order was adopted regarding MOMENTUM INVESTMENT, INC. dba Angels Gas & Grocery, Docket No. 2018-1299-PST-E on November 4, 2020, assessing \$9,188 in administrative penalties with \$1,837 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding Vachana S. Mao dba N V Food Mart, Docket No. 2019-0488-PST-E on November 4, 2020, assessing \$12,532 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, 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 AK MOMIN ENTERPRISES, INC. dba Express Drive Inn, Docket No. 2019-0555-PST-E on November 4, 2020, assessing \$12,063 in administrative penalties with \$2,412 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 Irving Molina, Docket No. 2019-0600-MSW-E on November 4, 2020, assessing \$7,875 in administrative penalties with \$4,275 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 BONO BROTHERS, INC., Docket No. 2019-0646-SLG-E on November 4, 2020, assessing \$10,000 in administrative penalties with \$2,000 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 Arcosa LWS, LLC fka TRNLWS, LLC, Docket No. 2019-0684-AIR-E on November 4, 2020, assessing \$39,535 in administrative penalties with \$7,907 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 the City of Miles, Docket No. 2019-0795-PWS-E on November 4, 2020, assessing \$311 in adminis-

trative penalties with \$261 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 Leona Bullock dba Blue Ridge Mobile Home Park, Docket No. 2019-0857-PWS-E on November 4, 2020, assessing \$1,530 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Mullins, 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 All Paws Go To Heaven, LLC, Docket No. 2019-1444-MLM-E on November 4, 2020, assessing \$22,750 in administrative penalties with \$4,550 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 T7 Enterprises LLC dba Reliable Tire Disposal, Docket No. 2019-1553-MLM-E on November 4, 2020, assessing \$115,963 in administrative penalties with \$23,192 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 ESPINOZA STONE, INC., Docket No. 2020-0134-EAQ-E on November 4, 2020, assessing \$15,000 in administrative penalties with \$3,000 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 Marathon Petroleum Company LP, Docket No. 2020-0138-AIR-E on November 4, 2020, assessing \$13,125 in administrative penalties with \$2,625 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 DG RV Properties, LLC, Docket No. 2020-0226-PWS-E on November 4, 2020, assessing \$300 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.

An agreed order was adopted regarding M & H Crates, Inc., Docket No. 2020-0369-MLM-E on November 4, 2020, assessing \$26,188 in administrative penalties with \$5,237 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 BODIN CONCRETE, L.P., Docket No. 2020-0399-WQ-E on November 4, 2020, assessing \$12,687 in administrative penalties with \$2,537 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 Tidehaven Independent School District, Docket No. 2020-0445-PWS-E on November 4, 2020, assessing \$975 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.

An agreed order was adopted regarding University of Texas Medical Branch at Galveston, Docket No. 2020-0602-AIR-E on November 4, 2020, assessing \$11,700 in administrative penalties with \$2,340 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 San Antonio River Authority, Docket No. 2020-0629-MWD-E on November 4, 2020, assessing \$5,625 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.

TRD-202004640

Kyle Lucas

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: November 4, 2020,



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40317

Application. Special Waste Management Inc, located at 1318 Kemper Street, Lubbock, Texas 79403, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40317, to construct and operate a Type V municipal solid waste medical waste processing facility. The proposed facility, SWM-Lubbock 1318 Kemper Lubbock TX 79403, will be located 1318 Kemper Street, Lubbock, Texas 79403, in Lubbock County. The Applicant is requesting authorization to store, treat and transfer medical waste, trace chemotherapeutic waste, and non-hazardous pharmaceutical waste. The registration application is available for viewing and copying at the SWM-Lubbock 1318 Kemper Lubbock TX 79403, located at 1318 Kemper Street, Lubbock, Texas 79403 and may be viewed online at <https://www.gdsassociates.com/txprojects/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1lemfv>. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Special Waste Management Inc at the address stated above or by calling Mr. John Seymour at (406)-533-9914.

TRD-202004638

Kyle Lucas

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: November 4, 2020



Notice of Commission Action and Response to Public Comments on General Permit TXG670000

After consideration of all public comments and the responses to such comments, the Texas Commission on Environmental Quality (TCEQ) issued a renewal without amendment of Texas Pollutant Discharge Elimination System General Permit Number TXG670000 during its public meeting on October 21, 2020. This general permit authorizes the discharge of hydrostatic test water from new vessels; existing vessels which contained raw water, potable water, or elemental gases; and existing vessels which contained petroleum substances or waste related to petroleum substances. The TCEQ also issued the Commission's Response to Public Comment. The issued permit and the Commission's Response to Public Comment are

available at the TCEQ Central File Room and on the TCEQ website at: <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>.

As part of the unprecedented response to coronavirus in Texas, and in light of the governor's recent disaster declaration, TCEQ will be operating remotely and with minimal staff in our offices, which impacts our staff's ability to access records.

During this time, the TCEQ central file room customer viewing area will be closed. Requests for information can be submitted through e-mail at cfrreq@tceq.texas.gov or through the central file room online at https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_SEARCH.

For additional information on the TCEQ's coronavirus response and policies see: <https://www.tceq.texas.gov/response/covid-19>. Please continue to check our website for updates as the situation develops.

TRD-202004608

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 3, 2020



Notice of Correction to Agreed Order Number 2

In the June 12, 2020, issue of the *Texas Register* (45 TexReg 4082), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 2, for City of Hooks, Docket Number 2019-1738-PWS-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$1,725."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202004607

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 3, 2020



Notice of Correction to Agreed Order Number 13

In the July 17, 2020, issue of the *Texas Register* (45 TexReg 5035), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 13, for NJK ENTERPRISE, INCORPORATED dba N K Texaco, Docket Number 2020-0439-PST-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "NJK ENTERPRISE, INCORPORATED dba N K Texaco."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202004606

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 3, 2020



Notice of Public Hearing and Comment Period on Proposed Draft Oil and Gas General Operating Permit Numbers 511, 512, 513, and 514

The Texas Commission on Environmental Quality (TCEQ or commission) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft Oil and Gas General Operating Permits (GOPs) Numbers 511, 512, 513, and 514. The draft GOPs contain revisions based on recent federal rule changes, which include updates to 40 Code of Federal Regulations Part 60, Subpart OOOOa published in the September 14, 2020, and September 15, 2020, *Federal Register*. These revisions also correct typographical errors and update language for administrative preferences.

Public Hearing. The commission will hold a public hearing on December 11, 2020, at 10:00 a.m. by conference call. To listen or participate, dial (877) 820-7831 and enter pass code 721683# (International: 1-720-279-0026).

The hearing will be structured for the receipt of oral comments by interested persons. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the draft GOPs 30 minutes prior to the hearing and will also be available to answer questions after the hearing. Detailed registration instructions and all documents to be considered at this public hearing are available at the following website: https://www.tceq.texas.gov/permitting/air/nav/titlev_news.html.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments. Comments may be submitted to Ms. Melanie Nelon, Texas Commission on Environmental Quality, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or emailed to melanie.nelon@tceq.texas.gov. All comments should reference GOPs 511-514. **The written comment period begins on November 13, 2020 and ends on December 16, 2020.**

Copies of the draft GOPs may be obtained from the commission website at: https://www.tceq.texas.gov/permitting/air/nav/titlev_news.html. For further information, please contact Ms. Nelon, at (512) 239-1350 (please leave a voicemail and the call will be returned promptly). Si desea información en español, puede llamar al (800) 687-4040.

TRD-202004610

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 3, 2020



Notice of Public Meeting for a Pending Section 401 Water Quality Certification Decision on U.S. Army Corps of Engineers Section 404 Permit: Application No. SWG-1995-02221 for Moda Ingleside Oil Terminal, LLC

Application. Moda Ingleside Oil Terminal, LLC has applied to the U.S. Army Corps of Engineers for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and to the Texas Commission on Environmental Quality (TCEQ) for water quality certification under Section 401 of the CWA to discharge dredged or fill material into waters of the United States associated with the proposal to dredge approximately 3.9 million cubic yards of material to increase the area of its West Basin by approximately 32.8 acres to a total of 43

acres. In addition, Moda proposes construction of a new barge dock and other improvements to the West and East Basins. Approximately 8.86 acres of seagrass and 0.95 acre of emergent wetlands would be impacted by this project. The project is located on the north side of the Corpus Christi Ship Channel at 262 Coral Sea Road (formerly Naval Station Ingleside), Ingleside, San Patricio County, Texas.

The TCEQ is reviewing the application under Section 401 of the CWA and in accordance with Title 30, Texas Administration Code Chapter 279 to determine if the proposed work would be consistent with Texas Surface Water Quality Standards and the CWA.

Public Comment / Public Meeting. The TCEQ will hold a public meeting on the 401 certification process for the proposed project. During the meeting, you may submit public comments related to TCEQ's certification decision on the application. The TCEQ will hold the public meeting on the application as requested by state legislators. The purpose of the public meeting is to provide the opportunity to submit comments or to ask questions about TCEQ's 401 water quality certification review of the application. A public meeting is not a contested case hearing under the Administrative Procedure Act.

The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, TCEQ staff will give a brief presentation about the TCEQ's role in the Section 404 permitting process for the proposed project. The public will be encouraged to ask questions of TCEQ staff concerning the Section 401 water quality certification review. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their comments orally into the official record. All formal comments relevant to the TCEQ 401 certification review will be considered before a final certification decision is made. A formal response to comments will not be provided.

The public meeting will be held:

Tuesday, December 1, 2020 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 770-318-739. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (213) 929-4212 and enter access code 221-515-203.

Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

Information. Citizens are encouraged to submit written public comments related to the 401 certification up until the time of the public meeting either by mail to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> (by entering 20201351MIS with no dashes in the Search Field). The comment period will end at the close of the public meeting.

For more information about the 401 certification process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.*

General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued: October 30, 2020

TRD-202004566

Kyle Lucas

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: November 2, 2020



Notice of Water Rights Application

Notices issued November 02, 2020

APPLICATION NO. 12-4062B; Mark O. Thomas Family Irrevocable Asset Trust Agreement, 5401 Highland Crest Drive, Austin, Texas 78731, Applicant, seeks an amendment to Certificate of Adjudication No. 12-4062 to correct and clarify the location of Diversion Point Nos. 1. and 4. and to change the location of Diversion Point Nos. 2. and 3. on Long Creek and the Brazos River (Lake Granbury), Brazos River Basin, in Hood County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 1, 2019. Additional fees and information were received on November 4, 2019 and December 3, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 26, 2020. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, establishing an accounting procedure to properly credit water diverted under the water right. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 19, 2020. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by November 19, 2020. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by November 19, 2020.

APPLICATION NO. 12-4114B; King Ranch Turfgrass, L.P. and Thomas Bros. Grass, LLC, Three Riverway, Suite 1600, Houston, Texas 77056, and Thomas Bros. Grass, LLC, P.O. Box 2337, Granbury, Texas 76048-7337, Co-Applicants, seek an amendment to Certificate of Adjudication No. 12-4114 to correct and clarify the location of Diversion Point Nos. 1. and 4. and to change the location of Diversion Point Nos. 2. and 3. on Long Creek and the Brazos River (Lake Granbury), Brazos River Basin, in Hood County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 1, 2019. Additional fees were received on November 4, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 26, 2020. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to,

establishing an accounting procedure to properly credit water diverted under the water right. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 19, 2020. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by November 19, 2020. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by November 19, 2020.

APPLICATION NO. 13343; IGO-Frisco 1, LLC and IGO-USA, LP, P.O. Box 599, Edinburg, Texas 78540, Applicants, have applied for a Water Use Permit to construct and maintain three reservoirs on an unnamed tributary of Stewart Creek, Trinity River Basin for recreational purposes in Collin County. The application and partial fees were received on November 4, 2016. Additional information was received on March 3, April 18, May 26, 2017 and March 23, 2020. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 26, 2018. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, maintaining the alternate source. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For infor-

mation concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202004639

Kyle Lucas

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: November 4, 2020



Request for Nominations for the Tax Relief for Pollution Control Property Advisory Committee

The TCEQ is currently accepting nominations for a replacement for a member of the Tax Relief for Pollution Control Property Advisory Committee (advisory committee) to serve the remainder of the term expiring December 31, 2021. This position is one that is reserved for an appraisal district representative.

In 1993, a ballot initiative listed as Proposition 2 (Prop 2) was approved by Texas voters, amending the Texas Constitution to authorize the Texas Legislature to exempt from ad valorem taxation "all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by an environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution." The Texas Legislature implemented Prop 2 by enacting Texas Tax Code, §11.31. The Texas Commission on Environmental Quality (TCEQ or commission) adopted 30 Texas Administrative Code Chapter 17, establishing the procedures for obtaining a "positive use determination" under the program. The goal of the program is to provide tax relief to individuals, companies, and political subdivisions that make capital investments to meet or exceed federal, state, or local environmental rules or regulations.

House Bill (HB) 3206 and HB 3544, 81st Texas Legislature, 2009, amended Texas Tax Code, §11.31 to require the TCEQ to form a permanent advisory committee that will make recommendations to the TCEQ commissioners on matters relating to property tax exemptions for pollution control property. Advisory committee members were appointed by the TCEQ commissioners to four-year staggered terms.

One of the advisory committee members, an appraisal district representative, whose term expires on December 31, 2021, has resigned his position effective December 31, 2020. Under 30 Texas Administrative Code §5.7, if a member of the advisory committee resigns prior to the expiration of his or her term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term.

Nomination forms for the advisory committee are provided on the TCEQ's website at: https://www.tceq.texas.gov/airquality/taxrelief/advisory_group.html. Completed nomination forms must be submitted to the TCEQ by 5:00 p.m. on December 16, 2020. Nominations received after that date will only be considered if there are insufficient qualified nominees. Individuals may nominate themselves or someone else to the advisory committee, but the TCEQ asks that only interested persons be nominated.

Questions regarding the advisory committee nomination process should be directed by phone to Elizabeth Sartain of the Tax Relief Program at (512) 239-3933 or by email to txrelief@tceq.texas.gov.

TRD-20200604

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 3, 2020

Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: 30-Day Pre-Election Report due February 3, 2020

Randle C. Daniels, 5021 Locke Ave., Fort Worth, Texas 76107

Deadline: Semiannual Report due July 15, 2020

Jennifer N. Ramos, 1730 E. Oltorf St. Apt. 401, Austin, Texas 78741

Ronald E. Reynolds, 6140 Hwy. 6 South Ste. 233, Missouri City, Texas 77459-3802

Steve Riddell, 1308 Shady Creek Drive, Euless, Texas 76040

Osbert G. Rodriguez III, 1020 Dennet Rd., Brownsville, Texas 78526

Byron K. Ross, 3223 North Park Dr., Missouri City, Texas 77459

Colin D. Ross, 813 Henderson St., Houston, Texas 77007

Deborah L. Russell, 1143 Shady Ln. #2127, Austin, Texas 78721

Brody Y. Shanklin, P.O. Box 51924, Denton, Texas 76206

Johnathan Sibley, 202 Cypress Court, Woodway, Texas 76712

Gena N. Slaughter, 10124 Cimmaron Trail, Dallas, Texas 75243

Sam N. Smith, 8600 Stirlingshire Apt. 40, Houston, Texas 77078

Rumaldo Solis, P.O. Box 3323, Alice, Texas 78333

Karen Nicole Sprabary, 416 E. Kempner St., Mabank, Texas 75147

Cathleen M. Stryker, P.O. Box 782063, San Antonio, Texas 78230

Angeanette Thibodeaux, 6713 Cathcart, Houston, Texas 77091

Aubrey R. Thoede, P.O. Box 86, Barker, Texas 77413-0086

Hilary D. Unger, 650 N. Sam Houston Pkwy. E., Houston, Texas 77060

Ruben Villarreal, P.O. Box 1975, Pasadena, Texas 77501

Nathaniel D. Walters, 2508 Forty Circle Apt. 123, Arlington, Texas 76006

Kory D. Watkins, 6611 Etchstone Dr., Spring, Texas 77389

Christopher B. Watt, 1504 Blair St., Houston, Texas 77008

Allyson L. Wilkinson, 1308 Bomar, Houston, Texas 77006

Joseph R. Willie II, 4151 Southwest Freeway Ste. 490, Houston, Texas 77027-7307

Emily R. Wolf, 1102 Patterson Street, Houston, Texas 77007

Ashton P. Woods, 8419 Hearth Dr. Apt 38, Houston, Texas 77054

TRD-202004564

Anne Peters
Executive Director
Texas Ethics Commission
Filed: October 30, 2020

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 26, 2020, to November 2, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, November 6, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, December 6, 2020.

FEDERAL AGENCY ACTIVITIES:

Applicant: United States Army Corps of Engineers

Project Description: The U.S. Army Corps of Engineers, Galveston District (USACE), in partnership with the Texas General Land Office, have undertaken the Coastal Texas Protection and Restoration Feasibility Study (the Study), which is examining coastal storm risk management (CSR) and ecosystem restoration (ER) opportunities within 18 counties of the Texas Gulf coast. This Study seeks to develop a comprehensive plan along the Texas coast to mitigate coastal erosion, relative sea level rise (RSLR), coastal storm surge, habitat loss, and water quality degradation.

The Recommended Plan includes a combination of ER and CSR features that function as a system to reduce the risk of coastal storm damages to natural and built infrastructure and to restore degraded coastal ecosystems through a comprehensive approach employing multiple lines of defense. Focused on redundancy and robustness, the proposed system provides increased resiliency along the Bay and is adaptable to future conditions, including relative sea level change. The Recommended Plan can be broken into three groupings: a Coastwide ER plan, a lower Texas coast CSR plan, and an upper Texas coast CSR plan.

The Planning and Environmental Documents for public review can be found at the USACE's website: <https://www.swg.usace.army.mil/Business-With-Us/Planning-Environmental-Branch/Documents-for-Public-Review/>.

CMP Project No: 21-1079-F2

FEDERAL AGENCY ACTIONS:

Applicant: Audubon Texas

Location: The project site is located in the Laguna Madre at the Laguna Vista Spoil Island approximately 3 miles north-northeast of Laguna Vista, Cameron County, Texas.

Latitude & Longitude (NAD 83): 26.143, -97.279

Project Description: The applicant proposes placement of approximately 2,300 cubic yards (CY) of limestone or clean concrete riprap breakwater within shallow open water adjacent to approximately 1,700 linear feet (LF) of the 11-acre Laguna Vista Spoil Island shoreline. The applicant also proposes placement of approximately 700 CY of lime-

stone or clean concrete riprap along approximately 550 LF of the island's southern shoreline. In addition, the applicant proposes removal of an old culvert, placement of 5,000 CY of fill material within approximately 1.5 acres of upland in the island's interior (above the mean high-water line), and shoreline restoration and planting. The project purpose is to provide shoreline protection measures to address active erosion and restore colonial and migratory bird habitat that has been lost due to continuous erosion from winds and wave action. Minor shoreline regrading of in-situ material could generate fill material of up to 330 CY total for project use (80 CY for revetment and 250 CY for planting).

Construction activities would require creation of a flotation channel to allow barge access. The footprint of the channel would be approximately 50 feet wide by 4 feet deep, extending approximately 1,800 LF and generating 15,000 CY of dredged material. The total area of the channel would be a maximum of 2.3 acres and could affect up to 1.4 acres of submerged aquatic vegetation.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00745. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1081-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202004612

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: November 3, 2020



Official Notice to Vessel Owner/Operator

(Pursuant to §40.254, Tex. Nat. Res. Code)

PRELIMINARY REPORT

Authority

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on October 30, 2020.

Facts

Based on an investigation conducted by Texas General Land Office-Region 3 staff on October 12, 2020, the Commissioner of the General Land Office (GLO) has determined that a 42' Fiberglass hulled vessel identified as GLO Vessel Tracking Number 3-83141; TPWD Vessel Registration Number TX 8051 DE; Vessel Name: *Expression* is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is anchored in Ingleside Cove in San Patricio County, Texas. The vessel is specifically located at latitude 27° 50' 40" N and longitude 97° 13' 56" W.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have intrinsic value. The GLO has also determined

that, because of the vessel's location and condition, the vessel poses a THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of § 40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil; a threat to the public health, safety, and welfare; a threat to the environment; or a navigational hazard. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Director has determined the person responsible for abandoning this vessel (GLO Tracking Number 3-83141) and recommends that the Commissioner order the vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the GLO. If the GLO removes and disposes of the vessel, the GLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact (512) 463-2613.

TRD-202004611

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: November 3, 2020



Texas Health and Human Services Commission

Notice of Public Hearing for Medicaid Community Hospice and Home and Community-Based Services -- Adult Mental Health

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 30, 2020, at 9:00 a.m., to receive public comments on proposed payment rates for two separate programs. The first set of proposed payment rates are for Medicaid Community Hospice and the second is a proposed payment rate for Home and Community-Based Services -- Adult Mental Health (HCBS-AMH) in-home respite.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only. Physical entry to the hearing will not be permitted. Please join the meeting from your computer, tablet, or smartphone at the following link:

<https://attendee.gotowebinar.com/register/306233490755234831>

After registering, you will receive a confirmation email containing information about joining the webinar. You can also dial in using your phone at (914) 614-3221, access code 979-292-988.

If you are new to GoToWebinar, please download the GoToMeeting app at <https://global.gotomeeting.com/install/626873213> before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursement rates. HHSC will archive the public hearing; the archive can be accessed on demand after the hearing at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. HHSC proposes to increase payment rates for Medicaid Community Hospice for routine home, continuous home, inpatient respite, and general inpatient care services, effective retroactive to October 1, 2020.

HHSC also proposes to convert the HCBS-AMH daily payment rate to a 15-minute rate of \$2.49, effective January 1, 2021. Transitioning of the in-home respite rate to 15 minutes is necessary to implement electronic visit verification.

Methodology and Justification. The increased payment rates for Medicaid Community Hospice for routine home, continuous home, inpatient respite, and general inpatient care services were determined in accordance with the hospice reimbursement methodology located at the Code of Federal Regulations, Title 42, Part 418, Subpart G.

The proposed payment rate for HCBS-AMH was developed in compliance with HHSC's established rate methodology in Title 1 of the Texas Administrative Code (1 TAC) §355.9070 relating to Reimbursement Methodology for Home and Community-Based Services -- Adult Mental Health Program.

Briefing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/proposed-rate-packets> on or after November 13, 2020. Interested parties may obtain a copy of the briefing packet before the hearing by contacting the HHSC Provider Finance Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response, please use email or phone, if possible, for communication with HHSC related to this public hearing.

TRD-202004618

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 3, 2020

Hunt County Commissioner's Court

Takings Impact Assessment Summary

Pursuant to Texas Local Govt. Code Section 232.003 and Texas Govt. Code Chapter 2007, Hunt County has prepared a Takings Impact Assessment (TIA) evaluating the potential impacts of the County's proposed Subdivision and Land Development Regulations. The proposed regulations would establish standards and requirements related to land development, including platting and subdivision of land, stormwater drainage design, roadway design and dedication, and permitting of certain uses under state law. The TIA prepared by Hunt County found that the regulations as proposed would not constitute a regulatory or physical taking of property under the criteria listed in Chapter 2007 and the guidelines published by the Texas Attorney General. A copy of the full TIA may be obtained from the Hunt County Judge's Office, attn: Amanda Blankenship, 2507 Lee Street, Greenville, Texas 75403.

TRD-202004617

Bobby W. Stovall

Hunt County Judge

Hunt County Commissioner's Court

Filed: November 3, 2020

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Safe Auto Choice Insurance Company, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application to do business in the state of Texas for Safe Auto Value Insurance Company, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application for incorporation in the state of Texas for Upland Specialty Insurance Company, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application to do business in the state of Texas for Old Guard Insurance Company, a foreign fire and/or casualty company. The home office is in Westfield Center, Ohio.

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-202004632

James Person

General Counsel

Texas Department of Insurance

Filed: November 4, 2020

Texas Department of Insurance, Division of Workers' Compensation

Fiscal Year 2021 Research Agenda for the Workers' Compensation Research and Evaluation Group

General remarks and official action taken:

The commissioner of workers' compensation considers the Fiscal Year (FY) 2021 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance, Division of Workers' Compensation (DWC).

The Texas Labor Code requires the REG to conduct professional studies and research related to the operational effectiveness of the Texas

workers' compensation system and annually publish a workers' compensation research agenda.

DWC published the proposed research agenda in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5980) and sought public review and comment. DWC received four comments and no requests for a public hearing.

Summary of Comments and Agency Response.

General Comments:

Comment: One commenter states that the REG plays a critical role in monitoring the Texas workers' compensation system, and the proposed FY 2021 Research Agenda includes the appropriate research projects given the ongoing COVID-19 pandemic, its impact on the Texas workers' compensation system, and the staffing and resources available to the REG.

Response: The REG acknowledges the comment.

Comment: A commenter supports the project to publish the 2021 Workers' Compensation Health Care Network Report Card and states that the REG's research and evaluation of workers' compensation health care networks is crucial to understanding whether networks are adequately serving injured employees.

Response: The REG acknowledges the comment.

Specific Comments:

Comment: A commenter supports the proposed study on the use of telemedicine in the Texas workers' compensation system. The commenter suggests that the REG's study include the adequacy of remote or virtual examinations in resolving extent of injury and maximum medical improvement/impairment rating disputes.

Response: The REG acknowledges the comment and notes that the American Medical Association (AMA) has formed a workers' compensation technical committee that is currently looking at the issue of virtual impairment rating examinations for workers' compensation claims. The REG will monitor the AMA's work on this issue.

Comment: A commenter supports the proposed research project on the initial impact of COVID-19 on the Texas workers' compensation system. The commenter believes that COVID-19 has greatly impacted injured employees' ability to navigate the workers' compensation dispute resolution process. The commenter recommends that the REG also study the impact of COVID-19 on the Texas workers' compensation dispute resolution process and remote proceedings, including the win/loss rate for injured employees, any complications in presenting evidence, and the availability of broadband access for injured employees to access the remote proceedings. A second commenter also recommends a study on COVID-19 dispute outcomes.

Response: The REG notes that the proposed study on the impact of COVID-19 will include an analysis of the frequency and outcome of any disputes that arise on COVID-19 claims, as well as the impact of virtual dispute resolution proceedings on the timeliness of disputes and dispute outcomes for injured employees and insurance carriers.

Comment: A commenter recommends that the REG analyze the impact of COVID-19 on insurance rates and premiums to determine the impact of the large number of employers that have gone out of business due to premiums and the resulting impact of changes to the premium base on the DWC and Office of Injured Employee Counsel maintenance tax.

Response: The REG acknowledges the suggestion and notes that the Texas Department of Insurance (TDI), Property and Casualty Actuarial Office, already monitors estimated premium levels for Texas employers to assist TDI in setting the maintenance tax rate that funds DWC

and OIEC. In addition, DWC estimates employer participation rates on a biennial basis using employer information obtained by the Texas Workforce Commission, and these estimates consider changes in the number and size of Texas employers with workers' compensation coverage, as well as the impact of certain factors, such as COVID-19, on insurance purchasing decisions.

Comment: A commenter states that the COVID-19 pandemic has impacted the designated doctor examination process because examinations were suspended for a period to prevent the spread of the virus. The commenter states that the necessary delay in these examinations likely had an impact on the amount of income benefits paid to injured employees and recommends that the REG study this impact.

Response: The REG acknowledges the comment and will make a note to monitor the impact of the pandemic on income benefits as data becomes available. However, it is too early, and the income benefit data is too immature to accurately analyze the current impact. There are multiple factors, in addition to the availability of designated doctor exams, that affect an injured employee's eligibility for and duration of income benefits, including the availability of jobs for injured employees. It will be difficult to distinguish the impact of these various factors since they occur at the same time.

Comment: A commenter states that the national media has been reporting an increase in opioid abuse since the beginning of the pandemic. The commenter suggests that the REG study the impact of the pandemic, if any, on the use of opioid drugs in the Texas workers' compensation system.

Response: The REG acknowledges the comment and notes that it already tracks opioid use for injured employees annually through the annual workers' compensation network report card. Included in the report card are the percentage of network and nonnetwork injured employees that receive opioids at six months post-injury, the average number of opioid prescriptions dispensed, the average number of days an injured employee received opioids, and the average cost per opioid prescription. The 2021 Workers' Compensation Health Care Network Report Card is one of the scheduled projects for this research agenda and will analyze claims that occurred during the pandemic from January 2020 through May 2020.

Comment: A commenter says that prior authorization is an ongoing source of frustration for many physicians, and the prior authorization processes in workers' compensation are no exception. The commenter states that the tedious prior authorization processes found in workers' compensation deter some orthopedic surgeons from participating in the system. A commenter recommends that the REG perform an analysis to determine which aspects of the state's treatment guidelines result in the highest level of prior authorization denials. In addition, the commenter recommends a study to analyze prior authorization processes, including:

-- taking a sample that consists of the top 10 most used musculoskeletal codes to determine how many times those services were denied on first pass and how often they were later overturned by an Independent Review Organization (IRO);

-- performing research to determine why IROs overturned an insurance carrier's initial decision;

-- determining how many cases that were referred to peer-to-peer evaluation were already within the guidelines that were put forward in the insurance carriers' medical necessity guidelines;

-- assessing whether there is a correlation between denial or delay of care, return to work, and establishment of disability score; and

-- examining which insurance carriers have the highest overturned rates by IROs.

Response: The REG acknowledges the comment and recognizes the importance of an effective and fair utilization review process for system participants. As part of its statutorily required efforts to monitor the impacts of the 2005 legislative reforms, the REG plans to analyze trends associated with medical necessity disputes resolved by IROs. This analysis will include an analysis of the frequency, type, timeliness, and outcome of medical necessity disputes over time, including the percentage of these disputes that uphold the insurance carrier's utilization review decisions. The results of this analysis will be incorporated into the REG's biennial report to the Legislature, which is due December 1, 2020.

Regarding preauthorization, the REG does not have access to any data source for preauthorization requests and outcomes because that data is not reported to TDI or DWC. Currently, the only data that the REG may access includes medical services that were rendered, billed, and paid for by injured employees.

Comment: A commenter states that DWC's enforcement efforts and process have had a significant impact on the behavior of system participants, and DWC is required by statute to monitor the performance of system participants and take enforcement actions when appropriate. The commenter remarks that DWC's enforcement efforts and focus has changed over time, and DWC has been charged with taking action on noncompliance that would have, before recent court decisions, risen to the level of bad faith on the part of an insurer. The commenter remarks DWC has a very active system monitoring and enforcement program, but there has been no report or study on this program or on the most common acts of noncompliance within the Texas workers' compensation system.

Response: The REG acknowledges the suggestion and notes that DWC publishes all enforcement consent orders on its website and provides summary level presentations of complaint statistics and enforcement outcomes at regular stakeholder meetings. Given the requirements of the REG this fiscal year and serving as a resource during the upcoming legislative session, the REG does not currently have the resources to take on this project at this time.

Comment: A commenter states that fraud within the Texas workers' compensation system has long been a major concern, and there has not been a study done by the REG on fraud within the Texas workers' compensation system since the 1998 study by the former Workers' Compensation Research and Oversight Council on Workers' Compensation. If possible, the commenter recommends a research project that analyzes and reports on workers' compensation fraud in the Texas system. Specifically, the commenter recommends that the study include a report on:

- DWC's fraud unit and its activities;
- DWC's prosecutors and their prosecution efforts;
- the number of known fraud cases and fraud referrals received by DWC over the past 10 years;
- an overview of the action DWC took on fraud referrals to include the number of cases closed versus the number of fraud cases opened;
- the number of fraud cases referred to Texas district attorneys;
- the number of fraud convictions;
- a breakdown of the fraud referrals by subject; and
- an analysis of any barriers or staffing issues that may be preventing DWC from pursuing a greater number of workers' compensation fraud cases.

Response: The REG acknowledges the suggestion and notes that before 2016, workers' compensation fraud activities were handled by the TDI Fraud Unit. DWC moved workers' compensation cases back to DWC and formed the DWC Fraud Unit in 2016. DWC was able to embed a prosecutor dedicated to workers' compensation fraud in the Travis County District Attorney's Office soon after. DWC publishes several of the suggested fraud statistics on its website and provides a summary of the Fraud Unit's activities as part of its biennial report to the Texas Legislature. Given the requirements of the REG this fiscal year and serving as a resource during the upcoming legislative session, the REG does not currently have the resources to take on this project at this time.

Comment: A commenter recommends that the REG should study the impact of the legislative changes last session on first responder cancer presumptions. These legislative changes were very significant and warrant a study on the impact of the changes and DWC's activity related to enforcement, benefit review conferences, and contested case hearings. The study of this issue should examine the frequency of these claims and their disposition, the number of disputes and dispute outcomes, the number of enforcement cases initiated against political subdivisions, and a summary of the basis of the enforcement actions. The REG should also analyze the financial impact of these legislative changes on medical and income benefit costs.

Response: The REG acknowledges the comment and notes that Senate Bill 2551 took effect on June 10, 2019. Since then, approximately 100 cancer claims have been filed by first responders, and many of these claims were filed in the past six months or are still actively in the dispute resolution process. At this time, these claims are not mature enough to analyze the cost impact of the legislation, but the REG will continue to monitor the frequency and outcome of these claims to prepare for the upcoming legislative session in 2021.

Comment: A commenter proposes that the REG research whether transitioning away from an average wholesale price (AWP)-based pharmacy fee schedule would reduce system costs for the Texas workers' compensation system while maintaining adequate access to medication and services.

The REG should consider alternative benchmarks to AWP, such as the National Average Drug Acquisition Cost. In researching alternative pricing benchmarks to AWP, the commenter proposes that the REG include a comparison of pharmacy-dispensed drug prices under alternative fee benchmarks to identify combinations of alternative benchmarks that have prices available for the largest percentage of drugs and that minimize costs.

Response: The REG acknowledges the comment and notes the importance of understanding the various pharmacy reimbursement benchmarks used in health systems, including workers' compensation. Given the requirements of the REG this fiscal year and serving as a resource during the upcoming legislative session, the REG does not currently have the resources to take on this project at this time. However, the REG will explore ways to access data on these various alternative benchmarks, and if this data is readily available, will consider this project for a future research agenda.

Order

It is ordered that the FY 2021 Research Agenda for the Workers' Compensation Research and Evaluation Group is adopted as follows:

1. Complete and publish the 2021 Workers' Compensation Health Care Network Report Card required under Texas Insurance Code §1305.502 and Texas Labor Code §405.0025.

2. Analyze the initial impact of COVID-19 on the Texas workers' compensation system, including claim frequency, claim costs, disputes, and return-to-work outcomes.

3. Study the use of telemedicine in the Texas workers' compensation system, including trends on the types and cost of services being performed, the types of health care providers providing these services, and the demographic trends of injured employees receiving telemedicine services.

The REG will consider expanding the scope of the research projects or conducting more projects to accommodate stakeholder suggestions, subject to the resources and data available.

TRD-202004524

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Filed: October 28, 2020



Texas Lottery Commission

Scratch Ticket Game Number 2316 "TRIPLE \$\$\$"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2316 is "TRIPLE \$\$\$". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2316 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2316.

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, MONEY BAG SYMBOL, \$\$\$ SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$30.00, \$100, \$500, \$1,000 and \$30,000.

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. 2316 - 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
MONEY BAG SYMBOL	WIN\$
\$\$\$ SYMBOL	TRP
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$30.00	TRTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$30,000	30TH

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 (2316), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2316-0000001-001.

H. Pack - A Pack of the "TRIPLE \$\$\$" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch 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 - Texas Lottery "TRIPLE \$\$\$" Scratch Ticket Game No. 2316.

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 "TRIPLE \$\$\$" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "\$\$\$" Play Symbol, the player wins TRIPLE 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 twenty-two (22) 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 twenty-two (22) 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 twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the twenty-two (22) 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 de-

fective 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 ten (10) 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 two (2) 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 two (2) times.
- G. The "\$\$\$" (TRP) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.
- H. The "\$\$\$" (TRP) Play Symbol will only appear on winning Tickets as dictated by the prize structure.
- I. The "MONEY BAG" (WINS) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.
- J. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).
- K. No Prize Symbol in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE \$\$\$" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$6.00, \$10.00, \$12.00, \$15.00, \$30.00, \$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 \$30.00, \$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 "TRIPLE \$\$\$" Scratch Ticket Game prize of \$1,000, \$1,500 or \$30,000, 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 "TRIPLE \$\$\$" 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.

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 "TRIPLE

\$\$\$" 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 "TRIPLE \$\$\$" 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 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.

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 Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2316. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2316 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	875,520	10.42
\$4.00	583,680	15.63
\$5.00	145,920	62.50
\$6.00	145,920	62.50
\$10.00	145,920	62.50
\$12.00	72,960	125.00
\$15.00	72,960	125.00
\$30.00	72,960	125.00
\$100	2,850	3,200.00
\$500	152	60,000.00
\$1,000	22	414,545.45
\$1,500	10	912,000.00
\$30,000	5	1,824,000.00

*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 4.30. 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. 2316 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 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. 2316, 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-202004615

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 3, 2020

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North Central Texas Council of Governments

Request for Proposals for a Regional Rail Integration and Analytics System (RRIS)

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to develop a freight and passenger integration and movement coordination system to be implemented in the North Central Texas Region. The system must be able to analyze aggregated real-time data on train movements in order to enhance freight and passenger rail operations and eliminate operational bottlenecks in real time. In addition, the system must be able to identify

rail network issues and patterns over time, for the purpose of improved capital project selection and enhanced effectiveness of rail mobility development programs and investments.

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, December 11, 2020, to Jeff Hathcock, Program Manager. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, November 13, 2020.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202004642

R. Michael Eastland
Executive Director

North Central Texas Council of Governments
Filed: November 4, 2020



Public Utility Commission of Texas

Notice of Application for True-Up of 2018 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 29, 2020, for true-up of 2018 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Border to Border Communications, Inc. for True Up of 2018 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 51473.

The Application: Border to Border Communications, Inc. filed a true-up in accordance with Ordering Paragraph No. 2 of the Order in Docket No. 48270. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Border to Border received in Federal Universal Service Fund (FUSF) revenue by \$1,188,152 for calendar year 2018. Border to Border asserts that it did not fully recover the impacted FUSF as a result of the Order in Docket No. 48270 and requests to recover an additional \$194,926 from the TUSF.

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 51473.

TRD-202004616

Andrea Gonzalez
Rules Coordinator

Public Utility Commission of Texas
Filed: November 3, 2020



Notice of Request for Approval of Alternate Technology

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 28, 2020, petitioning for approval of an alternate technology under 16 Texas Administrative Code §26.57.

Docket Title and Number: Application of Peoples Telephone Cooperative, Inc. for Approval of Alternate Technology for Provider of Last Resort Obligations, Docket Number 51470.

The Application: Peoples Telephone Cooperative, Inc. filed an application with the Public Utility Commission of Texas for approval for the use of fixed wireless service and Voice-over-Internet-Protocol to meet its provider of last resort (POLR) obligations within its certificated service area.

Persons who wish to comment upon 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51470.

TRD-202004567

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2020



Public Notice of Staff Strawman for Repeal of 16 Texas Administrative Code (TAC) §24.75 and Adoption of New 16 TAC §24.75 and §24.76 Request For Comments

The staff of the Public Utility Commission of Texas (commission) requests comments on a strawman rule to implement Texas Water Code §13.183(c), which allows the commission to adopt rules related to specific alternative ratemaking methodologies for water and sewer rates to allow for more timely and efficient cost recovery. The strawman proposes repealing existing 16 Texas Administrative Code (TAC) §24.75 and adopting new 16 TAC §24.75, which addresses the same subject matter but includes changes to the cash needs method and multi-step rate changes. The strawman also includes the addition of a new customer classes subsection to proposed §24.75 and the addition of a new section, 16 TAC §24.76, addressing system improvement charges.

The strawman rule can be accessed through the interchange on the commission's website using Project Number 50322. Staff invites written comments on the strawman rule. Comments may be filed through the interchange on the commission's website as long as the commission's order filed in Docket No. 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019*, is in effect. Should the commission's order entered into in Docket No. 50664 no longer be in effect, then parties may file comments by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 before 3:00 p.m. on December 11, 2020. Comments should be organized in a manner consistent with the organization of the rule. All responses should reference Project Number 50322. The parties' responses to the strawman will assist staff in developing a policy or in developing the proposed rule.

Questions concerning this notice should be referred to Emily Sears, Financial Analyst, Rate Regulation Division, (512) 936-7224. Deaf and hard of hearing individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-202004631

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2020



Texas Water Development Board

Applications Received in October 2020

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62903, a request from the City of New Braunfels, 424 South Castell Avenue, New Braunfels, Texas 78131-1747, received on October 5, 2020, for \$40,000,000 in financial assistance from the Drinking Water State Revolving Fund for a surface water treatment plant expansion project.

Project ID #62904, a request from the City of Lubbock, 1314 Avenue K, Lubbock, Texas 79401-3830, received on October 14, 2020, for \$10,445,000 in financial assistance from the Drinking Water State Revolving Fund for construction of a new 15 MGD firm capacity pump station to deliver Lake Alan Henry water to the City's West Pressure Zone.

Project ID #73745, a request from Acton Municipal Utility District, 6420 Lusk Branch Court, Granbury, Texas 76049, received on October 23, 2020, for \$2,490,000 in financial assistance from the Texas Water Development Board Fund for the De Cordova Bend Estates wastewater treatment plant expansion project.

TRD-202004630
Ashley Harden
General Counsel
Texas Water Development Board
Filed: November 4, 2020



Flood Infrastructure Fund Applications Received

Project ID #40111, a request from the City of Bandera, 511 Main Street, Bandera, Texas 78003, received on October 15, 2020, for \$8,233,973 in financial assistance from the Flood Infrastructure Fund, for drainage improvements and erosion control in two areas of the city.

Project ID #40118, a request from Dallas County, 411 Elm Street, 4th Floor, Dallas, Texas 75202, received on October 16, 2020, for \$7,245,000 in financial assistance from the Flood Infrastructure Fund, for an area in southeast Dallas County known as the Inland Port, that will include the entire Hydraulic Unit Code (HUC 10) 1203010502 plus a small area north of Interstate 20 within the City of Dallas.

Project ID #40067, a request from the City of Fredericksburg, 126 West Main Street, Fredericksburg, Texas 78624, received on October 16, 2020, for \$745,000 in financial assistance from the Flood Infrastructure Fund for installation of automatic flood gates and warning flashers at low water crossings.

Project ID #40060, a request from the City of Austin, 505 Barton Springs Road, Austin, Texas 78704, received on October 16, 2020, for \$4,450,000 in financial assistance from the Flood Infrastructure Fund to update regulatory floodplains within the City of Austin's jurisdiction, including those that extend into neighboring jurisdictions.

Project ID #40127, a request from Fort Bend Municipal Utility District No. 140, 422 River Trace Drive, Richmond, Texas 77406, received on October 16, 2020, for \$22,000,000 in financial assistance from the Flood Infrastructure Fund for Land acquisition, construction of earthen levee, floodwall and a pump station to protect approximately 960 acres of residential and commercial development from Brazos River flooding.

Project ID #40126, a request from Fort Bend Levee Improvement District No. 19, 6811 Thompson Ferry Road, Missouri City, Texas 77459, received on October 16, 2020, for \$15,800,000 in financial assistance from the Flood Infrastructure Fund to construct an additional storm water pump station within the watershed to evacuate more water faster from the system in times when the river is at flood stage.

Project ID #40064, a request from Uvalde County, 100 North Getty Street, Uvalde, Texas 78801, received on October 16, 2020, for \$219,000 in financial assistance from the Flood Infrastructure Fund for a self-supporting tower for early warning system project.

Project ID #40099, a request from the City of Port Arthur, 444 4th Street, Port Arthur, Texas 77640, received on October 19, 2020, for \$1,430,000 in financial assistance from the Flood Infrastructure Fund for a master drainage plan and policy guide development projects.

Project ID #40023, a request from Cameron County Drainage District No. 3, 26041 Farm-to-Market Road 510, San Benito, Texas 78586, received on October 19, 2020, for \$1,485,000 in financial assistance from the Flood Infrastructure Fund for a flood protection study project.

Project ID #40073, a request from Cameron County Drainage District No. 5, 221 East Filmore, Harlingen, Texas 78550, received on October 19, 2020, for \$2,342,000 in financial assistance from the Flood Infrastructure Fund for the Murphy Lateral and South Fork Lateral Regional detention pond projects.

Project ID #40081, a request from Cameron County Drainage District No. 5, 221 East Filmore, Harlingen, Texas 78550, received on October 19, 2020, for \$3,005,000 in financial assistance from the Flood Infrastructure Fund for the North Main drainage channel improvement and regional detention pond projects.

Project ID #40082, a request from Cameron County Drainage District No. 5, 221 East Filmore, Harlingen, Texas 78550, received on October 19, 2020, for \$3,560,000 from the Flood Infrastructure Fund for the Sibley Lateral Regional detention pond project.

Project ID #40015, a request from Jackson County County-Wide Drainage District, 2066 State Highway 111 South, Edna, Texas 77957, received on October 19, 2020, for \$375,000 in financial assistance from the Flood Infrastructure Fund for the Keller Branch-Lavaca River Basin flood protection study option 2 project.

Project ID #40006, a request from Wharton County, 100 South Fulton Street, Suite 100, Wharton, Texas 77488, received on October 19, 2020, for \$427,500 in financial assistance from the Flood Infrastructure Fund for the Waterhole Creek - Caney Creek Basin flood protection study to consist of a watershed-wide study of the entire HUC 10 watersheds.

Project ID #40106, a request from the City of Wharton, 120 East Caney Street, Wharton, Texas 77488, received on October 19, 2020, for \$3,055,000 in financial assistance from the Flood Infrastructure Fund a project to work in conjunction with the levee sumps and the Santa Fe Ditch, to move stormwater to these facilities.

Project ID #40080, a request from the City of Laredo, 1110 Houston Street, Laredo, Texas 78040, received on October 19, 2020, for \$585,000 in financial assistance from the Flood Infrastructure Fund the Chacon Creek-Rio Grande Basin flood protection study project.

Project ID #40038, a request from the Lower Rio Grande Valley Development Council, 301 West Railroad, Weslaco, Texas 78596, for \$7,983,000 in financial assistance from the Flood Infrastructure Fund for a Lower Rio Grande Valley Regional flood protection planning project.

Project ID #40047, a request from the San Jacinto River Authority, 1577 Dam Site Road, Conroe, Texas 77304, received on October 19, 2020, for \$500,000, in financial assistance from the Flood Infrastructure Fund to develop a joint reservoir operations strategy for Lake Conroe and Lake Houston.

Project ID #40037, a request for the San Jacinto River Authority, 1577 Dam Site Road, Conroe, Texas 77304, received on October 19, 2020,

for \$500,000, in financial assistance from the Flood Infrastructure Fund for a conceptual engineering feasibility study of two potential dams/reservoirs within the Spring Creek watershed.

Project ID #40012, a request from Caldwell County, 110 South Main, Lockhart, Texas 78644, received on October 19, 2020, for \$731,250 in financial assistance from the Flood Infrastructure Fund for a flood protection planning study project.

Project ID #40129, a request from Harris County Flood Control District, 9900 Northwest Freeway, Houston, Texas 77092, received on October 19, 2020, for \$28,515,863 in financial assistance from the Flood Infrastructure Fund for the Halls Bayou Drainage Project Bond.

Project ID #40043, a request from Bastrop County, 804 Pecan Street, Bastrop, Texas 78602, received on October 19, 2020, for \$1,125,000 in financial assistance from the Flood Infrastructure Fund for flood risk evaluation and alternatives considered, the watersheds proposed for study in this application include Big Sandy Creek, Pin Oak Creek, Piney Creek, Yegua Creek, Barton Creek, Peach Creek.

Project ID #40109, a request from Marble Falls, 800 3rd Street, Marble Falls, Texas 78654, received on October 19, 2020, for \$894,874 in financial assistance from the Flood Infrastructure Fund for installation of a two-way bridge at the Avenue N Crossing of Backbone Creek.

Project ID #40034, a request from Jefferson County Drainage District No. 6, 6550 Walden Road, Beaumont, Texas 77707, received on October 19, 2020, for \$8,500,000 in financial assistance from the Flood Infrastructure Fund for the development of a regional watershed plan project.

Project ID #40055, a request from the City of Bay City, 1901 5th Street, Bay City, Texas 77414, received on October 19, 2020, for \$394,740 in financial assistance from the Flood Infrastructure Fund for a regional drainage study project.

Project ID #40002, a request from Falls County, 125 Bridge Street, Room 203, Marlin, Texas 76661, received on October 19, 2020, for \$820,000 in financial assistance from the Flood Infrastructure Fund for data collection, mapping, engineering studies, and dam evaluation flood planning project.

Project ID #40004, a request from Milam County, 102 South Fannin Avenue, Cameron, Texas 76520, received on October 19, 2020, for \$856,500 in financial assistance from the Flood Infrastructure Fund for a flood control planning project.

Project ID #40041, a request from the City of Harlingen, 118 East Tyler Avenue, Harlingen, Texas 78550, received on October 19, 2020, for \$5,613,300 in financial assistance from the Flood Infrastructure Fund for a flood protection planning project.

Project ID #40121, a request from Harris County, 1001 Preston Street, Houston, Texas 77002, received on October 19, 2020, for \$807,250 in financial assistance from the Flood Infrastructure Fund for the Beaumont Place subdivision drainage improvement project.

Project ID #40011, a request from Karnes County, 101 North Panna Maria Avenue, Suite 101, Karnes City, Texas 78118, received on October 19, 2020, for \$618,750 in financial assistance from the Flood Infrastructure Fund for a flood protection planning study project.

Project ID #40013, a request from the City of Cameron, 100 South Houston Avenue, Cameron, Texas 76520, received on October 19, 2020, for \$112,500 in financial assistance from the Flood Infrastructure Fund for the Little River Watershed study project.

Project ID #40017, a request from Tehuacana Creek Water Improvement District, 3728 Chimney Ridge Drive, Waco, Texas 76708, received on October 19, 2020, for \$36,800 in financial assistance from

the Flood Infrastructure Fund for a baseline water quality study on Site 19.

Project ID #40009, a request from the City of Eastland, 113 East Commerce Street, Eastland, Texas 76448, received on October 19, 2020, for \$405,000 in financial assistance from the Flood Infrastructure Fund for the Leon River Watershed study project.

Project ID #40046, a request from Williamson County, 3151 Southeast Inner Loop, Georgetown, Texas 78626, received on October 19, 2020, for \$4,649,592 in financial assistance from the Flood Infrastructure Fund for the Atlas 14 floodplain mapping project.

Project ID #40021, a request from the City of Gatesville, 110 North 8th Street, Gatesville, Texas 76528, received on October 19, 2020, for \$250,000 in financial assistance from the Flood Infrastructure Fund for drainage study and mater plan project.

Project ID #40062, a request from Val Verde County, 400 Pecan Street, Del Rio, Texas 78840, received on October 19, 2020, for \$500,000 in financial assistance from the Flood Infrastructure Fund for a flood early warning system project.

Project ID #40125, a request from Fort Bend County Levee Improvement District No. 14, Dawnington Place, Sugar Land, Texas 77479, received on October 19, 2020, for \$3,000,000 in financial assistance from the Flood Infrastructure Fund for a pump station upgrade and replacement project.

Project ID #40070, a request from Montgomery County Municipal Utility District No. 67, 2455 Lake Robbins Drive, The Woodlands, Texas 77380, received on October 19, 2020, for \$11,300,000 in financial assistance from the Flood Infrastructure Fund for the Bear Branch drainage improvement project.

Project ID #40124, a request from Sienna Plantation Levee Improvement District, 202 Century Square Boulevard, Sugar Land, Texas 77478, received on October 19, 2020, for \$9,400,000 in financial assistance from the Flood Infrastructure Fund for a flood project to reduce the risk of flood waters negatively affecting the community within the southern levee system by increasing Channel 1 conveyance to the main drainage channel.

Project ID #40010, a request from Trinity River Authority, 5300 South Collins Street, Arlington, Texas 76108, received on October 19, 2020, for \$1,053,000 in financial assistance from the Flood Infrastructure Fund for the Trinity River mid-basin watershed study project.

Project ID #40019, a request from Orange County Drainage District, 8081 Old Highway 90, Orange, Texas 77630, received on October 20, 2020, for \$5,000,000 in financial assistance from the Flood Infrastructure Fund for the Sabine River relief ditch extension and expansion project.

Project ID #40031, a request from Hidalgo County Drainage District No. 1, 902 North Doolittle Road, Edinburg, Texas 78542, received on October 20, 2020, for \$29,799,000 in financial assistance from the Flood Infrastructure Fund for a flood control project.

Project ID #40110, a request from the City of Marble Falls, 800 3rd Street, Marble Falls, Texas 78654, received on October 20, 2020, for \$1,691,906 in financial assistance from the Flood Infrastructure Fund for the Backbone Tributary Bypass Channel project.

Project ID #40059, a request from Llano County, 801 Ford Street, Llano, Texas 78643, received on October 20, 2020, for \$31,500 in financial assistance from the Flood Infrastructure Fund for the Llano and San Saba County Hazard Mitigation Plan.

Project ID #40018, a request from Chambers County, 404 Washington Avenue, Anahuac, Texas 77514, received on October 20, 2020, for

\$4,656,000 in financial assistance from the Flood Infrastructure Fund for flood protection planning project.

Project ID #40077, a request from Hays County, 111 East San Antonio Street, Suite 300, San Marcos, Texas 78666, received on October 20, 2020, for \$215,000 in financial assistance from the Flood Infrastructure Fund for the Onion Creek watershed study floodplain and mapping project.

Project ID #40113, a request from the City of Mexia, 101 North McKinney Street, Mexia, Texas 76667, received on October 20, 2020, for \$1,700,000 in financial assistance from the Flood Infrastructure Fund the Plummers Creek Tributary storm sewer improvement project.

Project ID #40123, a request from the City of Junction, 730 Main Street, Junction, Texas 76849, received on October 20, 2020, for \$4,121,000 in financial assistance from the Flood Infrastructure Fund for the Junction Dam repairs and mitigation project.

Project ID #40114, a request from the City of Weslaco, 255 South Kansas Avenue, Weslaco, Texas 78596, received on October 20, 2020, for \$3,002,627 in financial assistance from the Flood Infrastructure Fund for the Kansas and Los Torritos drainage improvements project.

Project ID #40119, a request from the City of La Villa, 916 South Mike Chapa Drive, La Villa, Texas 78562, received on October 20, 2020, for \$8,939,000 in financial assistance from the Flood Infrastructure Fund for a water treatment plant relocation project.

Project ID #40058, a request from Sabine River Authority, 12777 State Highway 87, Orange, Texas 77632, received on October 20, 2020, for \$750,000 in financial assistance from the Flood Infrastructure Fund for the flood protection planning project for watersheds on the Upper Sabine River Basin.

Project ID #40076, a request from North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011, received on October 20, 2020, for \$3,000,000 in financial assistance from the Flood Infrastructure Fund for an integrated transportation and stormwater management project.

Project ID #40049, a request from the City of San Perlita, 14168 7th Street, San Perlita, Texas 78590, received on October 20, 2020, for \$2,720,000 in financial assistance from the Flood Infrastructure Fund for a city-wide sewer system upgrade project.

Project ID #40016, a request from the City of Iowa Colony, 12003 Iowa Colony Boulevard, Iowa Colony, Texas 77083, received on October 20, 2020, for \$150,000 in financial assistance from the Flood Infrastructure Fund for a mater drainage plan project.

Project ID #40074, a request from the City of Houston, 611 Walker Houston, Texas 77002, received on October 20, 2020, for \$5,250,000 in financial assistance from the Flood Infrastructure Fund a storm water master plan project.

Project ID #40117, a request from Nueces River Authority on Behalf of San Patricio County Drainage District, 529 South Highway 83, Uvalde, Texas 78801, received on October 20, 2020, for \$10,455,840 in financial assistance from the Flood Infrastructure Fund for system improvements based on existing drainage improvements plan.

Project ID #40003, a request from Bee County, 105 West Corpus Christi Street, Beeville, Texas 78102, received on October 20, 2020, for \$1,800,000 in financial assistance from the Flood Infrastructure Fund for a master drainage planning study project.

Project ID #40051, a request from the City of Stephenville, 298 West Washington Street, Stephenville, Texas 76401, received on October 20, 2020, for \$337,500 in financial assistance from the Flood Infrastructure

Fund for the Green River - North Bosque flood protection planning project.

Project ID #40057, a request from Midland County, 500 North Loraine Street, Suite 500, Midland, Texas 79701, received on October 20, 2020, for \$612,748 in financial assistance from the Flood Infrastructure Fund for the Monahans and South Draw flood planning project.

Project ID #40039, a request from Bee County, 105 West Corpus Christi Street, Beeville, Texas 78102, received on October 20, 2020, for \$328,125 in financial assistance from the Flood Infrastructure Fund for a flood early warning system project.

Project ID #40024, a request from Nueces County Drainage & Conservation District #2, 603 East Avenue A, Robstown, Texas 78380, received on October 20, 2020, for \$550,000 in financial assistance from the Flood Infrastructure Fund for a master drainage planning g study.

Project ID #40108, a request from the City of Bryan, 300 South Texas Avenue, Bryan, Texas 77803, received on October 20, 2020, for \$180,000 in financial assistance from the Flood Infrastructure Fund for a flood early warning system project.

Project ID #40045, a request from Sabine River Authority, 12777 State Highway 87, Orange Texas 77632, received on October 20, 2020, for \$1,914,147.25 in financial assistance from the Flood Infrastructure Fund for. A flood protection planning for watersheds - Lower Sabine River Basin project.

Project ID #40040, a request from DeWitt County Drainage District No. 1, 107 North Gonzales Street, Cuero, Texas 77954, received on October 20, 2020, for \$124,350 in financial assistance from the Flood Infrastructure Fund fora flood warning system and stream gage network project.

Project ID #40072, a request from Sabine River Authority, 12777 State Highway 87, Orange, Texas 77632, received on October 20, 2020, for \$174,000 in financial assistance from the Flood Infrastructure Fund for the Sabine River Basin gages project.

Project ID #40005, a request from the City of Alice, 500 East Main Street, Alice, Texas 78332, received on October 20, 2020, for \$217,000 in financial assistance from the Flood Infrastructure Fund for a master drainage planning study project.

Project ID #40022, a request from the City of Silsbee, 1220 Highway 327 East, Silsbee, Texas 77656, received on October 20, 2020, for \$720,000 in financial assistance from the Flood Infrastructure Fund for citywide flood protection planning project.

Project ID #40107, a request from Cameron County Drainage District No. 1, 3510 Old Port Isabel Road, Brownsville, Texas 78526, received on October 20, 2020, for \$390,000 in financial assistance from the Flood Infrastructure Fund for the ditch one regional detention drainage improvement project.

Project ID #40092, a request from Nueces County Drainage and Conservation District No. 2, 603 East Avenue A, Robstown, Texas 78380, received on October 20, 2020, for \$2,453,731 in financial assistance from the Flood Infrastructure Fund for the Bosquez Road and Avenue J drainage improvement project.

Project ID #40069, a request from Willacy County, 575 West Main Avenue, Raymondville, Texas 78580, received on October 20, 2020, for \$1,457,571 in financial assistance from the Flood Infrastructure Fund for a joint flood control project with Willacy County Drainage District.

Project ID #40088, a request from Willacy County Drainage District No. 2, 8304 Business 77, Lyford, Texas 78569, received on October 20, 2020, for \$1,325,391 in financial assistance from the Flood Infra-

structure Fund for the Willacy County Drainage District No. 2 regional detention facilities project.

Project ID #40098, a request from City of Alice, 500 East Main Street, Alice, Texas 78332, received on October 20, 2020, for \$286,825 in financial assistance from the Flood Infrastructure Fund for the Pintas Creek at Sunset Drive and Virginia Street drainage improvement project.

Project ID #40093, a request from Nueces County Drainage and Conservation District No. 2 603 East Avenue A, Robstown, Texas 78380, received on October 20, 2020, for \$1,312,000 in financial assistance from the Flood Infrastructure Fund for the Ditch A and Bluebonnet drainage improvement project.

Project ID #40090, a request from Cameron County Drainage District No. 1, 3510 Old Port Isabel Road, Brownsville, Texas 78526, received on October 20, 2020, for \$101,400 in financial assistance from the Flood Infrastructure Fund for Ditch One regional detention drainage improvement project.

Project ID #40085, a request from the City of New Braunfels, 550 Landa Street, New Braunfels, Texas 78130, received on October 20, 2020, for \$777,143 in financial assistance from the Flood Infrastructure Fund for a drainage area master plan.

Project ID #40084, a request from City of Cotulla, 202 South Main Street, Cotulla, Texas 78014, received on October 20, 2020, for \$150,000 in financial assistance from the Flood Infrastructure Fund for a flood planning study for FEMA's Letter of Map Revision.

Project ID #40027, a request from Hunt County, 2507 Lee Street, Greenville, Texas 75401, received on October 20, 2020, for \$191,250 in financial assistance from the Flood Infrastructure Fund for the Hunt County countywide drainage study project.

Project ID #40169, a request from the City of Tyler, 423 West Ferguson Street, Tyler, Texas 75710, received on October 20, 2020, for \$62,400 in financial assistance from the Flood Infrastructure Fund for the Headwaters of Willow Creek Capital improvement plan study project.

Project ID #40141, a request the City of Tyler, 423 West Ferguson Street, Tyler, Texas 75710, received on October 20, 2020, for \$28,000 in financial assistance from the Flood Infrastructure Fund for the Black Fork Creek at Gentry Parkway Capital improvement plan study project.

Project ID #40103, a request from the City of Junction, 730 Main Street, Junction, Texas 76849, received on October 20, 2020, for \$907,600 in financial assistance from the Flood Infrastructure Fund for a water treatment plant raw water intake project.

Project ID #40025, a request from the City of Brownsville, 1001 East Elizabeth Street, Brownsville, Texas 78520, received on October 20, 2020, for \$1,350,000 in financial assistance from the Flood Infrastructure Fund for the Port Isabel HUC-10 watershed study project.

Project ID #40063, a request from the City of Brownsville, 1001 East Elizabeth Street, Brownsville, Texas 78520, received on October 20, 2020, for \$9,100,000 in financial assistance from the Flood Infrastructure Fund for the Impala drain and upstream ditches improvement projects.

Project ID #40001, a request from the City of Raymondville, 142 South 7th Street, Raymondville, Texas 78580, received on October 20, 2020, for \$400,000 in financial assistance from the Flood Infrastructure Fund for a watershed study project.

Project ID #40020, a request from Willacy County, 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$1,600,000 in financial assistance from the Flood Infrastructure Fund for the Willacy County watershed study project.

Project ID #40048, a request from Willacy County 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$1,132,300 in financial assistance from the Flood Infrastructure Fund for the Railroad Spur drainage detention area project.

Project ID #40100, a request from Willacy County 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$880,578 in financial assistance from the Flood Infrastructure Fund for the Mulberry detention pond project.

Project ID #40096, a request from Willacy County 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$889,134 in financial assistance from the Flood Infrastructure Fund for the Lyford Trunkline project.

Project ID #40095, a request from Willacy County 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$147,777 in financial assistance from the Flood Infrastructure Fund for a linear detention and pipe project.

Project ID #40094, a request from Willacy County 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$56,238 in financial assistance from the Flood Infrastructure Fund for the La Sara Gates project to install five drainage control gate structures at two locations.

Project ID #40089, a request from City of Raymondville, 142 South 7th Street, Raymondville, Texas 78580, received on October 20, 2020, for \$884,760 in financial assistance from the Flood Infrastructure Fund for the Raymondville ditch drainage detention project.

Project ID #40008, a request from the City of Bartlett, 104 Clark Street, Bartlett, Texas 76511, received on October 20, 2020, for \$350,000 in financial assistance from the Flood Infrastructure Fund for a flood planning project.

Project ID #40035, a request from Spring Creek Waller County, 775 Business 290 East, Hempstead, Texas 77445, received on October 20, 2020, for \$240,000 in financial assistance from the Flood Infrastructure Fund for the Spring Creek watershed flood protection study project.

Project ID #40054, a request from the City of Pharr, 118 South Cage Boulevard, Pharr, Texas 78577, received on October 20, 2020, for \$4,510,000 in financial assistance from the Flood Infrastructure Fund for the South Pharr regional detention facility and drainage improvement project.

Project ID #40078, a request from the City of Palm Valley, 1313 North Stuart Place Road, Harlingen, Texas 78552, received on October 20, 2020, for \$1,418,431 in financial assistance from the Flood Infrastructure Fund for a stormwater improvement project.

Project ID #40071, a request from Nueces County Drainage & Conservation District No. 2, 603 East Avenue A, Robstown, Texas 78380, received on October 20, 2020, for \$465,500 in financial assistance from the Flood Infrastructure Fund for a flood early warning system project.

Project ID #40112, a request from the City of Alton for, 509 South Alton Boulevard, Alton, Texas 78573, received on October 20, 2020, for \$8,500,000 in financial assistance from the Flood Infrastructure Fund for the North Steward Boulevard drainage improvement project.

Project ID #40102, a request from the City of Cameron, 100 South Houston Avenue, Cameron, Texas 76520, received on October 20, 2020, for \$15,000,000 in financial assistance from the Flood Infrastructure Fund for the Little River pump station project.

Project ID #40061, a request from San Jacinto River Authority, 1577 Dam Site Road, Conroe, Texas 77304, received on October 20, 2020, for \$375,000 in financial assistance from the Flood Infrastructure Fund for the Upper San Jacinto River Basin regional sedimentation study.

Project ID #40042, a request from San Jacinto River Authority, 1577 Dam Site Road, Conroe, Texas 77304, received on October 20, 2020, for \$48,100 in financial assistance from the Flood Infrastructure Fund for a flood early warning system for San Jacinto County.

Project ID #40052, a request from Nueces County Drainage & Conservation District No. 2, 603 East Avenue A, Robstown, Texas 78380, received on October 20, 2020, for \$8910,000 in financial assistance from the Flood Infrastructure Fund for the Casa Blanca drainage improvement project.

Project ID #40053, a request from the City of Mart for a Category, 112 North Commerce Street, Mart, Texas 76664, received on October 20, 2020, for \$155,000 in financial assistance from the Flood Infrastructure Fund for a flood planning study project.

Project ID #40030, a request from the City of Jourdanton, 1604 State Highway 97 East, Jourdanton, Texas 78026, received on October 20, 2020, for \$1,504,770 in financial assistance from the Flood Infrastructure Fund for the Main Street drainage project.

Project ID # 40007, a request from the City of Driscoll, 133 West Dragon #178, Driscoll, Texas 78351, received on October 20, 2020, for \$135,000 in financial assistance from the Flood Infrastructure Fund for a master drainage planning stud

Project ID #40028, a request from Kaufman County, 100 West Mulberry, Kaufman, Texas 75142, received on October 20, 2020, for \$180,000 in financial assistance from the Flood Infrastructure Fund for a countywide drainage study project.

Project ID #40065, a request from the City of Lubbock for a Category, 1314 Avenue K, Lubbock, Texas 79401, received on October 20, 2020, for \$562,500 in financial assistance from the Flood Infrastructure Fund for a flood protection planning for watersheds project.

Project ID #40101, a request from Willacy County, 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$4,910,760 in financial assistance from the Flood Infrastructure Fund for the Sebastian drainage improvement project.

Project ID #40097, a request from Willacy County, 576 West Main Avenue, Room 145, Raymondville, Texas 78580, received on October 20, 2020, for \$564,420 in financial assistance from the Flood Infrastructure Fund for the Simo lift station project.

Project ID #40033, a request from Waller County, 775 Business 290 East, Hempstead, Texas 77445, received on October 20, 2020, for \$262,500 in financial assistance from the Flood Infrastructure Fund for the Brazos River flood update study project.

Project ID #40083, a request from Harris County Flood Control District, 9900 Northwest Freeway, Houston, Texas 77092, received on October 20, 2020, for \$57,120,515 in financial assistance from the Flood Infrastructure Fund for a regional stormwater detention basin, Woodland Trails Detention Basin on White Oak Bayou project.

TRD-202004619

Ashley Harden
General Counsel
Texas Water Development Board
Filed: November 3, 2020

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Workforce Solutions for the Heart of Texas

Request for Proposal (RFP #13210201) Fiscal and Program Monitoring

The Heart of Texas Workforce Development Board, Inc. (HOTWDB) dba Workforce Solutions for the Heart of Texas is soliciting proposals for Fiscal and Program Monitoring. Workforce Solutions for the Heart of Texas is the administrative entity for programs funded by the Texas Workforce Commission and Department of Labor. The Workforce Solutions for the Heart of Texas serves McLennan, Falls, Bosque, Freestone, Limestone and Hill Counties.

Proposals are due on December 15, 2020, by 3:30 p.m. (CST) to:

Heart of Texas Workforce Development Board, Inc.
dba Workforce Solutions for the Heart of Texas
801 Washington Avenue, Suite 700
Waco, Texas 76701

Any proposal received after that time and date will not be considered.

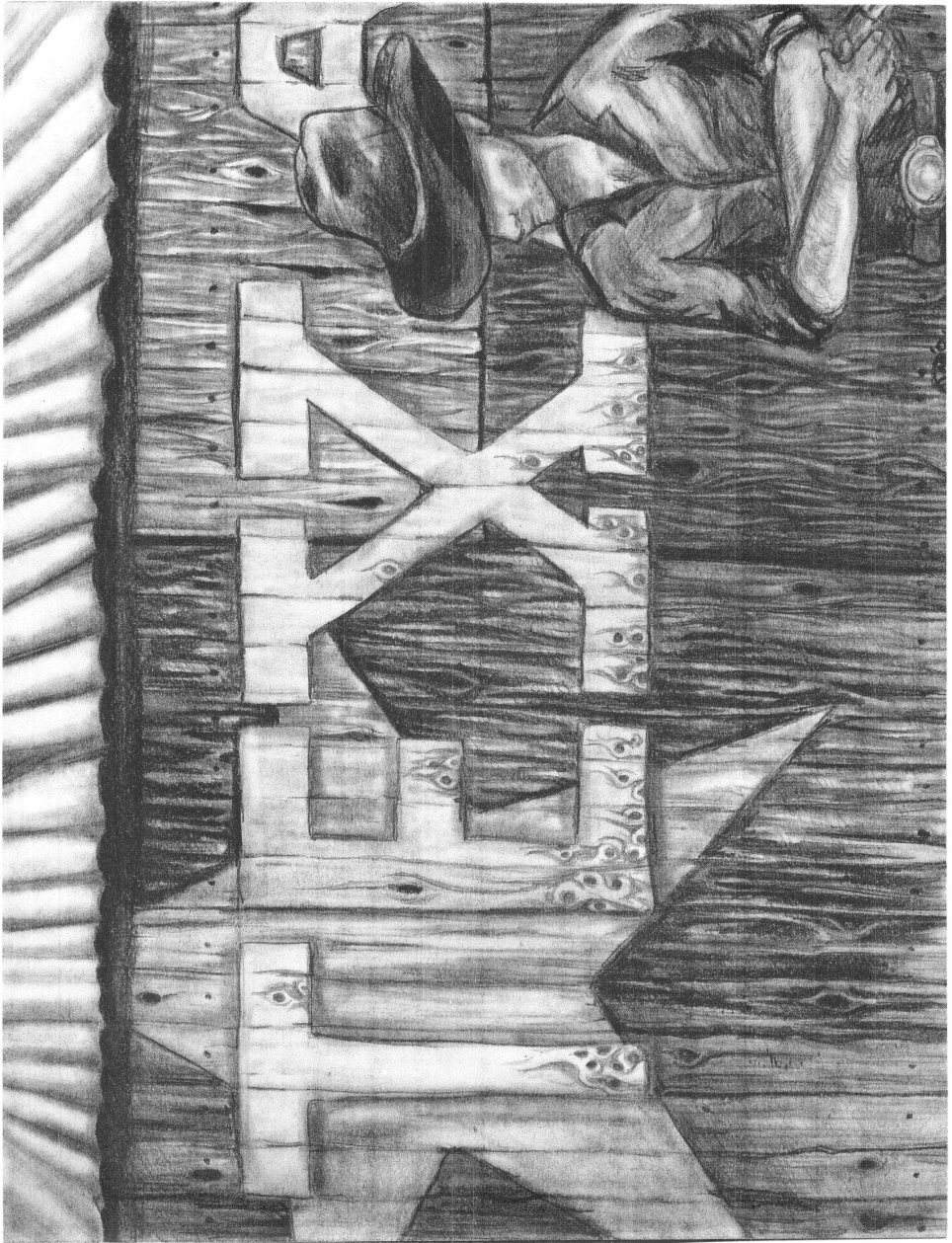
The Request for Proposal (RFP) may be obtained by contacting Margie Cintron at (254) 855-6543 or via email at jcinton@grandecom.net. The RFP is also available on the Workforce Solutions for the Heart of Texas website at <http://www.hotworkforce.com>. A virtual Bidders Conference will be held via Zoom on November 10, 2020, at 10:00 a.m. (CST). To receive the access code and password, please e-mail Margie Cintron at jcinton@grandecom.net. Attendance is not mandatory, but strongly recommended.

The Heart of Texas Workforce Development Board, Inc. reserves the right to reject any and/or all bids, and to make awards as they may appear to be advantageous to HOTWDB.

The Heart of Texas Workforce Board, Inc. is an equal opportunity employer. Programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) (800) 735-2989/(800) 735-2988 (voice).

TRD-202004603
Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: November 2, 2020

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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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