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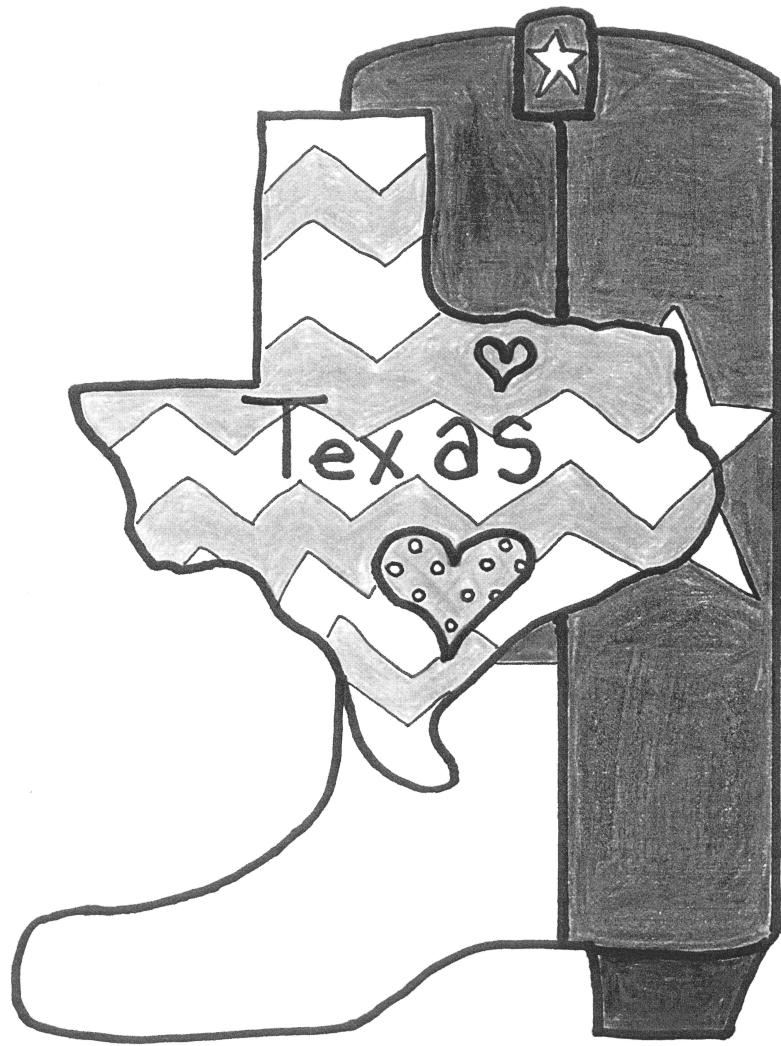
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THE GOVERNOR

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

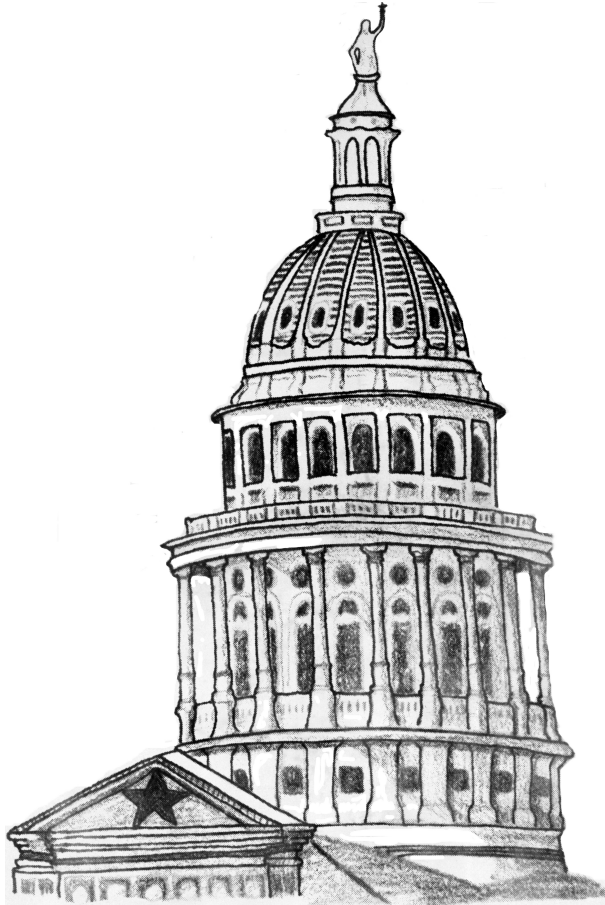
Greg Abbott, Governor

Appointments for February 6, 2024

TRD-202400467

Appointed as District Attorney of the 159th Judicial District, Angelina County, for a term to expire December 31, 2024, or until his successor shall be duly elected and qualified, Layne A. Thompson of Pollock, Texas (replacing Janet R. Cassels of Lufkin, who resigned).





THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0530-KP

Requestor:

The Honorable Lisa Pence
Erath County Attorney
298 South Graham Avenue
Stephenville, Texas 76401

Re: Whether section 6.05(f) of the Tax Code bars the continued employment of the Chief Appraiser if his sibling is elected as the County Tax Assessor/Collector (RQ-0530-KP)

Briefs requested by March 4, 2024

RQ-0531-KP

Requestor:

The Honorable John L. Forrest, Jr.

Parker County Attorney

101 North Main Street
Weatherford, Texas 76086

Re: Whether Texas Property Code section 52.002 requires a district clerk to prepare an abstract of judgment rendered by a court of appeals (RQ-0531-KP)

Briefs requested by March 6, 2024

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

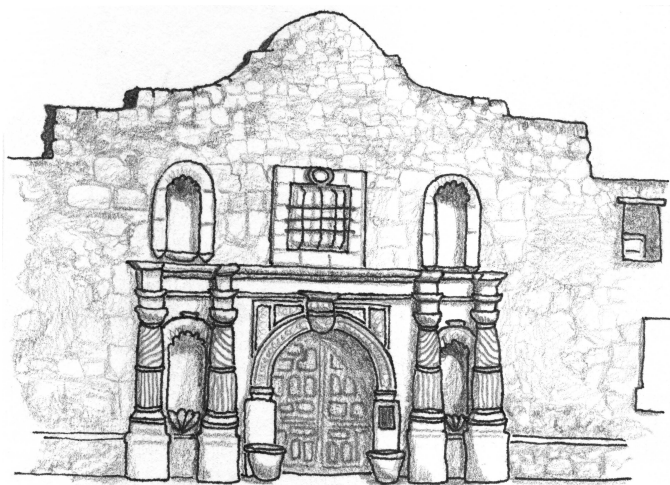
TRD-202400442

Justin Gordon
General Counsel

Office of the Attorney General

Filed: February 6, 2024





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 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 107. REGISTRATION OF VISION SUPPORT ORGANIZATIONS

SUBCHAPTER A. DEFINITIONS

1 TAC §107.1

The Office of the Secretary of State (Office) adopts, on an emergency basis, new Chapter 107, Subchapter A, Definitions, §107.1, concerning registration of vision support organizations (VSOs) with the Office.

The Office is adopting these emergency rules to implement the new VSO registration requirements under the provisions of Senate Bill 820, enacted by the 88th Legislature, Regular Session, codified at Chapter 74 of the Texas Business and Commerce Code (SB 820).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the Office intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

BACKGROUND AND JUSTIFICATION FOR THE EMERGENCY RULEMAKING

The emergency rules implement SB 820 (88th Legislature, Regular Session), which establishes a required occupational registration for VSOs in Chapter 74 of the Texas Business and Commerce Code. The bill took effect on September 1, 2023.

As enacted by SB 820, Texas Business and Commerce Code §74.002 requires a VSO (as defined in Texas Business and Commerce Code §74.001(3)) to register annually with the Office. Texas Business and Commerce Code §74.004(a) identifies the information that must be included in the VSO's registration filed with the Office. Texas Business and Commerce Code §74.004(b) specifies that a registration and each corrected registration must be accompanied by a fee in an amount set by the Office.

Section 2 of SB 820 provides that, notwithstanding Texas Business and Commerce Code §74.002, a VSO is not required to register under §74.002 before February 1, 2024.

The purpose of these emergency rules under Chapter 107 (Registration of Vision Support Organizations) is to provide informa-

tion regarding the procedures for VSO registration with the Office, in accordance with SB 820.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

SECTION-BY-SECTION SUMMARY

Subchapter A contains new §107.1, which defines terms used within Chapter 107.

STATUTORY AUTHORITY

The emergency rules are adopted under Texas Government Code §2001.034, which authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 74 of the Texas Business and Commerce Code, as added by SB 820. No other statute, code, or article is affected by the emergency rules.

§107.1. Definitions.

Words and terms defined in Chapter 74 of the Business and Commerce Code shall have the same meaning in this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Non-optometrist owner--A person, including a corporation, association, general partnership, limited partnership, limited liability company, limited liability partnership, other legal entity, or sole proprietorship, who is not a licensed optometrist but maintains 5% or more ownership in a vision support organization.

(2) Professional entity--A professional corporation, professional limited liability company, professional association, general partnership that provides a professional service, or limited partnership that provides a professional service.

(3) Secretary--The Texas Secretary of State.

(4) Vision support agreement--One or more agreements under which a vision support organization provides two or more business support services to an optometrist.

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 January 31, 2024.

TRD-202400363

◆ ◆ ◆
**SUBCHAPTER B. REGISTRATION
AND RENEWAL OF VISION SUPPORT
ORGANIZATIONS**

1 TAC §107.2, §107.3

The Office of the Secretary of State (Office) adopts, on an emergency basis, new Chapter 107, Subchapter B, Registration and Renewal of Vision Support Organizations, §107.2 and §107.3, concerning registration of vision support organizations (VSOs) with the Office.

The Office is adopting these emergency rules to implement the new VSO registration requirements under the provisions of Senate Bill 820, enacted by the 88th Legislature, Regular Session, codified at Chapter 74 of the Texas Business and Commerce Code (SB 820).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the Office intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

BACKGROUND AND JUSTIFICATION FOR THE EMERGENCY RULEMAKING

The emergency rules implement SB 820 (88th Legislature, Regular Session), which establishes a required occupational registration for VSOs in Chapter 74 of the Texas Business and Commerce Code. The bill took effect on September 1, 2023.

As enacted by SB 820, Texas Business and Commerce Code §74.002 requires a VSO (as defined in Texas Business and Commerce Code §74.001(3)) to register annually with the Office. Texas Business and Commerce Code §74.004(a) identifies the information that must be included in the VSO's registration filed with the Office. Texas Business and Commerce Code §74.004(b) specifies that a registration and each corrected registration must be accompanied by a fee in an amount set by the Office.

Section 2 of SB 820 provides that, notwithstanding Texas Business and Commerce Code §74.002, a VSO is not required to register under §74.002 before February 1, 2024.

The purpose of these emergency rules under Chapter 107 (Registration of Vision Support Organizations) is to provide information regarding the procedures for VSO registration with the Office, in accordance with SB 820.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

SECTION-BY-SECTION SUMMARY

Subchapter B contains general provisions relating to the filing of a VSO initial registration and renewal registration as well as the timing of such registrations. New §107.2 specifies the procedures for a VSO to register with the Office, or to renew an existing registration, as required by Texas Business and Commerce Code §74.004. New §107.3 provides that a registration of a VSO expires on December 31 of each year and must be renewed annually. The section also designates the time period for a registered VSO to submit a renewal registration and a new VSO to register after executing a vision support agreement (as defined in new §107.1).

STATUTORY AUTHORITY

The emergency rules are adopted under Texas Government Code §2001.034, which authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 74 of the Texas Business and Commerce Code, as added by SB 820. No other statute, code, or article is affected by the emergency rules.

§107.2. Registration and Renewal of Vision Support Organizations.

(a) A complete initial registration or renewal registration is comprised of:

(1) A completed registration form that is signed by a person authorized to act by or on behalf of the vision support organization, in the form promulgated by the secretary (See Form 4101); and

(2) Payment of the filing fee stated in §107.5 of this chapter (relating to Filing Fees).

(b) A registration statement or renewal application must comply with Business and Commerce Code §74.004, and also provide:

(1) For the vision support organization:

(A) The legal name;

(B) The business address and mailing address, if different; and

(C) A contact name, email address, and phone number.

(2) For each optometrist and each entity that employs or contracts with an optometrist to provide eye care services in this state with which the vision support organization has entered into an agreement to provide two or more business support services:

(A) The legal name and business address of each optometrist and each such entity, as applicable;

(B) If the optometrist provides eye care services through a professional entity, the legal name of the professional entity; and

(C) A disclosure of all business support services provided to each optometrist or each entity that employs or contracts with an optometrist to provide eye care services.

(3) For each optometrist who owns any portion of the vision support organization and for each non-optometrist owner who owns 5% or more of the vision support organization:

(A) The legal name and business address of the owner; and

(B) Whether the owner is an optometrist or a non-optometrist owner.

§107.3. Timing of Registration.

(a) Registrations will expire annually on December 31 of each year.

(b) A vision support organization seeking to renew an existing registration must file a renewal registration. Renewals may be submitted from ninety (90) days prior to expiration until January 31 of the year for which the next registration will be effective by submitting a completed registration form and paying the filing fee, except as provided in subsection (c) of this section.

(c) In the event a vision support organization is required to register under Chapter 74 of the Business and Commerce Code after January 31, the vision support organization must file an initial registration within ninety (90) days after the date of execution of a vision support agreement.

(d) The initial registration for a vision support organization that has entered into a vision support agreement prior to February 1, 2024, must be filed not later than January 31, 2025.

(e) The initial registration for a vision support organization that first enters into a vision support agreement on or after February 1, 2024, must be filed not later than the ninetieth (90th) day after the date the agreement is executed.

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 January 31, 2024.

TRD-202400365

Adam Bitter

General Counsel

Office of the Secretary of State

Effective date: January 31, 2024

Expiration date: May 29, 2024

For further information, please call: (512) 475-2813



SUBCHAPTER C. STATEMENT OF CORRECTION

1 TAC §107.4

The Office of the Secretary of State (SOS) adopts, on an emergency basis, new Chapter 107, Subchapter C, Statement of Correction, §107.4, concerning registration of vision support organizations (VSOs) with the Office.

The Office is adopting these emergency rules to implement the new VSO registration requirements under the provisions of Senate Bill 820, enacted by the 88th Legislature, Regular Session, codified at Chapter 74 of the Texas Business and Commerce Code (SB 820).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the Office intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

BACKGROUND AND JUSTIFICATION FOR THE EMERGENCY RULEMAKING

The emergency rules implement SB 820 (88th Legislature, Regular Session), which establishes a required occupational registration for VSOs in Chapter 74 of the Texas Business and Commerce Code. The bill took effect on September 1, 2023.

As enacted by SB 820, Texas Business and Commerce Code §74.002 requires a VSO (as defined in Texas Business and Commerce Code §74.001(3)) to register annually with the Office. Texas Business and Commerce Code §74.004(a) identifies the information that must be included in the VSO's registration filed with the Office. Texas Business and Commerce Code §74.004(b) specifies that a registration and each corrected registration must be accompanied by a fee in an amount set by the Office.

Section 2 of SB 820 provides that, notwithstanding Texas Business and Commerce Code §74.002, a VSO is not required to register under §74.002 before February 1, 2024.

The purpose of these emergency rules under Chapter 107 (Registration of Vision Support Organizations) is to provide information regarding the procedures for VSO registration with the Office, in accordance with SB 820.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

SECTION-BY-SECTION SUMMARY

Subchapter C contains new §107.4, which establishes the procedures and time periods for a VSO to submit a corrected registration.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §2001.034, which authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rule is those set forth in Chapter 74 of the Texas Business and Commerce Code, as added by SB 820. No other statute, code, or article is affected by the emergency rule.

§107.4. Corrections.

(a) A vision support organization must submit a statement of correction semiannually if, during that period, any information provided in the initial registration or renewal registration, as applicable, changes.

(b) A statement of correction must include the following information:

(1) The legal name of the vision support organization;

(2) The date of the last filed registration;

(3) The registration number assigned by the secretary to the vision support organization; and

(4) A statement identifying the information that has changed.

(c) A vision support organization that is required to submit a statement of correction in accordance with subsection (a) of this section shall do so according to the following schedule:

(1) First half (January 1 - June 30) - Statement of correction due not later than the forty-fifth (45th) day after June 30.

(2) Second half (July 1 - December 31) - Statement of correction due not later than the forty-fifth (45th) day after December 31.

(d) The statement of correction must be signed by a person authorized to act by or on behalf of the vision support organization.

(e) The statement of correction must be accompanied by the filing fee stated in §107.5 of this chapter (relating to Filing Fees).

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 January 31, 2024.

TRD-202400367

Adam Bitter

General Counsel

Office of the Secretary of State

Effective date: January 31, 2024

Expiration date: May 29, 2024

For further information, please call: (512) 475-2813



SUBCHAPTER D. FILING FEES

1 TAC §107.5

The Office of the Secretary of State (SOS) adopts, on an emergency basis, new Chapter 107, Subchapter D, Filing Fees, §107.5, concerning registration of vision support organizations (VSOs) with the Office.

The Office is adopting these emergency rules to implement the new VSO registration requirements under the provisions of Senate Bill 820, enacted by the 88th Legislature, Regular Session, codified at Chapter 74 of the Texas Business and Commerce Code (SB 820).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the Office intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

BACKGROUND AND JUSTIFICATION FOR THE EMERGENCY RULEMAKING

The emergency rules implement SB 820 (88th Legislature, Regular Session), which establishes a required occupational registration for VSOs in Chapter 74 of the Texas Business and Commerce Code. The bill took effect on September 1, 2023.

As enacted by SB 820, Texas Business and Commerce Code §74.002 requires a VSO (as defined in Texas Business and Commerce Code §74.001(3)) to register annually with the Office. Texas Business and Commerce Code §74.004(a) identifies the information that must be included in the VSO's registration filed with the Office. Texas Business and Commerce Code §74.004(b) specifies that a registration and each corrected registration must be accompanied by a fee in an amount set by the Office.

Section 2 of SB 820 provides that, notwithstanding Texas Business and Commerce Code §74.002, a VSO is not required to register under §74.002 before February 1, 2024.

The purpose of these emergency rules under Chapter 107 (Registration of Vision Support Organizations) is to provide information regarding the procedures for VSO registration with the Office, in accordance with SB 820.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

SECTION-BY-SECTION SUMMARY

Subchapter D contains new §107.5, which sets forth the required fees under Chapter 74 of the Texas Business and Commerce Code.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Business and Commerce Code §74.004(b) and Texas Government Code §2001.034. Texas Business and Commerce Code §74.004(b) directs the Office to set the fee, which must accompany the relevant VSO filings with the Office, in an amount necessary to recover the costs of administering Chapter 74 of the Texas Business and Commerce Code. Texas Government Code §2001.034 authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 74 of the Texas Business and Commerce Code, as added by SB 820. No other statute, code, or article is affected by the emergency rules.

§107.5. Filing Fees.

(a) The filing fee for an initial registration or a renewal registration is \$150.

(b) The filing fee for a statement of correction is \$50.

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 January 31, 2024.

TRD-202400372

Adam Bitter

General Counsel

Office of the Secretary of State

Effective date: January 31, 2024

Expiration date: May 29, 2024

For further information, please call: (512) 475-2813



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S
RULES CONCERNING OPEN-ENROLLMENT
CHARTER SCHOOLS
DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1020

The Texas Education Agency (TEA) adopts on an emergency basis new §100.1020, concerning determination of academic accountability. The new section implements the requirements of Texas Education Code (TEC), §12.1141, Renewal of Charter; Denial of Renewal; Expiration, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; and TEC, §12.114, Revision, which requires the commissioner to provide to the charter holder written notice of approval or disapproval of an expansion amendment not later than the 60th day after the date that a charter holder submits a completed request for approval for an expansion amendment.

The new section is adopted on an emergency basis to take effect immediately. As a result of a court order enjoining the commissioner of education from issuing A-F academic accountability ratings for the 2022-2023 school year, TEA, pursuant to Texas Government Code, §2001.034, is adopting this emergency rule on fewer than 30 days' notice in order to comply with requirements of state law found in TEC, Chapter 12, and its associated rules.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §12.114, which requires the com-

missioner to provide to the charter holder written notice of approval or disapproval of an expansion amendment not later than the 60th day after the date that a charter holder submits a completed request for approval for an expansion amendment; and §12.1141, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §12.114 and 12.1141.

§100.1020. Determination of Academic Accountability.
If academic ratings are not issued for any reason, scaled scores may be used to determine "academically acceptable" and "academically unacceptable" performance.

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 February 5, 2024.

TRD-202400421

Cristina De La Fuente-Valadez

Director, Rulemaking

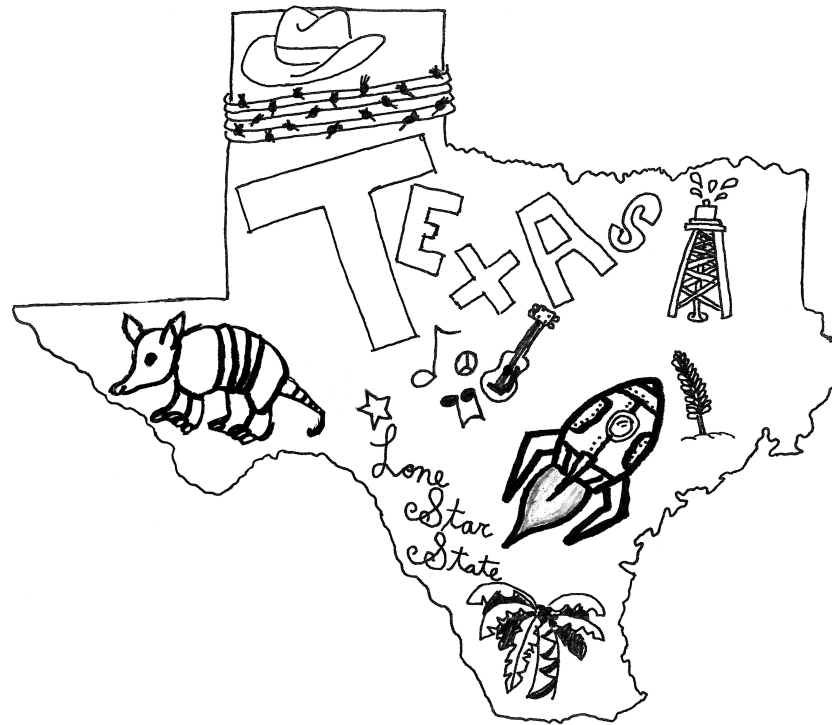
Texas Education Agency

Effective date: February 5, 2024

Expiration date: June 3, 2024

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





PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 65. LANDOWNER COMPENSA- TION PROGRAM

The Office of the Attorney General (OAG) proposes new Chapter 65 in Title 1 of the Texas Administrative Code (TAC), relating to the Landowner Compensation Program. Proposed new Chapter 65 consists of Subchapter A, §§65.1 and §65.2, Scope, Construction, and Definitions; Subchapter B, §§65.200 - 65.203, Program Guidelines; Subchapter C, §§65.300 - 65.307, Application for Compensation; and Subchapter D, §§65.400 - 65.402, Administrative Remedies. Proposed new Chapter 65 is necessary to implement the Landowner Compensation Program in Chapter 56C, Texas Code of Criminal Procedure.

EXPLANATION OF AND JUSTIFICATION RULES

The Legislature, in the 88th Regular Session (2023), added Chapter 56C to the Code of Criminal Procedure (S.B. 1133) which establishes the Landowner Compensation Program (LCP). The purpose of the LCP is to compensate certain landowners who suffer real property damage on agriculture land as a result of certain acts in connection with a border crime.

Senate Bill 1133 provides that the OAG shall establish: Eligibility for compensation, application procedures, criteria for evaluating application and awarding compensation, guidelines for compensation amounts not to exceed \$75,000 per incident, and procedures for monitoring the use of awarded compensation.

Proposed new Chapter 65 is necessary to implement Chapter 56C and Contingency Rider Section 18.03, General Appropriations Act (GAA) for Fiscal Years 2024-2025, which appropriates funds to create and administer the LCP. Chapter 56C, Code of Criminal Procedure, as added by S.B. 1133 will expire on the second anniversary of the date that the money appropriated for the LCP has been expended.

SECTION-BY-SECTION SUMMARY

Proposed new Chapter 65 adds new Subchapter A - Scope, Construction, and Definitions.

Proposed new §65.1, outlines the authority, scope, and construction of the rules and law establishing the LCP.

Proposed new §65.2, defines the following terms: "Agriculture land," "Agriculture use," "Application," "Border crime," "Claimant," "Closed application," "Collateral source," "Incident," "Landowner," "Law enforcement agency," "LCP," "OAG," "Real property," "Report," and "Trespasser."

Proposed new Chapter 65 adds new Subchapter B - Program Guidelines.

Proposed new §65.200 outlines claimant eligibility requirements, the administration of the program, and compensation and award limits. The eligibility requirements are consistent with Chapter 56C and require that a claimant submit an application in accordance with proposed new Chapter 65. Proposed new §65.200 also establishes that real property damage for which an applicant files a claim must have occurred on or after September 1, 2023.

Proposed new §65.201 establishes that the OAG may award compensation to claimants that the OAG determines have met all eligibility requirements outlined in §65.200. Proposed new §65.201 also establishes parameters the OAG may use to determine the amount of compensation that will be awarded to a claimant who the OAG determines is eligible to receive compensation under the LCP.

Proposed new §65.202 establishes the types of real property repairs for which the OAG may award compensation and how the rates will be set, published, and reviewed. New §65.202 also establishes a maximum compensation amount of \$75,000, which is consistent with Chapter 56C, and states that applications for \$15 or less will not be considered.

Proposed new §65.203, establishes procedures that the OAG may use to monitor a landowner's use of compensation awarded under the LCP.

Proposed new Chapter 65 adds new Subchapter C - Application for Compensation.

Proposed new §65.300 establishes the application requirements a claimant must meet to be eligible for compensation under the LCP.

Proposed new §65.301 states that claimants must submit applications for compensation no later than 95 days after the date the incident occurred. The OAG has the discretion to extend the time frame for filing an application.

Proposed new §65.302, requires the claimant report an incident to the appropriate state or local law enforcement agency within a reasonable time period as determined by the OAG.

Proposed new §65.303 outlines when an application may be denied or closed. The OAG may reconsider an application that has been closed. The OAG will not reconsider an application that has been denied. However, a claimant may reapply for compensation based on the same incident for which a previous application has been denied if the claimant discovers new relevant information.

Proposed new §65.304 establishes that the OAG is the payer of last resort pursuant to §56C.006 of the Code of Criminal Pro-

cedure. Proposed new §65.304 provides that the OAG will not award compensation where another collateral source is or was available to compensate the landowner for real property damage that otherwise qualified for compensation under the LCP. Proposed new §65.304 also establishes that the OAG may consider the availability of collateral sources to determine, award, deny, or reduce compensation.

Proposed new §65.305 establishes that the OAG may require a refund from a claimant if the claimant applied for compensation on the basis of fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation. The OAG may also pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

Proposed new §65.306 provides that the OAG will not exceed the amount of money appropriated for compensation under the LCP and available funds will be awarded in a priority deemed appropriate by the OAG.

Proposed new §65.307 provides that the OAG has authority to transmit the submission of notices, forms, and other documentation electronically and also may require a claimant to do so.

Proposed new Chapter 65 adds new Subchapter D - Administrative Remedies.

Proposed new §65.400 outlines procedures to request a reconsideration of an application or award under the LCP.

Proposed new §65.401 outlines the prehearing conference requirements.

Proposed new §65.402 outlines the hearing procedures.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Ryan Fisher, Chief of the Crime Victim Services Division, has determined that for each year of the first five years the proposed rules are in effect, there will be an anticipated additional cost to the state General Revenue Funds, estimated at \$18,000,000 for the first fiscal year and \$18,000,000 for the second fiscal year.

The additional cost to the state was considered in the fiscal note for S.B. 1133, which amended the Texas Code of Criminal Procedure by adding Chapter 56C. Senate Bill 1133 grants the OAG the ability to adopt rules, establish, and administer the Landowner Compensation Program.

The General Appropriations Act for Fiscal Year 2024-2025 appropriated \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount to implement S.B. 1133. Because the LCP is a new program, an accurate forecast of compensation payouts and operating costs is not possible.

Chapter 56C of the Code of Criminal Procedure, as added by S.B. 1133, will expire on the second anniversary of the date the money appropriated for the Landowner Compensation Program has been expended.

Mr. Fisher has determined that there will be no additional costs to local government, no estimated reductions in costs to state or local government, and no estimated increase in revenue or estimated losses in revenue to state or local government.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Fisher has determined that the proposed rules do not have an impact on local employment or economies because the proposed rules impact landowners. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Fisher has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be to the landowners who have suffered real property damage on agriculture land as a result of certain acts in connection with a border crime. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. The compensation will allow for financial recovery for damage caused by trespassing on agricultural land or related to border crimes if compensation from other collateral sources is not available to the landowner.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Fisher has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Senate Bill 1133 amended the Texas Code of Criminal Procedure adding Chapter 56C, which establishes the Landowner Compensation Program, to assist those affected by border crime on agricultural land to be eligible to receive compensation for real property damage. Those identified as affected by the proposed rules are potential claimants who may be eligible for compensation. Enforcing or administering the proposed rules do not have foreseeable economic costs to those claimants.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. Fisher has determined that for each year of the first five-year period the proposed rules are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules.

Since the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. Proposed new chapter 65 creates a new government program. Senate Bill 1133 creates a government program called Landowner Compensation Program and appropriates General Revenue Funds to the OAG for two years to administer the program.
2. Implementation of proposed new chapter 65 requires the OAG to create 10 new full-time employee positions. The proposed rules are necessary to implement S.B. 1133, which resulted in the creation of a new program for which implementation requires additional staff in the Crime Victims Services Division.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. The proposed rules implement General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program. The appropriated amount for the program is \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount. Chapter 56C, Code of Criminal Procedure, as added by S.B. 1133 will expire on the second anniversary of the date that the money appropriated for the Landowner Compensation Program has been expended. Unless continued by the Texas Legislature and funded through the General Appropriations Act, the proposed rules do not increase or decrease future legislative appropriations.

4. The proposed rules will not require an increase or decrease in fees paid to the agency.

5. The proposed rules will not create a new regulation.

6. The proposed rules will not expand, limit, or repeal an existing regulation.

7. The proposed rules increase the number of individuals subject to the rules' applicability. The proposed rules implement S.B. 1133 which creates a new Landowner Compensation Program and therefore increases the number of individuals that may be eligible to be claimants.

8. The proposed rules positively affect this state's economy. Senate Bill 1133 allows landowners who have suffered real property damage on agriculture land as a result of certain acts in connection with a border crime. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. This will allow for a quicker financial recovery for damage caused by trespassing on agricultural land or related to border crimes.

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Written comments on the proposed rules may be submitted electronically to the Crime Victims Services Division by email at landowner.compensation@oag.texas.gov or by mail to Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Austin, Texas 78711.

The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. SCOPE, CONSTRUCTION, AND DEFINITIONS

1 TAC §65.1, §65.2

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023)

which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.1. Authority, Scope, and Construction of Rules.

This chapter applies to the administration of the Landowner Compensation for Property Damage caused by Certain Criminal Activities program pursuant to Texas Code of Criminal Procedure, Chapter 56C. The Office of the Attorney General (OAG) adopts this chapter under the authority of the Texas Code of Criminal Procedure, Chapter 56C and Texas Government Code, Chapter 402.

§65.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings:

(1) "Agricultural land" means any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter 23, Texas Tax Code.

(2) "Agriculture use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, defined by the Texas Tax Code §23.51(2).

(3) "Application" means a written request for compensation under the Landowner Compensation for Property Damage caused by Certain Criminal Activities program and includes all supporting documentation that is provided for claim determination as prescribed by the OAG.

(4) "Border crime" means conduct:

(A) constituting an offense under:

(i) Subchapter D, Chapter 481 (Texas Controlled Substances Act), Health and Safety Code;

(ii) Section 20.05 (Smuggling of Persons) or 38.04 (Evading Arrest or Detention), Penal Code; or

(iii) Chapter 20A (Trafficking of Persons), Penal Code; and

(B) involving transnational criminal activity.

(5) "Claimant" means any landowner applying for any benefit under this chapter.

(6) "Closed application" means an application which has been administratively closed under this chapter.

(7) "Collateral source" means financial compensation for real property damage under a state, local, or federal funding program, or an insurance contract and may include property insurance; state funding; local funding; federal funding; or foreign consulate payments.

(8) "Incident" means an occurrence of real property damage on agricultural land caused by a trespasser as a result of an offense under Chapter 28, Penal Code, in the course or furtherance of a border crime or engaged in a border crime that has been reported to law enforcement.

(9) "Landowner" means an individual or business that owns land in the State of Texas.

(10) "Law enforcement agency" means a governmental organization that employs commissioned peace officers as defined by Texas Code of Criminal Procedure Article 2.12.

(11) "LCP" means Landowner Compensation Program.

(12) "OAG" means Office of the Attorney General.

(13) "Real Property" means agricultural land that has the meanings assigned by Texas Tax Code, §1.04(2). The term does not include crops, farm equipment, or livestock.

(14) "Report" means written documentation created or provided by a law enforcement agency in connection with an incident.

(15) "Trespasser" has the meaning assigned by Texas Civil Practice and Remedies Code §75.007.

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 February 5, 2024.

TRD-202400427

Justin Gordon

General Counsel

Office of the Attorney General

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 565-8064



SUBCHAPTER B. PROGRAM GUIDELINES

1 TAC §§65.200 - 65.203

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.200. Eligibility and Administration.

(a) The OAG shall determine the eligibility, standards, and reasonable limits on compensation for applications and payments in a manner consistent with the law and this chapter. Use of payments made under the LCP are subject to ongoing review by the OAG to ensure compliance with conditions of the awards.

(b) The following requirements must be met in order for a claimant to be eligible for compensation under the LCP:

(1) the claimant must be a landowner;

(2) the land for which the claimant submits an application for compensation under the LCP must be agricultural land;

(3) the damage for which the claimant submits an application must be real property damage caused by a trespasser as a result of an offense under Chapter 28, Texas Penal Code, that was committed in the course of or in furtherance of a border crime or a law enforcement response to a trespasser who was engaged in a border crime;

(4) the claimant must submit a written report created by a law enforcement agency stating real property damage occurred in connection with a border crime; and

(5) the landowner sought and was not eligible to receive compensation from all available collateral sources.

(c) The real property damage for which a claimant files a claim must have occurred on or after September 1, 2023.

(d) A claimant may not be eligible for compensation under the LCP if the claimant does not submit an application in accordance with this chapter.

§65.201. Program Compensation.

(a) The OAG may award compensation to claimants determined by the OAG to have met all eligibility requirements in §65.200 of this chapter.

(b) Compensation will be reduced for any portion of the otherwise eligible real property damage for which the claimant received compensation from a collateral source.

(c) Awarded compensation will be an amount the OAG determines is reasonable to restore the real property to equal value of the real property before the damage.

(d) The OAG may determine the fair market price of a cost to determine a reimbursable amount of compensation if a claimant does not, for a reasonable reason, submit proof of the actual cost for repair. The OAG has the discretion to determine whether the reason a claimant is not able to provide proof of actual cost for repair is reasonable.

§65.202. Compensation Amount Guidelines.

(a) Real property repairs are limited to the following categories:

(1) labor cost for repairs made;

(2) cost for fence repair, including materials;

(3) cost for structure repair, including materials;

(4) disposal and removal of damaged property; or

(5) any other costs the OAG determines is reasonable to restore fair market value.

(b) The OAG will set the compensation rates for costs enumerated in subsection (a) of this section in accordance with fair market value guidelines and publish the rates on the OAG's website. The OAG may periodically review and adjust the compensation rates at its discretion to ensure fair market value.

(c) The maximum amount awarded per incident will not exceed \$75,000.

(d) Applications submitted by a claimant for \$15 or less will not be considered.

§65.203. Monitoring Use of Compensation.

(a) The OAG may verify and investigate the use of compensation awarded under the LCP. Verification and investigation includes but is not limited to:

(1) verification of any documentation submitted to the OAG;

(2) review of records submitted by a claimant; or

(3) a post-award audit to verify actual charges, bills, payments, and the delivery of goods or services.

(b) The OAG may require additional supporting documentation from a claimant. The claimant must respond to the OAG's request within 10 days, unless good cause is shown.

(c) If the claimant fails to provide additional supporting documentation or the OAG determines the claimant improperly used awarded compensation, then the OAG may require a claimant to refund the awarded funds in accordance with this chapter.

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 February 5, 2024.

TRD-202400486

Justin Gordon

General Counsel

Office of the Attorney General

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 565-8064



SUBCHAPTER C. APPLICATION FOR COMPENSATION

1 TAC §§65.300 - 65.307

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.300. Application for Compensation.

(a) All communications and applications for compensation shall be submitted to the LCP in a manner and form prescribed by the OAG.

(b) An application for compensation is complete when the application:

(1) is filled out in its entirety as prescribed by the OAG;

(2) signed by the claimant;

(3) contains all relevant required documentation; and

(4) contains any other information requested by the OAG to determine eligibility.

(c) The OAG will not consider an application until the application is complete as prescribed in §65.300(b).

(d) An application must include:

(1) a written report, including an incident or claim number, by a law enforcement agency that documents the real property damage occurred in connection with a border crime;

(2) photographic evidence of the real property damage;

(3) a detailed description of the real property damage;

(4) the Texas Comptrollers of Public Accounts - Ag/Timber Registration Number; and

(5) insurance declarations or denial of coverage.

(e) The OAG may require the claimant to provide:

(1) Federal Tax Identification Number (EIN);

(2) entity formation information;

(3) the claimant's social security number;

(4) the claimant's Individual Taxpayer Number (ITIN);

(5) itemized receipts or invoices of cost for repair(s); or

(6) itemized receipts or invoices of cost for labor.

(f) If the claimant submits an application that is not complete, the OAG will notify the claimant in writing, that the application is incomplete and request additional information be provided.

(g) If the claimant does not return the completed application to the OAG within 30 days from the date generated on the OAG's request for additional information, the application may be closed in accordance with §65.303 of this chapter.

§65.301. Timely Filing an Application.

(a) An application must be submitted with the OAG no later than 90 days from the date of an incident.

(b) The OAG may extend the time for filing an application upon good cause shown by the claimant. Good cause, as determined by the OAG, may include the following circumstances:

(1) The claimant was not reasonably aware of the LCP;

(2) Extenuating circumstances prevented the claimant from filing in a timely manner; or

(3) Any other circumstance that the OAG considers significant.

§65.302. Law Enforcement Report.

(a) A claimant must report an incident to the appropriate law enforcement agency within a reasonable period as determined by the OAG in order to be eligible for compensation under the LCP.

(b) The OAG may extend the time for reporting an incident to law enforcement if the OAG determines that the extension is justified by extraordinary circumstances.

(c) The report must include the location of the incident.

§65.303. Denial or Closure of an Application.

(a) The OAG will deny compensation under this article if:

(1) real property damage was not caused by a trespasser committing a border crime on agricultural land;

(2) the claimant was eligible for reimbursement from another collateral source and failed to seek reimbursement from the collateral source prior to submitting an application;

(3) the claimant did not meet the requirements for eligibility under this chapter; or

(4) the claimant knowingly or intentionally provided false or fraudulent information or supporting documentation to the OAG.

(b) An application for compensation may be closed at the discretion of the OAG if any of the following conditions occurs:

(1) No written report by a law enforcement agency was obtained;

(2) The claimant fails to respond within a 30-day period to a request made by the OAG for additional information as required by §65.300;

(3) The OAG is unable, within 30 days of receiving an application, to obtain information substantiating the incident;

(4) The claimant fails to report that the claimant received or was eligible to receive compensation through a collateral source;

(5) The 30-day time period for appealing the decision of the OAG to award or deny an application has passed without a request from the claimant for reconsideration;

(6) The 30-day time period for appealing the reconsideration has passed without a request from the claimant for a hearing;

(7) The 40-day period has passed for filing a written notice of dissatisfaction with the OAG's final decision; or

(8) The 40-day period has passed to bring suit in district court after filing a written notice of dissatisfaction with the OAG's final decision.

(c) The OAG may reopen an application that has been closed at its discretion upon written request from a claimant that establishes good cause.

(d) The OAG will not reopen an application that has been denied. A claimant may not reapply for compensation for an incident.

§65.304. Collateral Sources.

(a) The LCP is the payer of last resort, and the OAG will not award compensation to a claimant if the OAG determines the claimant is or was eligible for reimbursement from any available collateral source or failed to seek reimbursement from an available collateral source.

(b) The OAG may deny or reduce the compensation if the OAG notifies the claimant of a possible reimbursement amount from

any available collateral source, and the claimant fails to apply or pursue the compensation within a reasonable time frame as determined by the OAG. The acceptable time frame will be determined by the OAG upon consideration of all relevant facts and circumstances.

(c) A claimant must seek compensation from any available collateral sources prior to submitting a claim to the OAG, when reasonably possible.

(d) Unless good cause is shown, if a claimant receives compensation from a collateral source, the claimant must report the compensation amount and the source to the OAG before the claimant will be eligible to receive compensation. If a claimant is awarded compensation by a collateral source after the OAG awarded compensation under the LCP, the claimant must notify the OAG of the amount and the source of the collateral source within 10 business days of becoming aware of the compensation from a collateral source.

(e) If the claimant fails to utilize any available collateral source for all or a portion for real property damage, the OAG may deny or reduce an award under the LCP.

(f) Gifts, donations, or charitable contributions made directly to a claimant are not a collateral source and may not reduce the determination of the actual real property damage incurred by the claimant.

§65.305. Refunds from Claimants.

(a) The OAG may require a refund from a claimant if any compensation was awarded under the LCP based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

(b) The OAG may require the claimant to refund any overpayment in full or in installments or reduce future or pending payments by the amount of the overpayment.

(c) The OAG may discontinue or suspend all current and future payments to a claimant from whom the OAG has requested a refund.

(d) The OAG may pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

§65.306. Insufficient Funds.

The OAG will not exceed the amount of money appropriated for compensation and available funds will be awarded in a priority deemed appropriate by the OAG.

§65.307. Use of the Electronic Communication.

(a) The OAG may send a claimant any notices, forms, or other documentation and information by electronic means.

(b) The OAG may require a claimant to submit notices, forms, or other documentation and information by electronic means, unless good cause is shown.

(c) In accordance with the Uniform Electronic Transactions Act, Texas Business and Commerce Code, Chapter 322, a notice, form, record, or signature may not be denied legal effect or enforceability solely because it is in electronic form.

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 February 5, 2024.

TRD-202400487
Justin Gordon
General Counsel
Office of the Attorney General
Earliest possible date of adoption: March 17, 2024
For further information, please call: (512) 475-4291



SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §§65.400 - 65.402

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.400. Request for Reconsideration of Adverse Action.

(a) A claimant may request a reconsideration of all or any part of the OAG's decision to make or deny an award on an application or on the amount of an award.

(b) Within 30 days from the date that the OAG's office provides the claimant with the award written decision notice, the claimant must submit a signed, written request for reconsideration stating the reasons for the request for reconsideration. If the claimant fails to file a written request for reconsideration to the OAG's adverse action within the 30-day time period, the decision of the OAG becomes binding and the claimant waives the right to further appeal.

(c) The OAG may not grant a reconsideration if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for reconsideration of the OAG's adverse action within the 30-day time period. If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding and the claimant waives the right to further appeal.

(d) The OAG will provide the claimant a written notification of its reconsideration decision. If the claimant is dissatisfied with the reconsideration of the OAG's award decision, the claimant must file a signed, written request for a hearing with the OAG within 30 days of the date of the reconsideration decision. If the claimant fails to file a written request for a hearing within the 30-day time period, the reconsideration decision becomes binding and the claimant waives the right to a hearing.

(e) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

§65.401. Prehearing Conference.

At any time before a hearing is conducted, the hearing officer may request a prehearing conference, either in person or by telephone, with

the claimant or his or her legal representative in order to establish whether a hearing on an application for compensation is necessary.

§65.402. Hearing.

(a) If the claimant is dissatisfied with the reconsideration decision, the claimant may file a signed, written request for a hearing.

(b) The OAG may not grant a request for a hearing if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for a hearing within the 30-day time period.

(c) If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding and the claimant waives the right to further appeal. If the OAG determines that a hearing is necessary, then the claimant will receive notice of the hearing not less than 10 days before the date of the hearing, stating the time, date, and place of the hearing.

(d) The hearing shall be conducted in Texas in a manner consistent with the law and rules adopted under this chapter.

(e) Any costs for the claimant to travel to the hearing are entirely the financial responsibility of the claimant and those costs will not be reimbursed by the OAG.

(f) Failure of the claimant to appear for the hearing may result in the entry of a final decision based upon the available record. A claimant may have the hearing rescheduled by making a request to reschedule at least two OAG business days prior to the hearing. Multiple requests for reschedule may be denied by the OAG. If a claimant fails to make a timely request to reschedule, the OAG may reschedule the hearing upon good cause shown by the claimant.

(g) The OAG will notify the claimant in writing of the final decision, including the reasons for the decision.

(h) A claimant may seek judicial review of all or any part of the final decision.

(i) In any proceeding under this subchapter, the burden of proof is upon the claimant to prove by a preponderance of the evidence that grounds for compensation exist.

(j) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

(k) A final decision from the OAG may only be rendered by the OAG hearing officer after a prehearing conference, a final ruling hearing, or based on the available record.

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 February 5, 2024.

TRD-202400488
Justin Gordon
General Counsel
Office of the Attorney General
Earliest possible date of adoption: March 17, 2024
For further information, please call: (512) 475-4291



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID AND OTHER
HEALTH AND HUMAN SERVICES FRAUD
AND ABUSE PROGRAM INTEGRITY
SUBCHAPTER G. ADMINISTRATIVE
ACTIONS AND SANCTIONS
DIVISION 3. ADMINISTRATIVE ACTIONS
AND SANCTIONS

1 TAC §371.1723

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Office of Inspector General (OIG), proposes in the Texas Administrative Code, Title 1, Part 15, Chapter 371, Subchapter G, Division 3, new §371.1723, concerning Recoupment of Overpayments Identified by Retrospective Payment Review.

BACKGROUND AND PURPOSE

The purpose of the proposal is to describe OIG's retrospective payment review procedures related to records requests, review processes, notices, and due process.

Texas Government Code §531.102 authorizes OIG to conduct reviews related to the provision and delivery of all health and human services in Texas to identify fraud, waste, or abuse.

SECTION-BY-SECTION SUMMARY

The proposed new §371.1723(a) identifies the types of retrospective payment reviews - data reviews and record reviews - performed by OIG and states that OIG may recoup an overpayment identified in a retrospective payment review.

The proposed new §371.1723(b) describes the procedures related to a retrospective payment review records request, including the time deadline required to submit records in response to a records request. The proposed new §371.1723(b) also states that failure to timely produce requested records may result in an OIG enforcement action.

The proposed new §371.1723(c) describes the review procedures related to a retrospective payment review, including the dollar limit of overpayment recoveries resulting from retrospective payment reviews and the ability of a person to produce records to address a review finding.

The proposed new §371.1723(d) specifies the notices OIG sends during a retrospective payment review, which includes any finding of an overpayment amount and instructions for filing an appeal.

The proposed new §371.1723(e) outlines the first and second level appeal options available to a person subject to a retrospective payment review.

The proposed new §371.1723(f) specifies the timing and circumstances under which results of a retrospective payment review become final.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rule(s);
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this new rule because it does not impose a cost on regulated persons; is necessary to receive a source of federal funds or comply with federal law; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Frank Bryan, OIG Senior Counsel, has determined that for each year of the first five years the rule is in effect, the public benefit will be the identification and review of fraud, waste, and abuse in the provision and delivery of health and human services in the state of Texas.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the new rule does not require a change to business practices and does not create additional costs to comply with the rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 4601 W. Guadalupe St., Austin, Texas 78751-3146; or by email to IG_Rules_Comments_Inbox@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R032" in the subject line.

STATUTORY AUTHORITY

The proposed new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with OIG to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with OIG to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement §531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

The proposed new section affects Texas Government Code §531.0055 and Texas Human Resources Code Chapter 32.

§371.1723. Recoupment of Overpayments Identified by Retrospective Payment Review.

(a) Introduction. The OIG conducts retrospective payment (RP) reviews related to the provision and delivery of all health and human services in the state. RP reviews include data reviews and record reviews. The OIG may recoup an overpayment identified in a RP review.

(b) Records.

(1) A person who receives a request for records and documentation for an OIG RP review must provide the requested records and documentation to the OIG within the time period requested by the OIG or 10 calendar days from the date of receipt of the request, whichever is later.

(2) When requested, a person must submit a signed and notarized OIG-approved records affidavit that properly authenticates the records and documentation provided to the OIG as business records pursuant to Texas Rules of Evidence Rule §803(6) and Rule §902(10).

(3) Failure to timely produce requested records and affidavits may result in an OIG enforcement action under this chapter.

(c) Review procedures.

(1) A RP review conducted by the OIG:

(A) limits the period covered by a RP review to five years;

(B) includes any finding of an overpayment amount;

(C) is limited to recovery of overpayments less than or equal to \$100,000 per case, except recovery of overpayments is limited to less than or equal to \$300,000 when the overpayment amount is based on a single Medicaid recipient's treatment; and

(D) permits a person subject to a review to produce records and documentation to address any finding found during a RP review by the date specified by the OIG.

(2) Overpayments identified in a RP review may be referred to other areas within the OIG or other entities outside of the OIG.

(3) For purposes of this section, a case means the application of the selected criteria to a particular set of data or records for a person subject to a review.

(d) Notice.

(1) The OIG provides written notice of review results, first level appeal results, if any, and second level appeal results, if any.

(2) A notice of RP review results includes any finding of an overpayment amount, instructions for filing a first level appeal, and a date by which the first level appeal request must be received.

(3) If applicable, a notice of first level appeal results includes any finding of an overpayment amount, instructions for filing a second level appeal, and a date by which the second level appeal request must be received.

(4) If applicable, a notice of second level appeal results includes any finding of an overpayment amount and instructions related to payment of any overpayment amount.

(5) OIG notices may be sent by electronic mail.

(e) Due process.

(1) A RP review provides an option for a first level appeal and, if necessary, a second level appeal.

(2) A first level appeal is a review conducted by a reviewer who was not associated with the initial review.

(3) A second level appeal, if necessary, is conducted by HHSC, or its contractor.

(4) A request for a first or second level appeal must be timely and complete as specified in the notice of review results or first level appeal results.

(f) Scope and effect.

(1) A notice of RP review results becomes final and unappealable 30 calendar days after the person's receipt of the RP review results notice, unless the OIG, or its contractor, has received a timely and complete request for a first level appeal.

(2) A notice of first level appeal results becomes final and unappealable 30 calendar days after the person's receipt of the first level appeal results notice, unless the OIG, or its contractor, has received a timely and complete request for a second level appeal.

(3) A notice of second level appeal results becomes final and unappealable 30 calendar days after the person's receipt of the second level appeal results notice.

(4) The effect of a final notice as specified in this subsection is to create a final debt in favor of the State of Texas.

(5) A person who receives a final notice as specified in this subsection must, within 60 calendar days after receipt of the final notice:

(A) pay the overpayment; or

(B) submit a request for, and execute, a final payment plan agreement approved by the OIG.

(6) Failure to pay a delinquent debt may result in OIG collection efforts or enforcement action under this chapter.

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 January 31, 2024.

TRD-202400342

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 221-7320



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §§4.22, 4.23, 4.27, 4.29, 4.32, 4.34, 4.39

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter B, §§4.22, 4.23, 4.27, 4.29, 4.32, 4.34, and 4.39 concerning transfer of credit, core curriculum, and field of study curricula. Specifically, this amendment will encourage transferability of lower division course credit among institutions of higher education and implement the requirements of Senate Bill 1887 (88R).

This amendment will encourage the transferability of lower division course credit among institutions of higher education, and especially provide for the smooth transfer of lower division

credit through core curricula, field of study curricula, and a procedure for the resolution of transfer disputes. The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of core curricula, field of study curricula, and a transfer dispute resolution process under Texas Education Code, §§61.059, 61.0512, 61.0593, 61.821 - 61.828, and 61.834.

Rule 4.22, Authority, lists the sections of Texas Education Code that grant the Board authority over transfer of credit, core curriculum, and field of study curricula, and updates statutory references as appropriate.

Rule 4.23, Definitions, lists definitions broadly applicable to chapter 4. This rule provides the addition of definitions for Academic Associate Degrees and Applied Associate Degrees. This rule uses Texas Education Code, §61.003, to define categories of institutions.

Rule 4.27, Resolution of Transfer Disputes for Lower-Division Courses, details the procedures in the resolution of credit transfer disputes involving lower-division courses. This rule revision includes the Commissioner's role in the process placing emphasis on the fact the Commissioner or his designee's decision is final and there is no process for appeal. This revision also removes problematic language no longer supported by statutory authority.

Rule 4.29, Core Curricula Larger than 42 Semester Credit Hours, revision allows for an institution, contingent upon Board approval, to have a core curriculum of fewer than 42 semester credit hours for an associate degree program if it would facilitate the award of a degree or transfer of credit.

Rule 4.32, Field of Study Curriculum, revised to correct an error in the timeline of the process.

Rule 4.34, Revision of Approved Field of Study Curricula, revises the language of subsection (c) for clarity.

Rule 4.39, Texas Direct Associate Degree, an addition to subchapter B for the purpose of awarding a Texas Direct Associate Degree. The rule allows for the award of a "Texas Direct" associate degree with the directive to include a notation on the student's transcript who completes a field of study curriculum, the college's core curriculum; or an abbreviated core curriculum related to a specific approved field of study curriculum transferable to one or more general academic institutions.

Elizabeth Mayer, Assistant Commissioner, Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improvement of transferability of lower division course credit among institutions of higher education. There are no anticipated economic

costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner, Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Elizabeth.Mayer@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Sections §§61.059, 61.0512, 61.0593, 61.821 - 61.828, and 61.834., which provides the Coordinating Board with the authority to develop and implement policies affecting the transfer of lower division course credit among institutions of higher education.

The proposed amendments affect transfer of credit, core curriculum, and fields of study.

§4.22. Authority.

The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of Core Curricula, Field of Study Curricula, and a transfer dispute resolution process under Texas Education Code, §§61.059, 61.0512, 61.0593, 61.821 - 61.828, 61.834 [61.059, 61.0593, 61.821, 61.8213-61.828].

§4.23. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic Associate Degree--A type of degree program generally intended to transfer to an upper-level baccalaureate program that will satisfy the lower-division requirements for a baccalaureate degree in a specific discipline. The Academic Associate Degree includes, but is not limited to, the Associate of Arts (A.A.), Associate of Science (A.S.), or Associate of Arts in Teaching (A.A.T.) degrees.

(2) Applied Associate Degree--A type of degree program designed to lead the individual directly to employment in a specific career. The Applied Associate Degree Program includes, but is not limited to, the Associate of Applied Arts (A.A.A.) or Associate of Applied Science (A.A.S.).

(3) [(4)] Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(4) [(2)] Commissioner--The Commissioner of Higher Education.

(5) [(3)] Core Curriculum or Texas Core Curriculum--The [the] curriculum in the liberal arts, humanities, sciences, and political, social, and cultural history that all undergraduates of an institution of higher education are required to complete before receiving an academic undergraduate degree. Core curriculum provisions apply to all institutions of higher education that offer academic undergraduate degree programs.

(6) [(4)] Directed Electives--A [a] set of courses within a major course of study, consisting of at least six semester credit hours, specific to each general academic teaching institution and prescribed by the faculty of each general academic teaching institution. Directed Electives form part of the Field of Study Curriculum.

(7) [(5)] Discipline Foundation Courses (DFC)--A [a] set of courses within a major course of study, consisting of up to twelve (12) semester credit hours. The Discipline Foundation Courses form part of the Field of Study Curriculum.

(8) [(6)] Discipline-Specific Subcommittee--A [a] subcommittee established under Title 19, Chapter 1, Subchapter V, §1.242 and §1.243. Each subcommittee is comprised of faculty from general academic teaching institutions and public junior colleges in a single discipline.

(9) Faculty Member--A person employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration. However, the term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate of assistant provost, or dean.

(10) [(7)] Field of Study Curriculum--A [a] set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives.

(11) [(8)] General Academic Teaching Institution [academic teaching institution]--An [an] institution of higher education defined in Texas Education Code, §61.003(3).

(12) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, other agency of higher education as defined in Texas Education Code, §61.003(8).

(13) Lower-Division Academic Course Guide Manual (ACGM)--A Board-approved publication listing academic courses that public two-year colleges may teach and report for contact hour reimbursement from state appropriations without special approval from the Board. Courses (except for developmental courses) listed in the ACGM are freely transferable among all public institutions of higher education in Texas in accordance with the Texas Education Code, §61.822.

(14) [(9)] Public Junior College [junior college]--An [an] institution of higher education defined in Texas Education Code, §61.003(2).

(15) [(10)] Texas Common Course Numbering System (TCCNS)--A [a] Board-approved course numbering system for lower-division academic courses that assigns common course numbers in order to facilitate the transfer of lower-division academic courses among institutions of higher education by promoting consistency in course designation and identification.

~~(16) [(14)] Texas Transfer Advisory Committee--The [the] advisory committee established under Title 19, Chapter 1, Subchapter V. The Texas Transfer Advisory Committee has responsibility for advising the Commissioner and Board on Field of Study Curricula, including their establishment and revision. The Texas Transfer Advisory Committee may request to form a Discipline-Specific Committee to assist in the development of a Field of Study Curriculum.~~

~~[(12) Institution of Higher Education or Institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, other agency of higher education as defined in Texas Education Code, §61.003(8).]~~

~~[(13) Lower-Division Academic Course Guide Manual (ACGM)--a Board-approved publication listing academic courses that public two-year colleges may teach and report for contact hour reimbursement from state appropriations without special approval from the Board. Courses (except for developmental courses) listed in the ACGM are freely transferable among all public institutions of higher education in Texas in accordance with the Texas Education Code, §61.822.]~~

~~[(14) Faculty Member--a person employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration. However, the term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate of assistant provost, or dean.]~~

§4.27. Resolution of Transfer Disputes for Lower-Division Courses.

(a) Each institution [Institutions] of higher education shall apply the following procedures in the resolution of credit transfer disputes involving lower-division courses:

(1) If an institution of higher education does not accept [course credit] a course included in the field of study curriculum for the program in which a student is enrolled or a course in the core curriculum earned by a student at another institution of higher education, the receiving institution shall give written notice to the student and to the sending institution that it intends to deny the transfer of the course credit and shall include in that notice the reasons for the proposed denial. The receiving institution must attach the procedures for resolution of transfer disputes [for lower-division courses] as outlined in this section to the notice. The notice and procedure must include:

(A) clear instructions for appealing the decision to the Commissioner; and

(B) the name and contact information for the designated official at the receiving institution who is authorized to resolve the credit transfer dispute.

(2) A student who receives notice as specified in paragraph (1) of this subsection may dispute the denial of credit by contacting a designated official at either the sending or the receiving institution.

(3) The two institutions and the student shall attempt to resolve the transfer of the course credit in accordance with this section. An institution that proposes to deny the credit shall resolve the dispute not later than the 45th day after the date that the student enrolls at the institution.

(4) If the student or the sending institution is not satisfied with the resolution of the credit transfer dispute, the student or the sending institution may notify the Commissioner in writing of the denial of the course credit and the reasons for denial. [request for transfer dispute resolution. A receiving institution that denies course credit for transfer

shall notify the Commissioner in writing of its denial and the reasons for the denial not later than the 45th day after the date the receiving institution provided the required notice of the transfer credit denial under subsection (a)(1) of this section.]

(b) Not later than the 20th business day after the date that the Commissioner receives the notice of dispute concerning the application of credit for the core curriculum or field of study curriculum, the Commissioner or the Commissioner's designee shall make the final determination about a credit transfer dispute and give written notice of the determination to the student and each institution. [The Commissioner or the Commissioner's designee shall make the final determination about a credit transfer dispute and give written notice of the determination to the student and institutions. The decision is not a contested case. The Commissioner's decision is final and may not be appealed.]

(c) If the Commissioner or the Commissioner's designee determines that an institution may not deny the transfer of credit for the core curriculum or the field of study curriculum, the receiving institution shall apply the credit toward the core curriculum or the field of study as determined by the Commissioner or the Commissioner's designee. [Each institution of higher education shall publish in its course catalogs the procedures specified in this section.]

(d) A decision under this section is not a contested case. The Commissioner or the Commissioner's designee's decision is final and may not be appealed. Each transfer credit dispute resolved by the Commissioner shall be posted on the Board website, including the final determination. [The Board shall collect data on the types of transfer disputes that are reported and the disposition of each case that is considered by the Commissioner or the Commissioner's designee.]

(e) Each institution of higher education shall publish in its course catalogs the procedures specified in this section. [If a receiving institution has cause to believe that a course being presented by a student for transfer from another institution is not of an acceptable level of quality, it should first contact the sending institution and attempt to resolve the problem. In the event that the two institutions are unable to come to a satisfactory resolution, the receiving institution may notify the Commissioner who may investigate the course. If its quality is found to be unacceptable, the Board may discontinue funding for the course.]

(f) The Board shall collect data on the types of transfer disputes that are reported and the disposition of each case that is considered by the Commissioner or the Commissioner's designee.

§4.29. Core Curricula Larger than 42 Semester Credit Hours.

(a) No institution may adopt a core curriculum of more than 42 semester credit hours.

(b) An institution may, with Board approval, have a core curriculum of fewer than 42 semester credit hours for an associate degree program if it would facilitate the award of a degree or transfer of credit.

§4.32. Field of Study Curriculum.

(a) In accordance with Texas Education Code, §61.823, the Board is authorized to approve Field of Study Curricula for certain fields of study/academic disciplines. The Board delegates to the Commissioner development of Field of Study Curricula with the assistance of the Texas Transfer Advisory Committee, as defined by Title 19, Subchapter V, Chapter 1. The Texas Transfer Advisory Committee is responsible for convening Discipline-Specific Subcommittees. Discipline-Specific Subcommittees shall provide subject-matter expertise to the Texas Transfer Advisory Committee in developing Field of Study Curricula in specific disciplines.

(b) A complete Field of Study Curriculum will consist of the following components:

(1) Selected Texas Core Curriculum courses.

(A) Selected Texas Core Curriculum courses relevant to the discipline may be included in the Field of Study Curriculum for that discipline.

(B) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses from a list of all Texas Core Curriculum courses provided by the Board that may be used to satisfy core curriculum requirements. Each Discipline-Specific Subcommittee shall recommend identified Texas Core Curriculum courses to the Texas Transfer Advisory Committee.

(C) The Texas Transfer Advisory Committee shall recommend the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum to the Commissioner who may approve or deny the inclusion of the recommended Texas Core Curriculum courses in the Field of Study Curriculum.

(D) Each institution of higher education must publish on its public website in manner easily accessed by students the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number.

(2) Discipline Foundation Courses (DFC).

(A) Discipline Foundation Courses are a set of courses within a major course of study, consisting of up to twelve (12) semester credit hours, selected for inclusion in a Field of Study Curriculum for that discipline. These courses will apply toward undergraduate degrees within the Field of Study Curriculum at all Texas public institutions that offer a corresponding major or track, except for those institutions approved to require alternative Discipline Foundation Courses under Title 19, Chapter 4, Subchapter B, §4.35 (relating to Petition for Alternative Discipline Foundation Courses).

(B) Each receiving institution must apply the semester credit hours a student has completed in a Discipline Foundation Course upon the student's transfer into a corresponding major or track. The sending institution must indicate Discipline Foundation Courses on the transfer student's transcript.

(C) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses for inclusion on the Discipline Foundation Courses list. The Discipline-Specific Subcommittees must select from courses listed in the Lower-Division Academic Course Guide Manual. Each Discipline-Specific Subcommittee shall report this course list to the Texas Transfer Advisory Committee.

(D) The Texas Transfer Advisory Committee shall recommend the Discipline Foundation Courses selected by the Discipline Specific Subcommittees for inclusion in a Field of Study Curriculum to the Commissioner. The Commissioner may approve or deny the Discipline Foundation Courses recommended by the Texas Transfer Advisory Committee for inclusion in a Field of Study Curriculum.

(E) General academic teaching institutions may submit a request for an alternative set of Discipline Foundation Courses for a specific program of study according to the process in Title 19, Chapter 4, Subchapter B, §4.35.

(F) Each institution of higher education must report to the Coordinating Board and publish on its public website in manner easily accessed by students the Discipline Foundation Courses with the cross-listed TCCNS course numbers for each course.

(G) The Commissioner must publish the list of Discipline Foundation Courses for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course number for each course.

(3) Directed Electives.

(A) Directed Electives are a set of courses that apply toward a major course of study within a Field of Study Curriculum at a specific general academic teaching institution.

(B) The Directed Electives for each Field of Study Curriculum must consist of at least six (6) semester credit hours. The Directed Electives and Discipline Foundation Courses components combined may not exceed twenty (20) semester credit hours in total.

(C) Faculty from each general academic teaching institution may select a list of Directed Electives for the major course of study corresponding to each Field of Study curriculum. Faculty must select the Directed Electives only from courses listed in the Lower-Division Academic Course Guide Manual.

(D) The Chief Academic Officer of the institution shall ~~submit~~ submit the list of Directed Electives for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number to the Commissioner not later than 45 days after being sent the request from the Coordinating Board. ~~The Coordinating Board [who]~~ shall publish the list of each institution's Directed Electives for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course numbers for each course.

(E) An institution that does not submit its Directed Electives in accordance with subparagraph (D) shall be required to accept any Directed Elective courses that appear on the Board's list for the Texas Direct Associate Degree for any institution's Field of Study Curriculum. [Each institution of higher education must publish on its public website in manner easily accessed by students Directed Electives with the cross-listed TCCNS course number.]

(F) Each institution of higher education must publish on its public website in a manner easily accessed by students Directed Electives with the cross-listed TCCNS course number.

(c) A receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred.

(d) If a student transfers from one institution of higher education to another without completing the Field of Study Curriculum, the receiving institution must grant academic credit in the Field of Study Curriculum for each of the courses that the student has successfully completed in the Field of Study Curriculum of the sending institution. After granting the student credit for these courses, the institution may require the student to satisfy remaining course requirements in the current Field of Study Curriculum of the receiving general academic teaching institution, or to complete additional requirements in the receiving institution's program, as long as those requirements do not duplicate course content the student previously completed through the Field of Study Curriculum.

(e) Each institution must note the selected Texas Core Curriculum component and Discipline Foundation Courses components of the Field of Study Curriculum courses on student transcripts as recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO).

(f) The Board shall publish on its website the components of each Field of Study Curriculum, including the selected Texas Core Curriculum courses, the Discipline Foundation Courses, and the Directed Electives of each general academic teaching institution.

(g) Effective Dates.

(1) Unless repealed or replaced, Field of Study Curricula in effect as of March 1, 2021 will remain in effect until August 31, 2025, upon which date those Field of Study Curricula expire by operation of law. For Field of Study Curricula that are repealed, replaced, or expire by operation of law, the following transition or "teach out" provisions apply:

(A) A student who has earned credit on or before August 31, 2022, in one or more courses included in a Field of Study Curriculum that exists on March 1, 2021, is entitled to complete that Field of Study Curriculum on or before August 31, 2025.

(B) A student who has not, on or before August 31, 2022, earned any course credit toward a Field of Study Curriculum in effect on March 1, 2021, is not entitled to transfer credit for that Field of Study Curriculum.

(2) After an institution's Spring 2026 enrollment deadline, a receiving institution is not required to transfer a complete Field of Study Curricula that expired prior to that date. A receiving institution may, at its discretion, choose to accept a complete or partial Field of Study Curricula that has expired.

§4.34. Revision of Approved Fields of Study Curricula.

(a) The Commissioner may modify or revise a Field of Study Curriculum when a need for such a revision is identified.

(b) Any Chief Academic Officer of an institution that offers a corresponding major or track may request a modification or revision to an approved Field of Study Curriculum. The Texas Transfer Advisory Committee shall evaluate institutions' proposed modifications or revisions to Field of Study Curricula and may refer the proposed revisions to Discipline-Specific Subcommittees prior to making a final recommendation to the Commissioner.

(c) A student is entitled to apply an institution's previously approved directed electives to the field of study curriculum for not fewer than two academic years after an institution modifies or revises its directed electives.

§4.39. Texas Direct Associate Degree.

A junior college, public state college, or public technical institute shall award a student a "Texas Direct" associate degree and include a notation on the transcript of a student who completes any Board approved field of study curriculum developed by the Board and:

(1) The college's core curriculum; or

(2) An abbreviated core curriculum related to a specific approved field of study curriculum transferable to one or more general academic institutions.

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 February 5, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 427-6182



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER DD. COMMISSIONER'S

RULES CONCERNING SUBSTITUTE

ASSESSMENTS FOR GRADUATION

19 TAC §101.4003

The Texas Education Agency (TEA) proposes an amendment to §101.4003, concerning Texas assessment of knowledge and skills exit-level alternate assessments. The proposed amendment would update the performance standards for former students whose assessment graduation requirement was the Texas Assessment of Knowledge and Skills (TAKS) based on the redesign of the State of Texas Assessment of Academic Readiness (STAAR®).

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.4003 specifies the assessments and corresponding passing scores allowed as alternate assessments for certain former students whose assessment graduation requirement was TAKS. As required in Texas Education Code (TEC), §39.025, some of the alternate assessments former students may use to satisfy graduation assessment requirements in place of TAKS exit-level assessments are the STAAR® end-of-course (EOC) assessments.

In 2023, STAAR® was redesigned as required by House Bill (HB) 3906, 86th Texas Legislature, 2019, and HB 3261, 87th Texas Legislature, Regular Session, 2021. Based on the required redesign, STAAR® performance standards were re-evaluated and updated.

The proposed amendment would update Figure: 19 TAC §101.4003(a) to align the performance standards for former students whose assessment graduation requirements was TAKS with the updated performance standards for the STAAR® EOC assessments. The performance standards in Figure: 19 TAC §101.4003(a) for STAAR® Algebra I, English II, Biology, and U.S. History EOC assessments would be amended to ensure they reflect an equivalent level of rigor as the performance standards that were in place for the TAKS exit-level assessments.

FISCAL IMPACT: Iris Tian, deputy commissioner of analytics, assessment, and reporting, 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 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 expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian 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 to provide school districts, open-enrollment charter schools, and former TAKS examinees with updated performance standards for alternate assessments to meet graduation requirements and earn a high school diploma.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins February 16, 2024, and ends March 18, 2024. 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 February 16, 2024. 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), §28.02541, which requires the commissioner by rule to establish a procedure to determine whether certain former students, who have met curriculum requirements for graduation but have not performed satisfactorily on an assessment instrument, may qualify to graduate and receive a high school diploma; and TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma, establishes alternate assessment options for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year, and requires the commissioner to establish satisfactory performance levels on the alternate assessments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.02541 and §39.025.

§101.4003. *Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments.*

(a) In accordance with the Texas Education Code (TEC), Chapter 39, Subchapter B, the commissioner of education adopts certain assessments as provided in the figure in this subsection as alternate assessments that a person may use in place of corresponding Texas Assessment of Knowledge and Skills (TAKS) exit-level assessments beginning in the fall of 2017.

Figure: 19 TAC §101.4003(a)

[Figure: 19 TAC §101.4003(a)]

(b) An eligible person who has met the passing standard on a state-approved alternate exit-level assessment as set by the commissioner and provided in the figure in subsection (a) of this section in a particular subject area has satisfied the exit-level testing requirement in that subject area.

(c) A person is eligible to substitute an alternate exit-level assessment for a TAKS exit-level assessment for purposes of this subchapter if the person was first enrolled in Grade 9 prior to the 2011-2012 school year or first enrolled in Grade 10 or above in the 2011-2012 school year.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 17, 2024

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

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CHAPTER 104. ACCELERATED INSTRUCTION

19 TAC §104.1001

The Texas Education Agency (TEA) proposes an amendment to §104.1001, concerning the accelerated instruction, modified teacher assignment, and accelerated learning committee. The proposed amendment would implement House Bill (HB) 1416, 88th Texas Legislature, Regular Session, 2023, by providing approval criteria for instruction through automated, computerized, or other augmented method (ACAM); establishing school district or open-enrollment charter school waivers of accelerated instruction requirements; and clarifying supplemental instruction requirements for students repeating an entire course.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 104.1001 establishes the provision of accelerated instruction and related supports for students who have failed to perform satisfactorily on assessments required under Texas Education Code (TEC), §39.023. HB 1416, 88th Texas Legislature, Regular Session, 2023, changed the requirements for accelerated instruction by differentiating the required hours based on student performance, implementing the accelerated education plan, providing performance-based accelerated instruction waivers for qualifying school districts and open enrollment charter schools, and removing the ratio requirement for school districts and open enrollment charter schools using ACAM products for

providing supplemental instruction. The proposed amendment to §104.1001 would implement HB 1416 as follows.

The term "supplemental accelerated instruction" would be changed to "accelerated instruction" throughout the rule.

The requirements for accelerated instruction would be modified in subsection (b)(1).

New subsection (b)(3) would be added to clarify that school districts and open-enrollment charter schools cannot excuse students from receiving the required accelerated instruction because of the provisions of renumbered subsection (b)(2).

Subsection (c) would be amended to modify the provisions related to required transportation for students attending accelerated instruction programs outside school hours.

New subsection (d)(1) and (2) would be added to specify the hours of instruction that must be provided based on a student's performance on an assessment instrument specified under TEC, §28.0211(a-1).

New subsection (e) would be added to outline provisions related to accelerated education plans and notification of the plans to a student's parent or guardian.

Requirements for accelerated learning committees, including specific provisions for admission, review, and dismissal (ARD) committees serving as accelerated learning committees, would be removed.

New subsection (g) would be added to describe new waivers of accelerated instruction requirements.

New subsection (h) would be added to allow for the provision of accelerated instruction by ACAM. The new subsection would define ACAM; describe approval by TEA of ACAM to provide accelerated instruction that is more effective than individual or group instruction and waive the 4:1 student-to-teacher ratio requirement; list school district and charter school responsibilities when implementing the use of ACAM for accelerated instruction; and state that vendors seeking provider approval will follow the process established by TEA.

New subsection (i) would clarify that accelerated instruction waivers focus only on mathematics and reading because those subject areas are tested consecutively. The new subsection would also describe the conditions that will enable schools to qualify for the accelerated instruction waiver and explain how school districts and charter schools will be notified if they are included on the waiver list and how they can apply for a waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).

New subsection (j) would clarify that repeating a high school course in its entirety is the equivalent to grade retention, which would remove accelerated instruction requirements for students repeating an entire course at the high school level.

FISCAL IMPACT: Andrew Hodge, associate commissioner for system innovation, 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 expand an existing regulation by adding information related to instruction conducted by ACAM, introducing waivers of accelerated instruction requirements, and including provisions related to accelerated instruction plans. The proposal would limit an existing regulation by removing information related to ARD committees serving as accelerated learning committees. In addition, the new waiver provisions would decrease the number of individuals subject to the rule for the duration of the waiver, which is one school year.

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 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. Hodge 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 to provide school districts and open-enrollment charter schools that meet the set criteria a one-school-year waiver from accelerated instruction. Additionally, school districts and charter schools using products included on the TEA ACAM list will not have to adhere to the 4:1 student-to-teacher ratio for students who meet the set criteria. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. Regardless, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. School districts meeting the accelerated instruction waiver criteria will have to complete the Accelerated Instruction Waiver through TEAL.

PUBLIC COMMENTS: The public comment period on the proposal begins February 16, 2024, and ends March 18, 2024. 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 calen-

dar days after notice of the proposal has been published in the *Texas Register* on February 16, 2024. 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), §28.0211, as amended by House Bill 1416, 88th Texas Legislature, Regular Session, 2023, which requires that students are provided accelerated instruction each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8 or fails to perform satisfactorily on an end-of-course assessment instrument administered under TEC, §39.023(c).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.0211, as amended by HB 1416, 88th Texas Legislature, Regular Session, 2023.

§104.1001. Accelerated Instruction and[-] Modified Teacher Assignment[-] and Accelerated Learning Committee[-].

(a) Definition of [supplemental] accelerated instruction. For purposes of this chapter, "[supplemental] accelerated instruction" means instruction required under Texas Education Code (TEC), §28.0211(a-1) and, if applicable, (a-4).

(b) Requirements for [supplemental] accelerated instruction.

(1) Each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8, or on an end-of-course assessment instrument administered under TEC, §39.023(c), other than an assessment instrument developed or adopted based on alternative academic achievement standards, the school district or open-enrollment charter school the student attends shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to TEC, §28.0211(a-7) and (a-8), either:

(A) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area; or

~~[(A) provide to the student supplemental accelerated instruction in the applicable subject area during the subsequent summer or school year; or]~~

(B) provide the student supplemental instruction under TEC, §28.0211(a-4).

~~[(B) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area.]~~

~~[(2) Each time a student fails to perform satisfactorily as determined by the commissioner under TEC, §39.0241(a), on an end-of-course assessment instrument, a school district or open-enrollment charter school shall:]~~

~~[(A) provide to the student supplemental accelerated instruction under TEC, §28.0217, in the subject assessed by the assessment instrument; or]~~

~~[(B) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area.]~~

~~[(3) For a student served by special education who does not perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), the student's admission, review, and dismissal (ARD) committee must determine the manner in which the student will engage in supplemental accelerated instruction. ARD committees must consider the individual needs of a student with a disability when determining the manner in which supplemental accelerated instruction is to be provided to the student. If supplemental accelerated instruction is to be provided to the student, the supplemental accelerated instruction must meet the requirements outlined in this subsection unless the ARD committee specifically determines that some or all of the requirements for supplemental accelerated instruction would deny the student access to a free appropriate public education (FAPE).]~~

~~[(4)] The superintendent of each school district and chief administrative officer of each open-enrollment charter school shall establish procedures to ensure that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate [supplemental] accelerated instruction as warranted on an individual student basis.~~

(3) Paragraph (2) of this subsection may not be used to excuse a student from appropriate accelerated instruction required by this subsection.

(c) Participation in [supplemental] accelerated instruction. Accelerated [Supplemental accelerated] instruction may require a student to participate before or after normal school hours and may include participation at times of the year outside normal school operations. Each school district and open-enrollment charter school shall be responsible for providing transportation to students required to attend [supplemental] accelerated instruction programs if the programs occur outside of regular school hours, unless the school district or charter school does not operate, contract, or agree with another entity to operate a transportation system.

(1) In providing [supplemental] accelerated instruction, a school district or an open-enrollment charter school may not remove a student from recess or from the foundation or enrichment curriculum as defined in TEC, §28.002, except under circumstances for which a student enrolled in the same grade level who is not receiving [supplemental] accelerated instruction would be removed. The foundation curriculum includes English language arts, mathematics, science, and social studies. Courses in the enrichment curriculum include languages other than English; health, with emphasis on physical health, proper nutrition, and exercise; mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision making; suicide prevention; physical education; fine arts; career and technical education; technology applications; religious literature; and personal financial literacy.

(2) In the event that a school week is three or less instructional days, the school is exempt from meeting the requirement of meeting once per week for [supplemental] accelerated instruction.

(d) Content and delivery of [supplemental] accelerated instruction. Accelerated [Supplemental accelerated] instruction shall be based on, but not limited to, targeted instruction in the essential knowledge and skills for the applicable grade levels and subject areas and be provided by a person with training in the applicable instructional materials for the [supplemental] accelerated instruction and under the oversight of the school district or open-enrollment charter school. Accelerated [Supplemental accelerated] instruction shall be provided as outlined in TEC, §28.0211(a-4)(1) and (2) [§28.0211(a-4)(2)-(5) and (8)], to a student individually or in a group of no more than four [three] students, unless the parent or guardian of each student

in the group authorizes a larger group. School districts and charter schools shall provide students who fail to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1):

(1) no less than 15 hours of supplemental instruction; or

(2) no less than 30 hours of supplemental instruction for students who scored Low Did Not Meet Grade Level as indicated by state-provided district-level data files or failed to perform satisfactorily on any Grade 3 assessment.

(c) Accelerated education plans. For each student who does not perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), for two or more consecutive school years in the same subject area, the school district or open-enrollment charter school the student attends shall develop an accelerated education plan as described by TEC, §28.0211(f), and provide the student at least 30 hours of supplemental instruction. A school district or charter school shall make a good faith attempt to provide to the parent or guardian of a student to whom TEC, §28.0211(b), applies a parent-teacher conference with the student's primary teacher at the start and end of the subsequent school year. At the conference, the school district or charter school shall provide the student's parent or guardian with:

(1) the notice required under TEC, §28.0211(a-14); and

(2) an explanation of:

(A) the accelerated instruction to which the student is entitled under this section; and

(B) the accelerated education plan that must be developed for the student under TEC, §28.0211(f), and the manner in which the parent or guardian may participate in developing the plan.

~~(e) Accelerated learning committee. A school district or an open-enrollment charter school shall establish an accelerated learning committee described by TEC, §28.0211(e), for each student who does not perform satisfactorily on a mathematics or reading assessment instrument under TEC, §39.023, in Grade 3, 5, or 8.]~~

~~(1) The accelerated learning committee shall be composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. If a student is changing campuses, the committee must include the receiving principal or designee, the sending principal or designee, the receiving content teacher or designee, and the sending content teacher or designee.]~~

~~(2) The school district or open-enrollment charter school shall notify the parent or guardian of the time and place for convening the accelerated learning committee and the purpose of the committee.]~~

~~(3) The accelerated learning committee shall, not later than the start of the subsequent school year, develop an educational plan for the student that provides the necessary supplemental accelerated instruction to enable the student to perform at the appropriate grade level by the conclusion of the school year. The provisions of TEC, §28.0211(f-1)-(f-5), (h), and (j), must be satisfied, where applicable, in connection with the development and implementation of the educational plan.]~~

~~(f) Requirements for an ARD committee serving as an accelerated learning committee.]~~

~~(1) The ARD committee must serve as the accelerated learning committee for a student served by special education who does not perform satisfactorily on an assessment instrument described by subsection (e) of this section.]~~

~~(2) The ARD committee must serve as the accelerated learning committee for students who meet the criteria for participation in alternative assessment instruments under TEC, §39.023(b); who do not perform satisfactorily on a mathematics or reading assessment instrument in Grade 3, 5, or 8. The ARD committee must determine the manner in which the student will participate in supplemental accelerated instruction; however, the requirements for supplemental accelerated instruction described by subsection (b) of this section do not apply.]~~

~~(3) In serving as the accelerated learning committee for a student served by special education, the ARD committee must meet and develop a plan in accordance with TEC, §28.0211(f), to determine the manner in which the student will participate in supplemental accelerated instruction, and this meeting must include the required members of a properly constituted ARD committee as described in §89.1050 of this title (relating to The Admission, Review, and Dismissal Committee.)]~~

~~(4) When the ARD committee for a student served by special education serves as the accelerated learning committee, efforts must be taken to ensure parental participation as specified within the requirements of §89.1050(d) of this title and 34 Code of Federal Regulations §300.322.]~~

~~(5) The ARD committee, serving as the accelerated learning committee, must document decisions regarding supplemental accelerated instruction in writing and a copy must be provided to the student's parent or guardian in accordance with TEC, §28.0211(f-1). This documentation may either be included in ARD deliberations or as a supplemental attachment to the student's individualized education program.]~~

~~(6) A parent or guardian of a student served by special education may use a dispute resolution mechanism specified in §89.1150 of this title (relating to General Provisions) to resolve any dispute between the parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a FAPE to a student with a disability. If a parent or guardian of a student served by special education does not agree with the decision of the ARD committee serving as the accelerated learning committee regarding supplemental accelerated instruction, the parent or guardian may follow the school district grievance policy provided for under TEC, §28.0211(f-3).]~~

~~(f) [(g)] Request for teacher assignment. In accordance with TEC, §28.0211(a-5), the parent or guardian of a student who fails to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), [a mathematics or reading assessment in Grade 3, 5, or 8] may follow established school district or open-enrollment charter school processes to request that the student be assigned to a particular classroom teacher in the applicable subject area for the subsequent school year if more than one classroom teacher is available.~~

~~(g) Waivers of accelerated instruction requirements. The commissioner of education may waive requirements of accelerated instruction for a school district or an open-enrollment charter school in which 60% of the students who received accelerated instruction during the school year immediately preceding the previous school year, including at least 60% of students whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner rule, performed satisfactorily in the previous school year on the assessment instrument in each subject in which the student previously failed to perform satisfactorily. The commissioner shall publish a list of school districts and open-enrollment charter schools that qualify for the waiver not later than the beginning of each school year, starting before the 2024-2025 school year. For purposes of determining~~

whether a school district or charter school qualifies for a waiver under this subsection, the commissioner shall:

(1) if a student received accelerated instruction in more than one subject during the applicable school year, consider the student's performance on the assessment instrument in each subject separately from the student's performance on the assessment instrument for each other subject; and

(2) by rule provide that a school district may not qualify for a waiver if students who are receiving special education services or are educationally disadvantaged are overrepresented among the students in the district who received accelerated instruction during the school year immediately preceding the previous school year and did not perform satisfactorily in the previous school year on the assessment instrument in each applicable subject.

(h) Approval of automated, computerized, or other augmented method (ACAM). The Texas Education Agency (TEA) shall approve one or more products that use an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency. TEA may approve a product under this subsection only if evidence indicates that the product is more effective than the individual or group instruction required under TEC, §28.0211(a-4)(6).

(1) For the purposes of this subsection, ACAM means an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency.

(2) School districts and open-enrollment charter schools may provide accelerated instruction using an ACAM listed on the TEA website with information related to accelerated instruction. The 4:1 student-to-teacher ratio requirement in subsection (d) of this section does not apply to a school district or charter school using a listed ACAM product to provide accelerated instruction to its students.

(3) School districts and open-enrollment charter schools shall:

(A) notify the parent or guardian of the use of ACAM for providing the required accelerated instruction;

(B) ensure that the required hours of supplemental instruction are completed prior to the subsequent State of Texas Assessments of Academic Readiness (STAAR®) administration;

(C) use ACAM remotely, regardless of primary mode of instruction (i.e., in-person, virtual, or hybrid) only if the school district ensures that time spent by the student engaged in ACAM is aligned with approved product usage expectations documented by the school district;

(D) adhere to the ACAM usage fidelity requirements by product as approved by TEA to waive ratio requirements. A school district not fulfilling usage fidelity with an ACAM product will be required to revert to the 4:1 ratio for supplemental instruction as specified in subsection (d) of this section; and

(E) be responsible for contracting and funding the selected vendors included on the TEA list of approved vendors.

(4) Entities seeking ACAM accelerated instruction provider approval shall follow a process required by TEA.

(i) Accelerated instruction waivers.

(1) For the purposes of this subsection:

(A) "significantly below satisfactorily" is defined as achieving a performance level of Low Did Not Meet Grade Level on a STAAR® mathematics or reading administration;

(B) "satisfactorily" is defined as achieving a performance level of Approaches or better on a STAAR® mathematics or reading administration; and

(C) "educationally disadvantaged" is defined as being identified in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) as being eligible to participate in the national free or reduced-price lunch program established under 42 U.S.C. §1751 et seq.

(2) Only those subject areas for which two consecutive years of assessment instrument distribution can be positively identified (i.e., mathematics and reading) for all students based on their grade level shall be considered in the determination of this waiver.

(3) A school district or an open-enrollment charter school shall be eligible for the one-year waiver if it meets all of the following conditions when reviewing the most recent available year of STAAR® data:

(A) 60% of total students eligible to receive accelerated instruction in mathematics and 60% of total students eligible to receive accelerated instruction in reading score satisfactorily on the applicable subject area assessment instrument;

(B) 60% of students eligible to receive accelerated instruction who scored significantly below satisfactorily in the prior year score satisfactorily on the applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students receiving accelerated instruction scored significantly below satisfactorily in the prior year; and

(C) at least 50% of students receiving special education services or qualifying as educationally disadvantaged who received accelerated instruction in mathematics and/or reading score satisfactorily on the subsequent applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students who received accelerated instruction receive special education services or qualified as educationally disadvantaged.

(4) TEA shall generate a yearly report that identifies all school districts and open-enrollment charter schools that meet all applicable conditions and are consequently eligible for the one-year waiver.

(5) Eligible school districts and open-enrollment charter schools shall be notified via TEA communication pathways upon the publication of the annual list.

(6) Upon distribution of the annual notification, eligible school districts and open-enrollment charter schools shall have 45 days to apply for the waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).

(7) The one-year waiver application shall contain the following at minimum:

(A) the school district or open-enrollment charter school's name;

(B) the signature of the school district's superintendent or the chief administrative officer of an open-enrollment charter school;

(C) documentation of the approval of the board of trustees or governing board, as applicable; and

(D) an explanation of how the school district or open-enrollment charter school will evaluate the impact of the waiver on student performance.

(j) Repeating a high school course.

(1) Credit recovery means completing a certain number of seat hours to satisfy the course requirements after failure or excessive absences.

(2) For courses taken for high school credit, a student who is required to repeat any course in which the student was enrolled in during the previous school year and who is eligible for accelerated instruction for the current school year is exempt from accelerated instruction requirements for that specific course if that course is retaken in its entirety (i.e., to earn a full credit). However, a student who is participating in credit recovery is still required to receive accelerated instruction.

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 February 5, 2024.

TRD-202400422

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 17, 2024

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



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS

SUBCHAPTER F. BEHAVIORAL HEALTH PARTNERSHIP PROGRAM

26 TAC §§307.251, 307.253, 307.255, 307.257, 307.259, 307.261, 307.263, 307.265, 307.267

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new Subchapter F, Behavioral Health Partnership Program in Texas Administrative Code, Chapter 307. New Subchapter F comprises §307.251, concerning Purpose; §307.253, concerning Application; §307.255, concerning Definitions; §307.257, concerning Behavioral Health Partnership Program Liaison Qualifications; §307.259, concerning Local Mental Health Authority or Local Behavioral Health Authority Responsibilities; §307.261, concerning Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison; §307.263, concerning Responsibilities of a Behavioral Health Partnership Program Liaison; §307.265, concerning Texas Health and Human Services Commission Waiver Process; §307.267, concerning Texas Health and Human Services Commission Notification.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill 26, 88th Legislature, Regular Session, 2023, which amends Texas Education Code §8.151 and §8.152 to establish a process for local mental health authorities (LMHAs) or local behavioral health authorities (LBHAs) to submit a waiver request to HHSC to hire a licensed master social worker or licensed professional counselor (LPC) associate in lieu of a non-physician mental health professional (NPMHP) if the LMHA is unable to hire a NPMHP in its designated regional education service center (ESC). The proposal establishes the behavioral health partnership program (BHPP) as the program name and "behavioral health partnership program liaison" as the position title that includes an NPMHP or a person hired under the waiver process.

SECTION-BY-SECTION SUMMARY

Proposed new §307.251 describes the purpose of the subchapter, which is to implement the BHPP.

Proposed new §307.253 establishes new Subchapter F's applicability to LMHAs and LBHAs.

Proposed new §307.255 provides definitions for terminology used in the subchapter. Additionally, for purposes of this subchapter, a "non-physician mental health professional" as referenced under Texas Education Code §8.152 is included in the term "behavioral health partnership program liaison."

Proposed new §307.257 describes the BHPP liaison as a person who either meets the qualifications of an NPMHP or for whom the LMHA or LBHA submits a waiver request to HHSC.

Proposed new §307.259 describes LMHA and LBHA responsibilities to enter into a memorandum of understanding with the ESC addressing employment of a BHPP liaison; provide payment for costs for space and administrative costs; provide supervision of the BHPP liaison; provide reports to HHSC; and comply with parameters concerning how long an NPMHP waiver is effective.

Proposed new §307.261 establishes which LMHA or LBHA employs a BHPP liaison based on the LMHA or LBHA serving the majority of counties in which the ESC is located and requires the LMHA or LBHA to consult with the other LMHA or LBHA in the same region before making the final hiring decision.

Proposed new §307.263 establishes responsibilities of a BHPP liaison for carrying out the functions and duties required of an NPMHP in accordance with Texas Education Code §8.155.

Proposed new §307.265 describes the HHSC waiver process for an LMHA or LBHA to employ an LMSW or LPC associate to serve as the BHPP liaison.

Proposed new §307.267 describes HHSC's written notification regarding if an LMHA's or LBHA's waiver request is approved or the opportunity to remedy and resubmit the waiver request if it was denied.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, 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 that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that Section 2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be to clarify provider expectations and broaden eligibility of NPMHPs through a waiver process to address workforce shortages and challenges in fulfilling statutory requirements for the safety and welfare of Texas residents.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there are no new fees or costs imposed on those required to comply. Funds are currently allocated for the relevant LMHAs/LBHAs to hire masters' level professionals as BHPP Liaisons for this program.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R073" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Education Code §8.152 which allows the Executive Commissioner to establish a waiver process for an LMHA to hire a person other than an NPMHP, if certain conditions are met, to provide mental health and substance use resources to school districts.

The new sections affect Texas Government Code §531.0055 and Texas Education Code §8.152.

§307.251. Purpose.

The purpose of this subchapter is to implement the Behavioral Health Partnership Program. This program delivers mental health and substance use resources to school districts served by a regional education service center and in which the local mental health authority (LMHA) or local behavioral health authority (LBHA) also delivers services. The program allows LMHAs and LBHAs to request a waiver to employ a professional who fulfills the duties outlined in Texas Education Code §8.152.

§307.253. Application.

The subchapter applies to local mental health authorities and local behavioral health authorities.

§307.255. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) BHPP liaison--Behavioral Health Partnership Program liaison. For purposes of this subchapter, a "non-physician mental health professional" as referenced under Texas Education Code §8.152 is included in the term "behavioral health partnership program liaison."

(2) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(3) Child--An individual under 18 years of age as defined under Texas Human Resources Code §42.002 and not emancipated as described in Texas Family Code Chapter 31.

(4) ESC--Regional education service center. An entity designated as the educational service center by the Texas Education Agency in accordance with Texas Education Code, Subtitle B, Chapter 8, Subchapter A.

(5) HHSC--Texas Health and Human Services Commission or its designee.

(6) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(7) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(8) LMSW--Licensed master social worker. A person who holds a master social worker license in accordance with Texas Occupations Code Chapter 505.

(9) LPC associate--Licensed professional counselor associate. A person who holds a professional counselor associate license in accordance with 22 TAC §681.2 (relating to Definitions).

(10) NPMHP--Non-Physician Mental Health Professional.

(11) TAC--Texas Administrative Code.

§307.257. Behavioral Health Partnership Program Liaison Qualifications.

A BHPP liaison must meet the qualifications as an NPMHP under Texas Health and Safety Code §571.003 or serve under a waiver approved by HHSC in accordance with §307.267 of this subchapter (relating to Texas Health and Human Services Commission Notification).

§307.259. Local Mental Health Authority or Local Behavioral Health Authority Responsibilities.

(a) The LMHA or LBHA must:

(1) enter into a memorandum of understanding with the ESC to collaborate regarding the administration of this subchapter;

(2) employ a BHPP liaison to serve as a mental health and substance use resource for school districts located in the region served by an ESC and in which the LMHA or LBHA delivers services;

(3) pay the ESC a reasonable and negotiated cost-recovery fee, not to exceed \$15,000 per year unless the LMHA or LBHA and the ESC agree to a higher amount, for providing the space and administrative support necessary for the BHPP liaison to carry out the professional duties outlined in Texas Education Code §8.155;

(4) supervise the BHPP liaison;

(5) consult with any other LMHA or LBHA in the region and the regional ESC for input on supervising the BHPP liaison and coordinating services provided by the BHPP liaison;

(6) submit a written quarterly activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with §307.263 of this subchapter (relating to Responsibilities of a Behavioral Health Partnership Program Liaison);

(7) submit a written annual activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with Texas Education Code §8.153;

(8) submit a written waiver request to the BHPP mailbox and the HHSC contract manager if required under Texas Education Code §8.152(c);

(9) ensure an LMSW or an LPC associate is eligible for an HHSC waiver request as outlined in this subchapter and the LMSW or LPC associate has the ability to fulfill the duties outlined in this subchapter if a waiver is requested;

(10) retain documentation in accordance with the LMHA's and LBHA's policies and procedures on efforts made to hire an NPMHP before submitting a waiver request; and

(11) submit a new waiver request, as needed, if the HHSC BHPP liaison vacates the position.

(b) If a BHPP liaison vacates the position within one year of approval of the waiver under subsection (a)(11) of this section, a new waiver request is not required.

(c) If a BHPP liaison vacates the position more than a year after approval of the waiver under subsection (a)(11) of this section, the LMHA or LBHA must attempt to hire a professional pursuant to Texas Education Code §8.152 before requesting a waiver under subsection (a)(11) of this section.

§307.261. Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison.

If two or more LMHAs or LBHAs deliver services in a region served by a regional ESC, the LMHA or LBHA serving the majority of counties in which the ESC is located is required to hire the BHPP liaison. The LMHA or LBHA must consult with the other LMHA or LBHA in the same region before making the final hiring decision.

§307.263. Responsibilities of a Behavioral Health Partnership Program Liaison.

(a) A BHPP liaison must:

(1) serve as a mental health and substance use resource for school districts located in the region served by a regional ESC in which the LMHA or LBHA provides services; and

(2) operate within the scope of their professional state license.

(b) A BHPP liaison is responsible for carrying out the following functions and duties required of an NPMHP in accordance with Texas Education Code §8.155:

(1) helping school district personnel gain awareness and a better understanding of mental health and co-occurring mental health and substance use disorders;

(2) assisting school district personnel to implement initiatives related to mental health or substance use under state law or agency rules, interagency memorandums of understanding, and related programs; and

(3) ensuring school district personnel are aware of:

(A) the list of recommended best practice-based programs and research-based practices developed under Texas Education Code §38.351;

(B) other public and private mental health and substance use prevention, treatment, and recovery programs available in the school district, including evidence-based programs delivered by an LMHA or LBHA and other public and private mental health resources, such as the Texas School Mental Health Resources database as required by Texas Education Code §38.253; and

(C) other available public and private mental health and substance use prevention, treatment, and recovery program resources administered by the LMHA or LBHA or HHSC to support school districts, students, and families;

(4) on a monthly basis, facilitating mental health first aid training;

(5) on a monthly basis, facilitating training on the effects of grief and trauma and providing support to children with intellectual or developmental disabilities who suffer from grief or trauma; and

(6) on a monthly basis, facilitating training on prevention and intervention programs that have been shown to be effective in helping students cope with pressures to:

(A) use alcohol, cigarettes, or illegal drugs; or

(B) misuse prescription drugs.

(c) A BHPP liaison employed under this subchapter must not treat or provide counseling to a student or provide advice to school district personnel regarding a specific student.

§307.265. Texas Health and Human Services Commission Waiver Process.

(a) If an LMHA or LBHA is unable to employ a person who qualifies as an NPMHP for the BHPP liaison position in its designated ESC, the LMHA or LBHA may request a waiver from the HHSC Executive Commissioner, or designee, to employ an LMSW or LPC associate to serve as the BHPP liaison, pursuant to Texas Education Code §8.152(c).

(b) To apply for a waiver, the LMHA or LBHA must complete and submit the written HHSC Local Mental and Behavioral Health Authority Waiver Request Form to the BHPP mailbox addressing the following information:

- (1) the name of the LMHA or LBHA requesting the waiver;
- (2) the name of LMHA's or LBHA's staff member's name and contact information;
- (3) the LMHA or LBHA's recruitment efforts to hire an NPMHP;
- (4) the duration of time the LMHA or LBHA was unable to hire for this position before requesting a waiver; and
- (5) the LMSW or LPC associate clinical licensure of the BHPP liaison waiver candidate.

§307.267. Texas Health and Human Services Commission Notification.

The HHSC Executive Commissioner or designee will deliver written notification to the LMHA or LBHA within ten business days after receipt of the submission regarding:

- (1) whether the waiver request is approved; or
- (2) the opportunity to remedy and resubmit the waiver request if the waiver request is denied.

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 January 31, 2024.

TRD-202400343

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 243-4241



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES **SUBCHAPTER A. ACCREDITATION**

37 TAC §651.7

The Texas Forensic Science Commission ("Commission") proposes an amendment to rule to 37 Texas Administrative Code §651.7 to exempt from accreditation requirements, any College of American Pathologist (CAP)-accredited testing or Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (SAMHSA/HHS)-certified testing limited to analysis of urine testing for approved classes of drugs on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other government agency. The results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's bail, bond, community supervision, or parole. The Commission amendments are necessary to reflect a rule proposal made by the Commission at its January 26, 2024 quarterly meeting.

Reasoned Justification for Rule Amendments. The current exemption in §651.7(a)(17) does not expressly include bail or bond testing on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other government agency where the results of such testing are subsequently entered into evidence in an action to revise or revoke terms. The current rule only states that the exemption applies to community supervision or parole. The rule changes herein provide that clarity to criminal justice stakeholders which was the original intention of the rulemaking. The current rule does not state that the rule exemption applies to scenarios where such testing is used for pretrial diversion or intervention purposes. The rule changes add this language to provide that clarity to criminal justice stakeholders which was also the original intention of the rulemaking.

One-for-One Rule Requirement for Rules with a Fiscal Impact. Because Ms. Tomlin has determined that the rules do not have a fiscal impact that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services. The amendments do not impose any costs to state or local governments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services.

Public Benefit/Cost Note. Ms. Tomlin has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit includes providing clarity to criminal justice stakeholders that forensic testing for pretrial,

community supervision, and related services are exempt from crime laboratory accreditation requirements.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services.

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services.

Environmental Rule Analysis. Ms. Tomlin has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," as defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b): 1) the proposed amendments do not create or eliminate a government program; 2) implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed amendments do not increase or decrease future legislative appropriations to the agency; 4) the proposed amendments do not require a fee; 5) the proposed amendments do not create a new regulation; 6) the proposed amendments do not increase the number of individual's subject to regulation; and 7) the proposed amendments have a neutral effect on the state's economy. The amendments do not expand any accreditation or licensing requirement under the current programs, but rather clarify that forensic testing for pretrial, community supervision and related services are exempt from crime laboratory accreditation requirements.

Requirement for Rule Increasing Costs to Regulated Persons. Ms. Tomlin has determined that there are no anticipated increased costs to regulated persons as the proposed amendments do not impose any fees or costs.

Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by March 18, 2024, to be considered by the Commission.

Statutory Authority. The amendments are made in accordance with the Commission's accreditation authority under Code of Criminal Procedure, Art. 38.01 § 4-d(2), which establishes that

the Commission may modify or remove crime laboratory accreditation exemptions, and the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Cross reference to statute. The proposal amends rule 37 Texas Administrative Code §651.7.

§651.7. Disciplines Exempt from Commission Accreditation Requirements by Administrative Rule.

(a) The Commission has exempted the following categories of forensic analysis from the accreditation requirement by administrative rule:

- (1) sexual assault examination of a person;
- (2) forensic anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) serial number restoration;
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;
- (8) statement analysis;
- (9) forensic odontology for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries;
- (10) testing and/or screening conducted for sexually transmitted diseases;
- (11) fire scene investigation, including but not limited to cause and origin determinations;
- (12) forensic photography;
- (13) non-criminal paternity testing;
- (14) non-criminal testing of human or nonhuman blood, urine, or tissue, including but not limited to workplace/employment drug testing;
- (15) the location, identification, collection, or preservation of physical evidence at a crime scene;
- (16) crime scene reconstruction;
- (17) confirmatory testing of a human specimen in a laboratory either accredited by the College of American Pathologists (CAP) forensic drug testing program, or certified by the Centers for Medicare and Medicaid Services of the Department of Health and Human Services (HHS/CMS) under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), or the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (SAMHSA/HHS) limited to analysis of urine testing for approved classes of drugs. This is for the purposes of referring, offering, or making available treatment, diversion, intervention, or monitoring[;] conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, [or] the Board of Pardons and Paroles, or another governmental entity. [and the] The results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's bail, bond, community supervision, or parole;
- (18) document examination, including document authentication, physical comparison, and product determination;

(19) other evidence processing or handling that is excluded under §651.2(2) of this title (relating to Definitions); or

(20) determination of National Integrated Ballistic Information Network (NIBIN) suitability limited to triaging or grouping multiple items of evidence for NIBIN entry and assessing a set of test fires for purposes of NIBIN entry[,] as well as corresponding NIBIN entry. The suitability assessment may include test-firing, but only if no physical modification is made to the firearm other than what occurs during the act of test-firing the weapon, and subject to the condition that the test fire is for NIBIN suitability only and will not be used for comparison purposes or for determination of functionality.

(b) A request for exemption for any discipline not listed in this subsection shall be submitted in writing to the Commission.

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

Filed with the Office of the Secretary of State on January 31, 2024.

TRD-202400380

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 936-0661



SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.202, §651.222

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code §651.202, Definitions and §651.222, Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration to change the minimum education requirement for a voluntary license for a document examination analyst from a high school diploma or equivalent degree or higher (*i.e.*, baccalaureate or advanced degree) to a baccalaureate or advanced degree or from an accredited university and to provide a definition of document examination.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

One-for-One Rule Requirement for Rules with a Fiscal Impact. Because Ms. Tomlin has determined that the rule amendments do not have a fiscal impact that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the new rule does not

impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Ms. Tomlin has also determined that for each year of the first five years the rule amendments are in effect, the anticipated public benefit is clarity with regard to the scope of forensic activities covered in the forensic discipline of forensic document examination and better assurance of the quality and educational background of voluntarily licensed forensic document examiners in the State.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or crime laboratory.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed new rules will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; (4) the proposed rule does not require any change in fees; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand, limit, or repeal an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule has no effect on the state's economy.

Probable Economic Costs to Persons Required to Comply with Proposal. Ms. Tomlin has determined for the first five-year period that the rules are in effect, there is no anticipated economic cost to persons who are required to comply with the proposed rules.

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Environmental Rule Analysis. Ms. Tomlin has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," as defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh.tomlin@fsc.texas.gov. Comments must be received by March 18, 2024, to be considered by the Commission.

Statutory Authority. The amendments are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a, its authority to regulate

forensic analysts under Article 38.01 § 4-a, under its authority to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation requirements under Article 38.01 § 4-a(c). The adopted rules have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-a(c).

§651.202. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Forensic analyst - Means a person who on behalf of a crime laboratory accredited under Article 38.01 §4-d, Code of Criminal Procedure, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(2) Forensic analysis - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(3) Forensic pathology - Includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(4) Accredited laboratory - Includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(5) Physical evidence - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(6) Accredited university - A college or university accredited by a national accrediting body recognized by the United States Department of Education, or a foreign university with a degree program(s) recognized as equivalent by the Commission.

(7) Professional Misconduct - Professional misconduct means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

(8) Technician - An individual who performs basic analytical functions under the supervision of a qualified analyst but does not evaluate data, reach conclusions or sign any report for court or investigative purposes shall be considered a technician under the disciplines set forth in this section, with the exception of a Firearms/Toolmarks Technician who may issue a report provided it is limited to a representation that a firearm was test-fired and/or cartridge cases were entered into the National Integrated Ballistics Information Network.

(9) Interpretation for toxicology - Interpretation is the consideration of dose-response relationships between drugs, alcohol or other compounds of interest and the resulting behavioral or physical changes to human performance, including the evaluation of pharmacokinetic and pharmacodynamics parameters. Examples include but are not limited to: calculation of dose or other pharmacokinetic calculations; determination of drug/drug interactions; determination (or reporting) of therapeutic, toxic, or lethal drug ranges; evaluation of drug

absorption, distribution, metabolism, or excretion; and determination of the effects (mental or physical).

(10) Crime scene reconstruction - is the application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements. Crime Scene Reconstruction--as distinguished from crime scene processing or crime scene investigation--includes the application of analytical methods beyond general observations or opinions about the scene to identify and test hypotheses.

(11) Latent print examination - Includes the forensic examination of friction ridge detail from the hands and feet.

(12) Latent print processing - Includes identifying and collecting latent prints from items obtained at a crime scene utilizing appropriate optical, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate.

(13) ~~[(12)]~~ Forensic anthropology - Includes the application of anthropological methods and theory, particularly those relating to the recovery and analysis of human remains.

(14) Document Examination - includes the scientific examinations, analyses, and comparisons of documents in order to determine the origin, authenticity and authorship.

§651.222. *Voluntary Licensure Forensic Analyst and Technician Licensing Requirements, Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration.*

(a) Issuance. The Commission may issue an individual's forensic analyst or technician license for forensic examinations or tests not subject to accreditation under this section.

(b) Voluntary. Licensure under this section is voluntary and is not a prerequisite for practice in any of the forensic disciplines listed in this section.

(c) The following forensic disciplines are eligible for a forensic analyst or forensic technician license under this section:

(1) forensic anthropology;

(2) document examination, including document authentication, physical comparison, qualitative determination, and recovery [product determination];

(3) latent print examination, including the forensic examination of friction ridge detail from the hands and feet;

(4) digital/multimedia evidence (limited to computer, mobile, vehicle, call detail records (*i.e.*, phone carrier record comparisons to mobile device), and location detail records); and

(d) Application. Before being issued a forensic analyst license, an applicant shall complete and submit to the Commission a current forensic analyst license application and provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(e) Minimum Education Requirements.

(1) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a baccalaureate or advanced degree from an accredited university [high school diploma or equivalent degree] or higher [*i.e.*, baccalaureate or advanced degree].

(2) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any minimum education requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(3) Latent Print Analyst. An applicant for a forensic analyst license in latent print examination must have:

(A) A baccalaureate or advanced degree from an accredited university;

(B) 3 years of experience in latent print examination with an Associates of Arts or Associates of Science; or

(C) 4 years of experience in latent print examination and 176 hours of training that includes 16 hours of testimonial training (with only a maximum of 80 conference hours accepted as training hours).

(4) Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have:

(A) a baccalaureate or advanced degree from an accredited university;

(B) a non-law enforcement or non-military background without a baccalaureate degree, demonstrating equivalent digital skill set through Certified Forensic Computer Examiner (CFCE), Global Information Assurance Certified Forensic Examination (GCFE), or Global Information Assurance Certification Certified Forensic Analyst (GCFA) or equivalent non-vendor certification examination(s) with competency test(s); or

(C) law enforcement or military experience equivalent demonstrated through forensic training through one of the following organizations: SysAdmin, Audit, Network, and Security (SANS), International Association for Computer Investigative Specialists (IACIS), National White Collar Crime Center (NW3C), Law Enforcement & Emergency Services Video Association International, Inc. (LEVA), U.S. Military, Computer Analysis Response Team (CART) (FBI Training), Seized Computer Evidence Recovery Specialist (SCERS), or U.S. Secret Service.

(5) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(f) Specific Coursework Requirements and Certification Requirements.

(1) General Requirement for Statistics. With the exception of the categories of licensure specifically exempt in this sub-section, an applicant for any forensic analyst license under this section must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Forensic Discipline-Specific Coursework Requirements.

(A) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a three-semester credit hour (or equivalent) college-level statistics course from

an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(B) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any specific coursework requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(C) Latent Print Analyst.

(i) An applicant for a forensic analyst license in latent print examination who qualifies for a latent print analyst license based on the minimum education requirements forth in subsection (d)(3)(A) or (B) of this section must have a minimum of 24 semester-credit hours or equivalent in science, technology, engineering, or mathematics (STEM) related coursework.

(ii) All applicants for a forensic analyst license in latent print examination must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(iii) IAI Certification Requirement for Unaccredited Laboratory. All licensed latent print examination analysts and applicants who are not employed by a laboratory accredited by the Commission are required to be certified by the International Association for Identification (IAI) under the IAI's Latent Print Certification program and are required to provide proof of certification upon request. Licensees are required to notify the Commission of any change in the status of their IAI certification within ten (10) business days of any changes.

(D) Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(3) Exemptions from Specific Coursework Requirements. Previously Licensed Document Examination Analyst Exemption. An applicant for a voluntary forensic analyst license previously licensed by the Commission when licensure was mandatory for the discipline is exempt from any specific coursework requirements in this subsection.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a forensic analyst license under this section must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of sup-

port from their employing agency's director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(2) Credit for Pilot Exam. If an individual passes a Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a voluntary or mandatory Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this subsection.

(h) Proficiency Monitoring Requirement.

(1) Requirement for Applicants Employed by an Accredited Laboratory. An applicant who is employed by an accredited laboratory must demonstrate the applicant participates in the laboratory's process for intra agency [~~intra-laboratory~~] comparison, interagency [~~interagency-laboratory~~] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(2) Requirement for Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in an Unaccredited Forensic Discipline. An applicant who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must demonstrate the applicant participates in the laboratory or employing entity's process for intraagency comparison, interagency comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(3) A signed certification by the laboratory or entity's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intraagency comparison, interagency comparisons, proficiency testing, or observation-based performance monitoring requirements in paragraph (1) or (2) of this subsection as of the date of the analyst's application must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework.

(4) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation must include written proof of the Forensic Science Commission's approval described in paragraph (5) of this subsection with the Proficiency Monitoring Certification form required in paragraph (3) of this subsection. The applicant must include written documentation of performance in conformance with expected consensus results for the laboratory or employing entity's Commission-approved activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring.

(5) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation seeking approval of proficiency monitoring activities or exercise(s) must seek prior approval of the activities or exercise(s) from the Commission.

(6) Special Proficiency Testing Requirements for Latent Print Analysts.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency comparison or developed internally by the employing laboratory or entity through participation in an interagency comparison or intraagency comparison.

(C) All latent print examiner proficiency tests selected shall be developed and validated in accordance with the requirements set forth in Sections 4.2 and 4.3 of the Organization of Scientific Area Committees for Forensic Science (OSAC) 2022-S-0012 Friction Ridge Subcommittee's Standard for Proficiency Testing in Friction Ridge Examination.

(7) Special Proficiency Testing Requirements for Crime Scene Processing Technicians, Crime Scene Investigation Analysts, and Crime Scene Reconstruction Analysts.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency comparison or developed internally by the employing laboratory or entity through participation in an interagency comparison or intraagency comparison.

(i) Employing Laboratory or Agency Quality Requirement for Forensic Analysts. Applicants for a forensic analyst license under this section must be employed by a laboratory or agency that can demonstrate, regardless of Commission accreditation status, compliance with specific standards as applicable to the applicant's forensic discipline as published on the Commission's website and updated January 15 of each calendar year.

(j) License Term and Fee.

(1) A Forensic Analyst license issued under this section shall expire on the last day of the applicant's birth month that occurs on the second birthdate occurring after the application is granted [~~two years from the date the applicant is granted a license~~].

(2) Application Fee. A Forensic Analyst or Forensic Technician license applicant or current licensee under this section shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Crime Scene Investigation Analysts;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Crime Scene Investigation Analysts;

(C) License Reinstatement fee of \$220; or

(D) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts.

(k) Forensic Analyst License Renewal. Renewal of a Forensic Analyst License. Applicants for renewal of a Forensic Analyst License must comply with §651.208 (Forensic Analyst and Forensic Technician License Renewal) of this subchapter.

(l) Forensic Analyst License Expiration and Reinstatement. Expiration and Reinstatement of a Forensic Analyst License. A Forensic Analyst must comply with §651.209 of this subchapter (Forensic Analyst and Forensic Technician License Expiration and Reinstatement).

(m) Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a forensic analyst license under this section does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

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 February 5, 2024.

TRD-202400426

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 936-0661



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T):

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 813 rule change is to amend rule language to conform with SNAP provisions of the Fiscal Responsibility Act of 2023, revise references to the case management system, and update the allowable activities for able-bodied adults without dependents (ABAWDs).

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 813, Supplemental Nutrition Assistance Program Employment and Training, and any resulting changes are described in Part II of this preamble.

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.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§813.1. Purpose

Section 813.1 updates the SNAP purpose to align with the Fiscal Responsibility Act of 2023.

§813.2. Definitions

Section 813.2 extends the age range of ABAWDs to align with the Fiscal Responsibility Act of 2023.

§813.5. Documentation, Verification, and Supervision of Work Activities

Section 813.5 updates language related to TWC's case management system.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§813.32. SNAP E&T Activities for ABAWDs

Section 813.32 adds work experience as an allowable activity for ABAWDs.

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 US 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. TWC completed a Takings Impact Assessment 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 amend the Chapter 813 SNAP E&T rules to conform with the Fiscal Responsibility Act of 2023, revise references to the case management system, and update the allowable activities for ABAWDs.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US 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 rules will be in effect, they:

--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 TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules 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, Labor Market Information, has determined that there is not a 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 align Chapter 813 legislation with federal legislation.

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

This rulemaking is in direct response to SNAP provisions added by the Fiscal Responsibility Act of 2023. The federal action made it necessary for TWC to amend Chapter 813 to conform with the updated federal rules.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than March 18, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§813.1, 813.2, 813.5

STATUTORY AUTHORITY

The rules are proposed under the authority of 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 implement provisions of the federal Fiscal Responsibility Act of 2023 by making conforming changes to TWC rules regarding Supplemental Nutrition Assistance Program Employment and Training.

§813.1. Purpose.

The purpose of Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities and support services is to assist SNAP recipients who are not receiving Temporary Assistance for Needy Families in entering employment and increasing their earnings through participation in allowable job search, training, education,

or workfare activities that promote self-sufficiency. These rules may be cited as the SNAP E&T rules.

§813.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) ABAWD--a SNAP household member who is determined by the Texas Health and Human Services Commission to be a mandatory work registrant and is:

(A) classified as an able-bodied adult;

(B) within the age range specified in 7 USC §2015(o)(3) [at least 18 but less than 50 years of age];

(C) without dependents; and

(D) subject to a limitation on the receipt of SNAP benefits for three months out of 36 months if the person does not work at least 20 hours per week or participate in employment and training activities as specified in 7 USC [U.S.C.] §2015(o)(2)(A) - (B).

(2) Exempt recipient--an individual who is part of the General Population, is not required to participate in SNAP E&T services, as set forth in 7 USC [U.S.C.] §2015(d)(2), and shall not be sanctioned for failure to cooperate with SNAP E&T requirements as set forth in §813.12 of this chapter.

(3) Full-service counties--counties in which Boards ensure that:

(A) ABAWDs, who are not working at least 20 hours per week, are outreached and receive SNAP E&T services;

(B) the SNAP E&T General Population receives SNAP E&T services based on available funding;

(C) mandatory work registrants shall be sanctioned (that is [i.e.], SNAP benefits are denied) for failure to cooperate with SNAP E&T requirements; and

(D) exempt recipients who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.

(4) General Population--a mandatory or exempt SNAP household member who is:

(A) at least 16 but less than 60 years of age; and

(B) not classified as an ABAWD.

(5) HHSC--the Texas Health and Human Services Commission.

(6) Mandatory work registrant--a SNAP household member who is required to register for SNAP E&T services, and is:

(A) classified as General Population; or

(B) an ABAWD.

(7) Minimum-service counties--counties in which:

(A) SNAP recipients (that is [i.e.], mandatory or exempt) may volunteer to participate in SNAP E&T services;

(B) Boards may provide services to SNAP recipients based on available funds;

(C) outreach is not conducted; and

(D) SNAP recipients (that is [i.e.], mandatory or exempt) who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.

(8) Nonprofit organization--any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations.

(9) SNAP E&T activities--Supplemental Nutrition Assistance Program Employment and Training activities as specified in §813.31 of this chapter.

(10) SNAP E&T support services--Supplemental Nutrition Assistance Program Employment and Training support services as specified in §813.41 of this chapter.

(11) Volunteer--an individual who is not required to participate, but who voluntarily participates, in SNAP E&T services, including:

(A) exempt recipients in full-service counties; and

(B) exempt recipients and mandatory work registrants in minimum-service counties.

(12) Workfare--a work-based activity that consists of placement of an ABAWD with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an ABAWD's monthly household SNAP allotment amount divided by the federal minimum wage.

§813.5. *Documentation, Verification, and Supervision of Work Activities.*

(a) A Board shall ensure that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in this section, is documented in the case management system [~~The Workforce Information System of Texas (TWIST)~~].

(b) A Board shall ensure that all participation in SNAP E&T is verified and documented and that self-attestation is not allowed.

(c) For the activity described in §813.31(5) of this chapter, Boards shall ensure that all participation is verified and documented in the case management system [TWIST] at least monthly.

(d) For the activities described in §813.31(1) and (4) and §813.32(a)(4) of this chapter, Boards shall ensure that all participation is:

(1) supervised daily; and

(2) verified and documented in the case management system [TWIST] at least monthly.

(e) For the activities described in §813.31(2) and (3) of this chapter, Boards shall ensure that:

(1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward participation in SNAP E&T;

(2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;

(3) study or homework time is only counted toward participation in SNAP E&T if:

(A) the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and

(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;

(4) good or satisfactory progress, as determined by the educational institution, is verified and documented in the case management system [TWIST] at least monthly;

(5) all participation in SNAP E&T is supervised daily; and

(6) all participation in SNAP E&T is verified and documented in the case management system [TWIST] at least monthly.

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 January 30, 2024.

TRD-202400334

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 850-8356



SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §813.32

The rules are proposed under the authority of 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 implement provisions of the federal Fiscal Responsibility Act of 2023 by making conforming changes to TWC rules regarding Supplemental Nutrition Assistance Program Employment and Training.

§813.32. *SNAP E&T Activities for ABAWDs.*

(a) Boards shall ensure that SNAP E&T activities for ABAWDs are limited to participating in the following:

(1) Services or activities under the Trade Act of 1974, as amended by the Trade Act of 2002

(2) Activities under Workforce Innovation and Opportunity Act (29 USC §3111 et seq.)

(3) Education and training, which may include:

(A) vocational training as described in §813.31(2) of this subchapter; or

(B) nonvocational education as described in §813.31(3) of this subchapter; and

(4) Workfare activities that shall:

(A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;

(B) be unpaid job assignments based in the public or private nonprofit sectors;

(C) have hourly requirements based on the ABAWD's monthly household SNAP allotment divided by the number of ABAWDs in the SNAP household, as provided by HHSC and then divided by the federal minimum wage; and

(D) include a four-week job search period before placement in a workfare activity.

(5) Work experience as described in §813.31(4) of this subchapter.

(b) Boards shall ensure that ABAWDs who are referred to a Workforce Solutions Office and subsequently become engaged in unsubsidized employment for at least 20 hours per week are not required to continue participation in SNAP E&T services because they have fulfilled their work requirement, as described in 7 USC §2015(o)(2)(A). Additionally, Boards shall ensure that HHSC is notified when ABAWDs obtain employment.

(c) An employment and training program for veterans operated by the US Department of Labor or the US Department of Veterans Affairs, as tracked by HHSC, is an allowable SNAP E&T activity for ABAWDs.

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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Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 850-8356



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 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.202, §651.222

The Texas Forensic Science Commission withdraws proposed amended §651.202 and §651.222 which appeared in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7493).

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400425

Leigh Tomlin

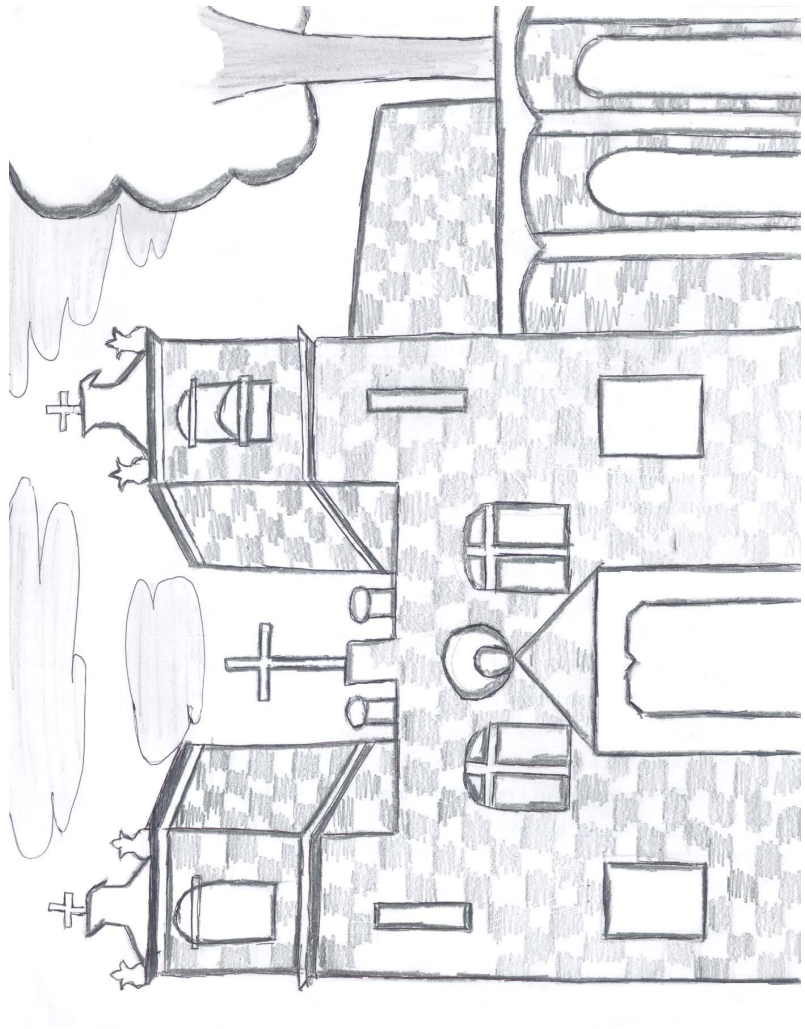
Associate General Counsel

Texas Forensic Science Commission

Effective date: February 5, 2024

For further information, please call: (512) 936-0661





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER J. MEDICAID THIRD PARTY RECOVERY

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments in Texas Administrative Code (TAC), Title 1, Part 15, Chapter 354, Subchapter J, to §354.2301, concerning Basis and Purpose; §354.2302, concerning Definitions; §354.2311, concerning Applicant and Recipient Assignment of Rights; §354.2313, concerning Duty of Applicant or Recipient to Inform and Cooperate; §354.2315, concerning Duty of Attorney or Representative of a Recipient; §354.2321, concerning Provider Billing and Recovery from Third Party Resources; §354.2322, concerning Provider Billing and Recovery from Other Liable Third Parties; §354.2331, concerning Requests for Information; §354.2332, concerning Distribution of Recoveries; §354.2333, concerning Waiver Authority of the Executive Commissioner; §354.2334, concerning Notices and Payments; §354.2341, concerning Third Party Health Insurer Payment and Information Requirements; §354.2343, concerning Administrative Penalties for Failure to Provide Information; §354.2344, concerning Notice and Appeal of Administrative Penalty; §354.2354, concerning Billing Medicare Intermediaries; §354.2355, concerning Long Term Care Providers; and §354.2356, concerning Provider Requirements to Bill Third Party Health Coverage.

The amendments to §§354.2301, 354.2302, 354.2311, 354.2313, 354.2315, 354.2321, 354.2322, 354.2331 - 354.2334, 354.2341, 354.2343, 354.2344 and 354.2354 - 354.2356 are adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6696). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The federal Consolidated Appropriations Act of 2022 (H.R. 2471) amended §1902(a)(25)(I) of the Social Security Act to require a state plan for medical assistance to make certain assurances to the Secretary of Health and Human Services that state law imposes certain requirements on responsible third party health insurers.

Senate Bill (SB) 1342, 88th Legislature, Regular Session, 2023, implemented H.R. 2471 by amending Texas Human Resources Code §32.0424. SB 1342 also repealed Texas Human Resources Code §32.042. Section 32.0424 requires

a third party health insurer to: (i) provide certain insurance coverage information, upon timely request, to HHSC or HHSC's designee; (ii) with some exceptions, accept authorization from HHSC or HHSC's designee that an item or service is covered by Medicaid as if that authorization is a prior authorization made by the third party health insurer; and (iii) respond within 60 days to an inquiry from HHSC or HHSC's designee regarding a claim for payment for health care submitted to the third party health insurer. Further, Texas Human Resources Code §32.0424 defines "third party health insurer" to mean a health insurer or other person or arrangement that is legally responsible by state or federal law or private agreement to pay some or all claims for health care items or services provided to an individual.

One purpose of the amendments is to implement the recent changes to the Texas Human Resources Code as it applies to Medicaid Third Party Recovery. Additionally, the amendments implement other changes made to §1902(a)(25)(I) of the Social Security Act prior to H.R. 2471, such as obligating the state to require health insurers to accept the State's right of recovery and assignment to the State of any right to payment for an item or service for which payment has been made under Medicaid and to agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim or the type or format of the claim form. The amendments also add and update definitions; clarify the sections of the amendments that would apply to managed care organizations; add HHSC's right, based on the United States Supreme Court decision in *Gallardo v. Marsteller*, 142 S. Ct. 1751 (2022), to seek reimbursement from settlement amounts representing past or future payments for medical care; and update certain outdated terms and phrases throughout TAC Chapter 354, Subchapter J.

COMMENTS

The 31-day comment period ended December 18, 2023.

During this period, the Health and Human Services Office of Inspector General (OIG) received one comment regarding the proposed rules from Kyle Mauro, HillCo Partners. A summary of the comment relating to the amended rules and OIG's response follows.

Comment: One general question was received inquiring if the rule amendments will require a State Plan Amendment (SPA).

Response: No changes are made to the rules in response to this comment OIG believes a SPA is not required for the rule amendments because the current Texas Medicaid State Plan, Third Party Liability section, provides that the State has laws in effect that require third parties to comply with the provisions of section 1902(a)(25)(I) of the Social Security Act.

DIVISION 1. GENERAL PROVISIONS

1 TAC §354.2301, §354.2302

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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DIVISION 2. APPLICANT AND RECIPIENT REQUIREMENTS

1 TAC §§354.2311, 354.2313, 354.2315

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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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DIVISION 3. PROVIDER REQUIREMENTS

1 TAC §§354.2321, §354.2322

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 4. DUTIES OF THE COMMISSION

1 TAC §§354.2331 - 354.2334

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 5. HEALTH INSURER REQUIREMENTS

1 TAC §§354.2341, 354.2343, 354.2344

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 6. BILLING AND PAYMENT GUIDELINES

1 TAC §§354.2354 - 354.2356

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 221-7320



CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs; §355.458, concerning Supplemental Payments to Non-State Government-Owned Facili-

ties; §355.722, concerning Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers; §355.8210, concerning Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care; §355.8422, concerning Reimbursement for Specialized Rehabilitation Services for Infants and Toddlers with Developmental Disabilities; and §355.9040, concerning Reimbursement Methodology for Comprehensive Rehabilitation Services Program.

Sections 355.306, 355.314, 355.743, 355.746, 355.781, and 355.8421 were also published as proposed in this rulemaking. These sections were withdrawn in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6881) due to conflicts with other agency rulemakings.

The amendments to §355.102, §355.458, §355.722, §355.8210, §355.8422, and §355.9040 are adopted without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6065). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

In 2020, the Rate Analysis Department of HHSC underwent a rebranding to change the department's name to "Provider Finance Department." The amendments to §355.102, §355.458, §355.722, §355.8210, §355.8422, and §355.9040 are adopted to reflect the current department name.

COMMENTS

The 31-day comment period ended on November 20, 2023. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.102

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and 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 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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 730-7455

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.458

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and 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.

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.722

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and 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 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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8210

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and 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 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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Karen Ray

Chief Counsel

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DIVISION 22. REIMBURSEMENT METHODOLOGY FOR THE EARLY CHILDHOOD INTERVENTION PROGRAM

1 TAC §355.8422

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and 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 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 M. MISCELLANEOUS PROGRAMS

DIVISION 3. COMPREHENSIVE REHABILITATION SERVICES FOR INDIVIDUALS WITH A TRAUMATIC BRAIN INJURY OR TRAUMATIC SPINAL CORD INJURY

1 TAC §355.9040

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and 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 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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Karen Ray

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For further information, please call: (512) 730-7455



SUBCHAPTER I. REPORTING

1 TAC §355.7201

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.7201, concerning Novel Coronavirus (COVID-19) Fund Reporting. The amendment to §355.7201 is adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6813). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to comply with the 2024-25 General Appropriations Act, House Bill (H.B.) 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires that HHSC develop a report detailing the total value and uses of COVID-19-related Federal Funds, including Provider Relief Funds, provided directly to nursing facilities and hospitals contracting with HHSC since the beginning of the public health emergency.

COMMENTS

The 31-day comment period ended December 27, 2023.

During this period, HHSC received a comment regarding the proposed rule from one commenter - the Texas Organization of Rural and Community Hospitals. A summary of the comment relating to the rule and HHSC's response follows.

Comment: One commenter, who is commenting on behalf of 157 rural Texas hospitals, expressed their support for the amendment. The commenter expressed their appreciation for the move from monthly to semi-annual reporting and the update that allows an organization or authorized person to report on behalf of a hospital.

Response: HHSC appreciates the comment. No changes are made in response to this comment.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; 2024-25 General Appropriations Act, H.B. 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires HHSC to establish procedures for hospitals and nursing facilities to report required information. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6637



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

The Texas Education Agency adopts the repeal of §61.1008 and new §61.1008, concerning the school safety allotment. The repeal is adopted without changes to the proposed text as published in the November 3, 2023, issue of the *Texas Register* (48 TexReg 6448) and will not be republished. The new rule is adopted with changes to the proposed text as published in the November 3, 2023, issue of the *Texas Register* (48 TexReg 6448) and will be republished. The adopted repeal and new rule reflect changes to the school safety allotment made by House Bill (HB) 1525, 87th Texas Legislature, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, transferred many Foundation School Program formulas from Texas Education Code (TEC), Chapters 41 and 42, to Chapter 48. However, TEC, §42.168, which authorized the school safety allotment, remained in Chapter 42. Section

61.1008 was adopted to allow the school safety allotment authorized under TEC, §42.168, to be treated as an allotment under TEC, Chapter 48, Subchapter C. HB 1525, 87th Texas Legislature, Regular Session, 2021, transferred and redesignated TEC, §42.168, to §48.115, making the existing rule unnecessary.

HB 3, 88th Texas Legislature, Regular Session, 2023, amended TEC, §48.115(a)(2), to create a per-campus safety allotment in addition to the per-student funding districts and open-enrollment charter schools are currently provided by appropriation for each student in average daily attendance.

Adopted new §61.1008 implements the school safety allotment authorized under TEC, §48.115.

Adopted new subsection (a) clarifies definitions applicable to the school safety allotment. Based on public comment, "prekindergarten instruction" was added at adoption to subsection (a)(1)(C) to clarify inclusion of prekindergarten campuses.

Adopted new subsection (b) clarifies that eligibility for funding under TEC, §48.115(a)(2), is open to both school districts and open-enrollment charter schools based on qualifying campuses and that juvenile justice alternative education program (JJAEP) campuses or those campuses offering exclusively virtual instruction are not eligible for funding under §61.1008. Based on public comment, language was added at adoption to subsection (b)(2) to clarify that the definitions in subsection (a) apply to school district campuses and open-enrollment charter school campuses.

Adopted new subsection (c) clarifies the timeline for calculating the school safety allotment entitlement under TEC, §48.115(a)(2), using data from Texas Student Data System Public Education Information Management System (TSDS PEIMS) summer submission.

Adopted new subsection (d) clarifies that school districts and open-enrollment charter schools will receive estimated funding for eligible campuses at the start of the school year based on the prior year's data from TSDS PEIMS. The final funding amount will be determined using current-year data from TSDS PEIMS. Any discrepancies between the estimated and final funding will be resolved as part of the Foundation School Program settle-up process as outlined in TEC, §48.272.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 3, 2023, and ended December 4, 2023. Following is a summary of public comments received and agency responses.

Comment: A Texas administrator commented that, in addition to funds, another challenge to the proposed rule is that finding appropriate personnel can be costly, especially if forced to use private companies to meet requirements.

Response: This comment is outside the scope of the rule proposal, which implements the school safety allotment authorized under TEC, §48.115.

Comment: Texas State Teachers Association (TSTA) commented that the proposed rules could potentially exclude prekindergarten-only campuses and recommended adding prekindergarten guidelines to subsection (a)(1)(C) to ensure prekindergarten campuses are included as eligible for the school safety allotment.

Response: The agency agrees and has modified §61.1008(a)(1)(C) at adoption to include clarifying language that includes prekindergarten instruction.

Comment: TSTA commented that the proposed rules also apply a unique set of restrictions on school district campuses that do not apply to campuses of open-enrollment charter schools and recommends language that would require subsection (a)(1) to apply equally to charter schools.

Response: The agency agrees and has modified §61.1008(b)(2) at adoption to include language to clarify that the definitions in subsection (a) of this section apply to school district campuses as well as open-enrollment charter school campuses.

19 TAC §61.1008

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §48.004, which requires the commissioner of education to adopt rules and take action, as necessary, to implement and administer the Foundation School Program; and TEC, §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes provisions for the school safety allotment.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §48.004 and §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

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



19 TAC §61.1008

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.004, which requires the commissioner of education to adopt rules and take action, as necessary, to implement and administer the Foundation School Program; and TEC, §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes provisions for the school safety allotment.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.004 and §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

§61.1008. School Safety Allotment.

(a) Definitions. The following definitions apply to the school safety allotment (SSA) in accordance with Texas Education Code (TEC), §48.115.

- (1) School district campus--a campus that:

(A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;

(B) receives federal, state, or local funds or any combination of the three as its primary support;

(C) provides instruction in the Texas Essential Knowledge and Skills, including prekindergarten instruction;

(D) has one or more grade groups in the range from early education through Grade 12; and

(E) is not a program for students enrolled in another public school, does not provide only virtual instruction, and does not use only facilities not subject to the district's control.

(2) Instructional facility--a term that has the meaning defined by §61.1031(a)(3) of this title (relating to School Safety Requirements).

(b) Eligibility.

(1) Both school districts and open-enrollment charter schools are eligible for the SSA.

(2) Funding under TEC, §48.115(a)(2), will be calculated for campuses that qualify as a school district campus, as defined in subsection (a) of this section and which includes an open-enrollment charter school campus and an instructional facility, as defined in subsection (a) of this section, used for teaching the curriculum required by TEC, Chapter 28.

(3) Juvenile justice alternative education program campuses or campuses that provide only virtual instruction are not eligible for funding under TEC, §48.115(a)(2).

(c) Entitlement. In the fall of each school year, as part of the settle-up process for the preceding school year, campus data reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) for eligible campuses with confirmed enrollment and average daily attendance from the TSDS PEIMS summer submission will be used to calculate the allotment provided by TEC, §48.115(a)(2).

(d) Estimates. School districts and open-enrollment charter schools will be provided with estimated funding during a school year for eligible campuses based on the prior year's summer TSDS PEIMS data using the same methodology described in subsection (c) of this section to calculate the entitlement. The final entitlement will be based on data from the current school year as provided for in subsection (c) of this section. Any difference from the estimated entitlement will be addressed as part of the Foundation School Program settle-up process according to the provisions of TEC, §48.272.

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

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CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S
RULES CONCERNING IMPLEMENTATION OF
THE ACADEMIC CONTENT AREAS TESTING
PROGRAM

DIVISION 1. IMPLEMENTATION OF
ASSESSMENT INSTRUMENTS

19 TAC §101.3011

The Texas Education Agency (TEA) adopts an amendment to §101.3011, concerning the implementation and administration of academic content area assessment instruments. The amendment is adopted with changes to the proposed text as published in the October 6, 2023 issue of the *Texas Register* (48 TexReg 5808) and will be republished. The adopted amendment clarifies the policies relating to the administration mode of certain required assessments.

REASONED JUSTIFICATION: Section 101.3011 addresses federal and state requirements relating to the implementation and administration of academic content area assessments. The adopted amendment to 19 TAC §101.3011 clarifies state policies relating to the administration mode of certain required assessments.

Texas Education Code (TEC), §39.0234, requires that TEA administer the State of Texas Assessments of Academic Readiness (STARR®) online beginning with the 2022-2023 school year. House Bill (HB) 1225, passed by the 88th Texas Legislature, Regular Session, 2023, now allows two exceptions to online testing for STARR®: (1) a student who qualifies for a special paper administration of an online assessment, and (2) any student whose parent, guardian, or teacher in the applicable subject area requests a paper version of the assessment. The number of students who are provided a paper-by-request administration of STARR® may not exceed 3% of the number of eligible students enrolled in the district who are administered each assessment. The number of students who receive a paper-by-request administration is separate and distinct from the students who are eligible for a special paper administration of STARR®.

Based on public comment, the first sentence of subsection (a)(4)(B) was amended at adoption to clarify that public school districts and open-enrollment charter schools may implement the new optional paper-by-request administration. The amendment to the rule language was made to align the adoption with the statutory language of TEC, §39.02342(a), which states, "a school district may administer an assessment required under Section 39.023(a), (c), or (l) in paper format to any student whose parent, guardian, or teacher in the applicable subject area requests the assessment instrument be administered in paper format." The second and third sentences of subsection (a)(4)(B) were amended at adoption to clarify that subsection (a)(4)(B) applies only to paper-by-request administrations.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 6, 2023, and ended November 6, 2023. Following is a summary of public comments received and agency responses.

Comment: Nineteen individuals and the company, lead4ward, requested that the language of the rule be amended to clarify that paper-by-request administration is optional for public school districts and open-enrollment charter schools.

Response: The agency agrees that clarification is needed and has amended the language of the adopted rule to align with TEC, §39.0234. Subsection (a)(4)(B) was amended at adoption to clarify that school districts and open-enrollment charter schools may implement the new optional paper-by-request administration.

Comment: Three individuals commented that paper assessments for students in special circumstances should be allowed, but all other students should be required to test online.

Response: The agency disagrees. TEC, §39.02342, as added by HB 1225, 88th Texas Legislature, Regular Session, 2023, permits school districts and open-enrollment charter schools to administer assessments required under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, in a paper format to any student whose parent, guardian, or teacher in the applicable subject area requests a paper format.

Comment: One Texas administrator requested clarification on the enrollment value used to determine the 3% cap. The commenter also asked whether students served by Section 504 committees counted toward the 3% calculation.

Response: The agency provides the following clarification. As described in §101.3011(a)(4)(B), the number of students who are administered a paper-by-request version of an assessment may not exceed 3% of the eligible students enrolled in the district who are administered that specific assessment. More information as well as example calculations are provided in the Paper by Request Administration section of the *District and Campus Coordinator Resources*. All students in the district, including students served by Section 504 committees, are included in the total number of eligible students enrolled in the district who are administered each assessment. However, the number of students who receive a paper-by-request administration as described in §101.3011(a)(4)(B) is separate and distinct from the number of students who are eligible for a special paper administration of an assessment described in §101.3011(a)(4)(A). Students, including students served by Section 504 committees, who are eligible for a special paper administration are not counted in the maximum 3% of students who are administered a paper-by-request administration.

Comment: One Texas administrator commented requesting the agency align paper administration policies for STARR® interim assessments with the policies for STARR® assessments.

Response: This comment is outside the scope of the rule proposal, which addresses the administration mode of required assessments not optional assessments.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), which specify the required assessments for students in Grades 3-8, students enrolled in high school courses, and emergent bilingual students whose primary language is Spanish, respectively; TEC, §39.0234, which requires that assessment instruments under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, be administered online, unless otherwise provided by commissioner of education rule; TEC, §39.02342(a), as added by House Bill (HB) 1225,

88th Texas Legislature, Regular Session, 2023, which permits school districts to administer assessments required under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, in a paper format to any student whose parent, guardian, or teacher in the applicable subject area requests a paper format; and TEC, §39.02342(c), as added by HB 1225, 88th Texas Legislature, Regular Session, 2023, which limits the number of students who take a paper-by-request version of the assessments during each administration to 3% of the students enrolled in the district, excluding students whose admission, review, and dismissal committee determines that the student requires an accommodation that must be delivered in a paper format.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.023(a), (b), (c), and (l); 39.0234; and 39.02342(a) and (c), as added by House Bill 1225, 88th Texas Legislature, Regular Session, 2023.

§101.3011. Implementation and Administration of Academic Content Area Assessment Instruments.

(a) The Texas Education Agency (TEA) shall administer each assessment instrument under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).

(1) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student shall not be administered a grade-level assessment if the student:

(A) is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under TEC, §39.023(a), that aligns with the curriculum for that course or subject within the same content area; or

(B) is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an end-of-course assessment instrument developed under TEC, §39.023(c), that aligns with the curriculum for that course or subject within the same content area.

(2) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT® or the SAT®.

(3) A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete instruction in the entire curriculum for that subject during the semester the assessment is administered.

(4) A student shall be administered the assessments under TEC, §39.023(a), (c), and (l), online as required by TEC, §39.0234, except for a student:

(A) who requires specific accommodations that cannot be provided online as specified in the test administration materials; or

(B) who is enrolled in a school district or open-enrollment charter school that opts to offer paper administrations of assessments to students whose parent, guardian, or teacher in the applicable subject area requests a paper administration of an assessment. Requests for such paper administrations must be submitted to the school district or open-enrollment charter school by the dates indicated in TEC, §39.02342(b). Requests for these paper administrations from a district

or charter school may not exceed 3% of eligible students enrolled in the district or charter school who are administered each assessment.

(b) The TEA shall administer alternative assessment instruments under TEC, §39.023(b), that correspond to:

(1) the assessment instruments required under TEC, §39.023(a); and

(2) the following assessment instruments required under TEC, §39.023(c): English I, English II, Algebra I, biology, and U.S. history.

(c) Test administration procedures shall be established by the TEA in the applicable test administration materials. A school district, an open-enrollment charter school, or a private school administering the tests required by TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

(d) In accordance with TEC, §39.023(a)(5), the TEA shall administer to students assessments in any other subject and grade required by federal law.

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



DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The Texas Education Agency (TEA) adopts an amendment to §101.3041, concerning implementation of the academic content areas testing program. The amendment is adopted without changes to the proposed text as published in the September 15, 2023 issue of the *Texas Register* (48 TexReg 5133) and will not be republished. The adopted amendment updates the performance standards for the State of Texas Assessments of Academic Readiness (STAAR®) and STAAR® Alternate 2 based on the redesigned testing programs.

REASONED JUSTIFICATION: Section 101.3041 establishes the level of performance considered to be satisfactory on state-developed assessments, as required by Texas Education Code (TEC), Chapter 39, Subchapter B, for all assessments.

TEC, §39.023(a), as amended by House Bill (HB) 3906, 86th Texas Legislature, 2019, eliminated the stand-alone writing assessments for Grades 4 and 7. The redesigned assessments combine reading and evidence-based writing into one reading language arts test to better support the interconnected way these subjects are taught.

TEC, §39.023(c-8), as amended by HB 3906 and HB 3261, 87th Texas Legislature, Regular Session, 2021, specifies that not more than 75% of the points on a STAAR® assessment may be from multiple-choice questions. Therefore, the redesigned

STAAR® includes new, non-multiple-choice questions like the questions teachers ask in class to give students more ways to show their understanding. There are also more cross-curricular reading passages that reference topics students have learned about in other classes.

With changes made to the statewide assessment program introduced by HB 3906 and amended by HB 3261, TEA wants to ensure that the performance standards continue to accurately reflect what students know and can do through a standard-setting process. Educators from across the state convened to provide their expert opinions and verify that the cut points and related scale scores are appropriate for the redesigned STAAR® and STAAR® Alternate 2 assessments. Based on these activities, the commissioner of education has approved updated performance standards for all STAAR® assessments and for STAAR® Alternate 2 reading language arts assessments.

The performance standards adopted in §101.3041 are modified to reflect the newly approved standards as follows.

The performance standards for all STAAR® Grades 3-8 assessments are updated in Figure: 19 TAC §101.3041(b)(1). References to Grades 4 and 7 writing assessments have been removed.

The performance standards for STAAR® Alternate 2 Grades 3-8 reading language arts assessments are updated in Figure: 19 TAC §101.3041(b)(2). References to Grades 4 and 7 writing assessments have been removed.

The performance standards for all five STAAR® end-of-course (EOC) assessments are updated in Figure: 19 TAC §101.3041(c)(1). References to Algebra II and English III have been removed.

The performance standards for STAAR® Alternate 2 English I and English II EOC assessments are updated in Figure: 19 TAC §101.3041(c)(2).

Finally, the adopted amendment made technical edits related to assessment program names to ensure consistency across administrative rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 15, 2023, and ended October 16, 2023. Following is a summary of public comments received and agency responses.

Comment: One Texas school district administrator expressed support for the proposed amendment, noting that it would benefit students.

Response: The agency agrees. Establishing performance standards on assessments is critical for ensuring all students have access to high-quality, rigorous, academic instruction.

Comment: Seven Texas school district administrators, twenty-five teachers, and ninety-five individuals commented that they do not support the commissioner's recommendations to update the performance standards for STAAR®. The commenters stated the changes to the performance levels do not accurately describe students' knowledge.

Response: The agency disagrees. Performance standards for STAAR® are based on recommendations from standard-setting committees, which were composed of Kindergarten-Grade 12 educators. Each committee member is an expert in the assessed curriculum, the Texas Essential Knowledge and Skills (TEKS), for his or her grade and subject level or course (e.g.,

Grade 5 reading language arts, English II). STAAR® performance standards relate test performance to the expectations defined in the state curriculum standards, the TEKS, and identify what students know and can through the performance level descriptors. The updated performance level descriptors are available on the STAAR® Performance Standards page of the TEA website at <https://tea.texas.gov/student-assessment/testing/student-assessment-results/taar-performance-standards>.

Comment: One individual commented that the changes to the performance standards for STAAR® Alternate 2 are not helpful to students with special needs or disabilities.

Response: The agency disagrees. Performance standards for STAAR® Alternate 2 are based on recommendations from standard-setting committees, which were composed of Kindergarten-Grade 12 educators and special education experts. Establishing performance standards on assessments is critical for ensuring all students have access to high-quality, rigorous, academic instruction.

Comment: The company lead4ward suggested the proposed performance standards for 2012-2015 Satisfactory Performance for STAAR® end-of-course assessments not be revised and the 2016-2022 Approaches Grade Level Performance column be eliminated.

Response: The agency disagrees. The performance standards in those two columns were adjusted, along with the other performance standards, to ensure equivalent rigor in the level of performance required for students who took the assessments during those time periods.

Comment: One Texas school district administrator questioned the timing of the proposed rule and the effective date.

Response: The agency provides the following clarification. The performance standards adopted in this rule were approved earlier this year by the commissioner of education as required by TEC, §39.0241, and the updated performance standards were implemented and reported for the spring 2023 administrations.

Comment: Twelve individuals suggested significant changes to the Texas Assessment Program, including abolishing the statewide testing program.

Response: These comments are outside the scope of the rule proposal, which addresses assessment performance standards.

Comment: The Texas State Teachers Association raised concerns about the decision to change the 2023 A-F academic accountability ratings for Texas public schools.

Response: This comment is outside the scope of the rule proposal, which addresses assessment performance standards.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.0241(a), which requires the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; and TEC, §39.025(a), which requires the commissioner to provide a conversion of the scale scores for each end-of-course assessment to an equivalent score based on a 100-point scale score system.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.0241(a) and §39.025(a).

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 February 1, 2024.

TRD-202400395

Cristina de La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: February 21, 2024

Proposal publication date: September 15, 2023

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

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TITLE 22. EXAMINING BOARDS

**PART 16. TEXAS BOARD OF
PHYSICAL THERAPY EXAMINERS**

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3

The Texas Board of Physical Therapy Examiners adopts the amendment to §341.3, Qualifying Continuing Competence Activities with changes to the proposed text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6996). The rule will be republished. The amendments are adopted in order to clarify certain activities that qualify for continuing competence units (CCUs).

The amendments broaden the category of residencies and fellowships by allowing completion of a residency or fellowship accredited by an entity other than the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) and mentorship of a resident or fellow in an approved program to qualify for CCUs, and requires the Board to maintain a list of approved residencies and fellowships. Additionally, the amendments eliminate oPTion as a qualifying activity as the Federation of State Boards of Physical Therapy (FSBPT) has discontinued the self-assessment tool.

The amendment is adopted without changes to the proposed text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6996).

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§341.3. Qualifying Continuing Competence Activities.

Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

- (1) Continuing education (CE).

(A) Program content structure must be approved by the board-approved organization, or be offered by a provider accredited by that organization. Programs must meet the following criteria:

(i) Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(ii) The content must be identified by instructional level, i.e., basic, intermediate, advanced. Program objectives must be clearly written to identify the knowledge and skills the participants should acquire and be consistent with the stated instructional level.

(iii) The instructional methods related to the objectives must be identified and be consistent with the stated objectives.

(iv) Programs must be presented by a licensed health care provider, or by a person with appropriate credentials and/or specialized training in the field.

(v) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

(vi) The participants must evaluate the program. A summary of these evaluations must be made available to the board-approved organization upon request.

(vii) Records of each licensee who participates in the program must be maintained for four years by the CE sponsor/provider and must be made available to the board-approved organization upon request.

(B) CE programs subject to this subsection include the following:

(i) Live programs.

(I) One contact hour equals 1 continuing competence unit (CCU).

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(ii) Self-study programs - Structured, self-paced programs or courses offered through electronic media (for example, via the internet or on DVD) or on paper (for example, a booklet) completed without direct supervision or attendance in a class.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and instructional format of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(iii) Regular inservice-type programs over a one-year period where individual sessions are granted 2 CCUs or less.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the inservice; the signature of an authorized signer, and the accredited provider or program approval number with the maximum CCUs granted and the CCU value of each session or group of sessions specified and justified.

(III) Additionally, proof of attendance to any or all inservice sessions must be provided so that individual CCUs earned

can be calculated by the program sponsor/provider for submission to the board-approved organization.

(IV) If selected for audit, the licensee must submit the specified documentation.

(iv) Large conferences with concurrent programming.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the licensee's name and license number; title, sponsor/provider, date(s); and location of the conference; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or course approval number.

(III) If selected for audit, the licensee must submit the specified documentation and proof of attendance.

(2) College or university courses.

(A) Courses at regionally accredited US colleges or universities easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(i) The course must be at the appropriate educational level for the PT or the PTA.

(ii) All courses in this paragraph are subject to the following:

(I) One satisfactorily completed credit hour (grade of C or equivalent, or higher) equals 10 CCUs.

(II) Documentation required for consideration is the course syllabus for each course and a transcript indicating successful completion of the course.

(III) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) College or university sponsored CE programs (no grade, no official transcript) must comply with paragraph (1)(A) of this section.

(C) College or university courses that are part of a post-professional physical therapy degree program, or are part of a CAPTE-accredited program bridging from PTA to PT, are automatically approved and are assigned a standard approval number by the board-approved organization. If selected for audit, the licensee must submit a transcript indicating successful completion of the course.

(3) Scholarship.

(A) Publications. Publication(s) pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management written for the professional or lay audience. The author(s) are prohibited from self-promotion of programs, products, and/or services in the publication.

(i) The publication must be published within the 24 months prior to the license expiration date.

(ii) CCU values for types of original publications are as follows:

(I) A newspaper article (excluding editorials and opinion pieces) may be valued up to 3 CCUs.

(II) A regional/national magazine article (excluding editorials and opinion pieces) may be valued up to 10 CCUs.

(III) A case study in a peer reviewed publication, monograph, or book chapter(s) is valued at 20 CCUs.

(IV) A research article in a peer reviewed publication, or an entire book is valued at 30 CCUs.

(iii) Documentation required for consideration is:

(I) For newspaper articles, a copy of the article and the newspaper banner, indicating the publication date;

(II) For magazine articles and publications in peer reviewed journals, a copy of the article and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(III) For monographs or single book chapters, a copy of the first page of the monograph or chapter, and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(IV) For an entire book or multiple chapters in a book, the author must submit the following: title page, copyright page, entire table of contents, preface or forward if present, and one book chapter authored by the licensee.

(iv) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Manuscript review. Reviews of manuscripts for peer-reviewed publications pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management. The Board will maintain and make available a list of peer-reviewed publications that are automatically approved for manuscript review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One manuscript review is valued at 3 CCUs.

(iii) For each renewal:

(I) PTs may submit no more than 3 manuscript reviews (9 CCUs).

(II) PTAs may submit no more than 2 manuscript reviews (6 CCUs).

(iv) If selected for audit, the licensee must submit a copy of the letter or certificate from the publisher confirming completion of manuscript review.

(v) A peer-reviewed publication not on the list of recognized publications for manuscript review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the peer-reviewed journal;

(II) The name of the manuscript; and

(III) A description of the journal's relevance to the physical therapy profession.

(C) Grant proposal submission. Submission of grant proposals by principal investigators or co-principal investigators for research that is pertinent to physical therapy and in the areas of ethics,

professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management.

(i) The grant proposal must be submitted to the funding entity within the 24 months prior to the license expiration date.

(ii) One grant proposal is valued at 10 CCUs.

(iii) Licensees may submit a maximum of 1 grant proposal (10 CCUs).

(iv) Documentation required for consideration is a copy of the grant and letter submitted to the grant-provider.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(D) Grant review for research pertinent to healthcare. The Board will maintain and make available a list of grant-issuing entities that are automatically approved for grant review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One grant review is valued at 3 CCUs.

(iii) Licensees may submit a maximum of 2 grant reviews (6 CCUs).

(iv) If selected for audit, the licensee must submit a letter or certificate confirming grant review from the grant provider.

(v) A grant-issuing entity not on the list of recognized entities for grant review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the grant-issuing entity;

(II) The name of the grant; and

(III) A description of the grant's relevance to the physical therapy profession.

(4) Teaching and Presentation Activities.

(A) First-time development or coordination of course(s) in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(B) First-time development or coordination of course(s) in a regionally accredited U.S. college or university program for other health professions.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(C) Presentation or instruction as a guest lecturer in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE-accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(D) Presentation or instruction as a guest lecturer in a regionally accredited U.S. college or university program for other health professions.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(E) First-time development, presentation or co-presentation at state, national or international workshops, seminars, or professional conferences, or at a board-approved continuing education course.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit no more than 10 CCUs for this activity.

(II) PTAs may submit no more than 8 CCUs for this activity.

(iv) Documentation required for consideration includes one of the following: a copy of a brochure for the presentation indicating the licensee as a presenter; or, a copy of the cover from the program and page(s) indicating the licensee as a presenter.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(F) Service as a clinical instructor for full-time, entry-level PT or PTA students enrolled in accredited education. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The instructorship must be completed within the 24 months prior to the license expiration date.

(ii) Valuation of clinical instruction is as follows:

(I) Supervision of full-time PT or PTA students for 5 - 11 weeks is valued at 5 CCUs.

(II) Supervision of full-time PT or PTA students for 12 weeks or longer is valued at 10 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a letter or certificate from the coordinator of clinical education confirming clinical supervision and the number of weeks supervised from the education program.

(5) Advanced Training, Certification, and Recognition.

(A) Specialty Examinations. The Board will maintain and make available a list of recognized specialty examinations. Successful completion of a recognized specialty examination (initial or recertification) is automatically approved and assigned a standard approval number by the board-approved organization.

(i) The specialty examination must be successfully completed within the 24 months prior to the license expiration date.

(ii) Each recognized specialty examination is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter from the certifying body notifying the licensee of completion of the specialty from the credentialing body, and a copy of the certificate of specialization.

(iv) A specialty examination not on the list of recognized examinations but pertinent to the physical therapy profession may be submitted to the board approved organization for consideration. Documentation required for consideration includes the following:

(I) Identification and description of the sponsoring organization and its authority to grant a specialization to PTs or PTAs;

(II) A complete description of the requirements for specialization;

(III) A copy of the letter notifying the licensee of completion of the specialty from the certifying body, and a copy of the certificate of specialization.

(B) APTA Certification for Advanced Proficiency for the PTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The certification must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of specialty certification is valued at 20 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the advanced proficiency, and a copy of the certificate of proficiency.

(C) Residency or fellowship relevant to physical therapy. The Board will maintain and make available a list of approved residencies and fellowships. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The residency or fellowship must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of the residency or fellowship is valued at up to 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the certificate of graduation indicating completion of the fellowship or residency.

(D) Mentorship of a resident or fellow in an approved residency or fellowship program. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Mentorship of a resident or a fellow for a minimum of 150 hours of 1:1 mentoring is valued at 10 CCUs. The Board will consider partial credit for those mentors who provide mentorship for only a portion of the residency or fellowship.

(ii) Licensees may submit a maximum of 20 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter from the residency or fellowship program confirming participation as a clinical mentor, with the dates and number of mentorship hours served as a clinical mentor.

(6) Professional Membership and Service. Licensees may submit activities in this category for up to one half of their CC requirement (PT - 15 CCUs, PTAs - 10 CCUs) at time of renewal. Licensees must demonstrate membership or participation in service activities for a minimum of one year during the renewal period to receive credit. Credit is not prorated for portions of years.

(A) Membership in the APTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of membership is valued at 1 CCU.

(ii) If selected for audit, the licensee must submit a copy of the current membership card.

(B) Service on a board, committee, or taskforce for the Texas Board of Physical Therapy Examiners, the American Physical

Therapy Association (APTA) (or an APTA component), or the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 9 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter on official organization letterhead or certificate confirming completion of service.

(C) Service as a TPTA Continuing Competence Approval Program reviewer. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 6 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

(D) Service as an item writer for the national PT or PTA exam or an American Board of Physical Therapy Specialties (ABPTS) exam. This activity type is automatically approved and is assigned a standard approval number by the board approved organization.

(i) One year of service is valued at 5 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 10 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

(7) Voluntary charity care. Providing physical therapy services for no compensation as a volunteer of a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(A) Voluntary charity care must be non work-related.

(B) Proof of voluntary charity care can count toward up to one-half (1/2) of the continuing competence requirement.

(C) Ten (10) hours of voluntary charity care equals 1 CCU.

(D) If selected for audit, the licensee must submit a letter indicating the dates and number of hours of voluntary charity care on official charitable organization(s) letterhead.

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 January 29, 2024.

TRD-202400325

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: March 1, 2024

Proposal publication date: December 1, 2023

For further information, please call: (512) 305-6900



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §448.801, concerning Screening; §448.803, concerning Assessment; and §448.911, concerning Treatment Services Provided Through Electronic Means.

The amendments to §§448.801, 448.803, and 448.911 are adopted with changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6562). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with and implement House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021. H.B. 4, Section 2, amended Texas Government Code Chapter 531 to require HHSC to determine which services are cost-effective and clinically effective and adopt rules to develop and implement a system to allow providers to provide certain behavioral health services using audio-only means to an individual receiving those services. The amendments allow a chemical dependency treatment facility (CDTF) to deliver certain audio-only substance use disorder treatment services that HHSC determined are clinically effective and safe.

The amendments are also necessary to update the requirements for providing services through electronic means to increase clarity and readability.

COMMENTS

The 31-day comment period ended December 11, 2023.

During this period, HHSC received comments regarding the proposed rules from 23 commenters: Disability Rights Texas (DRTx), Texas Medical Association (TMA), and 21 individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One individual stated the draft rules were well written and wanted HHSC to implement the rules accordingly.

Response: HHSC acknowledges this comment.

Comment: One individual expressed concern with §448.801 allowing the use of audiovisual technology for screening but not for inpatient services and asked for clarification regarding why the proposed rules do not allow facilities to screen individuals using audiovisual technology in inpatient settings.

Response: HHSC declines to revise §448.801 because Texas Health and Safety Code §462.015, Outpatient Treatment Services Provided Using Telecommunications or Information Technology, authorizes only outpatient CDTF programs to provide treatment services through electronic means.

Comment: One individual expressed concern with §448.801(b) requiring the use of a valid screening tool before admission. The commenter stated they administer the brief scale once a facility admits an individual and clarified they do not administer the scale prior to an individual's admission. The commenter requested clarification regarding whether providers must administer a valid assessment tool prior to admission. The commenter noted that qualified credentialed counselors (QCCs) are not able under current law to interpret standardized assessments and stated a licensed clinician or clinical psychologist should instead administer the assessment.

Response: HHSC declines to revise §448.801(b) because individuals who qualify as QCCs under Texas Administrative Code Title (TAC), Title 25 §140.400(38) include a wide range of providers, including individuals who hold master's through medical doctorate degrees. Additionally, HHSC notes that a provider gains qualifications for assessment tools and instruments through training, and that there are a variety of appropriate tools and instruments available to qualified providers based on the provider's skill set, education level, and work experience.

Comment: One individual stated that §448.801(e)(4), which requires the physician to examine the client in person and sign the admission order within 24 hours of authorizing admission, only refers to a "physician" and recommended revising the rule to also include the physician's designee to align with the current regulations and avoid creating an undue burden on facilities.

Response: HHSC revises §448.801(e)(4) to add "the physician's designee" as a qualified individual who may satisfy the requirement to examine a client in person and sign the admission order within 24 hours of authorizing admission to a detoxification program. HHSC also revises §448.801(e) and §448.801(e)(3) for consistency with the revision at §448.801(e)(4) by adding "the physician's designee" as a qualified individual who may screen an individual for admission to a detoxification program and who may determine the appropriateness for and authorize the individual's admission.

Comment: DRTx stated §448.801(g) implies that screenings for programs other than detoxification programs must occur in person, and noted the language in the proposed rule does not clearly communicate that implication. DRTx recommended HHSC revise the language to clarify which programs may conduct virtual screenings and which programs are prohibited from conducting virtual screenings.

Response: HHSC declines to revise §448.801(g) because §448.801(h) clarifies a treatment program that is not a detoxification program may offer screenings in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1).

Comment: Fourteen individuals provided substantially similar comments and requested HHSC revise §448.801(h)(1), §448.803(b)(1), and §448.911(d)(2) to relax the requirement for counselor interns to pass the chemical dependency counselor licensing exam before providing telehealth services. These commenters stated Level III counselor interns already operate under the supervision of a QCC to provide services in person and have substantial training and experience, which should allow them to provide services electronically. These commenters also stated allowing counselor interns to provide services through electronic means could enhance accessibility to mental health care for individuals who may face barriers to in-person appointments.

Response: HHSC declines to revise §448.801(h)(1), renumbered to §448.801(h)(1)(B); §448.803(b)(1), renumbered to §448.803(b)(1)(B); and §448.911(d)(2) because the chemical dependency counselor licensing exam is necessary to demonstrate the intern's skill set and proficiency in service delivery.

Comment: One individual requested clarification on whether the 2,000 hours of supervised experience requirement, before a counselor or counselor intern may provide services through electronic means, would allow a licensed master social worker (LMSW) or licensed professional counselor assistant (LPC-A) to qualify under these paragraphs as being able to screen individuals using electronic means once they achieve the 2,000 hours and are under a board-approved supervision plan.

Response: HHSC revises §448.801(h)(1) and §448.803(b)(1) by dividing these paragraphs into two new subparagraphs and relocating "prior to screening an individual through electronic means" to the beginning of these paragraphs. HHSC revises §448.801(h)(1), renumbered to §448.801(h)(1)(A) and §448.803(b)(1), renumbered to §448.803(b)(1)(A), to clarify LMSWs or LPC-As, in addition to counselor interns, may conduct screenings and assessments if they meet the requirements of those subparagraphs.

HHSC also revises §448.801(h)(1), renumbered to §448.801(h)(1)(B), and §448.803(b)(1), renumbered to §448.803(b)(1)(B), to clarify that if the provider conducting the screening or assessment is a counselor intern, the intern must have passed the chemical dependency counselor licensing exam because LMSWs and LPC-As may conduct screenings and assessments without having to pass the chemical dependency counselor licensing exam.

Comment: One individual stated §448.801(h)(3)(A), which only allows CDTFs to screen individuals using audio-only technology during a declared state of disaster, is too narrow and limiting for both the prospective client and the organization completing the screening. The commenter stated this limitation disproportionately impacts indigent, low socio-economic-status, and rural populations that may not have cell phone service, data, or access to reliable broadband internet. The commenter also stated this limitation makes maintaining an individual's privacy during the screening process more difficult as the individual being screened may go to a place with public Wi-Fi, and in those situations, the individual's ability to have privacy is greatly reduced. The commenter further stated clients who are incarcerated often have limited options to complete screenings and being able to be screened over the phone may be an incarcerated individual's only means of being accepted into a treatment program. The commenter recommended revising the rule to expand the exceptions for using audio-only technology beyond a declared

state of disaster and include the circumstances the commenter noted in their comment.

Response: HHSC declines to revise §448.801(h)(3)(A) because the language allowing the use of audio-only technology for screening purposes only during declared states of disaster is consistent with HHSC Medicaid Managed Care rules at 1 TAC Chapter 353, Subchapter R, Telecommunications in Managed Care Service Coordination and Assessments.

Comment: One individual recommended revising §448.801(h)(3)(B) to require the organization completing the screening to document a justification for using audio-only technology that clearly outlines the reason why they did not use synchronous audiovisual technology to screen the individual.

Response: HHSC revises §448.801(h)(3)(B) and §448.803(b)(3)(B) to require the justification for using audio-only technology to include the reason why the counselor or counselor intern did not use synchronous audiovisual technology to screen or assess the individual, in addition to requiring the justification for their determination that using synchronous audio-only technology is safe and clinically appropriate for the individual being screened or assessed.

Comment: DRTx requested HHSC add language in the rules to clarify that a counselor or counselor intern must obtain the individual's consent before using electronic means to screen or treat the individual. DRTx further stated counselors or counselor interns must discuss with the individual how the counselor or counselor intern will conduct the screening or treatment, and if the individual chooses to utilize electronic means, that individual's choice must be documented in the individual's client record, as required by similar language in §448.803. DRTx noted their recommended revisions are consistent with 1 TAC Chapter 353, Subchapter R.

Response: HHSC revises §448.801(h)(4) and §448.803(b)(4) to clarify that the requirement to conduct an in-person and face-to-face screening or assessment with an individual when the individual does not provide their verbal consent to participate in a screening or assessment through electronic means is required by §448.911(u). HHSC notes §448.801(h) and §448.803(b) require a facility offering screenings and assessments through electronic means to comply with the applicable requirements under §448.911, including consent and consent documentation requirements.

Comment: One individual expressed concern with §448.803(d) requiring the assessment to result in a comprehensive diagnostic impression and stated licensed chemical dependency counselors (LCDCs) are not allowed to formulate comprehensive diagnostic impressions. The commenter further stated only a master's level professional licensed within the scope of their practice may formulate comprehensive diagnostic impressions from assessment results. The commenter recommended HHSC revise the rules to require only a fully licensed diagnostic clinician to properly review and approve a screening and assessment.

Response: HHSC revises §448.803(d) to clarify licensed interns or other providers must operate within the scope of their license when providing assessments. HHSC notes LCDCs are allowed under 25 TAC §140.424(a)(1)(B), Standards for Private Practice, to diagnose a patient based on an assessment.

Comment: TMA stated the "verbal consent" definition at §448.911(a)(5) could cause confusion because the definition uses the terms "medical consent" and "legally authorized

representative," which are synonymous. TMA further stated the current Texas Department of State Health Services chemical dependency treatment facility rules use the term "consenter," which could raise the question of whether "medical consenter" has a different meaning. TMA recommended revising the definition to either only include one of the terms or instead use the term "consenter" in place of "legally authorized representative and "medical consenter" to prevent confusion.

TMA also suggested revising §448.911(t), which uses the term "legally authorized representative," by replacing the term with "consenter" for consistency with their suggested revisions at §448.911(a)(5) and other rules for chemical dependency treatment services.

Response: HHSC revises the verbal consent definition in §448.911(a)(5) by removing "or a client's medical consenter" so the definition reads, "The spoken agreement of a client or a client's legally authorized representative to participate in treatment services through electronic means." HHSC notes the term "medical consenter" is defined at 1 TAC §353.1502(20).

HHSC declines to revise §448.911(t) because the term "legally authorized representative" in that subsection is appropriate and consistent with revised §448.911(a)(5).

Comment: One individual stated that while the proposed rule changes are well-intentioned, the commenter expressed concern with the audio-only rules preventing counselors from achieving any type of non-verbal observations by phone, including facial expressions, gaze, eye contact, gestures, posture, physical closeness, clothes, and grooming. The commenter expressed further concern with facilities being able to provide audio-only services under §448.911(k) as an everyday service but noted providing audio-only services during emergencies or catastrophes would make "perfect sense." The commenter also stated they could think of no other form of healthcare where audio-only services would be accepted or encouraged because a treatment provider must see the individual to provide quality services and effectively treat them.

Response: HHSC declines to revise §448.911(k) because the amended rule is authorized by Texas Health and Safety Code §462.015 and consistent with the rules at 1 TAC Chapter 353, Subchapter R.

Comment: One individual stated audio-only services should be reserved for screening purposes only and that any service requiring clinical assessment or insight should require direct client observation. The commenter further stated groups and individual sessions should require a visual of the client, assuming there are no limitations or unsuspected technology issues.

Another individual stated that while audio-only services would be appropriate for an established client in the middle to end parts of their treatment, a provider needs to be able to see the client in the earlier parts of the client's treatment to establish trust and gauge the client's understanding. The commenter further stated being able to monitor a person's body language allows a provider to better read a client's mood and determine whether the client is under the influence.

Response: HHSC declines to revise §448.803 and §448.911 because these rules are authorized by Texas Health and Safety Code §462.015 and consistent with the rules at 1 TAC Chapter 353, Subchapter R.

Comment: One individual identified themselves as an LCDC who works with juveniles and adults and stated delivering ser-

vices virtually is too impersonal, lacks connection with the client, and does not foster an effective one-on-one environment where the practitioner can build empathy and a more effective professional relationship with the individual.

Response: HHSC declines to revise the rules because the rules are authorized by Texas Health and Safety Code §462.015 and consistent with the rules at 1 TAC Chapter 353, Subchapter R. HHSC notes the rules do not require providers to deliver services virtually but allow that option.

Comment: One individual requested clearer regulations for co-occurring diagnoses. The commenter stated 25 TAC Chapter 448 has a section outlining staffing requirements and stated on-site inspectors used to confirm whether providers truly could deliver treatment for co-occurring diagnoses. The commenter further stated on-site inspections used to occur every two years and such inspections are no longer occurring. The commenter also stated there are several facilities that claim to provide treatment for co-occurring diagnoses but do not have the required staff to provide such services. The commenter recommended HHSC clarify who can and cannot provide treatment for co-occurring diagnoses or require a separate license for facilities wanting to provide such treatment.

Response: HHSC declines to revise the rules as suggested because such revisions are beyond the scope of this project. HHSC notes the agency will consider this comment when updating the CDTF rules in the future.

HHSC made minor editorial changes to §§448.911(f)(1), 448.911(o), and 448.911(r) to ensure consistency when using the term "electronic means" throughout the rules.

SUBCHAPTER H. SCREENING AND ASSESSMENT

25 TAC §448.801, §448.803

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

§448.801. Screening.

(a) To be eligible for admission to a treatment program, an individual must meet the current Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for substance use disorders (or substance withdrawal or intoxication in the case of a detoxification program). The facility shall use a screening process appropriate for the target population, individual's age, developmental level, culture, and gender, which includes the Texas Department of Insurance (TDI) criteria to determine eligibility for admission or referral including an assessment of the client's financial resources and insurance benefits.

(b) The screening process shall collect other information as necessary to determine the type of services that are required to meet the individual's needs. This may necessitate the administration of all or part of validated assessment instruments.

(c) TDI criteria shall guide referral and treatment recommendations as well as placement decisions.

(d) Sufficient documentation shall be maintained in the client record to support the diagnosis and justify the referral or placement decision. Documentation shall include the date of the screening and the signature and credentials of the Qualified Credentialed Counselor (QCC) supervising the screening process.

(e) For admission to a detoxification program, the screening will be conducted by a physician, the physician's designee, physician assistant, nurse practitioner, registered nurse, or licensed vocational nurse (LVN). An LVN may conduct a screening under the following conditions:

(1) the LVN has completed detoxification training and demonstrated competency in the detoxification process;

(2) the training and competency verification is documented in the LVN's personnel file;

(3) the LVN shall convey in person or via telephone the medical data obtained during the screening process to a physician or the physician's designee, who shall determine the appropriateness of the admission and authorize the admission or give instructions for an alternative course of action; and

(4) the physician or the physician's designee shall examine the client in person and sign the admission order within 24 hours of authorizing admission.

(f) For admission to all other treatment programs, the screening will be conducted by a counselor or counselor intern.

(g) A detoxification program shall not offer screenings through electronic means.

(h) A treatment program, other than a detoxification program, may offer screenings in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1) of this chapter (relating to Treatment Services Provided by Electronic Means). A facility offering screenings through electronic means shall comply with the applicable requirements under §448.911 of this chapter and the following requirements.

(1) Prior to screening an individual through electronic means:

(A) a counselor intern, licensed professional counselor assistant (LPC-A), or licensed master social worker (LMSW) must have more than 2,000 hours of supervised work experience or have a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure); and

(B) if the provider is a counselor intern, the intern must have passed the chemical dependency counselor licensing exam.

(2) A counselor or counselor intern screening an individual through electronic means shall use synchronous audiovisual technology, as that term is defined by §448.911(a)(4) of this chapter, except as provided under paragraph (3) of this subsection.

(3) To the extent allowed by federal law and only when all the following criteria are met, the counselor or counselor intern may screen an individual using synchronous audio-only technology, as that term is defined by §448.911(a)(3) of this chapter, when:

(A) the screening occurs during a declared state of disaster under Texas Government Code §418.014 (relating to Declaration of State of Disaster) in the county in which the facility where the client signed the client's consent for treatment form is located;

(B) the counselor or counselor intern determines and documents a justification for their determination in the individual's record that screening the individual using synchronous audio-only technology is safe and clinically appropriate for the individual being screened and the reason why the counselor or counselor intern did not use synchronous audiovisual technology to screen the individual; and

(C) the individual being screened agrees and provides verbal consent, as that term is defined by §448.911(a)(5) of this chapter, to participate in a screening using synchronous audio-only technology.

(4) The counselor or counselor intern shall conduct an in-person and face-to-face screening with an individual at the individual's request or if the individual does not provide their verbal consent to participate in a screening through electronic means as required by §448.911(u) of this chapter.

§448.803. Assessment.

(a) A counselor or counselor intern shall conduct and document a comprehensive psychosocial assessment with the client admitted to the facility. The assessment shall document and elicit enough information about the client's past and present status to provide a thorough understanding of the following areas:

(1) presenting problems resulting in admission;

(2) alcohol and other drug use;

(3) psychiatric and chemical dependency treatment;

(4) medical history and current health status, to include an assessment of Tuberculosis (TB), HIV and other sexually transmitted disease (STD) risk behaviors as permitted by law;

(5) relationships with family;

(6) social and leisure activities;

(7) education and vocational training;

(8) employment history;

(9) legal problems;

(10) mental/emotional functioning; and

(11) strengths and weaknesses.

(b) The counselor or counselor intern may conduct the assessment with a client in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1) of this chapter (relating to Treatment Services Provided by Electronic Means). A facility offering assessments through electronic means shall comply with the applicable requirements under §448.911 of this chapter and the following requirements.

(1) Prior to conducting an assessment through electronic means:

(A) a counselor intern, licensed professional counselor assistant (LPC-A), or licensed master social worker (LMSW) must have more than 2,000 hours of supervised work experience or have a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure); and

(B) if the provider is a counselor intern, the intern must have passed the chemical dependency counselor licensing exam.

(2) A counselor or counselor intern assessing a client through electronic means shall use synchronous audiovisual technology, as that term is defined by §448.911(a)(4) of this chapter, except as provided under paragraph (3) of this subsection.

(3) To the extent allowed by federal law and only when all the following criteria are met, the counselor or counselor intern may assess a client using synchronous audio-only technology, as that term is defined by §448.911(a)(3) of this chapter, when:

(A) the assessment occurs during a declared state of disaster under Texas Government Code §418.014 (relating to Declaration of State of Disaster) in the county in which the facility where the client signed their consent for treatment form is located;

(B) the counselor or counselor intern determines and documents a justification for their determination in the client's record that assessing the client using synchronous audio-only technology is safe and clinically appropriate for the client being assessed and the reason why the counselor or counselor intern did not use synchronous audiovisual technology to screen the individual; and

(C) the client being assessed agrees and provides verbal consent, as that term is defined by §448.911(a)(5) of this chapter, to participate in an assessment using synchronous audio-only technology.

(4) The counselor or counselor intern shall conduct an in-person and face-to-face assessment with a client at the client's request or if the client does not provide their verbal consent to participate in an assessment through electronic means, as required by §448.911(u) of this chapter.

(c) The assessment shall result in a comprehensive listing of the client's problems, needs, and strengths.

(d) The assessment shall result in a comprehensive diagnostic impression. The diagnostic impression shall correspond to current Diagnostic and Statistical Manual of Mental Disorders (DSM) standards. A licensed intern or other provider shall operate within the scope of their license when conducting assessments.

(e) If the assessment identifies a potential mental health problem, the facility shall obtain a mental health assessment and seek appropriate mental health services when resources for mental health assessments or services, or both, are available internally or through referral at no additional cost to the program. These services shall be provided by a facility or person authorized to provide such services or a qualified professional as described in §448.901 of this chapter (relating to Requirements Applicable to all Treatment Services).

(f) The assessment shall be signed by a QCC and filed in the client record within three individual service days of admission.

(g) The program may accept an evaluation from an outside source if:

(1) it meets the criteria set forth herein;

(2) it was completed during the 30 days preceding admission or is received directly from a facility that is transferring the client; and

(3) a counselor reviews the information with the client and documents an update.

(h) For residential clients, a licensed health professional shall conduct a health assessment of the client's physical health status within 96 hours of admission. The facility may accept a health assessment from an outside source completed no more than 30 days before admission or received directly from a transferring facility. If the client has any physical complaints or indications of medical problems, the client shall be referred to a physician, physician assistant, or nurse practitioner for a history and physical examination. The examination, if needed, shall be completed within a reasonable time frame and the results filed in the client record.

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. TREATMENT PROGRAM SERVICES

25 TAC §448.911

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

§448.911. *Treatment Services Provided Through Electronic Means.*

(a) In this section, the following words and terms have the following meanings:

(1) **Electronic means**--Live, synchronous, interactive treatment program services delivered using telecommunications or information technology by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional. This term includes services delivered using synchronous audiovisual technology or synchronous audio-only technology but does not include pre-recorded videos.

(2) **Existing clinical relationship**--A relationship that occurs when a person has received at least one in-person or synchronous audiovisual treatment service from the same provider within the six months prior to the initial service delivered by synchronous telephone (audio-only) technology.

(3) **Synchronous audio-only technology**--An interactive, two-way audio telecommunications platform, including telephone technology, that uses only sound and meets the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(4) **Synchronous audiovisual technology**--An interactive, two-way audio and video telecommunications platform that meets HIPAA privacy requirements.

(5) Verbal consent--The spoken agreement of a client or a client's legally authorized representative to participate in treatment services through electronic means.

(b) Except as provided under §448.801 of this chapter (relating to Screening) and §448.803 of this chapter (relating to Assessment), only a licensed outpatient chemical dependency treatment program may provide treatment program services through electronic means.

(c) The program providing treatment services through electronic means may provide treatment services to adult and adolescent clients to the extent allowed by the facility's license and shall comply with all requirements of this section.

(d) The program shall ensure only the following individuals provide services through electronic means under this section:

(1) a qualified credentialed counselor (QCC); or

(2) a counselor intern who has more than 2,000 hours of supervised work experience or a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure) and who has passed the chemical dependency counselor licensing exam.

(e) The program's physical location shall be equipped to provide in-person, face-to-face treatment services with an individual at the individual's request.

(f) The program shall ensure all treatment sessions shall have the following two forms of access control:

(1) all contact between a QCC and clients via electronic means shall begin with a verification of the client through a name, password or pin number; and

(2) security as detailed in HIPAA.

(g) A facility shall implement adequate security and encryption measures to ensure all patient communications, recordings and records are protected and adhere to federal and state privacy laws, including HIPAA and Texas Health and Safety Code Chapters 181, 464, and 466 (relating to Medical Records Privacy; Facilities Treating Persons with a Chemical Dependency, and Regulation of Narcotic Drug Treatment Programs).

(h) A program shall maintain compliance with HIPAA and Code of Federal Regulations (CFR) Title 42, Part 2 (relating to Confidentiality of Substance Use Disorder Patient Records).

(i) A program shall not use e-mail communications containing client identifying information.

(j) A program shall use synchronous audiovisual technology, except as provided in subsection (k) of this section.

(k) A program may provide outpatient individual and group counseling to clients using synchronous audio-only technology only when all the following criteria are met:

(1) the client and provider have an existing clinical relationship;

(2) the provider receives the client's verbal consent before each session; and

(3) the provider documents in the client's record the specific reason why the provider provided outpatient counseling services using synchronous audio-only technology.

(l) A program shall ensure timely access to individuals qualified in the technology as backup for systems problems.

(m) A program shall develop a contingency plan and maintain alternate means of communication for clients when technical problems occur during the provision of services.

(n) A program shall provide individuals and clients with a description of all services offered.

(o) A program shall provide developed criteria, in addition to the Diagnostic and Statistical Manual of Mental Disorders, to assess clients for appropriateness of utilizing services through electronic means.

(p) A program shall provide appropriate referrals for clients who do not meet the criteria for services.

(q) A program shall develop a grievance procedure and provide the website and phone number to the Texas Health and Human Services Commission (HHSC) for filing a complaint.

(r) Prior to clients engaging in services through electronic means, a program shall describe and provide in writing the potential risks to clients. The risks shall address at a minimum the following areas:

(1) clinical aspects;

(2) security; and

(3) confidentiality.

(s) In a HIPAA-compliant manner, a program shall document and maintain in a client's record the client's verbal consent to participate in services provided through electronic means. The program shall provide the verbal consent documentation to HHSC upon request.

(t) A program shall explain to the client or the client's legally authorized representative what verbal consent means and to what the client or client's legally authorized representative is consenting. The verbal consent a client provides when electing to participate in a treatment service delivered through electronic means only applies to one treatment service at a time. A program shall obtain the client's verbal consent before the client receives each service through electronic means.

(u) If the program does not obtain verbal consent for a treatment service through electronic means, the program shall provide the service to the client in-person and face-to-face.

(v) A program shall inform a client who chooses to receive services through electronic means that the program will:

(1) monitor services for evidence of fraud, waste, and abuse;

(2) determine whether the client needs additional social services or supports;

(3) ensure the provider documents, in writing and in the client's record, the client's verbal consent to participate in services provided through electronic means; and

(4) adhere to HIPAA, including using HIPAA-compliant technology for services provided through electronic means.

(w) A program shall create safeguards to ensure adolescents receive treatment services separately from adults and verify a client's identity and the identity of any authorized participant.

(x) A program shall provide clients with information to access online or a copy of the current version of the following chemical dependency treatment facility (CDTF) rules, statutes, and federal regulations to notify clients of applicable rules and laws regarding CDTFs:

(1) This chapter;

(2) Texas Health and Safety Code Chapter 464; and

(3) 42 CFR Part 2.

(y) A program shall provide the program's emergency contact information to the client.

(z) A program shall maintain resource information for the local area of the client.

(aa) A program shall provide reasonable Americans with Disabilities Act of 1990 (ADA) accommodations for clients upon request.

(bb) A program shall be located and perform services in Texas.

(cc) HHSC maintains the authority to regulate the program regardless of the location of the client.

(dd) The facility shall provide the facility's emergency contact information to the client.

(ee) The facility shall maintain resource information for the local area of the client.

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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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission (Commission) adopts this rulemaking to 37 Texas Administrative Code Chapter 651 DNA, CODIS, Forensic Analysis, and Crime Laboratories, Subchapter A, Accreditation, amendments to §§651.3, 651.8, and 651.11; Subchapter B, Accreditation-Related Actions, amendments to §§651.101 - 651.104; new §651.105; and the repeal of Subchapter B, Accreditation-Related Actions and Procedure for Hearing and Appeal, §651.105 and §651.106; Subchapter C, Forensic Analyst Licensing Program, repeal of §651.216; Subchapter D, Procedure for Processing Complaints and Laboratory Self-Disclosures, amendments to §§651.305 - 651.308, the repeal of §651.309 and adopts new Subchapter E, Appeals, §651.402 without changes to the text as published in the December 1, 2023 issue of the *Texas Register* (48 TexReg 7020). The rules will not be republished.

Reasoned Justification for Rule Adoptions. Some changes are responsive to the 88th Legislature's passage of SB 991 and HB

3474, which clarify the Commission's existing appeals process to allow a crime laboratory to appeal the Judicial Branch Certification Commission's any determination that the laboratory has committed professional negligence or misconduct, or otherwise violated a rule or order of the Commission. Under the revised rules, both forensic analyst licensees and crime laboratories subject to the Commission's jurisdiction may appeal disciplinary actions, findings of professional negligence or professional misconduct or violations of the code of professional responsibility or rules or orders of the Commission to the Judicial Branch Certification Commission. Before the passage of SB 991 and HB 3474, the Code of Criminal Procedure only provided an appeals process for forensic analyst licensee disciplinary actions.

The rule adoption also makes other non-substantive edits to its accreditation rules that provide clarity to the Commission's process for initiating accreditation-related actions and that correspond with the changes to its appeals process, including clarification that the Commission may suspend the accreditation of a crime laboratory. These changes are in §§651.101 - 651.104. The rulemaking also provides that in investigations in which an investigation panel are deemed unnecessary, the Commission must instruct staff to conduct the investigation, a practice already in place by the Commission but clarified in this rule adoption. These changes are in §§651.305 - 651.308. This rulemaking further clarifies that the Commission's General Counsel may make recommendations to the Commission on the dismissal of certain complaints that fall outside the Commission's jurisdiction. These changes are in §§651.305 - 651.308. Finally, the rulemaking replaces the former process for stipulated agreements of appeals with a similar process for disposition by agreement. These changes are in §§651.305 - 651.308.

Public Comment. Pursuant to § 2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on December 1, 2023 and ended on January 5, 2024. The Commission did not receive any comments from the public.

SUBCHAPTER A. ACCREDITATION

37 TAC §§651.3, 651.8, 651.11

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adoption affects Tex. Code Crim. Proc. art. 38.01.

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. ACCREDITATION-RELATED ACTIONS

37 TAC §§651.101 - 651.105

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affects Tex. Code Crim. Proc. art. 38.01.

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SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS AND PROCEDURE FOR HEARING AND APPEAL

37 TAC §§651.105, §651.106

Statutory Authority. The repeals are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

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. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.216

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adoption affects Tex. Code Crim. Proc. art. 38.01.

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 February 5, 2024.

TRD-202400431
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 25, 2024
Proposal publication date: December 1, 2023
For further information, please call: (512) 936-0661



SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

37 TAC §§651.305 - 651.308

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

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 February 5, 2024.

TRD-202400432

Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 25, 2024
Proposal publication date: December 1, 2023
For further information, please call: (512) 936-0661



37 TAC §651.309

Statutory Authority. The repeal is adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

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 February 5, 2024.

TRD-202400433
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 25, 2024
Proposal publication date: December 1, 2023
For further information, please call: (512) 936-0661



SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

37 TAC §651.402

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affects Tex. Code Crim. Proc. art. 38.01.

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 February 5, 2024.

TRD-202400434

Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 25, 2024
Proposal publication date: December 1, 2023
For further information, please call: (512) 936-0661



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER I. PURCHASED PROTECTIVE SERVICES TO PREVENT REMOVAL OR TO REUNIFY FAMILIES

40 TAC §700.905

The Department of Family and Protective Services (DFPS) adopts new §700.905 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter I, relating to Purchased Protective Services to Prevent Removal or to Reunify Families. The new rule is adopted with changes to the proposed text published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7165) and will be republished.

BACKGROUND AND JUSTIFICATION

The new rule §700.905 as required by House Bill 793 of the Texas 88th Regular legislative session (2023) allows DFPS to reimburse a licensed or qualified provider in an amount equal to the average cost for the specific service from department contractors providing the service in the region the parent resides, from existing DFPS resources. This provision is codified at Texas Family Code §263.1021.

Chapter 263, Subchapter B of the Texas Family Code pertains to when the Department of Family and Protective Services (DFPS) has been court ordered the temporary managing conservator of a minor, and the parent, as a client, is required to obtain services under a family service plan. Under the adopted rule, a parent seeking services under a family service plan will be permitted to choose a licensed or qualified service provider that is not under contract with DFPS or an SSCC if the requirements of the rule are met. Services obtained from a service provider selected by the parent must be designed to achieve the stated goals of the Family Plan of Service for a child in DFPS conservatorship and the service provider must certify whether the parent has satisfactorily completed the required service that is being sought for reimbursement.

COMMENTS

The 30-day comment period ended January 6, 2024. During this period, DFPS did not receive any comments regarding the new rule.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of DFPS

with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide DFPS with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

§700.905. *Reimbursement of Noncontracted Service Providers.*

(a) A parent who is required to complete a Family Service Plan may obtain services from a qualified or licensed noncontracted service provider, and this provider may be reimbursed by DFPS in an amount equal to the average cost for the specific service from DFPS contractors providing the service in the region where the parent resides. Only services where the parent is the direct client of the service provider are eligible for reimbursement. In addition, the rules relating to the reimbursement of noncontracted service providers are intended to further supplement and clarify Texas Family Code §263.1021. This rule is operable to the extent that DFPS has existing resources to implement Texas Family Code §263.1021.

(b) Definitions:

(1) Case Plan: a Case Plan, as defined by 42 U.S.C. 675, is a written document which meets the requirements 42 U.S.C. 675a. Texas has divided the federal requirement of a Case Plan into two separate plans, the Family Service Plan as defined in Texas Family Code §263.101 and the Child's Plan of Service as defined in Texas Family Code §264.128. For the purpose of this Rule, a Child's Plan (also referred to as a Child's Plan of Service) is not a Family Service Plan.

(2) Family Service Plan (also referred to as a "Family Plan of Service," "Family Plan" or "Individual Family Service Plan") is a written plan in which DFPS and a child's parents identify the actions, specific skills, knowledge, steps, and/or responsibilities that are necessary for the parents to achieve the Family Service Plan's goal during this Plan's service period and the assistance to be provided to the parents by the DFPS or other agency toward meeting that goal.

(3) Single Source Continuum Contract/Contractor (SSCC) is an entity, as described in Texas Family Code §264.154, with whom DFPS enters into a contract for the provision of the full continuum of substitute care, case management, and reunification services in a Designated Community Area.

(4) Licensed Provider is an individual who is required by the State of Texas to be licensed to provide the professional service that the parent is receiving and DFPS is reimbursing.

(5) Qualified Provider is an individual who has completed certification or other training programs and has two (2) years of verified full-time experience in the professional service in which they are providing to the parent and DFPS is reimbursing.

(6) Noncontracted Service Provider is one who is not under a current contract with DFPS or SSCC for the service that they are seeking reimbursement for. They also cannot be an employee of DFPS or SSCC.

(c) SSCCs must adopt similar requirements relating to the manner in which noncontracted service providers are reimbursed that do not conflict with this Section.

(d) Only the noncontracted service provider may seek reimbursement from DFPS for services and must not have already been paid by the parent or a third party.

(e) To be reimbursed, services may be provided in-person or through an electronic communication platform.

(f) DFPS cannot use state funds to reimburse a noncontracted service provider for Medicaid services to a parent who is a Medicaid beneficiary, as described in Texas Human Resources Code Chapter 32. If the parent has Texas Medicaid, the noncontracted service provider must bill Medicaid and not seek reimbursement through DFPS.

(g) All the following requirements/conditions must be met in order for a noncontracted service provider to be reimbursed:

(1) Must be qualified or licensed provider and comply with the DFPS's guidelines and requirements for reimbursement pursuant to Texas Family Code §263.1021.

(2) If a license is required, the service provider must maintain licensure and the license must remain in good standing while providing services that they are seeking reimbursement for.

(3) Services obtained from a service provider selected must be designed to achieve the stated goals of the Family Plan of Service for a child in DFPS conservatorship and the noncontracted service provider must certify whether the parent has satisfactorily completed the required service that is being sought for reimbursement.

(4) DFPS cannot reimburse for services that occur after DFPS is dismissed from the case, or the parental rights have been terminated (earlier of two). If a Family Service Plan is reinstated, then the service provider would have to seek reimbursement through a new claim under the reinstated Family Service Plan.

(5) The noncontracted service provider must be able to receive reimbursement from state or federal funds and not be debarred from receiving these funds.

(6) The noncontracted service provider cannot have had a prior DFPS contract to provide the specific service that they are seeking reimbursement for which DFPS terminated for cause.

(7) The noncontracted service provider cannot be related by consanguinity or affinity to the parent receiving services.

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 January 29, 2024.

TRD-202400326

Katharine McLaughlin

Policy Attorney

Department of Family and Protective Services

Effective date: February 18, 2024

Proposal publication date: December 8, 2023

For further information, please call: (512) 915-1729



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.

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 363, Texas Health Steps Comprehensive Care Program

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 363, Texas Health Steps Comprehensive Care Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 363" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202400397

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: February 1, 2024



Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.617, Affirmative Marketing Requirements. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to have rules in effect that specify the applicability of affirmative marketing on Department monitored developments and provides a rule citation for where to seek more specific information. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for re adoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 23, 2024 through March 23, 2024. Comments may be submitted by email to Brooke Boston, Texas Department of Housing and Community Affairs, at bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 23, 2024.

TRD-202400451

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 6, 2024



Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services, proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 2, Emergency Preparedness

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 2, Emergency Preparedness, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 2" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202400394

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: February 1, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 27, Case Management for Children and Pregnant Women

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 27, Case Management for Children and Pregnant Women, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 27" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202400398

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: February 1, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 98, Texas HIV Medication Program

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 98, Texas HIV Medication Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 98" in the subject line. The deadline for comments is on or before 5:00

p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202400379

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: January 31, 2024



Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 275, Consumer Managed Personal Attendant Services (CM-PAS) Program

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 275, Consumer Managed Personal Attendant Services (CMPAS) Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 275" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202400399

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 1, 2024



Texas Forensic Science Commission

Title 37, Part 15

The Texas Forensic Science Commission (Commission) files this notice of its intent to review 37 Texas Administrative Code Chapter 651, DNA, CODIS, Forensic Analysis, and Crime Laboratories, Subchapters A, B, C and D. The review is conducted in accordance with Government Code § 2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the Commission will assess whether the reasons for initially adopting the rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

For 30 days following the publication of this notice, the Commission will accept public comments regarding the review. Please direct comments to Leigh Tomlin, Associate General Counsel, Texas Forensic Science Commission, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or by email at Leigh.tomlin@fsc.texas.gov.

Any proposed changes to these rules, as a result of the review, will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to possible final adoption.

TRD-202400392

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Filed: January 31, 2024



Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 46, Contracting to Provide Assisted Living and Residential Care Services

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 46, Contracting to Provide Assisted Living and Residential Care Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 46" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202400401

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: February 1, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 58, Contracting to Provide Special Services to Persons with Disabilities

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every

four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 58, Contracting to Provide Special Services to Persons with Disabilities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 58" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202400402

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: February 1, 2024



Adopted Rule Reviews

Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 302, IDD-BH Training

Notice of the review of this chapter was published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 8004). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 302 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 302. Any amendments or repeals to Chapter 302 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 302 as required by the Texas Government Code, §2001.039.

TRD-202400411

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 2, 2024



The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 321, Substance Use Services

Notice of the review of this chapter was published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7620). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 321 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 321. Any amendments or repeals to Chapter 321 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 321 as required by the Texas Government Code, §2001.039.

TRD-202400435

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 5, 2024



The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 990, Anatomical Gift

Notice of the review of this chapter was published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7620). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 990 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 990. Any amendments or repeals to Chapter 990 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 990 as required by the Texas Government Code §2001.039.

TRD-202400490

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 7, 2024



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.

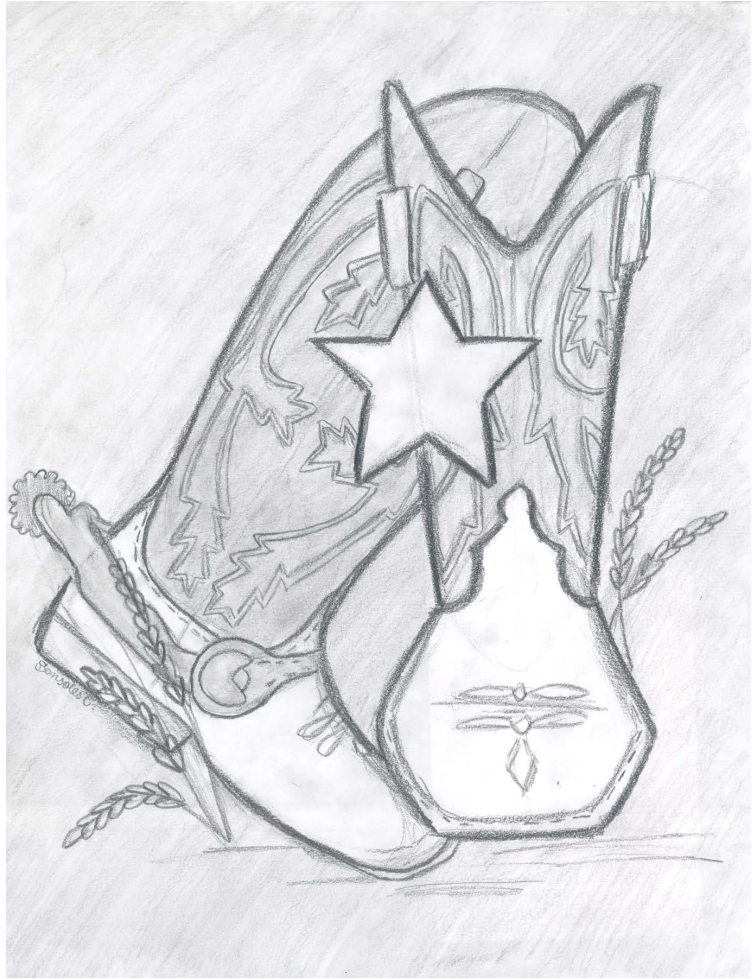
Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §101.40(3)(a)

Alternate Assessments Standards

Alternate Assessment	TAKS Exit-Level Mathematics		TAKS Exit-Level English Language Arts		TAKS Exit-Level Science		TAKS Exit-Level Social Studies	
	Assessment	Passing Score	Assessment	Passing Score	Assessment	Passing Score	Assessment	Passing Score
SAT — Administered March 2016 and After	Mathematics	360	Evidence-Based Reading and Writing	360				
SAT* — Administered January 2016 and Before	Mathematics	461	Critical Reading Writing	472 472				
ACT† — Administered September 2015 and After	Mathematics	15	Reading English	13 10	Science	14		
ACT† — Administered June 2015 and Before	Mathematics	19.5	Reading Combined English and Writing	17.7 17.7	Science	14		
TSI**	Mathematics	336	Reading Objective Writing and Sentence Skills Writing	342 350 4				
STAAR	Algebra I	[3246] 3065	English II combined† • English II (reading only)*** • English II (writing only)***	[3249] 3242 [3] 6†† [3] 6††	Biology	[3249] 3281	U.S. History	[3459] 3174

*To use SAT Critical Reading and Writing assessments, a student must meet the score requirements for both components.
 †To use ACT Reading and English assessments or Reading and Combined English and Writing assessments, a student must meet the score requirements for both components.
 **To use TSI English language arts assessments, a student must meet the score requirements for all three components.
 ††To use STAAR English II combined, a student must be a former TAKS or TAKS examinee who has not passed the EIA or both the reading and writing components, respectively.
 †††To use only the reading or writing component of STAAR English II combined, a student must be a former examinee who has not passed one of these components.
 ††††Because scale scores do not exist for each component (reading and writing) of STAAR English II combined, passing scores for each component can only be provided as raw scores.



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 Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.005, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/12/24 - 02/18/24 is 18.00% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/12/24 - 02/18/24 is 18.00% for commercial² credit.

The monthly ceiling as prescribed by §303.005³ and §303.009 for the period of 02/01/24 - 02/29/24 is 18.00%.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

³ Only for variable rate commercial transactions, as provided by §303.004(a).

TRD-202400475

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 7, 2024

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 **March 19, 2024**. 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 commission's 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 commission's 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 **March 19, 2024**. 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: Alliance Community Fellowship; DOCKET NUMBER: 2022-0580-PWS-E; IDENTIFIER: RN111473393; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e) 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 the new public water supply; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$3,315; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,652; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2022-0548-PWS-E; IDENTIFIER: RN101268514; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; PENALTY: \$216; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(3) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2022-0861-PWS-E; IDENTIFIER: RN101187854; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps that have a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; PENALTY: \$9,120; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(4) COMPANY: BABITA CORPORATION dba Heli; DOCKET NUMBER: 2022-0951-PST-E; IDENTIFIER: RN102014644; LOCATION: Marble Falls, Burnet County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED:

30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of De Leon; DOCKET NUMBER: 2021-1642-MWD-E; IDENTIFIER: RN101920569; LOCATION: De Leon, Comanche County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010078001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$15,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,600; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(6) COMPANY: City of Oak Point; DOCKET NUMBER: 2021-1322-WQ-E; IDENTIFIER: RN107515736; LOCATION: Oak Point, Denton County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under Texas Pollutant Discharge Elimination System (TPDES) General Permit for municipal separate storm sewer systems; and 30 TAC §305.125(1) and expired TPDES General Permit Number TXR040455, Part IV, Section B(2), by failing to submit concise annual reports to the Executive Director within 90 days of the end of each reporting year; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Rio Hondo; DOCKET NUMBER: 2022-0676-PWS-E; IDENTIFIER: RN101209195; LOCATION: Rio Hondo, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.111(e)(1)(B) and Texas Health and Safety Code, §341.0315(c), by failing to achieve a turbidity level of combined filter effluent that is less than 0.3 nephelometric turbidity units in at least 95% of the samples tested during the months of January through March 2022; PENALTY: \$4,275; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,275; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: Dreamland tank town, llc; DOCKET NUMBER: 2022-0124-MLM-E; IDENTIFIER: RN111393096; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: commercial construction project; RULES VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Contributing Zone; and 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; PENALTY: \$22,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,000; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: Franz Warehouse DE, LLC; DOCKET NUMBER: 2022-0600-PWS-E; IDENTIFIER: RN111476347; LOCATION: Katy, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (c)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30

TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher groundwater license; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$4,916; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: Gibbons Creek Environmental Redevelopment Group, LLC; DOCKET NUMBER: 2022-1181-IWD-E; IDENTIFIER: RN102739547; LOCATION: Bryan, Grimes County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002120000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall Number 001 and Effluent Limitations and Monitoring Requirements (Interim Phase) Number 1 for Outfall Number 005, by failing to comply with permitted effluent limitations; PENALTY: \$16,500; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(11) COMPANY: Pecan Grove Mobile Home Park, LLC; DOCKET NUMBER: 2022-0479-PWS-E; IDENTIFIER: RN101450526; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; 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 §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 for each year, and failing to submit to the TCEQ by July 1 for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2020; PENALTY: \$3,450; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(12) COMPANY: WJH LLC; DOCKET NUMBER: 2022-1433-WQ-E; IDENTIFIER: RN111332771; LOCATION: Livingston, Polk County; TYPE OF FACILITY: construction sites; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR1528GN, Part III, Section G.1, by failing to install and maintain best management practices at the sites which resulted in a discharge of pollutants into or adjacent to any water in the state; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202400439

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 6, 2024



Enforcement Orders

An agreed order was adopted regarding Alfredo Valles, Docket No. 2022-0077-MLM-E on February 6, 2024, assessing \$5,822 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Pence, 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 Harris County, Docket No. 2022-0433-PWS-E on February 6, 2024, assessing \$2,400 in administrative penalties with \$480 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 Lagasse Enterprises, LLC, Docket No. 2022-0650-WQ-E on February 6, 2024, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, 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 James L. Sullivan and Anytime Septic Solutions LLC, Docket No. 2023-0065-SLG-E on February 6, 2024, assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 HURTADO CONSTRUCTION COMPANY, Docket No. 2023-0992-AIR-E on February 6, 2024, assessing \$3,937 in administrative penalties with \$787 deferred. Information concerning any aspect of this order may be obtained by contacting Karyn Olschesky, 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 Alanreed Travel Center LLC, Docket No. 2023-1066-PST-E on February 6, 2024, assessing \$7,374 in administrative penalties with \$1,474 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Fishbeck, 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 Brooks, James Edwin, Docket No. 2023-1461-WOC-E on February 6, 2024, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, 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 CIMA General Contractors, Inc., Docket No. 2023-1462-WQ-E on February 6, 2024, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, 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 Bill Starks Construction Co., Inc, Docket No. 2023-1463-WQ-E on February 6, 2024, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, 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 Rey, Thomas A., Docket No. 2023-1548-OSS-E on February 6, 2024, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding 2BN Services, LLC, Docket No. 2023-1551-WR-E on February 6, 2024, assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, 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 Swift Holdings Inc, Docket No. 2023-1621-WQ-E on February 6, 2024, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Shane Glantz, 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 Myers, James A., Docket No. 2023-1638-WR-E on February 6, 2024, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202400481

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Enforcement Orders

A default order was adopted regarding BUSHWACKERS LAND SERVICES LLC., Docket No. 2020-1422-MLM-E on February 7, 2024, assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Pence, 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 Centex Materials LLC, Docket No. 2021-0669-MLM-E on February 7, 2024, assessing \$23,580 in administrative penalties with \$4,716 deferred. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Jimmy Ray Bland dba Bland Crushing and Salvage Facility, Docket No. 2021-0781-MSW-E on February 7, 2024, assessing \$79,779 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, 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 Galveston County Water Control and Improvement District No. 1, Docket No. 2021-1569-MLM-E on February 7, 2024, assessing \$55,625 in administrative penalties with \$11,125 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, 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 Trinity, Docket No. 2022-0048-MWD-E on February 7, 2024, assessing \$13,200 in administrative penalties with \$2,640 deferred. Information concerning any aspect of this order may be obtained by contacting Mistie Gonzales, 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 CS FRANKE DEVELOPMENT LLC, Docket No. 2022-0216-WQ-E on February 7, 2024, assessing \$20,750 in administrative penalties with \$4,150 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, 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 Francis Excavating LLC, Docket No. 2022-0249-WQ-E on February 7, 2024, assessing \$15,000 in administrative penalties with \$3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, 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 Paducah, Docket No. 2022-0385-PWS-E on February 7, 2024, assessing \$50,015 in administrative penalties with \$10,003 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.

A default order was adopted regarding Carlos Diaz, Docket No. 2022-0858-PST-E on February 7, 2024, assessing \$5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Devon Asphall, 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 Maria Elena Gueta dba Maria Elena's Mobile Homes, Docket No. 2022-0915-PWS-E on February 7, 2024, assessing \$2,746 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, 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 BRAUNTEX MATERIALS, INC., Docket No. 2022-1202-EAQ-E on February 7, 2024, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 Angelina & Neches River Authority, Docket No. 2023-0586-PWS-E on February 7, 2024, assessing \$1,650 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christiana McCrimmon, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202400484

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Notice of an Application for a Temporary Water Use Permit

APPLICATION NO.13918

Notices Issued February 06, 2024

Bechtel Energy Inc., Applicant, 3000 Post Oak Blvd., Houston, Texas 77056-6501, seeks a temporary water use permit to divert and use not to exceed 250 acre-feet of water, within a period of three years, from a diversion reach on the Port Arthur Ship Channel, Neches-Trinity Coastal

Basin for industrial purposes in Jefferson County. More information on the application and how to participate in the permitting process is given below.

The application was received on May 15, 2023, and fees were received June 16 and 28, 2023. Additional information was received on June 22 and July 25, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 7, 2023. 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, the installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. 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 Chief Clerk, at the address provided in the information section below, by February 26, 2024. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by February 26, 2024. The Executive Director may approve the application unless a written request for a contested case hearing is filed by February 26, 2024.

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;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the 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 permit and will 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 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRTP 13918 in the search field. For information 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 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO.13919

Bechtel Energy Inc., Applicant, 3000 Post Oak Blvd., Houston, Texas 77056-6501, seeks a temporary water use permit to divert and use not

to exceed 250 acre-feet of water, within a period of three years, from a point on the Port Arthur Ship Channel, Neches-Trinity Coastal Basin for industrial purposes in Jefferson County. More information on the application and how to participate in the permitting process is given below. The application was received on May 15, 2023, and fees were received June 16 and June 28, 2023. Additional information was received on June 22 and July 25, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 7, 2023.

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, the installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. 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 Chief Clerk, at the address provided in the information section below, by February 26, 2024. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by February 26, 2024. The Executive Director may approve the application unless a written request for a contested case hearing is filed by February 26, 2024.

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;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the 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 permit and will 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 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRTP 13919 in the search field. For information 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 o por el internet al <http://www.tceq.texas.gov>.

TRD-202400482

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 7, 2024



Notice of District Petition

Notice issued February 1, 2024

TCEQ Internal Control No. D-08212023-038; Lackland NE2 Development, LLC, a Texas limited liability company, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Grayson County Municipal Utility District No. 9 (District) under Local Government Code Section (§) 42.042 and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) there are no lienholders on the property to be annexed into the District; (3) the proposed property annexation will contain approximately 17.605 acres located within Grayson County; and (4) all of the land within the proposed property annexation is located within the extraterritorial jurisdiction of the City of Tom Bean, Texas (City). In accordance with Local Government Code §§ 42.0425 and 42.042, the Petitioner and the District submitted a petition to the City, requesting the City's consent to the annexation of land into the District. Information provided indicates that the City did not consent to the inclusion of the land into the District's area. After the 90-day period passed without receiving the City's consent to the annexation, the Petitioner submitted a petition to the City requesting the City provide water and sanitary sewer services to the proposed annexation area. The 120-day period for reaching a mutually agreeable contract expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Local Government Code § 42.042, failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include all of the land in the proposed annexation area into the District.

INFORMATION SECTION

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.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. 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) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar

to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information 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 Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202400477

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Notice of District Petition

Notice issued February 2, 2024

TCEQ Internal Control No. D-12202023-023; Schulle Farm Partners, L.P., (Petitioner) filed a petition for creation of Caldwell County Municipal Utility District No. 8 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Independent Bank, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 226.626 acres located within Caldwell County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide water supply for municipal uses, domestic uses, and commercial purposes; (2) collect, transport, process, dispose of, and control, all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses and operational expenses during construction and interest during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$27,720,678 (\$16,364,982 for water, wastewater, and drainage and \$11,355,696 for roads).

INFORMATION SECTION

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.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. 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) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087.

For information 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 Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202400479

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Notice of Informational Meeting for an Air Quality Standard Permit for Permanent Rock and Concrete Crushers Proposed Air Quality Registration Number 173335

APPLICATION. Travis Materials Group Ltd, 2016 Farm-to-Market Road 969, Elgin, Texas 78621-6102 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration Number 173335, which would authorize construction of a permanent rock and concrete crusher. The facility is proposed to be located at 1255 Farm-to-Market Road 969, Bastrop, Bastrop County, Texas 78602. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.408181,30.17855&level=13>. This application was submitted to the TCEQ on July 12, 2023. The executive director has determined the application was technically complete on October 4, 2023.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Building A Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

INFORMATIONAL MEETING. The TCEQ will conduct an informational meeting to answer questions and discuss the application. Formal comments will not be taken at the informational meeting. The meeting will be held:

Thursday, March 7, 2024 at 7:00 p.m.

Spiderwood Studios (Building A)

140 Utley Road

Elgin, Texas 78621

INFORMATION. Public written comments about this application may be submitted at any time during the public comment period. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. 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 permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. General information can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Travis Materials Group Ltd, 2016 Farm-to-Market Road 969, Elgin, Texas 78621-6102, or by calling Mr. Aaron Hertz, Environmental Consultant, Hertz Environmental Health & Safety, LLC at (512) 709-4251.

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 five business days prior to the meeting.

Notice Issuance Date: February 01, 2024

TRD-202400476

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **March 19, 2024**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 19, 2024**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Raymond Lemons, Sr. and Gaynell Lemons; DOCKET NUMBER: 2021-1300-MSW-E; TCEQ ID NUMBER: RN111255725; LOCATION: 3603 North Country Road 2706, Lubbock, Lubbock County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW at the site; PENALTY: \$26,250; STAFF ATTORNEY: Taylor Pack Ellis, Litigation, MC 175, (512) 239-6860; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202400441

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 6, 2024



Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is 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 **March 19, 2024**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 19, 2024**. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: PNS Operating, LLC dba Pump N Shop 48; DOCKET NUMBER: 2022-0459-PST-E; TCEQ ID NUMBER: RN102458270; LOCATION: 5255 Davis Boulevard, North Richland Hills, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §7.055 and 30 TAC §70.104(b)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,750; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202400440

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 6, 2024



Notice of Water Quality Application

The following notice was issued on January 31, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0015921001 issued to Liquid Utilities LLC, 6315B Farm-to-Market 1488 Road, Suite 192, Magnolia, Texas 77354, to remove dechlorination requirement from the existing permit. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility will be at 1997 North Farm-to-Market 1486 Road, in Montgomery County, Texas 77356.

TRD-202400478

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Notice of Water Quality Application

The following notice was issued on February 2, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN THE *TEXAS REGISTER*.

INFORMATION SECTION

Nucor corporation, which operates Nucor Steel - Texas, has applied for minor amendment of TCEQ Permit No. WQ0001897000, which authorizes the disposal of process wastewater and contact cooling water at an annual average flow not to exceed 13,000 gallons per day via evaporation, and contact cooling water from Ponds 1 and 2 at an annual average flow rate not to exceed 103,000 gallons per day via irrigation. The draft permit authorizes the disposal of process wastewater and contact cooling water at an annual average flow not to exceed 103,000 gallons per day via irrigation on 42.3 acres of Bermuda grass. This permit will not authorize a discharge of pollutants into water in the state. The facility and land application site are located at 8812 United State Highway 79 West, Leon County, Texas 75846.

TRD-202400480

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Notice of Water Quality Application

The following notice was issued on February 6, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0002817000 issued to Brownsville Navigation District, which operates the Fishing Harbor Wastewater Treatment Plant, a publicly owned treatment works which treats wastewater from the Port of Brownsville Fishing Harbor and the Brownsville Navigation District, to authorize correcting the parameter total cyanide, and the associated limits, to free cyanide. The existing permit authorizes the discharge of treated domestic wastewater, shrimp processing wastewater, shrimp boat bilge water, and stormwater at a daily average flow not to exceed 250,000 gallons per day via Outfall 001. The facility is located at 10251 Fisherman's Place Road, on the south side of State Highway 48, approximately 5.4 miles east of the intersection of State Highway 48 and Farm-to-Market Road 511, northeast of the City of Brownsville, Cameron County, Texas 78521. The TCEQ executive director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

TRD-202400483

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 7, 2024



Texas Health and Human Services Commission

Public Notice: Texas State Plan Amendment to Make Changes to Requirements for Prescribed Pediatric Extended Care Centers (PPECCs)

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 24-0005 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to make requirements for PPECCs consistent with changes made to state licensing rules for PPECCs as required by House Bill (H.B.) 3550, 88th Texas Legislature, Regular Session, 2023. The proposed amendment requires a PPECC to provide transportation to a recipient when the recipient's physician determines the recipient is stable to receive transportation services and the parent or legal guardian wants the recipient to receive transportation services. The proposed amendment also requires that a recipient be accompanied by a PPECC nurse or direct care staff member, as identified by the physician in the plan of care, during transport to and from the PPECC. Apart from H.B. 3550, the proposed amendment revises the qualifications for a PPECC's nursing director and alternate nursing director to be consistent with state licensing rules for PPECCs and makes minor editorial changes for clarity. The proposed amendment is effective 9/1/2024.

The proposed amendment is estimated to have no fiscal impact, as it is not expected to have an effect on Medicaid utilization or cost.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-202400403

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 1, 2024



Public Notice - Youth Empowerment Services (YES) Program

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Youth Empowerment Services (YES) Program. HHSC administers the YES Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the YES waiver application through March 31, 2028. The proposed effective date for the amendment is July 1, 2024, and does not affect the cost neutrality of the waiver.

The YES Program is designed to provide home and community-based services to children and youth with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The program currently serves eligible children who are at least three years of age and under 19 years of age.

The amendment proposes to change the *Quality Improvement Strategy* section in appendices A, B, C, D, G, H, and I. The amendment will modify the timeframes for monitoring reviews to obtain data for quality monitoring purposes from annual to biennial reviews for desk and onsite reviews of YES providers.

If you want to obtain a free copy of the proposed waiver amendment or if you have questions, need additional information, or want to submit comments about the amendment, please contact Jayasree Sankaran by U.S. mail, telephone, fax, or email at the addresses and numbers below.

A copy of the proposed waiver amendment may also be obtained online on the HHSC website at:

<https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers>

Comments about the proposed waiver amendment must be submitted to HHSC by March 18, 2024.

The Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the amendment available for review.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jayasree Sankaran, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street

Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4331

Fax

Attention: Jayasree Sankaran, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202400462

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 6, 2024



Revised Public Notice - Community Living Assistance and Support Services (CLASS) Waiver Program

The original notice regarding the Community Living Assistance and Support Services (CLASS) waiver program renewal request was posted in the *Texas Register* on February 9, 2024. This revised notice reflects an additional change to the renewal request to remove the word "unauthorized" from performance measure G.c.1.

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to renew the CLASS waiver program. HHSC administers the CLASS Program under the authority of §1915(c) of the Social Security Act. CMS has approved the CLASS waiver application through August 31, 2024. The proposed effective date for the renewal is September 1, 2024.

The CLASS Program provides community-based services and supports to individuals with a related condition who live in their own homes or in the home of another person, such as a family member. Services and supports are intended to enhance quality of life, functional independence, health and welfare, and to supplement, rather than replace, existing informal or formal supports and resources. Services in the CLASS Program are case management, prevocational services, residential habilitation, respite (in-home and out of home), supported employment, prescribed drugs, financial management services, support consultation, adaptive aids, auditory integration training/auditory enhancement training, behavioral support, cognitive rehabilitation ther-

apy, continued family services, dental treatment, dietary, employment assistance, minor home modifications, nursing, occupational therapy services, physical therapy services, specialized therapies, speech and language pathology, support family services and transition assistance services.

The renewal request proposes to make the following changes:

Main Attachment #2: Home and Community-Based Settings Waiver Transition Plan

HHSC removed the attachment #2 transition plan language from the main appendix. CMS is proposing to remove the attachment #2 Home and Community-Based Settings Waiver Transition Plan option from their updated CMS Home and Community-Based Services (HCBS) waiver application template in 2024.

Appendix A: Waiver Administration and Operation

HHSC added an Administrative Authority Performance Measure as requested by CMS as follows: A.a.1 Number and percent of individuals on the CLASS interest list who are offered waiver services on a first-come, first served basis by HHSC. N: Number of individuals on the CLASS interest list who are offered waiver services on a first-come, first-served basis. D: Number of individuals who are offered enrollment from the interest list.

Appendix B: Participant Access and Eligibility

HHSC clarified in the "Cost Limit" section that all individuals have access to services up to the cost limit if they have an identified need that is supported and justified.

HHSC increased the unduplicated number of participants served, and the point-in-time totals, for all five waiver years and maintained the same number of reserve capacity slots across all five waiver years.

HHSC clarified in the "Selection of Entrants to the Waiver" that when an individual is placed on the interest list the individual's name, mailing address, and date of birth is required.

HHSC clarified that anyone may request for an individual's name to be added to the interest list by calling or submitting a written request to HHSC.

HHSC clarified that the level of care (LOC) documentation may be submitted electronically by fax or mail and that qualified intellectual and developmental disability professionals (QIDP) review the LOC. HHSC also clarified the annual resubmission and provider process.

HHSC updated the "Maintenance of Evaluation/Reevaluation Records" section to include HHSC as an agency for records maintenance.

HHSC updated the "Access to Services by Limited English Proficiency Persons" section to align with current policy.

Appendix C: Participant Services

HHSC updated provider qualifications throughout Appendix C to align with current policy.

HHSC changed provider training for abuse, neglect, and exploitation (ANE) from "within 60 days of employment" to "before assuming job duties" to align with current policy.

HHSC updated provider qualifications reporting requirement training for ANE to require reporting immediately, but no later than 24 hours.

HHSC revised information in the service provider qualifications about who can be a service provider.

HHSC updated the "Frequency of Verification" section for Supported Employment to remove, "Individual/employer and financial management services agency (FMSA) prior to hiring" and "HHSC Contract staff verifies provider qualifications during on-site reviews, completed every three years at a minimum" to align with current policy.

HHSC updated the Prevocational Services definition to reflect "goals identified in the individual's individual program plan (IPP)." instead of the "individual's habilitation plan" to align with current policy and rules. Within the definition, replaced the term "employment" with "competitive employment" to align with policies.

HHSC changed the term "face to face" to "in person" to reflect the accurate terminology for habilitation services, and respite services definitions.

HHSC revised one of the locations in which respite care can be provided from "Individuals home or place of residence" to "Individual's residence or the residence of a relative or friend". Added "The residence of another person receiving a Medicaid waiver service;" as an additional location Respite care can be provided.

HHSC updated the verification of provider qualifications for respite (out-of-home) Adult Foster Care Four Person Residence provider service. New language reflects the current policy stating "HHSC Regulatory Services licenses four bed adult foster care homes as a Type A or B, but only renews the limited number of Type C Assisted Living facilities who were originally licensed as Type C."

HHSC removed "Vendor Drug" from the reference to the provider agreement for prescription medications to align with current policy.

HHSC clarified that financial management services are services provided by an FMSA to an employer, not an individual. Clarified language in the "Financial Management Services in the Frequency of Verification" section to make information requested in this section more accurate. Clarified Texas Administrative Code (TAC) references to include Chapter 41 and included chapter titles.

HHSC clarified in the "Frequency of Verification" section that contract staff conducts monitoring reviews at least every three years and each contract is monitored at least every three years thereafter to align with current policy.

HHSC clarified language that FMSAs must attend periodic trainings conducted by HHSC.

HHSC updated reference to Internal Revenue Service Form 2678 to include form name of Employer/Payer Appointment of Agent.

HHSC clarified that the supports for participant direction is provided by a support advisor and provides a level of assistance beyond that provided by the FMSA. HHSC clarified that support consultation helps the employer to meet the required employer responsibilities of the consumer directed services (CDS) option.

HHSC clarified in the "Provider Qualifications" section for both agency and CDS options that the support advisor cannot be the individual or the individual's spouse, the legally authorized representative (LAR) or the legally authorized representative's spouse, or the designated representative or the designated representative's spouse to align with current policy.

HHSC clarified in the "Provider Qualifications" section that the FMSA must have support consultation services available to be provided by a support advisor upon request by the individual or individual's LAR.

HHSC clarified that the support advisor, not the provider, must have a support advisor certificate issued by HHSC to indicate successful completion of required training conducted or approved by HHSC.

HHSC deleted "HHSC verifies provider qualifications prior to awarding a provider agreement and on an ongoing basis" in the "Entity Responsible for Verification" section.

To align with current policy, HHSC removed the statement in the "Provider Qualifications" section that the continued family and support family services provider must be an independent foster family verified by the Texas Department of Family and Protective Services and contracted with a direct services agency (DSA). Changed the term "Support Family Agencies" to "Child Placing Agencies."

HHSC clarified for self-directed services that the individual, the individual's spouse, the LAR, the LARs spouse, the designated representative, or the designated representative's spouse cannot be hired to provide services to align with existing policy.

Appendix D: Participant-Centered Planning and Service Delivery

HHSC clarified that the persons on the service planning team include "actively involved person" and staff providing direct services, if approved by the individual and LAR.

HHSC clarified that an oral and written explanation of CLASS waiver program services and "State Plan services" must be provided instead of "State Plan Community First Choice services (CFC)."

HHSC removed CFC Personal Assistance Services/Habilitation service" references throughout the waiver as CFC is not a waiver service. HHSC also added that the individual program plan documents that the frequency and amount of the service does not replace existing natural supports, non-waiver resources, or non-CFC resources for which the individual may be eligible; and documents the setting for each service, which must be selected by the individual or LAR from setting options.

HHSC removed from the "Risk Assessment and Mitigation" section the sentence "All person-centered service plans are reviewed by HHSC QIDP to further ensure the plan meets the individual's needs."

HHSC clarified, to align with existing policy, that when an assigned DSA employee or contractor is not available to deliver an individual's service, the DSA must have a written process to ensure backup staff are or can readily become familiar with the individual they may be required to provide a CLASS Program services to.

HHSC added FMSAs to the list of entities HHSC monitors to ensure compliance with requirements regarding an individual's transfer to a new CMA, DSA or FMSA.

HHSC clarified language relating to the online portal system that allows secure submission and return of electronic documentation being implemented.

Appendix E: Participant Direction of Services

HHSC added support consultation to the list of services an individual may direct through the CDS option.

HHSC updated the number of participants who self-direct their waiver services.

Appendix F: Participant Rights

HHSC did not make any substantive changes to Appendix F. Changes made were to align with other appendices edits such as changing the term "face-to-face" to "in-person", changing the term "provider investigations" to "Long-Term Care Regulation (LTCR)" or "HHSC CII", changing the term "Texas Department of Family and Protective Services" to "HHSC Complaint and Incident Intake (CII)", and updating TAC references.

Appendix G: Participant Safeguards

HHSC added restraint and seclusion to the list of critical incident categories and removed references to the HHSC CLASS/DBMD Notification of Critical Incidents form.

HHSC removed the sentence, "Oversight activities occur on an ongoing basis. Information regarding validated instances of ANE are monitored, tracked, and trended for purposes of training HHSC staff and to prevent recurrence" as duplicative.

HHSC clarified that HHSC Long-Term Care Regulation (LTCR) instead of HHSC Provider investigations, investigates allegations of ANE.

HHSC removed the references to the Department of Family and Protective Services for complaints and replaced it with HHC Complaint and Incident Intake (CII) unit.

HHSC clarified, to align with existing policy, that if CLASS providers become aware of a critical incident, including death, they must report that incident to HHSC using the critical incident management system (CIMS).

HHSC added the Accreditation Commission for Health Care to list of accreditation entities for home and community support services agencies.

HHSC changed the term "Department of Family and Protective Services Residential Child Care Licensing staff" to "Health and Human Services Child Care Regulation."

HHSC removed the term "Sanction Action Review Committee" and replaced it with "Adverse Action Review Committee."

Appendix H: Quality Improvement Strategy

HHSC removed the outdated sentence, "HHSC has articulated the vision and infrastructure for the quality improvement strategy for the waivers in the Quality Oversight Plan, which was approved by both agencies' commissioners in 2010."

HHSC changed the term "Quality Oversight Plan" to "Quality Improvement Strategy".

HHSC clarified the role of the Quality Review Team and Quality Reporting Unit in "System Design Changes and Quality Improvement Strategy" sections. Removed references and information relating to the Quality Assurance and Improvement Data Mart and Texas Quality Matters.

HHSC replaced general information relating to advisory committees with information on the Intellectual and Developmental Disability System Redesign Advisory Committee.

Appendix I: Financial Accountability

HHSC removed the on-site reference for HHSC's fiscal monitoring of CLASS DSA and CMAs. Clarified to align with existing policy that contract monitoring staff select a six-month period within the monitoring period to review service delivery.

HHSC changed the term "HHSC Community Services Contracts staff" to "HHSC Contracts staff".

HHSC removed references to HHSC Contract Oversight and Support area and updated these references with information on the System of Contract Operation and Reporting Application.

HHSC clarified the services that use cost reports to determine rates.

Appendix J: Cost Neutrality Demonstration

HHSC updated the unduplicated number of participants for all five waiver years. Updated the service projections (Factor D), and the waiver recipients other Medicaid cost projections (Factor D') and

projections for annual average per capita Medicaid costs for all non-waiver institutional services (Factor G) and other Medicaid costs for the institutional population (Factor G') for all five waiver years.

Performance Measures

HHSC revised performance measure C.a.3, as well as the numerator, to remove the term "continually."

HHSC revised performance measure C.b.1, as well as the numerator, to remove the term "prior to delivering services." Revised the denominator to remove the term "reviewed." Revised the sampling approach.

HHSC removed performance measure C.b.2 that read, "Number and percent of monitored FMSA legal entities that continually met program contract requirements, evidenced by an overall monitoring score of at least 90%."

HHSC removed performance measure C.b.3 that read, "Number and percent of monitored FMSA legal entities that continually met fiscal contract requirements, evidenced by an overall monitoring score of at least 90%."

HHSC revised performance measure C.b.4, as well as the numerator, to use the term "service provider" instead of "Medicaid provider." HHSC further revised the performance measure and numerator to include the phrase "each new employee hired," and revised the denominator to include the phrase "who had a new employee hired during the monitoring period." Renumbered from C.b.4 to C.b.2. The revised measure reads, "C.b.2 Number and percent of individuals/employers using the CDS option that had a service provider agreement for each new employee hired. N: Number of employers using the CDS option that had a service provider agreement for each new employee hired. D: Total number of individuals/employers reviewed who had a new employee hired during the monitoring period."

HHSC revised performance measure C.b.5 and C.b.6, as well as their numerators and denominators, to remove the term "and TAS." Renumbered C.b.5 to C.b.3 and C.b.6 to C.b.4.

HHSC revised performance measure C.c.2's denominator to remove the term "monitored." Updated sample approach.

HHSC removed performance measure C.c.3 that read, "Number and percent of provider staff meeting state training requirements by receiving a score of at least 80% on the HHSC CLASS Computer Based Training."

HHSC renumbered performance measure C.c.4 to C.c.3.

HHSC revised performance measures D.c.2, D.d.1, D.e.2, G.a.5, G.a.7, G.c.2, G.d.1, G.d.2, I.a.3, and I.a.5 sampling approach.

HHSC revised performance measure G.a.8 data source to replace the term "CLASS Consolidated Microsoft Database" with "Quality Assurance and Improvement Data Mart."

HHSC revised performance measure G.a.9 data source to replace the term "Salesforce Abuse, Neglect, and Exploitation Database" with "Critical Incident Management System."

HHSC revised performance measure G.a.11 data source to replace the term "LTSS Policy SoftChalk Database" with "HHSC Provider Learning Portal." Revised the frequency of data aggregation and analysis.

HHSC revised performance measure G.b.1 data source to replace the term "Notification of Critical Incidents Database" with "Critical Incident Management System."

HHSC revised performance measure G.b.2 and G.b.3 data source to replace the term "CLASS Consolidated Microsoft Database" with "Quality Assurance and Improvement Data Mart."

HHSC revised performance measure G.c.1, as well as the numerator, to remove the term "unauthorized" and to replace the term "referred for further investigation" with "that were in compliance with requirements related to restraint." Revised data source to replace the term "Notification of Critical Incidents Database" with "Critical Incident Management System." The revised measure reads as, "Number and percent of provider-reported incidents of restraint that were in compliance with requirements related to restraint. N: Number of provider-reported incidents of restraint that were in compliance with requirements related to restraint. D: Number of provider-reported incidents of restraint."

HHSC revised performance measure I.a.1, as well as the numerator, to add the term "coded and." The revised measure reads as, "Total dollar amount and percent of total dollar amount of paid claims, including those from FMSAs, that were coded and paid for according to the reimbursement methodology specified in the approved waiver. N: Total dollar amount of paid claims that were coded and paid for according to the reimbursement methodology specified in the approved waiver. D: Total dollar amount of paid claims."

HHSC removed performance measure I.a.2 that read, "Number and percent of monitored financial management services agencies (FMSAs) for which claims were paid in accordance with the employee's established rate of pay and the service hours actually worked." Replaced I.a.2 with new performance measure that reads, "Number and percent of FMSAs that received a contract monitoring review that were free from recoupment of the FMS fee. N: Number of FMSAs that received a contract monitoring review that were free from recoupment of the FMS fee. D: Number of FMSAs that received a contract monitoring review."

HHSC revised performance measure I.b.1 data source to replace the term "Rate Analysis" with "Provider Finance."

Miscellaneous

HHSC updated references to the TAC changing references from Title 40 to Title 26 throughout the waiver application. Rules of the former Department of Aging and Disability Services (DADS), which were in Title 40, have been transferred to Title 26.

HHSC changed the term "Policy Development Support" to "Federal Coordination, Rules and Committees".

HHSC removed references to the DADS because that agency was abolished in 2017 and its functions transferred to HHSC.

HHSC changed the term "provider" to "service provider" and the term "program provider" to "provider agency."

HHSC changed the term "face-to-face" to "in-person".

HHSC changed the term "provider investigations" to "Long-Term Care Regulation (LTCR)" or "HHSC CII".

HHSC changed the terms "Texas Department of Family and Protective Services" to "HHSC Complaint and Incident Intake (CII)" or "HHSC LTCR".

HHSC changed the term "Texas Department of Family and Protective Services" to "HHSC Child Care Regulation".

HHSC changed the term "Rate Analysis Department" to "Provider Finance Department".

To obtain a free copy of the proposed waiver renewal, ask questions, obtain additional information, or submit comments, please contact Jayasree Sankaran by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver renewal may also be obtained online on the HHSC website at:

<https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers>

Comments about the proposed waiver renewal must be submitted to HHSC by March 11, 2024.

The Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the renewal available for review.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jayasree Sankaran, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4331

Fax

Attention: Jayasree Sankaran, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202400459

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 6, 2024



Department of State Health Services

Certification Limited Liability Report

The Hospital Survey Program in the Center for Health Statistics, Texas Department of State Health Services, has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability under Texas Health and Safety Code, §311.0456. Thirty-one (31) hospitals requested certification. Each of the requesting hospitals will be notified, by mail, on the determination of whether the statutory certification requirements were met. The certification issued under Texas Health and Safety Code §311.0456 to a nonprofit hospital or hospital system takes effect on December 31, 2023, and expires on the anniversary of that date.

Certified:

One (1) nonprofit hospital system, comprised of six (6) hospitals, and nine (9) nonprofit hospitals were found to be eligible for certification of limited liability based on information they provided via survey to the Hospital Survey Program. These entities met the statutory requirements for certification by providing charity care in an amount equal to or greater than 8% of their net patient revenue and providing 40% or more of the charity care in their counties.

1. Seton Healthcare System (Travis County only)
 - a. Ascension Seton Medical Center in Travis County
 - b. Ascension Seton Northwest in Travis County
 - c. Ascension Seton Shoal Creek in Travis County
 - d. Ascension Seton Southwest in Travis County
 - e. Dell Children's Medical Center in Travis County

f. Dell Seton Medical Center at the University of Texas in Travis County

2. Ascension Seton Smithville in Bastrop County

3. CHRISTUS Spohn Hospital Beeville in Bee County

4. Ascension Seton Edgar B. Davis in Caldwell County

5. CHRISTUS Good Shepherd Medical Center - Marshall in Harrison County

6. CHRISTUS Southeast Texas - Jasper Memorial in Jasper County

7. CHRISTUS Spohn Hospital Alice in Jim Wells County

8. CHRISTUS Spohn Hospital Kleberg in Kleberg County

9. CHRISTUS Spohn Hospital Corpus Christi Shoreline in Nueces County

10. CHRISTUS Mother Frances Hospital - Winnsboro in Wood County

Not Certified:

Sixteen (16) nonprofit hospitals were not certified for limited liability based on their survey data. They were unable to meet the statutory requirements to provide charity care in an amount equal to or greater than 8% of their net patient revenue or did not provide at least 40% of the charity care in their counties.

1. Ascension Seton Bastrop in Bastrop County

2. CHRISTUS Childrens in Bexar County

3. CHRISTUS Santa Rosa Hospital - Medical Center in Bexar County

4. CHRISTUS St. Michael Health System in Bowie County

5. Ascension Seton Highland Lakes in Burnet County

6. CHRISTUS Mother Frances Hospital - Jacksonville in Cherokee County

7. CHRISTUS Santa Rosa Hospital - New Braunfels in Comal County

8. Ascension Seton Hays in Hays County

9. Knapp Medical Center in Hidalgo County

10. Mission Regional Medical Center in Hidalgo County

11. CHRISTUS Mother Frances Hospital - Sulphur Springs in Hopkins County

12. CHRISTUS Southeast Texas - St Elizabeth in Jefferson County

13. Ascension Providence in McLennan County

14. CHRISTUS Mother Frances Hospital - Tyler in Smith County

15. United Regional Health Care System in Wichita County

16. Ascension Seton Williamson in Williamson County

For further information about this report, please contact Dwayne Collins or Andria Orbach in the Center for Health Statistics via email at HSU@dshs.texas.gov.

TRD-202400436

Cynthia Hernandez

General Counsel

Department of State Health Services

Filed: February 5, 2024



Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking-Texas Research Incentive Program (TRIP) (Texas State University System, Texas Tech University System, The University of Texas System, University of Houston System, and University of North Texas System)

The Texas Higher Education Coordinating Board (THECB) intends to engage in negotiated rulemaking to amend Texas Research Incentive Program (TRIP) rules in Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter A, implementing Texas Education Code, Chapter 62, Subchapter F. The TRIP has been in effect for over a decade and some changes to administrative law are required to improve the program's administration. The proposed changes would codify existing processes into rule and clarify issues that have arisen during the application review process to lessen the administrative burden on institutions.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo to chancellors at Texas State University System, Texas Tech University System, The University of Texas System, University of Houston System, and University of North Texas System soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their system.

From this effort, six (6) individuals responded (out of approximately six (6) affected entities) and expressed an interest to participate or nominated a representative from their system to participate on the negotiated rulemaking committee. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee:

1. Texas State University System;
2. Texas Tech University System;
3. The University of Texas System;
4. University of Houston System;
5. University of North Texas System; and
6. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following seven individuals to the negotiated rulemaking committee for the Texas Research Incentive Program to represent affected parties and the agency:

Michael T. Blanda, Associate Vice President, Research, Texas State University System

Mikela Bryant, Associate General Counsel, Institutional Advancement, Texas Tech University System

Archie L. Holmes, Executive Vice Chancellor, Academic Affairs, The University of Texas System

Gloria Muhammad, Senior Director, Finance and Operations Development for Development and Alumni Relations, The University of Texas System-The University of Texas at Dallas

Cris Milligan, Assistant Vice President, Research Administration, University of Houston System

Liz Bolin, Deputy Chief Strategy Officer, University of North Texas System

Emily Cormier, Assistant Commissioner, Funding and Resource Planning, Texas Higher Education Coordinating Board

If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;
2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;
3. Name and contact information of the person being nominated for membership; and
4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the Texas research incentive program. Comments and applications for membership on the committee must be submitted by February 25, 2024, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202400485

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: February 7, 2024

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Securian Specialty Lines, Inc., a domestic surplus lines company. The home office is in Austin, Texas.

Application to do business in the state of Texas for Kemper Financial Indemnity Company, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Application to do business in the state of Texas for Atlas National Title Insurance Company, a foreign title company. The home office is in Irvine, California.

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 John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202400474

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: February 7, 2024

◆ ◆ ◆
Texas Lottery Commission

Scratch Ticket Game Number 2558 "SILVER ARMADILLO DOLLAR\$"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2558 is "SILVER ARMADILLO DOLLAR\$". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2558 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2558.

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: BAR SYMBOL, BELL SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, BOOT SYMBOL, POT OF GOLD SYMBOL, HORSESHOE

SYMBOL, CHERRY SYMBOL, LADYBUG SYMBOL, MONEY BAG SYMBOL, MELON SYMBOL, ELEPHANT SYMBOL, HAT SYMBOL, STACK OF COINS SYMBOL, CACTUS SYMBOL, RING SYMBOL, GRAPE SYMBOL, CHILE PEPPER SYMBOL, CLOVER SYMBOL, BANANA SYMBOL, WISHBONE SYMBOL, ANCHOR SYMBOL, HEART SYMBOL, JOKER SYMBOL, 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2558 - 1.2D

PLAY SYMBOL	CAPTION
BAR SYMBOL	BAR
BELL SYMBOL	BELL
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
BOOT SYMBOL	BOOT
POT OF GOLD SYMBOL	PTGD
HORSESHOE SYMBOL	SHOE
CHERRY SYMBOL	CHRY
LADYBUG SYMBOL	LBUG
MONEY BAG SYMBOL	MNBAG
MELON SYMBOL	MELN
ELEPHANT SYMBOL	ELPNT
HAT SYMBOL	HAT
STACK OF COINS SYMBOL	COINS
CACTUS SYMBOL	CACTUS
RING SYMBOL	RING
GRAPE SYMBOL	GRPE
CHILE PEPPER SYMBOL	PEPPER
CLOVER SYMBOL	CLOVER
BANANA SYMBOL	BANANA
WISHBONE SYMBOL	BONE
ANCHOR SYMBOL	ANCHR
HEART SYMBOL	HEART
JOKER SYMBOL	JOKER
01	ONE
02	TWO
03	THR

04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR

35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2558), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2558-0000001-001.

H. Pack - A Pack of the "SILVER ARMADILLO DOLLAR\$" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning 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 "SILVER ARMADILLO DOLLAR\$" Scratch Ticket Game No. 2558.

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 "SILVER ARMADILLO DOLLAR\$" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-nine (49) Play Symbols. \$20 BONUS: If the player reveals 2 matching symbols in the \$20 BONUS, the player wins \$20. \$50 BONUS: If the player reveals 2 matching symbols in the \$50 BONUS, the player wins \$50. SILVER ARMADILLO DOLLAR\$: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-nine (49) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-nine (49) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the forty-nine (49) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the forty-nine (49) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the

award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. SILVER ARMADILLO DOLLARS\$ (Key Number Match): No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

D. SILVER ARMADILLO DOLLARS\$ (Key Number Match): There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. SILVER ARMADILLO DOLLARS\$ (Key Number Match): There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

F. SILVER ARMADILLO DOLLARS\$ (Key Number Match): A non-winning Prize Symbol will never match a winning Prize Symbol.

G. SILVER ARMADILLO DOLLARS\$ (Key Number Match): A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. SILVER ARMADILLO DOLLARS\$ (Key Number Match): The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. SILVER ARMADILLO DOLLARS\$ (Key Number Match): The "10X" (WINX10) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SILVER ARMADILLO DOLLARS\$" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SILVER ARMADILLO DOLLARS" Scratch Ticket Game prize of \$1,000, \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SILVER ARMADILLO DOLLARS" 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 "SILVER ARMADILLO DOLLARS" 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 "SILVER ARMADILLO DOLLARS" 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 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2558. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2558 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	731,600	9.68
\$10.00	542,800	13.04
\$20.00	94,400	75.00
\$25.00	141,600	50.00
\$50.00	94,400	75.00
\$100	21,240	333.33
\$500	3,540	2,000.00
\$1,000	413	17,142.86
\$5,000	10	708,000.00
\$100,000	5	1,416,000.00

*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 4.34. 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. 2558 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. 2558, 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-202400437
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: February 6, 2024



Scratch Ticket Game Number 2559 "LUCKY 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2559 is "LUCKY 7s". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2559 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2559.

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, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 7 SYMBOL, 77

SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2559 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
58	FFET
59	FFNI
60	SXTY
7 SYMBOL	WINX10
77 SYMBOL	WINALL

\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2559), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2559-0000001-001.

H. Pack - A Pack of "LUCKY 7s" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "LUCKY 7s" Scratch Ticket Game No. 2559.

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 "LUCKY 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-seven (47) Play Symbols. LUCKY 7s PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "7" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the

player reveals a "77" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! BONUS PLAY INSTRUCTIONS: If the player reveals 2 matching prize amounts in the BONUS play area, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-seven (47) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-seven (47) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-seven (47) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-seven (47) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to twenty-one (21) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

D. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

E. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than three (3) times.

F. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

G. KEY NUMBER MATCH: The "7" (WINX10) and "77" (WINALL) Play Symbols will never appear in the WINNING NUMBERS or BONUS Play Symbol spots.

H. KEY NUMBER MATCH: The "7" (WINX10) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: The "77" (WINALL) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

J. KEY NUMBER MATCH: On Tickets that contain the "77" (WINALL) Play Symbol, the BONUS play area will win as dictated by the prize structure.

K. KEY NUMBER MATCH: On Tickets that contain the "77" (WINALL) Play Symbol, none of the WINNING NUMBERS Play Symbols will match any of the YOUR NUMBERS Play Symbols and the "7" (WINX10) Play Symbol will not appear.

L. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as winning Prize Symbol(s).

M. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 50 and \$50).

N. BONUS: Matching Prize Symbols will only appear in the BONUS play area on winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7s" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7s" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7s" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY 7s" 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 "LUCKY 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "LUCKY 7s" Scratch Ticket may be entered into one (1) of four (4) promotional drawings for a chance to win a promotional second-chance drawing prize. All entries from the first four (4) drawings will be entered into a special drawing for a chance to win a different promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in the Scratch Ticket Game No. 2559. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2559 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	720,000	10.00
\$10.00	528,000	13.64
\$15.00	192,000	37.50
\$20.00	192,000	37.50
\$50.00	96,000	75.00
\$100	22,140	325.20
\$500	840	8,571.43
\$1,000	80	90,000.00
\$100,000	6	1,200,000.00

*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 4.11. 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. 2559 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2559, 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-202400438

Bob Biard

General Counsel

Texas Lottery Commission

Filed: February 6, 2024



Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Exchange of Land - Cameron County

Acquisition of Approximately 477 Acres in Exchange for Approximately 43 Acres at Boca Chica State Park

In a meeting on March 4, 2024, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 477 acres near the Laguna Atascosa National Wildlife Refuge Bahia Grande Unit in exchange for approximately 43 acres from Boca Chica State Park. The project will enable the Texas Parks and Wildlife Department to enhance its management and protection of Texas’s natural resources and increase recreational opportunities.

The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 10:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Project Manager, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email to Real.Estate.Comment@tpwd.texas.gov, or via the department’s web site at www.tpwd.texas.gov. Visit the TPWD website at www.tpwd.texas.gov for the latest information regarding the Commission meeting.

Visite el sitio web de TPWD en www.tpwd.texas.gov para obtener la información más reciente sobre la reunión de la Comisión.

TRD-202400404

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Supreme Court of Texas

Supreme Court of Texas

Misc. Docket No. 24-9003

Final Approval of Amendments to Texas Rules of Appellate Procedure 9.3, 9.5, 53.2, and 53.3

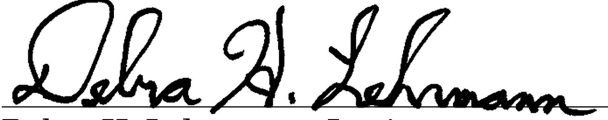
ORDERED that:

1. On October 3, 2023, in Misc. Dkt. No. 23-9082, the Court preliminarily approved amendments to Texas Rules of Appellate Procedure 9.3, 9.5, 53.2, and 53.3 and invited public comment.
2. Following the comment period, the Court made revisions to the rules. This Order incorporates the revisions and contains the final version of the amended rules.
3. The amendments are effective March 1, 2024.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

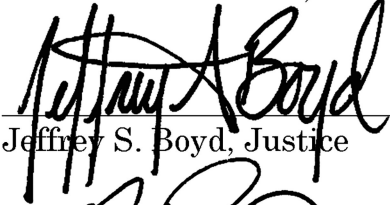
Dated: February 6, 2024.



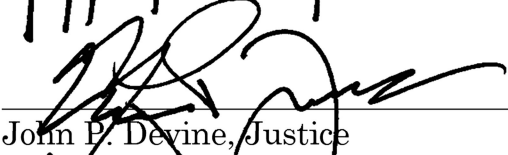
Nathan L. Hecht, Chief Justice



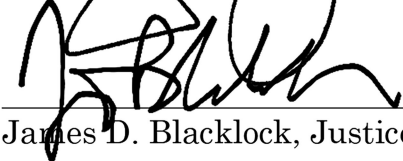
Debra H. Lehrmann, Justice



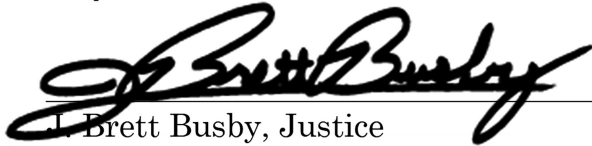
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



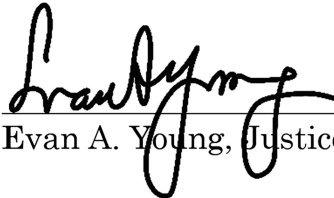
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 9. Documents Generally

9.3. Number of Copies

~~(a) — Courts of Appeals.~~

- ~~(1) — Document Filed in Paper Form. If a document is not electronically filed, a party must file the original and one unbound copy of the document unless otherwise required by local rule. The unbound copy of an appendix must contain a separate page before each document and must not include tabs that extend beyond the edge of the page.~~
- ~~(2) — Electronically Filed Document. Unless required by local rule, a party need not file a paper copy of an electronically filed document.~~

~~(b) — Supreme Court and Court of Criminal Appeals.~~

- ~~(1) — Document Filed in Paper Form. If a document is not electronically filed, a party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court only an original and one copy must be filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.~~
- ~~(2) — Electronically Filed Document. Paper copies of each document that is electronically filed with the Supreme Court or the Court of Criminal Appeals must be mailed or hand delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within three business days after the document is electronically filed. The number of paper copies required shall be determined, respectively, by order of the Supreme Court or the Court of Criminal Appeals.~~

(a) Document Filed in Paper Form. If a document is not electronically filed, a party must file the original and one unbound copy of the document unless otherwise required by local rule, except that, in the Court of

Criminal Appeals, only the original must be filed of a motion for extension of time, a response to the motion, or a pleading under Code of Criminal Procedure article 11.07. The unbound copy of an appendix must contain a separate page before each document and must not include tabs that extend beyond the edge of the page.

- (b) Electronically Filed Document. A party need not file a paper copy of an electronically filed document.
- (c) *Exception for Record.* Only the original record need be filed in any proceeding.

9.5. Service

- (d) *Proof of Service.* A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service. Proof of service may appear on or be affixed to the filed document. The clerk may permit a document to be filed without proof of service, but will require the proof to be filed promptly.
- (e) *Certificate Requirements.* For a document filed electronically in a civil case, an automated certificate of service generated by the filing party's electronic filing service provider suffices. For a document not filed electronically in a civil case or for any document filed in a criminal case, Aa certificate of service must be signed by the person who made the service and must state:
- (1) the date and manner of service;
 - (2) the name and address of each person served; and
 - (3) if the person served is a party's attorney, the name of the party represented by that attorney.

Rule 53. Petition for Review

53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

- (f) *Issues Presented.* The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. If the matter complained of originated in the trial court, it should have been preserved for appellate review in the trial court and assigned as error in the court of appeals.
- (g) *Introduction.* The petition must contain an introduction summarizing the reasons the Court should grant review.
- (~~g~~h) *Statement of Facts.* The petition must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The petition must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.
- (~~h~~i) *Summary of the Argument.* The petition must contain a succinct, clear, and accurate statement of the arguments made in the body of the petition. This summary must not merely repeat the issues or points presented for review.
- (~~i~~j) *Argument.* The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument need not address every issue or point included in the statement of issues or points. Any issue or point not addressed may be addressed in the brief on the merits if one is requested by the Court. The argument should state explain the reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Rule 56.1(a). The petition need not quote at length from a matter included in the appendix; a reference to the appendix is sufficient. The Court will consider the court of appeals' opinion along with the petition, so statements in that opinion need not be repeated.

- (j) *Prayer.* The petition must contain a short conclusion that clearly states the nature of the relief sought.
- (k) *Appendix.*
 - (1) Necessary Contents. Unless voluminous or impracticable, the appendix must contain a copy of:
 - (A) the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;
 - (B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any;
 - (C) the opinion and judgment of the court of appeals; and
 - (D) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based (excluding case law), and the text of any contract or other document that is central to the argument.
 - (2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.

53.3. Response to Petition for Review

Any other party to the appeal may file a response to the petition for review, but it is not mandatory. If no response is timely filed, or if a party files a waiver of response, the Court will consider the petition without a response. A petition will not be granted before a response has been filed or requested by the Court. The response must conform to the requirements of 53.2, except that:

- (d) a statement of jurisdiction should be omitted unless the petition fails to assert valid grounds for jurisdiction, in which case the reasons why the Supreme Court lacks jurisdiction must be concisely stated;

- (e) the introduction should summarize the reasons the Court should deny review;
- (fe) the respondent's argument must be confined to the issues or points presented in the petition or asserted by the respondent in the respondent's statement of issues;
- (gf) the appendix to the response need not contain any item already contained in an appendix filed by the petitioner.

TRD-202400463
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 6, 2024

Preliminary Approval of Amendments to the Texas Rules of
Appellate Procedure Related to the Fifteenth Court of Appeals
(Joint Order, Court of Criminal Appeals Misc. Docket No.
24-002)



Supreme Court of Texas

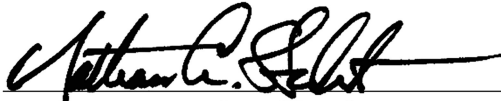
Misc. Docket No. 24-9005

Preliminary Approval of Amendments to the Texas Rules of Appellate Procedure Related to the Fifteenth Court of Appeals

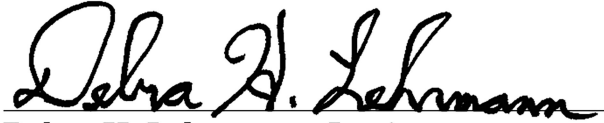
ORDERED that:

1. In accordance with the Act of May 21, 2023, 88th Leg., R.S. ch. 459 (S.B. 1045), the Court invites public comments on proposed new Texas Rule of Appellate Procedure 27a and on proposed amendments to Texas Rules of Appellate Procedure 25, 32, and 39. The new rule is shown in clean form, whereas the amendments are demonstrated in redline form.
2. Comments regarding the new and amended rules should be submitted in writing to rulescomments@txcourts.gov by May 1, 2024.
3. The Court will issue an order finalizing the rules after the close of the comment period. The Court may change the rules in response to public comments. The Court expects the amendments to take effect on September 1, 2024.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

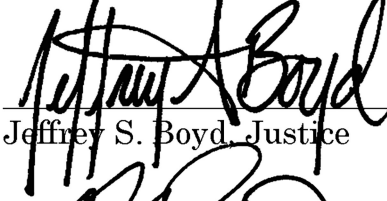
Dated: February 6, 2024.



Nathan L. Hecht, Chief Justice



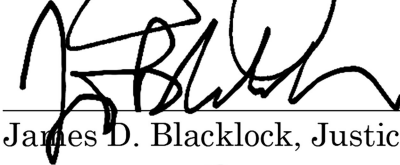
Debra H. Lehrmann, Justice




Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



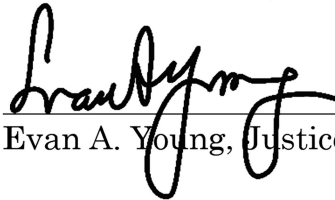
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 25. Perfecting Appeal

25.1. Civil Cases

- (a) *Notice of Appeal.* An appeal is perfected when a written notice of appeal is filed with the trial court clerk. If a notice of appeal is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court clerk, and the appellate clerk must immediately send the trial court clerk a copy of the notice.
- (b) *Jurisdiction of Appellate Court.* The filing of a notice of appeal by any party invokes the appellate court's jurisdiction over all parties to the trial court's judgment or order appealed from. Any party's failure to take any other step required by these rules, including the failure of another party to perfect an appeal under (c), does not deprive the appellate court of jurisdiction but is ground only for the appellate court to act appropriately, including dismissing the appeal.
- (c) *Who Must File Notice.* A party who seeks to alter the trial court's judgment or other appealable order must file a notice of appeal. Parties whose interests are aligned may file a joint notice of appeal. The appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause.
- (d) *Contents of Notice.* The notice of appeal must:
 - (1) identify the trial court and state the case's trial court number and style;
 - (2) state the date of the judgment or order appealed from;
 - (3) state that the party desires to appeal;
 - (4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
 - (5) state the name of each party filing the notice;
 - (6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, as defined in Rule 28.4;

- (7) in a restricted appeal:
- (A) state that the appellant is a party affected by the trial court’s judgment but did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of;
 - (B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
 - (C) be verified by the appellant if the appellant does not have counsel.
- (8) state, if applicable, that the appellant is presumed indigent and may proceed without paying costs under Rule 20.1-;
- (9) state whether the appeal involves a matter:
- (A) brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, including a university system or institution of higher education;
 - (B) brought by or against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch of the state government arising out of that officer’s or employee’s official conduct; or
 - (C) in which a party to the proceeding challenges the constitutionality or validity of a state statute or rule and the attorney general is a party to the case.
- (e) *Notice of Notice.* The notice of appeal must be served on all parties to the trial court’s final judgment or, in an interlocutory appeal, on all parties to the trial court proceeding. At or before the time of the notice of appeal’s filing, the filing party must also deliver a copy of the notice of appeal to each court reporter responsible for preparing the reporter’s record.
- (f) *Trial Court Clerk’s Duties.* The trial court clerk must immediately deliver a copy of the notice of appeal to the appellate court clerk, to the trial judge, and to each court reporter responsible for preparing the reporter’s record.

- (g) *Amending the Notice.* An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the appellant's brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the appellant's brief is filed, the notice may be amended only on leave of the appellate court and on such terms as the court may prescribe.
- (h) *Enforcement of Judgment Not Suspended by Appeal.* The filing of a notice of appeal does not suspend enforcement of the judgment. Enforcement of the judgment may proceed unless:
- (1) the judgment is superseded in accordance with Rule 24, or
 - (2) the appellant is entitled to supersede the judgment without security by filing a notice of appeal.

Notes and Comments

Comment to 2024 change: Rule 25.1(d)(9) is adopted to implement Texas Government Code Section 22.220(d), which describes matters within the Fifteenth Court of Appeals' exclusive intermediate appellate jurisdiction. The addition is designed to assist the courts of appeals in the orderly transfer of cases and to assist parties in determining which court should hear their appeal.

Rule 27a. Transfers Between Courts of Appeals (New Rule)

- (a) *Definitions.*
- (1) "Transferor court" means the court of appeals in which the appeal is pending.
 - (2) "Transferee court" means the court of appeals to which a party requests or the transferor courts seeks to transfer the appeal.
- (b) *Application.*
- (1) The transfer process in this rule applies to appeals:
 - (A) improperly taken to the Fifteenth Court of Appeals; or

- (B) over which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction.
- (2) This rule does not apply to appeals transferred by the Supreme Court for good cause, including for docket equalization purposes.
- (c) *Transfer by a Court of Appeals.*
 - (1) On a Party's Motion.
 - (A) A party may file a motion to transfer an appeal. The motion should be filed within 30 days after the appeal is perfected but must be filed by the date the appellee's brief is filed. The motion must be filed in the transferor court and may be supported by briefing. The movant must immediately notify the transferee court of the motion.
 - (B) The transferor court must notify the parties and the transferee court of its decision on the motion. The transferor court may transfer the appeal if:
 - (i) no party files an objection to the transfer within 10 days after the motion's filing or the transferor court determines that any filed objection lacks merit; and
 - (ii) the transferee court agrees to the transfer.
 - (C) The transferee court must file, within 20 days after receiving notice from the transferor court of its decision on the motion, a letter in the transferor court explaining whether it agrees with the transferor court's decision.
 - (2) On Its Own Initiative.
 - (A) The transferor court must notify the parties and the transferee court of its intent to transfer on its own initiative.
 - (B) The transferor court may transfer an appeal on its own initiative if:
 - (i) no party files an objection to the transfer within 10 days after receiving notice from the transferor court of its intent to transfer or the transferor court determines that any filed objection lacks merit; and

- (ii) the transferee court agrees to the transfer.
 - (C) The transferee court must, within 20 days after receiving notice from the transferor court of its intent to transfer, file a letter in the transferor court explaining whether it agrees with the transfer.
- (3) Notice to Supreme Court and the Office of Court Administration. If the transferor court transfers an appeal under (1) or (2), the transferor court must notify the Supreme Court and the Office of Court Administration of the transfer.
- (d) *Transfer by the Supreme Court.*
- (1) If the transferor court and transferee court do not agree on whether the appeal should be transferred, then the transferor court must forward to the Supreme Court either:
 - (A) the party’s motion to transfer, any briefing, the transferee court’s letter under (c)(1)(C), and a letter explaining the transferor court’s decision on the motion; or
 - (B) a letter from the transferor court that explains its reasons for requesting transfer and that notes any party objections and the transferee court’s letter under (c)(2)(C).
 - (2) Unless exceptional circumstances require additional time, the documents in (1) must be submitted to the Supreme Court within 20 days after receipt of the transferee court’s letter under (c)(1)(C) or (c)(2)(C).
 - (3) After receipt of all relevant documents, the Supreme Court will consider and decide the motion or request by the transferor court to transfer.

Notes and Comments

Comment to 2024 change: Rule 27a is adopted to implement Texas Government Code Section 73.001. Paragraph (b)(1) limits the applicability of the transfer process in Rule 27a to the appeals described in Section 73.001(c). And paragraph (b)(2) makes clear that Rule 27a does not apply to “good cause” transfers under Section 73.001(a), which are handled under the Policies for Transfer of Cases Between Courts of Appeals adopted in Misc. Dkt. No. 06-9136.

Consistent with Section 1.15 of the Fifteenth Court of Appeals' enabling legislation, Rule 27a only applies to appeals perfected on or after September 1, 2024. *See* Act of May 21, 2023, 88th Leg., R.S., ch. 459 (S.B. 1045). It does not apply to appeals pending in the courts of appeals that were filed between September 1, 2023, and August 31, 2024, and of which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction under Texas Government Code Section 22.220(d). On September 1, 2024, those appeals should be transferred immediately to the Fifteenth Court of Appeals.

Rule 32. Docketing Statement

32.1. Civil Cases

Promptly upon filing the notice of appeal in a civil case, the appellant must complete and file in the appellate court ~~at the~~ Docketing sStatement approved by the Office of Court Administration or another document that includes the same information.~~that includes the following information:~~

- ~~(a) (1) if the appellant filing the statement has counsel, the name of that appellant and the name, address, telephone number, fax number, if any, and State Bar of Texas identification number of the appellant's lead counsel; or~~
 - ~~(2) if the appellant filing the statement is not represented by an attorney, that party's name, address, telephone number, and fax number, if any;~~
- ~~(b) the date the notice of appeal was filed in the trial court and, if mailed to the trial court clerk, the date of mailing;~~
- ~~(c) the trial court's name and county, the name of the judge who tried the case, and the date the judgment or order appealed from was signed;~~
- ~~(d) the date of filing of any motion for new trial, motion to modify the judgment, request for findings of fact, motion to reinstate, or other filing that affects the time for perfecting the appeal;~~
- ~~(e) the names of all other parties to the trial court's judgment or the order appealed from, and:
 - ~~(1) if represented by counsel, their lead counsel's names, addresses, telephone numbers, and fax numbers, if any; or~~~~

- ~~(2) — if not represented by counsel, the name, address, and telephone number of the party, or a statement that the appellant diligently inquired but could not discover that information;~~
- ~~(f) — the general nature of the case — for example, personal injury, breach of contract, or temporary injunction;~~
- ~~(g) — whether the appeal's submission should be given priority, whether the appeal is an accelerated one under Rule 28.1 or another rule or statute, and whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, as defined in Rule 28.4;~~
- ~~(h) — whether the appellant has requested or will request a reporter's record, and whether the trial was electronically recorded;~~
- ~~(i) — the name, mailing address, telephone number, fax number, if any, email address, and Certified Shorthand Reporter number of each court reporter responsible for preparing the reporter's record;~~
- ~~(j) — whether the appellant intends to seek temporary or ancillary relief while the appeal is pending;~~
- ~~(k) — if the appellant filed a Statement of Inability to Afford Payment of Court Costs in the trial court:
 - ~~(1) — the date that the Statement was filed;~~
 - ~~(2) — the date of filing of any motion challenging the Statement;~~
 - ~~(3) — the date of any hearing on the appellant's ability to afford costs; and~~
 - ~~(4) — if the trial court signed an order under Texas Rule of Civil Procedure 145, the court's findings regarding the appellant's ability to afford costs and the date that the order was signed;~~~~
- ~~(l) — whether the appellant has filed or will file a supersedeas bond; and~~
- ~~(m) — any other information the appellate court requires.~~

Notes and Comments

Comment to 2024 change: Rule 32.1 is amended to remove the list of requirements of what information must be included in the docketing statement in favor of a form approved by the Office of Court Administration.

Rule 39. Oral Argument; Decision Without Argument

39.8. Clerk's Notice

The clerk must send to the parties—at least 21 days before the date the case is set for argument or submission without argument—a notice telling the parties:

- (a) whether the court will allow oral argument or will submit the case without argument;
- (b) the date of argument or submission without argument;
- (c) if argument is allowed, ~~the time allotted for argument; and:~~
 - (1) the time allotted for argument; and
 - (2) the location of the argument or instructions for joining the argument electronically, the court's designated contact information, and instructions for submitting exhibits; and
- (d) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court.

A party's failure to receive the notice does not prevent a case's argument or submission on the scheduled date. Once issued, the court may amend the notice with less than 21 days before the case is set for argument or submission.

Notes and Comments

Comment to 2024 change: Rule 39.8 is amended to clarify requirements for notices and to clarify the court's ability to amend notices.

TRD-202400464
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 6, 2024



Preliminary Approval of Rules for the Business Court

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the February 16, 2024, issue of the Texas Register.)

TRD-202400458
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 6, 2024



Texas Water Development Board

Request for Applications

The Texas Water Development Board (TWDB) requests applications for the possible award of financial assistance under the Flood Management Evaluation Category of the 2024 Flood Intended Use Plan, which can be found at the link below. The financial assistance will be used to conduct planning of entire watersheds or sub-watersheds to better inform the development of strategies using structural and nonstructural measures before a flood event. This may include determining and describing problems from or related to flooding, identifying, and planning solutions to flooding problems, and estimating the benefits and costs of these solutions. The TWDB will accept applications from political subdivisions in Texas that have the authority to plan for and implement projects related to flood protection. For more information, including instructions on how to apply and for full eligibility requirements, please visit the TWDB website at: <http://www.twdb.texas.gov/financial/programs/FIF/index.asp>

TRD-202400383
Ashley Harden
General Counsel
Texas Water Development Board
Filed: January 31, 2024



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 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

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 “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 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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