

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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC

The Office of the Secretary of State (hereinafter referred to as "Office") adopts proposed revisions to Chapter 87, concerning notaries public. Specifically, the Office adopts amendments to §§87.1, 87.2, 87.10, 87.11, 87.22, 87.30, 87.42, 87.43, 87.60, and 87.61; the repeal of §§87.4 - 87.6 and 87.23 - 87.25; and new §§87.4 - 87.7 and 87.23 - 87.26 without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9023). The amendments, repeals, and new rules are adopted to conform to statutory revisions to Chapter 406 of the Government Code enacted by the 84th Legislature, Regular Session, in House Bill 1683, effective January 1, 2016 (hereinafter referred to as "HB 1683"). The adopted revisions also generally include some reorganization of the chapter and clarifications of certain procedures.

Specifically, the following changes are adopted:

1. Section 87.1 is amended to provide specific information regarding what information is required to be included in the application to be commissioned as a notary public.
2. Section 87.2 is amended to clarify that the definition of moral turpitude is not exclusive and includes moral depravity, in accordance with state case law, and moves the definition of moral turpitude from amended §87.11, in accordance with the fact that the reference to "moral turpitude" is only contained in §87.2, and not in amended §87.11.
3. Section 87.4 is repealed, and new §87.4 of the adopted rules clarifies that the name on the notary seal must match the name under which the notary is commissioned. Additionally, the new section clarifies the applicability of HB 1683 to notaries commissioned or recommissioned before, on or after the effective date of the bill.
4. Section 87.5 is repealed, and new §87.5 of the adopted rules contains information previously contained in repealed §87.4, relating to the qualification by an officer or employee of a state agency who does not furnish a bond. No substantive change to this rule is made.
5. Section 87.6 is repealed, and new §87.6 of the adopted rules is added to provide information relating to a change in employment status of an employee of a state agency who has qualified without a surety bond (previously located at §87.5), and to clarify the wording in the language previously located at §87.5 relating to the option of a notary public terminating state employment to voluntarily surrender a commission and apply for a new term of office, provide a notary public bond, and pay the applicable fees.
6. Section 87.7 is added to provide information relating to renewal of a commission (previously located at §87.6), and to clarify the wording in the language previously located at §87.6 to make it clear that an application shall be filed if a notary wishes to renew a commission.
7. Section 87.10 of the adopted rules is amended to specify the disciplinary actions which are subject to notice of hearing.
8. Section 87.11 is amended to clarify that requests for public information must be responded to promptly, and adds failure to properly identify an individual and failure to keep proper notary records as good cause.
9. Section 87.22 is amended to specify that upon qualifying under a new name, a notary is required to obtain a new seal.
10. Section 87.23 is repealed, and new §87.23 includes information on the procedures for submitting a complaint.
11. Section 87.24 is repealed, and new §87.24 provides information relating to complaint procedures (previously located at §87.23), and specifically refers to new §87.23 and §87.25.
12. Section 87.25 is repealed, and new §87.25 contains information previously contained in repealed §87.24, relating to disciplinary action taken by the secretary of state. No substantive change to this rule is made.
13. Section 87.26 is added to provide information relating to when the secretary of state can take disciplinary action against a notary (previously located at §87.25). Additionally, the rule is amended to clarify that any unresolved complaints may be required to be resolved prior to accepting a new or renewed commission.
14. Section 87.30 is amended to clarify that a private employer may restrict the notarial acts of its employees during work hours, and to clarify that a notary must have reasonable grounds to believe that a signing party does not have the capacity to understand the contents of the document.
15. Section 87.42 is amended to clarify that promptly, with respect to responding to requests for public information, means within 10 business days of receipt of payment of fees, unless the notary certifies in writing on or before the 10th business day of receipt of payment of fees, that the notary cannot produce the certified copy within 10 business days from the date of receipt of the fees, and sets a date and hour within a reasonable time when the information will be provided, and provides the information by that date and hour.
16. Section 87.43 is amended to clarify that failure to promptly respond to a request for public information may be good cause for disciplinary action.

17. Section 87.60 is amended to modernize the procedures relating to electronic submission of notary applications.

18. Section 87.61 is amended to modernize the procedures relating to retention of records following electronic submission of a notary application.

One comment was received regarding the adoption of revisions to Chapter 87. The comment was received by Christopher L. Williston, CAE, on behalf of the Independent Bankers Association of Texas, requesting an amendment to proposed rule §87.4, stating that a notary public's failure to include the identification number prior to January 1, 2016 does not invalidate any activity by a notary public. After careful review, the Office has determined that its rulemaking authority does not extend to making determinations as to the validity of a document on which a notary stamp appears (as opposed to what is required or not required on the notary stamp itself, which it understands is within its rulemaking authority, as the contents of the stamp is covered in §406.013 of the Texas Government Code). The validity of a particular document or activity by a notary public is a fact-based inquiry which calls for a judicial determination. As a result, the Office adopts §87.4 without any additional amendments.

SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

1 TAC §§87.1, 87.2, 87.4 - 87.7

STATUTORY AUTHORITY

The amendments and new rules are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2016.

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5586



1 TAC §§87.4 - 87.6

STATUTORY AUTHORITY

The repeals are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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SUBCHAPTER B. REJECTION AND REVOCATION

1 TAC §§87.10, §87.11

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

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SUBCHAPTER C. ADMINISTRATIVE ACTION

1 TAC §§87.22 - 87.26

STATUTORY AUTHORITY

The amendments and new rules are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

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1 TAC §§87.23 - 87.25

STATUTORY AUTHORITY

The repeals are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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SUBCHAPTER D. REFUSAL TO PERFORM NOTARIAL SERVICES

1 TAC §87.30

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

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SUBCHAPTER E. NOTARY RECORDS

1 TAC §87.42, §87.43

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

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SUBCHAPTER G. ELECTRONIC SUBMISSIONS OF NOTARY APPLICATIONS AND BONDS

1 TAC §87.60, §87.61

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER J. OUTPATIENT PHARMACY SERVICES

1 TAC §353.903, §353.907

The Texas Health and Human Services Commission (HHSC) adopts amendments to §353.903, concerning Definitions, and §353.907, concerning Prior Authorization Requirements. The amendments are adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7749). The text of the rules will not be republished.

BACKGROUND AND JUSTIFICATION

The 84th Texas Legislature, Regular Session, 2015, enacted Senate Bill 200 (Section 3.08), which amends the Texas Government Code by eliminating the Pharmaceutical and Therapeutics Committee (P&T Committee) and transferring its functions to the existing Drug Utilization Review Board (DUR Board). Both of the proposed amended rules made references to the P&T Committee.

Also, the Centers for Medicare & Medicaid Services requires HHSC to have a drug utilization review program, which conducts prospective and retrospective utilization review of prescriptions. Currently, HHSC's definitions of prospective and retrospective utilization review processes are not aligned with similar definitions used by other payers, which is confusing to providers and HHSC's contracted managed care organizations. Both of the proposed amended rules referenced "clinical edits" or "clinical edit prior authorizations."

The amendments replace all references to the P&T Committee with references to the DUR Board. The amendments also clarify HHSC's drug utilization review definitions so that the definitions are more closely aligned with other payers' definitions. The amendments replace the terms "clinical edit" and "clinical edit prior authorization" with "clinical prior authorization."

Concurrently, HHSC is adopting amended §354.1832 and §354.1924, repealing §354.1928 and §354.1941, and adopting new §354.1941 and §354.1942 to remove all references to the P&T Committee and add information regarding the DUR Board.

COMMENTS

The 30-day comment period ended December 7, 2015. During this period, HHSC did not receive any comments regarding the proposed amended rules.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with

broad rulemaking authority), and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 354. MEDICAID HEALTH SERVICES SUBCHAPTER F. PHARMACY SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1832, concerning Prior Authorization Procedures, and §354.1924, concerning Preferred Drug List; the repeal of §354.1928, concerning Pharmaceutical and Therapeutics Committee, and §354.1941, concerning Conflict of Interest Policy; and adopts new §354.1941, concerning Drug Utilization Review Board, and new §354.1942, concerning Conflict of Interest Policy. The amendments, new rules, and repeals are adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7750). The text of the rules will not be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 200 (Section 3.08), 84th Legislature, Regular Session, 2015, amends the Texas Government Code by eliminating the Pharmaceutical and Therapeutics Committee (P&T Committee) and transferring its functions to the existing Drug Utilization Review Board (DUR Board). The duties of the restructured DUR Board include: (1) develop and submit recommendations to HHSC for the preferred drug list; (2) suggest to HHSC restrictions or clinical prior authorizations on prescription drugs; (3) recommend to HHSC educational interventions for Medicaid providers; (4) review drug utilization across Medicaid; and (5) perform other duties that may be specified by law and otherwise make recommendations to HHSC.

The HHSC Executive Commissioner will appoint the new members of the DUR Board, which must include at least 17 physicians and pharmacists who provide services across the entire population of Medicaid recipients, represent different specialties, and have experience in either developing or practicing under a preferred drug list. The board must also include a consumer advocate who represents Medicaid recipients and two non-voting representatives from managed care organizations. The HHSC Executive Commissioner will appoint the initial members to the new DUR Board by March 1, 2016, for terms beginning on that date.

Concurrently, HHSC is adopting amended 1 TAC §353.903 and §353.907. These adopted amendments appear elsewhere in this issue of the *Texas Register*.

COMMENTS

The 30-day comment period ended December 7, 2015. During this period, HHSC did not receive any comments regarding the proposed amended, new, or repealed rules.

DIVISION 2. ADMINISTRATION

1 TAC §354.1832

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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 7. TEXAS DRUG CODE INDEX--ADDITIONS, RETENTIONS, AND DELETIONS

1 TAC §354.1924

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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1 TAC §354.1928

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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 8. DRUG UTILIZATION REVIEW BOARD

1 TAC §354.1941

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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1 TAC §354.1941, §354.1942

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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) 424-6900



CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM SUBCHAPTER F. PERSONAL CARE SERVICES

1 TAC §363.603

The Texas Health and Human Services Commission (HHSC) adopts amendments to §363.603, concerning Provider Participation Requirements, without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7756) and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment implements Rider 47 of the 2016-2017 General Appropriations Act (Article II, Special Provisions, House Bill 1, 84th Legislature, Regular Session, 2015), which appropriated funds for an increase in the minimum base wage for personal attendants to \$8.00 per hour. This rule change establishes a standard base wage for personal care services (PCS) that was not previously defined in rule.

COMMENTS

During the public comment period, HHSC received comments from two representatives of the Texas Association for Home Care

and Hospice (TAHCH) who support the rule change and provided an additional recommendation for future consideration.

Comment: The commenters both requested that HHSC seek additional legislative appropriations for funding of the Attendant Compensation Rate Enhancement (ACRE) program to expand the program to include PCS attendants. TAHCH stated that due to the unavailability of ACRE funding for PCS attendant wages, increases in the wage floor compress the difference in wages between new and experienced PCS staff. They believe that this wage compression increases the likelihood of attrition for experienced and specially trained attendants.

Response: The commenters' request has been shared with HHSC leadership for future consideration. The ACRE program requires providers to submit annual cost reports which are used to determine if staff compensation requirements have been met. Currently, PCS providers are not required to submit cost reports. If legislative appropriations are made available to expand the ACRE program to include PCS, PCS providers will be required to complete annual cost reports.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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.

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 25, 2016.

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For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.50, 74.55, 74.69, 74.74, 74.80, 74.105

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 74, §74.69; and new rule §74.105 without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7955). The rules will not be republished.

The amendments to §§74.10, 74.50, 74.55, 74.74 and 74.80 are adopted with changes to the proposed text as published in the

November 13, 2015, issue of the *Texas Register* (40 TexReg 7955). The rules will be republished.

The adopted amendments and new rule are necessary to implement the changes made by House Bill 3741, which authorized the Commission to adopt rules and standards for removing equipment from service and set fees for applying to remove equipment from service.

The adopted amendments to §74.10 add the definitions "Installation Placed Out of Service" and "Installation Removed from Service". Editorial changes are also made to renumber the section.

The adopted amendments to §74.50 create the department's reporting requirements for equipment that has been removed from service.

The adopted amendments to §74.55 add removal from service to the reporting requirements for inspectors and make an editorial change.

The adopted amendment to §74.69 makes an editorial change.

The adopted amendment to §74.74 adds the section reference for inspectors to comply with when removing a piece of equipment from service.

The adopted amendment to §74.80 adds the fee for each piece of equipment removed from service.

Adopted new §74.105 sets the standards for equipment being removed from service.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7955). The deadline for public comments was December 14, 2015. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period.

Comment--One commenter requested clarification on discharging miscellaneous fluids via the sump pump.

Department Response--This comment was sent to our Compliance division for response. The Department did not make any changes to the proposed rule based on this comment since it is outside the scope of this rulemaking.

Comment--One commenter made comments to several rule sections recommending that the same terminology used in ASME Code A17.1 be used in the Department's rules. In particular the commenter requested the language, "Installation Placed Out of Service" and "Installation removed from Service."

Department Response--The Department appreciates the comments and has made the requested change to align rule language with the ASME Code A17.1.

The Elevator Advisory Board (Board) met on December 15, 2015, to discuss the proposed rules and the public comments received. The Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §§74.10, 74.50, 74.55, 74.74 and 74.80. At its meeting on January 6, 2016, the Commission adopted the proposed rules with the changes recommended by the Board.

The amendments and new rule are adopted under Texas Occupations Code, Chapter 51 and Health and Safety Code, Chapter 754, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chap-

ters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Health and Safety Code, Chapter 754. No other statutes, articles, or codes are affected by the adoption.

§74.10. Definitions.

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

(1) The Act--Texas Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Acceptance Inspection--An inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(3) Accident--An event involving equipment that results in death or serious bodily injury to a person.

(4) Alteration--A change in existing equipment. The term does not include testing, maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(5) Annual Inspection--An inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(6) ASCE--American Society of Civil Engineers.

(7) ASCE Code 21--The ASCE Code 21, "Automated People Mover Standards" as adopted in §74.100.

(8) ASME--American Society of Mechanical Engineers.

(9) ASME Code A17.1--The ASME Code A17.1/CSA B 44-07 - "Safety Code for Elevators and Escalators" as adopted in §74.100.

(10) ASME A17.2--The latest published edition of ASME A17.2, "The Guide for Inspection of Elevators, Escalators, and Moving Walks."

(11) ASME Code A17.3--The ASME Code A17.3-2002, "Safety Code for Existing Elevators and Escalators" as adopted in §74.100.

(12) ASME Code A18.1--The ASME Code 18.1, "Safety Standards for Platforms Lifts and Stairway Chairlifts" as adopted in §74.100.

(13) ASME QEI-1--The ASME QEI-1 "Standard for the Qualification of Elevator Inspectors."

(14) Automated People Mover (APM)--A guided transit mode operated by cables, with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(15) Board--The elevator advisory board.

(16) Certificate of Compliance--A certificate issued by the department indicating that the equipment has been inspected by a registered inspector and found to be in compliance with this chapter, except for any delays or waivers granted by the executive director and stated in the certificate.

(17) **Certifying Organization**--An independent organization that is competent and widely recognized to certify elevator inspectors and that has been accredited by an organization that is nationally recognized and is approved or recognized by the department as competent to certify elevator inspectors.

(18) **Commission**--The Texas Commission of Licensing and Regulation.

(19) **Contractor**--A person, partnership, company, corporation, or other entity engaging in the installation, alteration, repair, testing, or maintenance of equipment. The term does not include an employee of a contractor engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21, as applicable.

(20) **Delay**--Postponement of compliance with a requirement of the applicable ASME Safety Codes or ASCE Standard as adopted in §74.100, for a specific period of time.

(21) **Department**--The Texas Department of Licensing and Regulation.

(22) **Equipment**--An elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(23) **Executive Director**--The executive director of the department.

(24) **Existing Equipment**--Equipment installed or altered before September 1, 1993.

(25) **Industrial Facility**--A facility to which access is primarily limited to employees or contractors working in that facility.

(26) **Inspection Report**--A department-approved form used by the inspector to report the inspection results of one unit of equipment.

(27) **Inspector**--A person engaged in the inspection and witnessing of the tests specified in the adopted standards of ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, to determine compliance with those standards. The term also includes references to registered inspector and registered elevator inspector.

(28) **New Equipment**--Equipment installed or altered on or after September 1, 1993.

(29) **Installation Placed Out of Service**--Equipment rendered inoperative in accordance with ASME Code A17.1.

(30) **Owner**--A person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to a building or facility in which equipment regulated by the Act is located. For purposes under this chapter and the Act, an owner may designate an agent. The term "owner" when used in the chapter shall be construed to include the owner's agent.

(31) **Owner's Agent**--The person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that has been authorized by the owner to act on the behalf of the owner as relates to a building or facility in which equipment regulated by the Act is located.

(32) **Proof of Inspection**--A document provided to the owner by the registered inspector after the completion of an acceptance inspection of new equipment to inform the public that the equipment has been inspected.

(33) **Proof of Inspection Sticker**--An adhesive label placed by the registered inspector on the Proof of Inspection or the certificate of compliance indicating the inspection has been performed.

(34) **Publicly Visible Area of Building**--A location within the building where regulated equipment is located that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any regulated equipment is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(35) **Qualified Historic Building or Facility**--A building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(36) **Related Equipment**--The term means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(37) **Installation Removed from Service**--Equipment rendered inoperative in accordance with standards adopted in §74.105.

(38) **Reportable Condition**--A condition affecting the safety operation of the equipment and requires that the equipment be rendered inoperative to prevent injury to passengers, operators, or the general public.

(39) **Responsible Party**--The person or persons meeting the experience requirements of the Act and designated by the contractor to attend continuing education in compliance with this chapter.

(40) **Serious Bodily Injury**--A major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(41) **Unit of Equipment**--One elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(42) **Variance, New Technology ("new technology variance")**--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100. A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation. A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications.

(43) **Waiver**--Deferral of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time.

§74.50. *Reporting Requirements--Owner.*

(a) To obtain a certificate of compliance, the owner must submit to the department within 30 days of the equipment inspection date, the following items:

(1) the application for certificate of compliance;

(2) a copy of the inspection reports for each unit of equipment;

(3) written documentation to verify that all violations of the applicable ASME Safety Codes or ASCE Standards as adopted in §74.100, cited on the inspection report, are in compliance with §74.70(a)(3);

(4) any application(s) for delay or waiver if applicable; and

(5) all applicable fees.

(b) The owner must notify the department, in writing and within thirty (30) days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in ASME Code A17.1, "installation placed out of service".

(c) The owner must notify the department, in writing and within thirty (30) days, of an elevator that has had alterations converting the equipment to a material lift. The conversion shall comply with the applicable sections of ASME Code A17.1.

(d) The owner must notify the department, in writing and within thirty (30) days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with ASME Code A17.1 as a new installation.

(e) When a delay has been approved, the owner must notify the department, in writing within thirty (30) days of the date of correction.

(f) Within thirty (30) days of the date the equipment has become an Installation removed from service, the owner must notify the department by submitting a completed Inspection Report, including the applicable fee required by §74.80.

§74.55. Reporting Requirements--Inspector.

(a) For new installations, the inspector must provide a copy of the inspection report to the owner not later than the 5th calendar day after completing the inspection.

(b) For alterations, the inspector must provide a copy of the inspection report to the department and the owner not later than the 5th calendar day after completing the inspection.

(c) Inspectors, by e-mail, fax, or letter, must report to the department, within 72 hours of discovery, all equipment they encounter that does not have a decal number.

(d) The inspector must clearly note on the inspection report any equipment found with a reportable condition, and shall report it immediately by submitting a copy of the report to the owner and by e-mail, fax, or letter to the department within 24 hours.

(e) Inspectors, using the Online Inspection Reporting System, for each piece of equipment inspected, must report to the department within 72 hours of completing an acceptance inspection, annual inspection or Installation removed from service.

§74.74. Responsibilities of the Inspector--Inspection Procedures.

(a) The inspector must inspect all equipment for compliance with the applicable ASME Safety Codes or ASCE Standards as adopted in §74.100.

(b) Inspectors must use the latest published edition of ASME A17.2, "Guide for Inspection of Elevators, Escalators, and Moving Walks," to conduct inspections and witness tests for compliance with the ASME Safety Codes or ASCE Standards adopted in §74.100.

(c) The inspector must report to the owner before beginning any inspections.

(d) The inspector and the owner must sign and date the inspection report or electronically acknowledge the report using any electronic method approved by the department.

(e) The inspector is prohibited from performing any of the tests.

(f) On new or altered equipment installations, the inspector may perform an inspection prior to the installation being completed. However, on these installations the department will only accept inspection reports for final inspections performed by the inspector after the installation is completed.

(g) For new installations or alterations to existing equipment, the inspector must verify that approved applications and plans are on the site as specified in §74.111(b)(3) and is prohibited from proceeding with the inspection without the approved application and plans.

(h) The inspector must verify that the installation or alterations comply with the approved application and plans.

(i) New or altered units that fail to comply with the approved application and plans are prohibited from being placed in-service without the prior written approval of the department.

(1) The inspector must compare the installation to the approved application and plans.

(2) The inspector must not allow any installation that deviates from the approved application and plans to be placed into operation without the specific written authorization of the department.

(3) The inspector must not complete the inspection of any new installation or alteration until the inspector has verified that the documents required by §74.79 are on site and stored in the equipment room, machine room, machine space, control room, or control space.

(j) For Installations removed from service, the inspector must verify compliance with §74.105.

§74.80. Fees.

(a) Inspector Registration Fees.

(1) Original application--\$50

(2) Renewal application--\$50

(3) Revised/Duplicate registration card--\$25

(b) Certificate of Compliance Filing Fees.

(1) Filing fees submitted within 30 days of the equipment inspection date: \$20 per unit of equipment, along with a copy of the inspection report.

(2) Late filing fees: \$10 per unit of equipment for 30 day period if the inspection report, filing fees, and verification about correcting deficiencies in the inspection report are filed after the 60th day from the equipment inspection date.

(3) Revised/Duplicate Certificate Fee--\$25 per certificate.

(c) Waiver or Delay Application Fees.

(1) \$50 for each violation of the ASME Safety Codes or ASCE Standards as adopted in §74.100 per unit of equipment requested to be waived or delayed.

(2) Fees shall be charged and collected by the department for a waiver or delay application for an institution of higher education.

(d) Contractor Registration Fees.

(1) Original application--\$115

(2) Renewal application--\$115

(3) Revised/Duplicate registration card--\$25

(e) Late renewal fees for Inspector and Contractor registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(f) New Technology Variance Fees.

(1) Application fee--\$2,500

(2) Fee to file an appeal of a denial of an application--\$200

(g) Fees for Plan Reviews.

(1) The plan review fee for the installation or alteration of equipment included in a contract shall be calculated as follows:

(A) \$200 for each unit of equipment for which a decal is required; and

(B) the maximum fee shall not exceed \$5,000.

(2) The fee to review plans on an expedited basis is \$1,000 per unit of equipment included in a contract for which a decal is required. There is no maximum fee or cap for expedited reviews.

(h) Fees for Amendments to Previously Approved Plan Reviews.

(1) The plan review fee for amendments to previously approved plan reviews where the installation or alteration of equipment included in a contract has not been completed shall be as follows:

(A) \$100 per unit of equipment for which a decal is required; and

(B) the maximum fee shall not exceed \$2,500.

(2) The fee to review amendments to previously approved plan reviews on an expedited basis is \$1,000 per unit of equipment included in a contract for which a decal is required. There is no maximum fee or cap for expedited reviews.

(i) The fee for "Installation Removed from Service" is \$20 per unit of equipment.

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 21, 2016.

TRD-201600254

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 15, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 463-8179



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 75. CURRICULUM

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC

SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §§75.1001, 75.1004, 75.1006 - 75.1013

The Texas Education Agency (TEA) adopts the repeal of §§75.1001, 75.1004, and 75.1006-75.1013, concerning driver education. The repeal is adopted without changes to the proposed text as published in the November 27, 2015 issue of the *Texas Register* (40 TexReg 8435) and will not be republished. The sections establish provisions relating to driver education standards of operation for public schools, education service centers, and colleges or universities. The repeal is necessary because of the transfer of authority for developing a program of organized instruction in driver education and traffic safety in public schools from the TEA to the Texas Department of Licensing and Regulation (TDLR) as a result of House Bill (HB) 1786, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. The TEC, §7.021 and §29.902(a), required the TEA to develop a program of organized instruction in driver education and traffic safety for public school students. Rules in 19 TAC Chapter 75, Subchapter AA, were initially adopted effective January 1, 2000.

HB 1786, 84th Texas Legislature, Regular Session, 2015, transferred the regulatory authority for driver education programs from TEA to TDLR.

Effective September 1, 2015, TDLR administratively transferred the provisions in §75.1005, Course Requirements, and §75.1014, Procedures for Student Certification and Transfers, and codified them in 16 TAC Chapter 84. Of the remaining rules in 19 TAC Chapter 75, Subchapter AA, the TEA maintains authority for §75.1002, Driver Education Teachers, and §75.1003, Teaching Assistants, which relate to the certification of professional and paraprofessional personnel who conduct driver education programs under the TEC, §29.902(a), in public schools pursuant to the TEC, §29.902(b).

Since the statutory authority for adopting rules related to driver education and traffic safety was removed from TEA, the repeal of 19 TAC §§75.1001, Administration and Supervision; 75.1004, Classroom Instruction; 75.1006, Driver Licensing; 75.1007, Verification of School Enrollment and Attendance for Issuance of a Driver License; 75.1008, Progress; 75.1009, Attendance, Makeup, and Conduct Policy; 75.1010, Motor Vehicles; 75.1011, Driver Education Course Records; 75.1012, Fees and Tuition; and 75.1013, Control of Standards and Signatures, is necessary.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The public comment period on the proposal began November 27, 2015, and ended December 28, 2015. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §7.021, which requires the agency to develop a program of instruction in driver education and traffic safety for public school students as provided under the TEC, §29.902; the TEC, §11.158, which authorizes the board of trustees of an independent school district to require a fee for a driver training course; the TEC, §29.902, which authorized the agency to develop a program of instruction in driver education and traffic safety for public school students. House Bill (HB) 1786, 84th Texas Legislature, 2015, transferred the authority from the Texas Education Agency (TEA) to the Texas Department of Licensing and Regulation (TDLR); the

TEC, §51.308, which stated that a driver education course for the purpose of preparing students to obtain a driver's license may be offered by an institution of higher education, as defined by the TEC, §61.002, with the approval of the TEA. HB 1786, 84th Texas Legislature, 2015, transferred authority from the TEA to the TDLR; the TEC, §1001.101, which required the commissioner by rule to establish or approve the curriculum and designate the textbooks to be used in a driver education course for minors and adults, including a driver education course conducted by a school district, driver education school, or parent or other individual under the TEC, Chapter 1001. Section 1001.101 requires that the driver education course include 7 hours of behind-the-wheel instruction and 7 hours of observation instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent or other individual under the TEC, §1001.112, and an additional 30 hours of behind-the-wheel instruction, including at least 10 hours that takes place at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). HB 1786, 84th Texas Legislature, 2015, transferred authority from the commissioner of education to the TDLR; the TEC, §1001.1025, which required the agency by rule to require that information relating to motorcycle awareness, the dangers of failing to yield the right-of-way to a motorcyclist, and the need to share the road with motorcyclists be included in the curriculum of any driver education course or driving safety course. HB 1786, 84th Texas Legislature, 2015, transferred authority from the TEA to the TDLR; the TEC, §1001.110, which required the commissioner by rule to require that information relating to the effect of using a wireless communication device or engaging in other actions that may distract a driver on the safe or effective operation of a motor vehicle be included in the curriculum of each driver education course or driving safety course. HB 1786, 84th Texas Legislature, 2015, transferred authority from the commissioner of education to the TDLR; and the TEC, §1001.257, which stated that the commissioner may not issue or renew a driver education instructor license, including a temporary license, to a person who has six or more points assigned to the person's driver's license under Texas Transportation Code, Chapter 708, Subchapter B. The section was repealed by HB 1786, 84th Texas Legislature, 2015.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§7.021; 11.158; 29.902, 51.308, 1001.101, 1001.1025, and 1001.110, as amended by HB 1786, 84th Texas Legislature, Regular Session, 2015; and 1001.257, as repealed by HB 1786, 84th Texas Legislature, 2015.

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 20, 2016.

TRD-201600250

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency

Effective date: February 9, 2016

Proposal publication date: November 27, 2015

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



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board adopts amendments to §273.4 without changes to the proposed section as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6286).

The amendments set fees for new licenses and fees for license renewal of active licensees. House Bill 7, Regular Session, 84th Legislature, repealed Texas Occupations Code §351.153 that imposed a charge of \$200 for new and renewed active licensees.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.152, and House Bill 7, Regular Session, 84th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.152 as authorizing the agency to set license initial and renewal fees, and House Bill 7, Regular Session, 84th Legislature, as repealing the \$200 additional fee for renewing or obtaining an active license.

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 25, 2016.

TRD-201600290

Chris Kloeris
Executive Director

Texas Optometry Board

Effective date: February 14, 2016

Proposal publication date: September 18, 2015

For further information, please call: (512) 305-8500



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.1, which sets forth the definitions of words and terms used in the Board's rules. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7784).

The amendments to §361.1 are due to statutory changes brought about by the passage of House Bill 2255, during the regular session of the 84th Texas Legislature (2015) and adopted to inform the public, especially registrants and licensees, of the meaning of specific words and terms used by the Board.

No comments were received on the proposed amendments.

Section 361.1 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600233

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.6, which sets forth the fee schedule for examinations, licenses, endorsements, registrations and renewals. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7787).

The amendments to §361.6 are due to amendments to 22 TAC §363.1, new §365.17 and the passage of Senate Bill 807, during the regular session of the 84th Texas Legislature (2015) and are adopted to inform licensees and registrants of changes in the fee schedule.

No comments were received on the proposed amendments.

Section 361.6 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600234

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.8

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.8, which sets forth the forms used for doing official business with the agency. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7790).

Pursuant to House Bill 2464, 84th Legislative Session (2015), this amendment to the rule is necessary to administer the new statute regarding the transfer of a plumber's license on the retirement or death of a plumber.

No comments were received on the proposed amendment.

Section 361.8 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600235

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.9

The Texas State Board of Plumbing Examiners (Board) adopts the repeal of 22 TAC §361.9, concerning charges for copies of public records. This rule is repealed in its entirety without changes to the proposal as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7790).

The repeal is adopted since the reasons for originally adopting the rule no longer exist. Charges for copies of public records by state agencies are addressed by the Office of the Attorney General's rules in Title 1, Part 3, Chapter 70 of the Texas Administrative Code. The repeal of 22 TAC §361.9 is due to statutory changes brought about by the passage of Senate Bill 452 and Senate Bill 727, 79th Legislature, 2005, which transferred the duties of the Texas Building and Procurement Commission under the public information law to the Office of the Attorney General.

No comments were received on the proposed repeal.

The repeal of §361.9 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600236

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.11

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.11, which sets forth the general procedures the Board must follow in assigning and using its fleet of vehicles. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7791).

The Board is required to administer policies and procedures consistent with the Office of Vehicle Fleet Management. The adopted amendments to this section are needed to update and clarify the agency responsible for vehicle fleet management.

No comments were received on the proposed amendments.

Section 361.11 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600237

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §363.1 which sets forth the Board's requirements to qualify for a license, registration or endorsement. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7792).

The amendments to §363.1 are due to House Bill 2255, 84th Legislative Session (2015) and proposed amendments by Mr.

Russell Wyman on behalf of the Texas State Association of Plumbing Inspectors. The amendments to §363.1 are adopted to inform individuals of the requirements to qualify for a license, registration or endorsement.

No comments were received on the proposed amendments.

Section 363.1 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600238

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.4

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.4 which pertains to the issuance of licenses, registrations, and endorsements to qualified applicants. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7794).

The amendments to §365.4 are due to House Bill 2464, 84th Legislative Session (2015) and proposed amendments by Mr. Russell Wyman on behalf of the Texas State Association of Plumbing Inspectors. The amendments to §365.4 are adopted to comply with the new statute regarding transferring a license on the retirement or death of a plumber and amendments regarding the issuance of licenses to Plumbing Inspectors.

No comments were received on the proposed amendments.

Section 365.4 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600239
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 9, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 936-5200



22 TAC §365.17

The Texas State Board of Plumbing Examiners (Board) adopts new 22 TAC §365.17, which pertains to the transfer of a plumber's license on the retirement or death of a plumber. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7794).

Pursuant to House Bill 2464, 84th Legislative Session (2015), the Board adopts this new rule as it is necessary to administer the new statute regarding the transfer of a plumber's license on the retirement or death of a plumber.

No comments were received on the proposed new rule.

New §365.17 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600240
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 9, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 936-5200



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.12

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.12 concerning parole process. The amendments to §145.12 are adopted without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7211). The text of the rule will not be republished.

The amendments to §145.12 are adopted to be in compliance with House Bill 1914.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §§508.036, 508.0441, 508.045, and 508.141. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

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 22, 2016.

TRD-201600276
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 11, 2016
Proposal publication date: October 16, 2015
For further information, please call: (512) 406-5388



37 TAC §145.15, §145.17

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.15 and §145.17 concerning parole process. The amendments to §145.17 are adopted without changes and amended §145.15 is adopted with changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6038). The change to §145.15 is to delete an extra word in the text and the rule will be republished. The text of the rule for §145.17 will not be republished.

The adopted amendments update the frequency in which the Board considers the eligibility of certain offenders for release on parole in §145.15, and §145.17 includes two new definitions relating to administrative file processing error and erroneous information.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §§508.036, 508.0441, 508.045, 508.141 and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

§145.15. *Action upon Review; Extraordinary Vote (SB 45).*

(a) This section applies to any offender convicted of an offense under Texas Penal Code, Sections 20A.03, 21.02, or 21.11(a)(1), or who is required under Texas Government Code, Section 508.145(c), to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) F1-1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 60 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 60 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching

the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS--The board shall vote F1-1 and impose special condition "O" - "The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The presiding officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

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 22, 2016.

TRD-201600275

Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388



37 TAC §145.18

The Texas Board of Pardons and Paroles adopts new rule 37 TAC §145.18 concerning action upon review; extraordinary vote (HB 1914). The new rule is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6039). The text of the rule will not be republished.

New §145.18 is adopted to update the frequency in which the Board considers the eligibility of certain offenders for release on parole in §145.15.

No public comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §§508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§146.3 - 146.12

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 146, §§146.3 - 146.12, concerning revocation of parole or mandatory supervision. The rules are adopted without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7212). The text of the rules will not be republished.

The amendments to §146.3 add language for the Board Administrator's designee to make attorney determination decisions. Section 146.6 amendments relate to the Board Policy BPP-POL.146.252 Preliminary Hearings-Pending Criminal charges. Section 146.7 updates the language to be consistent with Board Rules §146.6(a) and §146.8(c)(1) and (2), and §146.8 updates the language to be consistent with Board Rule §146.6(a)(2).

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER F. SECURITY AND CONTROL

The Texas Juvenile Justice Department (TJJD) adopts amendments to the following rules without changes to the proposed text as published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048): §380.9715 (Testing for Alcohol and Other Drugs) and §380.9723 (Use of Force).

TJJD also adopts the repeal of the following rules without changes to the proposed text as published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048): §380.9701 (Facility Security) and §380.9727 (Riot Control).

TJJD also adopts amendments to the following rules with changes to the proposed text as published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048): §§380.9711 (Control of Unauthorized Items Seized), 380.9713 (Use of Canine (K-9) Teams), 380.9729 (Directives to Apprehend), 380.9739 (Isolation), 380.9740 (Security Program), 380.9745 (Protective Custody for Youth at Risk of Self-Harm), and 380.9747 (Self-Referral to Security Units).

The changes to the proposed text of §380.9711 consist of correcting typographical and grammatical errors.

The changes to the proposed text of §380.9713 consist of correcting a grammatical error and making a minor wording change in a subsection heading.

The changes to the proposed text of §380.9729 consist of correcting a typographical error.

The changes to the proposed text of §380.9739 consist of correcting a grammatical error.

The changes to the proposed text of §380.9740 consist of clarifying that when the director over residential services or his/her designee approves a 72-hour extension for a youth who has been in the Security Program for five continuous days, facility staff are still required to hold a Level III hearing every 24 hours to determine if the youth continues to meet extension criteria. The changes to this rule also consist of clarifying that when a youth has been in the Security Program for five continuous days, appeals of extension decisions are decided by the executive director or designee, as is currently required by §380.9353. A grammatical error was also corrected.

The changes to the proposed text of §380.9745 consist of correcting grammatical errors.

The changes to the proposed text of §380.9747 consist of correcting a typographical error.

JUSTIFICATION FOR CHANGES

The justification for these amended and repealed rules is to provide for the safety of staff, youth, and the public through programs and practices designed to maintain a safe, orderly, and therapeutic environment in TJJD facilities and the apprehension of TJJD youth who pose a risk to others. These rule changes are also intended to clarify and update TJJD rules for ease of use.

SUMMARY OF CHANGES

Throughout this subchapter, minor clarifications, grammatical corrections, and terminology updates have been made. Specific changes made throughout the subchapter are listed in the following paragraphs.

Section 380.9701 has been repealed because much of the information in this rule is addressed in other TJJD rules and procedures.

The amendment to §380.9711: 1) clarifies that the facility's evidence custodian is responsible for maintaining seized contraband that will be used in administrative due process hearings, but not contraband that will be used in a criminal investigation; 2) adds a requirement for facility staff to submit contraband that may be used in a criminal investigation to the Office of Inspector General (OIG), at which point it will be accessible only to OIG staff; 3) clarifies that when all administrative and legal proceedings are concluded, firearms and drugs are destroyed in accordance with the Texas Code of Criminal Procedure; 4) clarifies that staff who discover a potential crime scene must immediately notify the OIG; and 5) changes the title of the rule to more accurately reflect the content of the rule.

The amendment to §380.9713: 1) clarifies that the rule applies only to facilities operated by TJJD and not to facilities that contract with TJJD to house TJJD youth; 2) specifies that K-9 teams are used for detecting and identifying drugs, currency, alcohol, tobacco products, prescription medication, and other prohibited items; 3) deletes the need for local law enforcement to be noti-

fied if a K-9 alerts during an inspection of a TJJD parking area (TJJD K-9 handlers are now licensed peace officers); 4) deletes the provision allowing K-9 teams to aid in tracking and apprehending youth who have escaped from a high-restriction facility; and 5) clarifies that parking areas that are subject to search by K-9 teams include *any area used for parking that is owned, operated, or controlled by TJJD* (rather than just parking lots within the fenced perimeter).

The amendment to §380.9715 clarifies that the rule applies only to facilities operated by TJJD and not to facilities that contract with TJJD to house TJJD youth.

The amendment to §380.9723 adds a provision stating that only the facility administrator, staff having authority to act as the facility administrator, or a higher-level authority in the facility administrator's chain of supervision may declare that a particular situation is a riot, consistent with the definition of a riot. The amended rule now contains definitions for the terms "riot" and "barricade." The amended rule also clarifies that a planned team restraint may be used when a youth is in a security vehicle (in addition to when a youth is in a locked or barricaded room).

Section 380.9727 has been repealed. Certain provisions of this rule have been consolidated into §380.9723 or moved to internal operational policies and procedures. Provisions that are redundant, no longer operationally relevant, or otherwise unneeded have been deleted.

The amendment to §380.9729 clarifies that directives to apprehend TJJD youth are entered into the Texas/National Crime Information Center by staff in the TJJD Office of Inspector General. The amended rule also adds criteria for cancelling a directive to apprehend.

The amendment to §380.9739: 1) clarifies that the type of confinement addressed by this rule is not a disciplinary consequence; 2) expands the rule to apply to all residential facilities operated by TJJD, not just secure facilities; 3) adds a prohibition on placing a youth in isolation if the youth is on suicide alert; 4) adds a provision requiring isolation to occur in individual sleeping rooms or a room specifically designed for isolation; and 5) deletes the provision addressing the type of food a youth will receive upon release from isolation.

In addition to the changes listed earlier in this notice, the amendment to §380.9740: 1) deletes the requirement to include at least four hours outside of the locked room as part of the daily schedule in the Security Program; 2) deletes the requirement for staff to enter a youth's room or remove a youth from his/her room to qualify as one of the required daily staff visits; 3) clarifies that youth in the Security Program are offered an opportunity to discuss the problematic behavior that led to placement in the program (rather than requiring an intervention plan that addresses the problematic behavior); 4) deletes the ability to earn privileges from the list of required services provided to youth in the Security Program; 5) clarifies that youth in the Security Program are offered the amount of instructional minutes required by the campus master school schedule (rather than five and one-half hours each instructional day); 6) clarifies that education services provided to youth in the Security Program must include access to limited-English-proficient services for English language learners; 7) clarifies that 15-minute checks are required *unless more frequent checks are required by the suicide alert rule*; and 8) clarifies that the Security Program may be operated in a building other than the security unit if specifically allowed by other TJJD rules.

The amendment to §380.9745 includes only minor, non-substantive wording changes.

The amendment to §380.9747: 1) adds "space limitations" as a reason self-referrals to the security unit may be temporarily disallowed by the facility administrator; 2) requires staff to develop a written supervision and reintegration plan if the youth claims a need for protection from harm, the staff suspects the youth feels a need for protection from harm, or the youth has remained confined on self-referral for over 120 hours (these three situations will replace the requirement for staff to develop a safety/reintegration plan within one workday for every youth who self-refers to the security unit); 3) requires the security dorm supervisor to speak with each youth in the security unit on self-referral once every 72 hours (rather than once each day); 4) deletes the ability to earn privileges from the list of required services provided to youth who self-refer to the security unit; 5) clarifies that the daily visits with youth who self-refer to the security unit may be completed by a case manager *or other staff member designated by the facility administrator*; 6) clarifies that youth who self-refer to the security unit are offered the amount of instructional minutes required by the campus master school schedule (rather than five and one-half hours each instructional day); 7) clarifies that the education services provided to youth who self-refer to the security unit must include access to limited-English-proficient services for English language learners; 8) clarifies that access to shower and hygiene routine is provided every 24 hours, *as the youth's behavior permits*; and 9) clarifies that one hour of large-muscle exercise is provided in an enclosed outdoor recreation area *as the youth's behavior and the weather permit*.

RULE REVIEW

In the Proposed Rules section of the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048), TJJD published a notice of intent to review §§380.9701, 380.9707, 380.9711, 380.9713, 380.9715, 380.9723, 380.9727, 380.9729, 380.9739, 380.9740, 380.9745, and 380.9747 as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has determined that the reasons for adopting §380.9701 and §380.9727 no longer exist. Accordingly, these rules are repealed as described in this notice.

TJJD has also determined that the reasons for adopting §380.9707 continue to exist. Accordingly, this rule is readopted without amendments.

TJJD has also determined that the reasons for adopting the following rules continue to exist: §§380.9711, 380.9713, 380.9715, 380.9723, 380.9729, 380.9739, 380.9740, 380.9745, and 380.9747. Accordingly, these rules are readopted with amendments as described in this notice.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed amendments or repeals.

37 TAC §380.9701, §380.9727

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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 21, 2016.

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Texas Juvenile Justice Department

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37 TAC §§380.9711, 380.9713, 380.9715, 380.9723, 380.9729, 380.9739, 380.9740, 380.9745, 380.9747

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

§380.9711. *Control of Seized Contraband or Potential Evidence.*

(a) Purpose. This rule establishes requirements for the preservation, control, and/or disposition of all contraband, including physical evidence obtained in connection with a violation of law and/or rule violation.

(b) Applicability. This rule applies to TJJD-operated residential facilities.

(c) Definitions. Contraband--has the meaning assigned by §380.9107 of this title.

(d) Contraband Used as Evidence.

(1) Contraband Used in a Due Process Hearing. Seized contraband that may be used as evidence in a TJJD due process hearing and not used in a criminal investigation must be properly identified, documented, and submitted to the facility's evidence custodian.

(2) Contraband Used in a Criminal Investigation. Seized contraband that may be used as evidence in a criminal investigation is properly identified, documented, and submitted to the Office of Inspector General (OIG) evidence submission box. Criminal evidence is accessible only to the OIG staff. OIG maintains the chain of custody until proper case disposition.

(3) Contraband/Evidence Disposal.

(A) After all administrative/legal proceedings have been concluded, one of the following must occur:

(i) destroy firearms and drugs in accordance with the Code of Criminal Procedure; or

(ii) send contraband item(s), other than contraband firearms and drugs, to the youth's home; or

(iii) return contraband item(s) to include contraband money (if applicable) to the owner; or

(iv) deposit contraband money possessed by a youth into the student benefit fund pursuant to §385.9971 and §380.9555 of this title.

(B) After all OIG investigations, evidence will be disposed of as per court disposition.

(e) Contraband Not Used as Evidence. Seized contraband that is not used as evidence in a TJJD due process hearing or in a criminal investigation is destroyed or sent to the youth's parent or guardian at the youth's discretion.

(f) Contraband/Evidence in a Crime Scene. Staff discovering a potential crime scene must immediately notify the facility administrator and the Incident Reporting Center. A crime scene could be a death, major injury, sexual assault, and/or major property damage. The area must be immediately secured and access prohibited into the potential crime scene or area containing potential evidence. Staff must not enter the area to clean or disturb the potential evidence, clothing, and/or body fluids. Only the OIG personnel or another investigating law enforcement agency will handle the evidence of a crime scene.

§380.9713. *Use of Canine (K-9) Teams.*

(a) Purpose. This rule provides guidelines for the management and deployment of K-9 teams at residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(b) Applicability. This rule applies to residential facilities operated by TJJD.

(c) Definitions.

(1) K-9 Team--a handler and canine trained to detect and identify illegal drugs, currency, alcohol, tobacco products, prescription medication, and other prohibited items.

(2) Passive Indication--the K-9 is trained to sit, stand, or lie at the point closest to the source of the odor such as, but not limited to, cocaine, heroin, alcohol, marijuana, prescription medication, methamphetamines, tobacco, and other prohibited items.

(3) TJJD Parking Area--any area used for parking that is owned, operated, or controlled by TJJD.

(d) General Provisions.

(1) All TJJD K-9 teams must be certified annually and trained in passive indication.

(2) TJJD uses K-9 teams to detect and identify illegal drugs, currency, alcohol, tobacco products, prescription medication, and other prohibited items.

(3) A K-9 team may be deployed at the discretion of the K-9 handler to conduct routine, random, or specifically requested searches or inspections of the following areas:

(A) any dorm, cell, or other area used to house youth;

(B) any school or education building on TJJD property;

(C) any cafeteria, kitchen, canteen, or other food preparation area;

(D) any administrative area, staff office, storage building, and restroom;

(E) any other building or area located on TJJD grounds;

(F) any vehicle entering a perimeter fence at a facility operated by TJJD;

(G) any state vehicles;

(H) any TJJD parking area; and

(I) any property under the care, custody, control, or ownership of TJJD.

(4) All items seized by the K-9 team must be identified, documented, and submitted to the appropriate TJJD staff member in accordance with §380.9711 of this title.

(5) At the entrance of all TJJD parking areas, signs must be posted in English and Spanish noting: "This property is subject to canine inspection and search by law enforcement."

§380.9729. *Directives to Apprehend.*

(a) Purpose. This rule acknowledges a relationship between the Texas Juvenile Justice Department (TJJD), law enforcement, and the Texas/National Crime Information Center (TCIC/NCIC) with regard to reporting and apprehending youth in TJJD jurisdiction who escape or who have broken the conditions of release under supervision. This rule also establishes criteria for the issuance of a directive to apprehend.

(b) Applicability. This rule applies to all youth under TJJD jurisdiction whether supervised by TJJD staff or contract staff.

(c) Issuance of a Directive to Apprehend.

(1) TJJD may issue a directive to apprehend pursuant to the authority granted under Texas Human Resources Code §243.051 if a youth in TJJD custody has:

(A) escaped, as defined by §380.9503 of this title; or

(B) failed to comply with the written conditions of release under supervision (i.e., conditions of parole).

(2) Directives to apprehend must be entered by the Office of Inspector General Incident Reporting Center according to TCIC/NCIC procedures and the Department of Public Safety/Federal Bureau of Investigation (DPS/FBI) guidelines.

(d) Cancellation of a Directive to Apprehend. A directive to apprehend is cancelled when:

(1) a youth is arrested or apprehended;

(2) a youth is discharged from commitment to TJJD; or

(3) TJJD staff determines the directive to apprehend is no longer needed.

§380.9739. *Isolation.*

(a) Purpose. This rule allows for short-term confinement in a locked room of a youth who meets criteria. Confinement addressed in this rule is not a disciplinary consequence.

(b) Applicability.

(1) This rule applies to residential facilities operated by the Texas Juvenile Justice Department.

(2) This rule does not apply to:

(A) a youth being admitted to the Security Program. See §380.9740 of this title; or

(B) segregation in which doors are not locked. See §380.9520 of this title.

(c) Definitions. Isolation--the condition of confinement of a youth in a locked room. If the door is not locked, the confinement is not considered to be isolation. Isolation does not include when doors are routinely locked (e.g., during sleeping hours) and isolation has not otherwise been imposed.

(d) Criteria.

(1) A youth may be confined in isolation in cases when less restrictive interventions have failed and the youth is:

- (A) out of control; and
 - (B) a serious and immediate physical danger to others;
- and
- (C) not on suicide alert.

(2) Isolation must be in individual youth sleeping quarters or a room specifically designated for isolation. If the room is not individual sleeping quarters, the room must:

- (A) be heated, cooled, and ventilated;
- (B) have a minimum ceiling height of 7.5 feet when measured from the floor to the lowest point of the ceiling; and
- (C) be equipped with a viewing window that allows staff to observe the youth.

(e) Release.

(1) A youth placed in isolation must be released within three hours or be referred to the security program.

(2) Isolation must be terminated as soon as a youth is sufficiently under control so as to no longer pose a serious and immediate danger to himself/herself or others.

(f) Isolation Requirements.

(1) Staff must visually check youth in isolation at least once every 15 minutes.

(2) Youth in isolation must receive appropriate psychological and medical services.

§380.9740. *Security Program.*

(a) Purpose. The Texas Juvenile Justice Department (TJJD) operates Security Programs at its high-restriction facilities to temporarily remove youth who engage in certain dangerous or disruptive behaviors from the general campus population. This rule establishes admission criteria, service delivery requirements, security provisions, and requirements for due process and administrative review for youth admitted to the Security Program.

(b) Applicability. This rule applies to TJJD-operated high-restriction facilities that operate security units.

(c) Definitions. Security Unit--a designated building on the campus of a high-restriction TJJD facility that contains individual rooms and a central control station. Entry to and exit from the building are controlled exclusively by staff.

(d) General Provisions.

(1) Confinement in the Security Program may not be used as punishment or as a convenience for staff.

(2) Youth are afforded all basic youth rights established in §380.9301 of this title while confined in the Security Program.

(3) Except as otherwise authorized by the division director over residential services or designee on a case-by-case basis, confinement in the Security Program may not exceed five calendar days or a maximum of 120 hours.

(4) The Security Program is operated within the security unit, except as provided or permitted by other TJJD administrative rules.

(e) Admission Criteria. A youth may be admitted to the Security Program when there is a reasonable belief the youth has committed a minor rule violation that warrants referral to the security unit or a major rule violation and:

- (1) the youth is a serious and continuing escape risk;
 - (2) the youth is a serious and immediate physical danger to others and staff cannot protect them except by admitting the youth to the Security Program;
 - (3) confinement is necessary to prevent imminent and substantial damage to property;
 - (4) confinement is necessary to control behavior that disrupts programming to the extent that the current program cannot continue except by admitting the youth to the Security Program; or
 - (5) the youth is likely to interfere with a pending or ongoing investigation or a requested or scheduled due process hearing.
- (f) Admission Process.

(1) Within one hour after a youth's arrival at the security unit (or up to two hours if an extension is approved by the facility administrator or designee), a staff member must:

- (A) return the youth to the general population; or
- (B) hold a Level III hearing in accordance with §380.9557 of this title to determine whether admission criteria have been met. The staff member who conducts the review must not have been involved in the referral to the Security Program.

(2) If admission criteria are not met, the youth must be returned to the general population immediately.

(3) If admission criteria are met, the youth may be admitted to the Security Program for up to 24 hours.

(g) Extension Process.

(1) Extension Criteria.

(A) An extension may be authorized if the following criteria are met, as established through a Level III hearing conducted in accordance with §380.9557 of this title:

(i) based on current behavior, one or more of the admission criteria listed in subsection (e)(1)-(5) of this section continue to be present; or

(ii) there is documented evidence that the youth is not complying with the Security Program rules of conduct.

(B) Each extension is valid for up to 24 hours.

(C) No more than four extensions may be authorized by facility staff without approval from the division director over residential services or his/her designee, as described in paragraph (2) of this subsection.

(2) Extensions Beyond Five Days.

(A) The division director over residential services or his/her designee may approve extensions after the fifth day of confinement only when no less-restrictive placement is suitable for managing the youth's behavior and:

(i) the youth continues to present an immediate physical danger to others; or

(ii) the youth continues to be likely to interfere with a pending or ongoing investigation or a scheduled hearing.

(B) Each extension is valid for up to 72 hours. However, facility staff must continue to hold Level III hearings every 24 hours to determine whether the extension criteria in subparagraph (A) of this paragraph continue to be met.

(h) Release to the General Population.

(1) A youth must be released to the general population upon:

(A) a determination that the youth's behavior no longer warrants confinement in the security unit;

(B) expiration of the 24th hour after the most recent Level III hearing; or

(C) a finding in a Level III hearing that extension criteria are not met.

(2) A youth may be released from the Security Program only by the security dorm supervisor or a staff member authorized to conduct an admission hearing.

(i) Administrative Reviews and Appeals.

(1) The security dorm supervisor or designee must review all admission and local extension decisions within one workday. The person reviewing the decision must not have been involved in the decision. If it is determined that admission or extension criteria were not met or appropriate due process was not provided:

(A) the youth must be returned to the general population immediately; and

(B) the youth's record must be corrected to reflect the overturned admission or extension decision.

(2) The youth must be notified in writing of his/her right to appeal a Security Program admission or extension. Appeals are decided by the facility administrator or designee, unless:

(A) the admission or extension decision was made by the facility administrator, in which case the appeal is decided by the division director over residential services or designee; or

(B) the youth's current stay in the Security Program has reached 120 continuous hours, in which case the appeal is decided by the executive director or designee.

(3) The youth must be notified in writing of the outcome of the appeal.

(j) Security Program Requirements.

(1) Staff must visually check each youth at least once every 15 minutes and document youth activity and location during the check unless more frequent checks are required under §380.9188 of this title.

(2) Individual doors must be locked.

(3) The Security Program must adhere to a standard schedule approximating that of the general population, including time out of the locked room as behavior permits.

(4) The standard schedule and Security Program rules of conduct must be posted and reviewed with youth.

(5) The following staff must visit the Security Program at least once each calendar day and speak with each youth present in the program:

(A) a nurse;

(B) a case manager; and

(C) a staff member from the administrative, psychology, and/or chaplaincy departments.

(6) Youth must be provided:

(A) appropriate psychological and medical services;

(B) an opportunity to discuss with a case manager the behavior that resulted in the admission or extension;

(C) adequate access to restroom facilities and drinking water;

(D) access to shower and hygiene routine at least once every 24 hours, as behavior permits;

(E) the same food, including snacks, prepared in the same manner as for other youth except for special diets that are prescribed on an individual basis by a physician, dentist, or mental health professional or special diets approved by a chaplain;

(F) access to education services during each scheduled instructional day for the duration of instructional minutes required by the campus master schedule;

(G) education services that will enable the youth to meet the goals of the youth's individualized education program, if the youth is currently receiving special education services;

(H) access to limited-English-proficient services for English language learners; and

(I) one hour of large-muscle exercise out of the room or in an enclosed outdoor recreation area at least once every 24 hours, as the youth's behavior and weather permit.

§380.9745. *Protective Custody for Youth at Risk of Self-Harm.*

(a) Purpose. This rule provides for a protective custody program for the temporary placement of youth who are determined to be at risk of serious harm to themselves.

(b) Applicability. This rule applies only to high-restriction facilities operated by the Texas Juvenile Justice Department.

(c) Definitions. Definitions pertaining to this rule are under §380.9187 of this title.

(d) General Provisions.

(1) The protective custody program is administered in the security unit. Unless otherwise noted in this rule, all standard service delivery and programming requirements in §380.9740 must be followed while the youth is in the security unit.

(2) Placement of youth in protective custody is used only as a last resort when a mental health professional (MHP) determines that the youth cannot be safely managed in his/her assigned living unit and no appropriate less-restrictive placements are immediately available. Protective custody is used only as a temporary placement until the youth can be safely returned to his/her assigned living unit or until another appropriate housing or facility assignment can be arranged.

(3) Unless otherwise noted in this rule, youth in protective custody are monitored, assessed, and treated in accordance with requirements in §380.9188 of this title.

(e) Referral for Placement in Protective Custody.

(1) Only an MHP may authorize the referral of a youth to the security unit for possible placement in protective custody. The referral may be made only:

(A) after a trained designated staff member completes a suicide risk screening, as described in §380.9188 of this title and the MHP has consulted with the staff member concerning the results of the screening; and

(B) if the MHP determines that the youth is in imminent risk of serious self-injury and cannot be safely managed in his/her assigned living unit.

(2) The youth may be held in the security unit on referral for up to four hours, pending the completion of a face-to-face suicide risk assessment by an MHP. The youth is placed on at least constant observation until he/she is assessed by the MHP. Doors must not be locked while the youth is awaiting the suicide risk assessment unless the youth presents an imminent danger to staff due to aggressive behavior. In such cases, doors may be locked in accordance with subsection (g)(2) of this section.

(3) When a youth is referred to a security unit, the youth's suicide observation folder is transferred to the security staff, who continues documenting the youth's status at the required interval.

(f) Admission Criteria. Only an MHP, in consultation with the facility's designated mental health professional (DMHP), may admit a youth to protective custody due to suicide risk. A youth may be placed in protective custody only if the MHP has conducted a face-to-face suicide risk assessment as described in §380.9188 of this title and the MHP has determined that:

(1) based on the youth's actions, statements, or mental status, the youth is a serious and immediate physical danger to himself/herself; and

(2) confinement in the security unit is necessary to protect the youth from self-harm, and there is no less restrictive setting that provides the necessary level of security and staff supervision.

(g) Program Requirements.

(1) Youth are placed in suicide-resistant rooms. Except for youth assigned to one-to-one observation, individual room doors remain locked.

(2) For youth assigned to one-to-one observation, individual room doors must remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. In such cases, the youth's room door may be locked provided that the MHP determines (in consultation with the DMHP) that locking the door is necessary to manage the youth's aggressive behavior and still allows adequate supervision to ensure the youth's safety.

(3) In accordance with requirements established under §380.9188 of this title, the MHP develops an individualized treatment plan that identifies crisis stabilization issues to be addressed and includes a plan of action to address the issues.

(4) The MHP conducts a face-to-face assessment of the youth at least once every 24 hours while the youth is admitted to the protective custody program. As part of the assessment, the MHP must determine if the youth continues to be a serious and immediate physical danger to himself/herself and if continued confinement is necessary to prevent self-harm.

(5) At least once every 48 hours following the youth's admission into protective custody, the DMHP reviews the documentation relating to protective custody, including the youth's treatment plan and any other documentation relating to the youth's stay in protective custody.

(6) A youth may not remain in the protective custody program for more than five calendar days without written approval from the division director over residential facilities or his/her designee. This approval must be obtained for every 24-hour period thereafter.

(h) Review of Admission and Extensions. The security dorm supervisor or his/her designee reviews each admission and 24-hour extension decision within one workday to determine if policies and procedures were followed. If it is determined that a youth is being held in violation of policy, the security dorm supervisor or designee:

(1) immediately notifies the facility administrator or duty officer;

(2) unless otherwise instructed by the facility administrator or duty officer, returns the youth to the general population; and

(3) ensures the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.

(i) Release Criteria. The youth must be released from protective custody when:

(1) an MHP, in consultation with the DMHP, determines the youth may return to the general population with appropriate supervision and monitoring;

(2) an MHP, in consultation with the DMHP, determines that the youth meets criteria for transfer to a facility providing specialized mental health treatment, a TJJD-operated crisis stabilization unit, or a psychiatric hospital;

(3) the division director over residential facilities or his/her designee disapproves an extension request; or

(4) a review of the admission or extension in protective custody reveals that the youth is being held in violation of policy.

(j) Appeals. The youth may appeal his/her placement in protective custody to the director of treatment or his/her designee. The director of treatment or his/her designee must consult with the DMHP when reviewing the appeal.

§380.9747. *Self-Referral to Security Unit.*

(a) Purpose. This rule provides for the temporary placement of youth who request to be placed in a security unit.

(b) Applicability. This rule applies only to high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. Security Unit--has the meaning assigned under §380.9740 of this title.

(d) General Provisions.

(1) The security unit may be used as a temporary placement for youth who self-refer until the youth can be safely returned to his/her assigned living unit or another appropriate housing or facility assignment can be arranged.

(2) While placed in the security unit on a self-referral, a youth must be provided scheduled programming in accordance with his/her individual case plan and, if applicable, his/her individualized education program.

(3) If a youth claims a need for protection from harm, staff must complete a threat assessment. Based on the results of the threat assessment, all reasonable actions must be taken to ensure the safety of the youth, which may include any or all of the following:

(A) immediate implementation of enhanced supervision strategies;

(B) immediate separation of the youth from the source of the threat;

(C) referral to the TJJD Office of Inspector General for investigation;

(D) notification of the chief local administrator; and/or

(E) dorm or facility transfer.

(e) Referral Process.

(1) Any youth may request a self-referral to the security unit. Requests may be verbal or written and may be made to any staff member.

(2) Case management and/or supervisory staff must meet with the youth to discuss the circumstances regarding the request and, if appropriate, recommend alternatives to self-referral.

(3) Staff may not deny the youth's request for a self-referral to the security unit, unless self-referrals have been temporarily disallowed by the facility administrator due to an ongoing facility disruption or space limitations in the security unit.

(f) Service Delivery and Programming Requirements.

(1) While in the security unit on self-referral, youth shall be provided:

(A) psychological and medical services as appropriate;

(B) adequate access to restroom facilities and drinking water;

(C) access to shower and hygiene routine at least once every 24 hours, as behavior permits;

(D) the same food, including snacks, prepared in the same manner as for other youth, except for special diets that are prescribed on an individual basis by a physician, dentist, or mental health professional or special diets approved by a chaplain;

(E) access to education services during each scheduled instructional day for the duration of instructional minutes required by the campus master schedule;

(F) education services that will enable the youth to meet the goals of the youth's individualized education program, if the youth is currently receiving special education services;

(G) access to limited-English-proficient services for English language learners; and

(H) one hour of large-muscle exercise out of the room or in an enclosed outdoor recreation area at least once every 24 hours, as the youth's behavior and weather permit.

(2) A case manager or staff member designated by the facility administrator must meet with the youth daily to:

(A) assess the youth's status and make referrals to a mental health professional as appropriate;

(B) discuss strategies and offer opportunities for returning to the general population; and

(C) ensure that all required services and programming are being delivered.

(3) A case manager must, in consultation with members of the youth's multi-disciplinary team and a mental health professional, develop a written supervision and reintegration plan for the youth if any of the following apply:

(A) the youth claims a need for protection from harm;

(B) the staff reasonably suspects the youth feels a need to be protected from harm; or

(C) the youth has remained in the security unit on self-referral for 120 hours.

(4) The supervision and reintegration plan must include:

(A) strategies for addressing the threat of harm or coping with the circumstances that resulted in the self-referral;

(B) requirements for enhanced supervision, if appropriate;

(C) a schedule for reintegrating with the general campus population; and

(D) a safe housing reassessment, as described in §380.8524 of this title.

(g) Release from the Security Unit.

(1) Upon a youth's request or agreement to be released from the security unit, the youth must be granted release as soon as reasonably possible.

(2) If a supervision and reintegration plan is required, the youth may not be released from the security unit before the plan is completed unless the release is approved by the facility administrator or designee. If the facility administrator or designee denies a youth's request for release from the security unit before a required supervision and reintegration plan is completed, the facility administrator or designee must ensure that the plan is completed and the youth is released within 24 hours after the youth's request.

(3) Upon a youth's release from the security unit, the youth's case manager or other designated staff member must determine which components of the youth's supervision and reintegration plan will be continued after the youth's return to the general campus population. The youth must receive follow-up psychological services if directed by a mental health professional.

(h) Review and Oversight.

(1) At least once every 72 hours, the security dorm supervisor or designee must speak with each youth admitted to the security unit on a self-referral.

(2) If a youth has not requested or agreed to a release within 72 hours after admission to the security unit on self-referral, the security dorm supervisor must consult with the facility administrator or designee to discuss reintegration strategies, service delivery and counseling activities, youth behavior, and possible dorm or facility transfer. This consultation is required every 24 hours thereafter.

(3) If a youth has not requested or agreed to a release within five calendar days after admission to the security unit on self-referral, the facility administrator must consult with the division director over residential services or designee to discuss reintegration strategies, service delivery and counseling activities, youth behavior, and possible dorm or facility transfer. This consultation is required at least once every 72 hours thereafter until the youth is released from the security unit.

(4) The youth's multi-disciplinary team must monitor each youth's pattern of self-referrals to the security unit for indications of ongoing or unresolved issues. The multi-disciplinary team must address these issues through case plan objectives, clinical referrals, reports to facility management, or other appropriate interventions.

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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**PART 13. TEXAS COMMISSION ON
FIRE PROTECTION**

**CHAPTER 421. STANDARDS FOR
CERTIFICATION**

37 TAC §421.5, §421.17

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 421, Standards for Certification, concerning §421.5, Definitions, and §421.17, Requirement to Maintain Certification. The amendments are adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8869) and will not be republished.

The amendments are adopted to address requirements contained in Senate Bill 1307 of the 84th Legislature, requiring the waiving of certain fees for military personnel and spouses as well as extending the time in which military service members can renew certification without penalty.

The adopted amendments will provide clear and concise rules regarding who qualifies for the benefits.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees for each certification.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 437. FEES

37 TAC §§437.3, 437.5, 437.13

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, concerning §437.3, Certification Application Processing Fees, §437.5, Renewal

Fees, and §437.13, Processing Fees for Test Application. The amendments are adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8872) and will not be republished.

The amendments are adopted to address requirements contained in Senate Bill 807 of the 84th Legislature, requiring the waiving of certain fees for military personnel and spouses as well as extending the time in which military service members can renew certification without penalty.

The adopted amendments will provide clear and concise rules regarding who qualifies for the benefits.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees for each certification and examination given to fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection (the commission) adopts an amendment to Chapter 441, Continuing Education, concerning §441.5, Requirements. The amendments are adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8874) and will not be republished.

The amendments are adopted to address requirements contained in Senate Bill 1307 of the 84th Legislature, requiring the waiving of certain fees for military personnel and spouses as well as extending the time in which military service members can renew certification without penalty.

The adopted amendments will provide clear and concise rules regarding who qualifies for the benefits.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees for each certification.

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