

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. PROCUREMENT

SUBCHAPTER D. CONTRACT MONITORING

1 TAC §69.55

The Office of the Attorney General (OAG), Contracts and Asset Management Division, proposes adding Subchapter D, §69.55, concerning identifying and escalating contracts that require enhanced contract or performance monitoring.

The 84th Texas Legislature, Regular Session (2015), enacted Senate Bill (SB) 20, effective September 1, 2015. SB 20 relates to state contracting and amends, among other things, numerous sections within the Texas Government Code relating to state agency purchasing and contracting. In particular, newly-enacted §2261.253(c) of the Government Code, "Required Posting of Certain Contracts; Enhanced Contract and Performance Monitoring," requires:

- each state agency, by rule, to establish a procedure to:
 - identify contracts that require enhanced contract or performance monitoring; and
 - submit information on these contracts to the agency's governing official.
- Additionally, the agency's contract management office or procurement director is required to immediately notify the agency's governing official of any serious issue or risk that is identified with respect to a contract monitored under §2261.253(c).

Mr. Louis Sellers, Chief, Contracts and Asset Management Division, has determined that for the first five-year period the section is in effect there will be no additional estimated costs to the state expected as a result of enforcing or administering the rule.

Mr. Sellers has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of the addition of the section will be a more streamlined monitoring of contracts.

Mr. Sellers has also determined that there is no anticipated cost to persons who are required to comply with the section as proposed.

Written comments on the proposal may be submitted for 30 days following the publication of this notice to Mr. Louis Sellers, Chief, Contracts and Asset Management Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Louis.Sellers@texasattorneygeneral.gov.

The new section is proposed in accordance with Government Code, §2261.253(c), which requires the OAG to establish a procedure to identify each contract that requires enhanced contract or performance monitoring.

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

§69.55. Identification and Escalation of Contracts that Require Enhanced Contract or Performance Marketing.

(a) The agency will complete a risk assessment to identify contracts that require enhanced contract or performance monitoring.

(b) Information on these contracts will be reported to the First Assistant Attorney General at least quarterly. The First Assistant Attorney General will be notified immediately of any serious issue or risk that is identified with respect to such a contract.

(c) This subchapter does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

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

Filed with the Office of the Secretary of State on January 26, 2016.

TRD-201600343

Amanda Crawford

General Counsel

Office of the Attorney General

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 936-7940



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §§352.3, 352.7, 352.9, 352.21

The Texas Health and Human Services Commission (HHSC) proposes amendments to §352.3, concerning Definitions; §352.7, concerning Applying for Enrollment; §352.9, concerning Screening Levels; and §352.21, concerning Duty to Report Changes.

BACKGROUND AND JUSTIFICATION

Providers enrolled in Texas Medicaid and Medicare historically have been able to submit new location information using Provider Information Change (PIC) forms alone; however, §352.7 currently requires providers to submit a completed enrollment application for each practice location.

The use of PIC forms to add practice locations is allowable under federal and state law and in alignment with federal direction that state Medicaid programs can access the CMS enrollment system, or the Medicare Provider Enrollment, Chain, and Ownership System (PECOS), to verify provider location information. After implementation of the Affordable Care Act (ACA), CMS further encouraged use of PECOS by the states to determine whether practice locations were screened under Medicare, instead of requiring state Medicaid programs to redundantly screen Medicare-enrolled practice locations.

The current state requirement that a completed enrollment application be submitted for each new practice location creates an unnecessary administrative burden for providers, particularly considering that under the ACA, all providers must re-enroll by March 24, 2016. Texas Medicaid has a strong interest in ensuring that the administrative burden associated with enrollment and re-enrollment is not in excess of what is required by state and federal law, as long as all practice locations are screened and validated and mandated disclosures are still collected.

To ensure practice locations are enrolled in compliance with state and federal rules, while limiting the administrative burden for providers, these amendments revise rule provisions to require one enrollment application for each provider and all applicable application fees, and then leverage available Medicare data to ensure practice locations not included in the initial enrollment application are screened and validated. PIC forms, in lieu of a complete new application, will be accepted for limited-risk Medicaid providers and providers enrolled in both Medicaid and Medicare to update their practice locations. PIC forms or other supplemental forms will be revised as needed to indicate to the Texas Medicaid and Health Partnership and the HHSC Office of the Inspector General when the submitted form is not sufficient and will indicate that an enrollment application must be submitted for the new practice location (e.g. if the new location is associated with a new program or provider type or ownership change).

The proposed amendments will occur concurrently with amendments proposed for Chapter 371, Subchapter E of this title (relating to Provider Disclosure and Screening). The amendments to Chapter 371 were published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 717).

SECTION-BY-SECTION SUMMARY

Proposed §352.3 is amended to clarify that the definition for "Applicant" includes the enrollment of a practice location as defined in paragraph (7) of the rule. Paragraph (7) is further proposed for amendment to include the use of a supplemental enrollment form to add practice locations for Medicare-enrolled or limited-risk providers.

Proposed §352.7 removes language that requires a completed enrollment application for each practice location, to align with changes allowing for the use of a PIC form to add new practice location information for certain enrolled providers.

Proposed §352.9 clarifies that HHSC may rely on Medicare screening data as required under 42 Code of Federal Regulations §455.410. The amendment also clarifies that screenings

of provider practice locations may be conducted by a designee of HHSC.

Proposed §352.21 adds language clarifying that certain supplemental forms (including a PIC form) may be used by providers, as determined by HHSC, to notify HHSC of certain changes to its enrollment.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rule are in effect, there will be no impact to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rules, as they will not be required to alter their business practices to their detriment as a result of the amended rules.

PUBLIC BENEFIT AND COSTS

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be a decreased administrative burden on Medicaid providers.

Ms. Rymal has also determined that during the first five years the proposal is in effect, there are no anticipated costs to persons required to comply from implementing and enforcing the rule as proposed.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Alexander Melis; by fax to (512) 730-7472; by mail to P.O. Box 13247, MC H310, Austin, Texas 78711; or by e-mail to alex.melis@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

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

§352.3. *Definitions.*

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

(1) Applicant--An individual or an entity that submits an enrollment application to enroll or re-enroll as [become] a provider or to enroll a new practice location in Medicaid or CHIP as described in paragraph (7) of this section.

(2) CHIP--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and Chapter 62 of the Health and Safety Code.

(3) Change of ownership--A change of ownership related to a partnership, sole proprietorship, corporation, or leasing arrangement as defined in 42 CFR §489.18.

(4) Designee--An entity to which HHSC has delegated certain functions for provider enrollment purposes. A designee may include:

(A) an HHSC contractor;

(B) a health and human services agency; or

(C) a managed care organization (MCO) that contracts with HHSC under Medicaid or CHIP.

(5) Disenroll--To end a provider's participation in Medicaid or CHIP before the end of the provider's current enrollment period.

(6) Enrollment--The process for applying to become a provider, including contracting and procedures for determining whether to grant approval to enter into a provider agreement.

(7) Enrollment application--Documentation required [A form prescribed] by HHSC that an applicant [~~or re-enrolling provider~~] submits to HHSC [~~or its designee~~] to enroll or re-enroll as a provider or to add a new practice location. An enrollment application includes supplemental forms used to add practice locations for Medicare-enrolled or limited-risk providers, as determined by HHSC.

(8) Enrollment type--A type of enrollment category that identifies how the applicant seeks to enroll, such as individual, group, performing provider, or facility.

(9) Entity--A provider group, a facility, an organization, or a business registered with the Texas Secretary of State.

(10) Health care practitioner--A physician or non-physician licensed or certified health care provider who is recognized by federal law or by HHSC as a provider who can bill for medical services or benefits, submits orders or referrals for services to treat, certifies medical need for services, or supervises other individuals providing services and benefits to Medicaid or CHIP recipients.

(11) Health and human services agency--A state agency identified in §531.001(4) of the Government Code.

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

(13) Medicaid--The medical assistance program, a state and federal cooperative program authorized under Title XIX of the

Social Security Act that pays for certain medical and health care costs for people who qualify.

(14) National Provider Identifier--A unique ten-digit identification number assigned by the Centers for Medicare & Medicaid Services.

(15) Overpayment--A payment made to a provider in excess of the amount that is allowable for the service provided, plus any accrued interest.

(16) Person with an ownership or control interest--Has the meaning assigned by §371.1003 of this title (relating to Definitions).

(17) Provider--An applicant that successfully completes the enrollment process outlined in this chapter and in Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

(18) Provider agreement--An agreement between HHSC and a provider wherein the provider agrees to certain contract provisions as a condition of participation.

(19) Re-enrolling provider--A provider that submits an enrollment application before the end of the provider's current enrollment period.

(20) Recipient--A person receiving benefits under Medicaid or CHIP.

(21) Surety bond--One or more bonds issued by one or more surety companies under 31 U.S.C. §§9304 - 9308 and 31 CFR parts 223, 224, and 225.

(22) Terminate--To take an adverse action against a provider whose participation in Medicaid or CHIP has ended at federal or state agency direction due to violation of state rules or federal regulations.

(23) Third-party billing vendor--A vendor registered with HHSC or its designee that submits claims for reimbursement on behalf of a provider.

§352.7. *Applying for Enrollment.*

(a) To apply for enrollment or re-enrollment, an applicant or re-enrolling provider must:

(1) meet the requirements outlined in §352.5 of this chapter (relating to Provider Enrollment Requirements) and Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity);

(2) complete an enrollment application [~~for each practice location~~] in accordance with the criteria specified by HHSC or its designee and the instructions contained in the application;

(3) submit a supplemental application form or forms for any new practice location in accordance with the criteria specified by HHSC and the instructions contained in the form;

(4) [~~3~~] submit an application fee for each practice location, as described in subsection (b) of this section;

(5) [(4)] submit documentation to show proof of registration and good standing with the Texas Comptroller of Public Accounts, the Texas Secretary of State, or any other documentation requested by HHSC or its designee, as applicable;

(6) [(5)] provide a copy of a surety bond obtained pursuant to §352.5 of this chapter;

(7) [(6)] certify that the information contained in the application is true and accurate to the best of the applicant's or re-enrolling provider's knowledge; and

(8) [(7)] submit a signed provider agreement with each enrollment application. By signing the provider agreement, the applicant or re-enrolling provider acknowledges that the applicant or re-enrolling provider will comply with all terms and conditions of the provider agreement.

(b) If an applicant or re-enrolling provider must pay an application fee pursuant to 42 CFR §455.460 in an amount determined by 42 CFR §424.514, the applicant or re-enrolling provider must submit:

(1) the application fee; or

(2) documentation showing proof of payment of the application fee within the current enrollment period (as defined by 42 CFR §424.515) under Title XVIII or any other state's program under Title XIX or Title XXI of the Social Security Act.

(c) An applicant or re-enrolling provider must provide all additional information requested by HHSC or its designee in connection with the processing of the enrollment application, by the deadline and in the manner indicated in the request. If the applicant or re-enrolling provider fails to comply with this requirement, the enrollment application will be closed.

(d) If an applicant or re-enrolling provider fails to meet any of the requirements in this section, HHSC or its designee will consider the enrollment application incomplete and the application will not be processed.

§352.9. Screening Levels.

(a) HHSC assigns an applicant or re-enrolling provider a screening level of "Limited," "Moderate," or "High" based on:

(1) the federal screening level for the type of provider as provided by 42 CFR §424.518, if applicable;

(2) the federal screening level for the type of provider as provided by 42 CFR §455.450; or

(3) HHSC's assessment of:

(A) the risk level for potential fraud, waste, or abuse associated with the type of provider or the geographical area; or

(B) other factors as determined by HHSC, including:

(i) a change in business structure or organization;

(ii) past practices and circumstances; and

(iii) access to care in a geographical area.

(b) For a screening level of "Limited" or "Moderate" assigned under subsection (a) of this section, HHSC may assign a higher screening level based on provider, type of provider, or geographical area. For the requirements outlined in subsection (c) of this section, HHSC may rely on other validated screenings performed by Medicare, as provided for by 42 C.F.R. §455.410.

(c) Requirements for screening levels.

(1) Limited.

(A) For a provider assigned a screening level of "Limited," HHSC:

(i) verifies that a provider meets any federal or state requirements for that type of provider;

(ii) verifies licensure certifications, including licensure certifications in Texas and any other state; and

(iii) conducts database checks pursuant to 42 CFR §455.436.

(B) A provider assigned a screening level of "Limited" must submit a new enrollment application at least every five years, unless HHSC determines a shorter enrollment period.

(2) Moderate.

(A) For a provider assigned a screening level of "Moderate," HHSC:

(i) performs the screening described in paragraph (1)(A) of this subsection; and

(ii) performs at least one unscheduled and unannounced pre- and post-enrollment site visit in accordance with 42 CFR §455.432.

(B) A provider assigned a screening level of "Moderate" must submit a new enrollment application at least every five years, unless HHSC determines a shorter enrollment period.

(3) High.

(A) For a provider assigned a screening level of "High," HHSC:

(i) performs the screening described in paragraph (2)(A) of this subsection;

(ii) conducts a criminal background check; and

(iii) requires the submission of a set of fingerprints if applicable under 42 CFR §455.434.

(B) A provider assigned a screening level of "High" must submit a new enrollment application at least every three to five years, unless:

(i) HHSC determines a shorter enrollment period; or

(ii) the provider meets the requirements of §371.1007 of this title (relating to Screening Levels).

(d) In addition to the screening requirements provided under this section, additional screening may be performed under §371.1009 of this title (relating to Verifications Required for Each Screening Level).

(e) A screening level assigned under subsection (a)(3) of this section is within the sole discretion of HHSC and is not subject to administrative review.

§352.21. Duty to Report Changes.

(a) As a condition of continued enrollment, a provider must notify HHSC or its designee in writing of any change in its status or condition with respect to the information disclosed in an enrollment application or other supplemental form to an enrollment application, as determined by HHSC, including:

(1) National Provider Identifier or associated taxonomy code;

(2) Medicare number;

(3) Medicare certification status;

(4) federal tax identification number;

(5) responsible billing party for the provider;

(6) physical address for the provider or responsible billing party;

- (7) the name, address, date of birth, and Social Security number of any managing employee of the provider;
- (8) enrollment type;
- (9) provider licensure, certification, accreditation;
- (10) any change of ownership as required by 42 CFR §489.18;
- (11) a change in the person with an ownership or control interest in the provider;
- (12) information required to be disclosed under Chapter 371 of this title (relating to Other Health and Human Services Fraud and Abuse Program Integrity);
- (13) third-party billing vendor services; or
- (14) any other information required by HHSC or its designee.

(b) Time frame for reporting changes.

(1) If a change described in subsection (a) of this section occurs due to a change of ownership or control interest, the provider must report the change to HHSC or its designee within 30 days of the change of ownership.

(2) For all other changes, the provider must report the change to HHSC or its designee within 90 days of the occurrence.

(c) Upon notification of a change that is reported in accordance with this section, HHSC or its designee may require the submission of a new enrollment application and fee, if applicable, provider agreement, provider licensure or certification, or other documentation necessary to verify the reported change.

(d) If a provider does not report a change as required by this section or 42 CFR §489.18, or does not submit an item HHSC or its designee requires under subsection (c) of this section, HHSC or its designee may, retroactive to the date that the change should have been reported:

- (1) disenroll the provider or terminate the provider's participation in Medicaid or CHIP;
- (2) deny further reimbursement; and
- (3) recoup payments made to the provider.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600441
 Karen Ray
 Chief Counsel
 Texas Health and Human Services Commission
 Earliest possible date of adoption: March 13, 2016
 For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION
PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.9

The Texas Alcoholic Beverage Commission proposes amendments to §33.9, relating to Fees for On-Line Transactions.

Section 33.9 sets the fees for on-line transactions with the commission. The proposal clarifies that a credit card transaction incurs a 25 cent fee, plus an additional fee of 2.75 percent of the total transaction amount. These fees for the use of a credit card would not be changed under the proposal.

A transaction paid by ACH or electronic check currently incurs a 25 cent fee plus an additional fee of 0.5% of the total transaction amount. The proposal would modify the fee structure for these transactions by eliminating the 25 cent fee and imposing a flat fee of one dollar rather than basing the fee on the transaction amount.

The proposed amendments are consistent with the fees required by Texas.Gov, which processes the commission's on-line transactions.

Section 33.9 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government, as the fees are calculated to recover the costs of the services provided.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. Fees for credit card transactions are unchanged in the proposal. The impact of proposed changes to the fees for ACH or electronic check transactions will vary depending on the amount of the transaction, but in most cases the total amount will be less than the total current fees. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the costs of providing on-line transactions will be covered by those making such transactions.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 25, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.55, which allows the commission to charge a reasonable service fee to applicants using electronic or internet service to apply for licenses, permits and certificates.

The proposed amendments affect Alcoholic Beverage Code §5.31 and §5.55 and Government Code §2001.039.

§33.9. *Fees for On-Line Transaction.*

- (a) This rule relates to §5.55 of the Alcoholic Beverage Code.
- (b) A service fee of \$0.25 shall be assessed for each on-line transaction paid by credit card.
- (c) An additional fee of 2.75% of the total transaction amount shall be assessed for transactions paid by credit card.
- (d) A service [~~An additional~~] fee of one dollar (\$1.00) [~~0.5% of the total transaction amount~~] shall be assessed for transactions paid by ACH or electronic check.

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600387

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 206-3489



CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.52

The Texas Alcoholic Beverage Commission proposes amendments to §41.52, relating to Private Clubs--In General.

Section 41.52 sets forth general rules relating to private clubs. Most of the proposed changes are grammatical, change outdated references, correct internal references, change gender-specific references to gender-neutral references, or change the word "administrator" to "executive director" (pursuant to Alcoholic Beverage Code §5.11(b) and commission practice).

Currently, the language of subsection (c)(1)(F) references a tax bond requirement. Consistent with the commission's treatment of tax bonds generally, the reference would be changed to apply to any bond that may otherwise be required but to remove an affirmative obligation in this section that a bond be maintained.

The proposal also addresses food service requirements in subsection (e). The requirement for "complete" meals would be eliminated. Under the proposal, clubs could fulfill the food service obligation by contracting with an outside vendor. The food would have to be available upon request and be delivered to and served on the club's premises. In addition, payment for the food service would have to be made by the member to the club, and not to the outside vendor.

Section 41.52 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local or state government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because regulatory burdens regarding bonds and food service are relaxed in a manner consistent with the commission's mission.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 25, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.52. *Private Clubs--In General.*

(a) Scope. This section does not apply to temporary members or to hotel patrons, as described in the Alcoholic Beverage Code, §§32.09, 32.10, and 32.11. In addition, subsection (c)(1)(G) and (H) and subsection (e) of this section do not apply to fraternal organizations or to veterans' organizations.

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

- (1) Club--A private club.
- (2) Member and membership--a member of and membership in a private club.

(c) Membership and related topics.

(1) No private club shall be qualified to hold a private club registration permit unless it shall:

- (A) have 50 or more members at all times;
- (B) have a membership committee composed of three or more members of the club and vested with authority by charter, by-law or regulation to approve or reject membership applications and terminate existing memberships. The governing body of a club, if qualified under this provision, may be the membership committee, and

when functioning as such shall be subject to and governed by all provisions herein relating to the membership committee. When considering a membership application or termination of membership, the membership committee shall keep written minutes showing the meeting date, the names of all committee members present, the name of any person admitted to membership, and the name of any person whose membership was terminated. No minutes shall be required of any discussion or action regarding a membership application which is denied;

(C) have, other than charter members, no members except those approved by at least three members of the membership committee at a meeting of such a committee;

(D) keep a well-bound [~~well bound~~] book in which is shown the following about each member: the [~~The~~] full name of the member, the member's [~~his~~] initial membership number which shall be issued in sequence, the current complete address of such member, the date such member was admitted to membership, and the date such member was removed from membership. When [~~Provided that when~~] a member has been removed from membership, the [~~his~~] membership number may be reassigned to another member. Additional well-bound [~~Provided further that additional well bound~~] books may be used if necessary to record the information required by this paragraph, but all such books shall be kept permanently by the club. A [~~Provided further that a~~] club using a computer system [~~business machine~~] to maintain its membership records shall not be required to keep a well-bound [~~well bound~~] book if such computer system [~~machine~~] provides the [~~such~~] information as [~~shall be~~] required by the executive director [~~administrator~~], and is approved in writing by the executive director or the executive director's designee [~~administrator~~];

(E) keep all books, records and minutes required herein on the premises of such club, and make them available to any representative of the commission upon reasonable notice;

(F) maintain in force any bond required and executed by [~~a bond executed by~~]: the corporation[~~;~~] as principal, if an incorporated club[~~;~~] or [~~;~~] by an officer of the club[~~;~~] as principal, if an unincorporated club. Such bond shall be executed by a surety company duly authorized and qualified to do business in this state, as surety, in an amount required by rule of the commission payable to the State of Texas conditioned that all fees and taxes owed [~~owned~~] by such club to the State of Texas shall be paid. Such bond shall be in a form approved by the executive director [~~administrator~~] and the attorney general of Texas;

(G) if operating under the locker system, at all times keep all liquor owned by each member under the locker system in a locker located on the premises and rented only to such member, except when the member, one of the member's [~~his~~] family or the member's [~~his~~] guest is present on the premises and using such liquor; and

(H) if operating under the pool system, keep a well-bound [~~well bound~~] book in which is recorded the following about each member of the pool: the member's [~~His~~] name and membership number, the date and amount of each liquor pool assessment, and the date of payment of the assessment. The information required to be kept in a book by this subparagraph [~~paragraph~~] may be kept in the book required in subparagraph (D) of this paragraph. A [~~Provided that a~~] club using a computer system [~~business machine~~] to bill each member of its liquor pool shall not be required to have such well-bound [~~well bound~~] book if such computer system [~~machine~~] provides the [~~such~~] information [~~as shall be~~] required by the executive director [~~administrator~~] and is approved by the executive director or the executive director's designee [~~administrator~~].

(2) No membership shall be terminated except by action of the membership committee or by written resignation of the mem-

ber. Resignation of any member shall be recorded immediately in the minute book of the membership committee and in the records required by subparagraph [~~paragraph~~] (1)(D) of this paragraph [~~subsection~~].

(3) The executive director [~~administrator~~] may, after notice and hearing, refuse to issue a private club registration permit if the executive director [~~he~~] finds that the applicant has failed to comply with any requirement set forth in this subsection.

(4) After notice and hearing the executive director [~~administrator~~] may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if the executive director [~~he~~] finds that the holder of the permit, its governing body, or any of its committees, officers, directors, members, agents, servants, or employees has failed to comply with any requirement set forth in this section.

(d) Who may consume. As provided in the Alcoholic Beverage Code, §32.01, alcoholic beverages owned by members of a private club may be served only to and consumed only by a member, a member's family, or their guests.

(1) The word "member" shall mean a person who has been admitted to membership as provided in subsection (c) of this section.

(2) The term "member's family" shall mean the spouse, parents, and adult children of the member.

(3) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(e) Food service. A private club shall provide regular food service adequate for its members and their guests. The term "food service adequate for its members and their guests" shall mean that [~~complete~~] meals shall be available on the club premises for service to members, their families, and guests. The food service requirement may be fulfilled through the use of a concession or catering agreement with an outside vendor. Prepared food must be available upon request, and must be delivered and served at the licensed premises. Payment for food service must be made to the private club.

(f) Suspension and cancellation. After notice and hearing the executive director [~~administrator~~] may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if the executive director [~~he~~] finds that the club or any of its members, agents, servants, or employees has:

(1) served, consumed or permitted another person to consume an alcoholic beverage on the premises of the club at any time when the private club registration permit of such club is suspended by an order of the executive director [~~administrator~~]; or [~~and~~]

(2) made a false statement or a misrepresentation in any book, record, minutes or report, or other written matter required to be kept or reported by this section or by any provision of the Alcoholic Beverage Code.

(g) Permittees may access electronically readable information on a driver's license, commercial driver's license or identification certificate for the purpose of verifying the accuracy of the records required by this rule. Information so accessed may not be retained longer than is reasonably necessary to insure verification. The information may not be marketed in any manner. Written consent must be obtained from the club member or prospective member when accessing electronically readable [~~license~~] information and proof of such consent must be maintained with the permittee's membership records.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600430

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 206-3489



16 TAC §41.54

The Texas Alcoholic Beverage Commission proposes the repeal of §41.54, relating to Destructions.

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions are necessary. Therefore, the commission is proposing to repeal the text of this section as it currently exists and separately replace it with new text under the same rule number and title.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because outdated and outmoded procedures will be removed so that more efficient procedures can replace them.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, February 25, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed repeal affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.54. *Destructions.*

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600389

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



16 TAC §41.54

The Texas Alcoholic Beverage Commission proposes new §41.54, relating to Destructions.

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. In a separate rulemaking, the commission has reviewed the current section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions to the existing rule are necessary. Therefore, in that separate rulemaking the commission is proposing to repeal the text of this section as it currently exists and in this rulemaking the commission is proposing to replace it with new text under the same rule number and title.

Proposed subsection (a) specifies which permittees and licensees are entitled to a tax exemption or tax credit for alcoholic beverages that are destroyed in accordance with the section.

Proposed subsection (b) defines which destructions qualify for a tax exemption or tax credit.

Proposed subsection (c) specifies the timeline to notify the commission prior to a destruction and that an Application for Destruction of Alcoholic Beverages must be used to provide the notice. It also requires that written approval be received before the destruction occurs.

Proposed subsection (d) specifies the documents to be retained after a destruction, including a copy of the Application for Destruction of Alcoholic Beverages signed by an authorized representative of the commission, any receipt for fees charged by the facility where the destruction occurred, and an affidavit of destruction executed by an employee of the permittee or licensee who witnessed the destruction.

Proposed subsection (e) provides that the approved Application for Destruction of Alcoholic Beverages must be submitted with the monthly excise tax report filed with the commission upon which the tax exemption is claimed. If a permittee or licensee is unable to claim the destruction as an exemption on a tax report, the subsection would allow the permittee or licensee to submit a letter requesting issuance of an authorized tax credit.

Proposed subsection (f) requires that the permittee or licensee retain a copy of the Application for Destruction of Alcoholic Beverages.

Proposed subsection (g) specifies that the commission may require that the alcoholic beverages designated for destruction be physically inspected by the commission's authorized represen-

tative prior to destruction and/or that the actual destruction be witnessed by such a representative.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on local or state government.

The proposed new rule will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the procedures for claiming a tax exemption or tax credit on destroyed alcoholic beverages will be clear.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on Thursday, February 25, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed new rule affects Alcoholic Beverage Code §5.31. §41.54. Destructions.

(a) Each permittee subject to the provisions of Alcoholic Beverage Code §§201.03, 201.04, or 201.42, and each licensee subject to the provisions of Alcoholic Beverage Code §203.01, shall be entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with the provisions of this section.

(b) To be claimed as a destruction for purposes of receiving a tax exemption or a tax credit, the alcoholic beverages must be destroyed in such a manner that the product is rendered unrecoverable or unfit for human consumption.

(c) Prior to the destruction of alcoholic beverages for which a tax exemption or tax credit is claimed, the permittee or licensee must comply with the requirements of this subsection.

(1) At least three full working days prior to the destruction, the permittee or licensee must notify the nearest authorized representative of the commission of the intent to destroy the alcoholic beverages. This notification must be made in writing on an Application for Destruction of Alcoholic Beverages and contain a complete listing by brand, quantity, container size, and package size of the alcoholic beverages to be destroyed. This requirement for a complete listing may be satisfied by attaching a computerized listing that provides all the required documentation to the Application for Destruction of Alcoholic Beverages.

(2) The permittee or licensee must receive written approval from the nearest authorized representative of the commission to conduct the destruction.

(d) To support a claim for a tax exemption or tax credit for a destruction, the permittee or licensee must retain the documentation referenced in this subsection and make it available to an authorized representative of the commission upon request.

(1) A signed copy of the Application for Destruction of Alcoholic Beverages indicating that it was approved shall be provided to the permittee or licensee by the nearest authorized representative of the commission when the destruction is approved.

(2) If the alcoholic beverages were destroyed at a location which charges a fee for this service, the permittee or licensee shall retain a copy of the receipt for payment of this fee.

(3) An employee of the permittee or licensee who witnessed the destruction of the alcoholic beverages must execute an affidavit of destruction. The affidavit shall include the date of destruction, the destruction location, and a description of how the alcoholic beverages were destroyed. A separate affidavit must be prepared for distilled spirits and wine, for ale and malt liquor, and for beer.

(e) The approved Application for Destruction of Alcoholic Beverages (including any attachments) shall be submitted with the monthly excise tax report filed with the commission upon which the exemption for the destruction is claimed. If the permittee or licensee is unable to claim the destruction as an exemption on a tax report, it may submit a letter to the Commission requesting issuance of an authorized tax credit.

(f) A copy of the approved Application for Destruction of Alcoholic Beverages (including any attachments) should be retained in the permittee's or licensee's files and made available upon request for inspection by an authorized representative of the commission.

(g) The commission may require that the alcoholic beverages designated for destruction be physically inspected and inventoried by a representative of the commission prior to the scheduled destruction and/or that the actual destruction be witnessed by an authorized representative of the commission.

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

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TRD-201600394

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 206-3489



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.6

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §1.6, concerning

Advisory Committees. Specifically, the proposed amendment to §1.6(g) provides a nomination process for non-higher education institutional representatives on certain Coordinating Board advisory committees. This section is also amended to specify that the Board may replace a member who becomes unassociated with the nominating institution or entity.

Ms. Linda Battles, Deputy Commissioner for Agency Operations and Communications/COO, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Ms. Battles has determined that the public benefit anticipated as a result of administering this section will be the expanded opportunity for stakeholders who are not affiliated with an institution of higher education to participate on certain THECB advisory committees. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Ms. Linda Battles, Deputy Commissioner for Agency Operations and Communications/COO, THECB, 1200 East Anderson Lane, Austin, Texas 78752, linda.battles@thech.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Government Code, Chapter 2110, which provides the Coordinating Board with the authority to create advisory committees.

The amendments affect Texas Administrative Code, Title 19, Chapter 1, Subchapter A, §1.6.

§1.6. *Advisory Committees.*

(a) - (f) (No change.)

(g) Membership. The Board shall solicit nominations and make appointments from such nominations for membership on advisory committees from presidents and chancellors, or the respective designee. For advisory committees that include members not associated with an institution of higher education, the Board shall solicit nominations from appropriate entities, such as stakeholder organizations whose membership consists of the type of representative the advisory committee is seeking. Except as otherwise provided by law, all members of advisory committees are appointed by and serve at the pleasure of the Board. Board members may not serve on advisory committees. If an advisory committee member resigns, is no longer associated with the nominating institution or entity, dies, becomes incapacitated, is removed by the Board, otherwise vacates his or her position, or becomes ineligible prior to the end of his or her term, the Board may appoint a replacement who shall serve the remainder of the unexpired term.

(h) - (n) (No change.)

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

Filed with the Office of the Secretary of State on January 28, 2016.

TRD-201600366

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: March 13, 2016
For further information, please call: (512) 427-6114

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SUBCHAPTER E. STUDENT COMPLAINT
PROCEDURE

19 TAC §§1.110, 1.113 - 1.115

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §§1.110 and 1.113 - 1.115, concerning the Student Complaint Procedure. The amended rules clarify and update the procedures for filing a student complaint against an institution of higher education. The new language provides for the use of a more efficient online student complaint form, updates the mailing address for complaints mailed to the Agency, and specifies that the evaluation of a student's academic performance is under the sole purview of the student's institution and its faculty.

Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Booker has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be an improved understanding of the student complaint process. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jerel Booker, J.D., THECB, P.O. Box 12788, Austin, Texas 78711 or via email at jane.caldwell@thech.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.031, which provides the Coordinating Board with the authority to adopt rules for handling student complaints concerning higher education institutions.

The amendments affect Texas Education Code, §61.031.

§1.110. *Definitions.*

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

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

(6) Student complaint form--A standard form required for filing a student complaint with the Agency, available [in downloadable format] on the Agency's website or by request in hard copy form from the Agency[; which is required to be used in filing any student complaint with the Agency].

(7) (No change.)

§1.113. *Complaints Not Reviewed by the Agency.*

The following is a non-exhaustive list of student complaints that are not reviewed by the Agency:

(1) (No change.)

(2) The Agency does not intervene in matters solely concerning an individual's grades, [øf] examination results, or evaluation of academic performance, as these are within the sole purview of the institution and its faculty.

(3) - (8) (No change.)

§1.114. *Filing a Complaint.*

(a) (No change.)

(b) Complainants shall submit [~~send~~] student complaint forms through the online process provided on the agency's website, by electronic mail (email) to StudentComplaints@theeb.state.tx.us, or by hard copy sent [~~mail~~] to the Texas Higher Education Coordinating Board, College Readiness and Success Division [~~Office of the General Counsel~~], P.O. Box 12788, Austin, Texas 78711-2788. Facsimile (FAX) transmissions of the student complaint form are not accepted.

(c) - (e) (No change.)

§1.115. *Referral of Certain Complaints to Other Agencies or Entities.*

Once the Agency receives a student complaint form, the Agency may refer the complaint to another agency or entity as follows:

(1) Complaints alleging that an institution has violated state consumer protection laws, e.g., laws related to fraud or false advertising, may [~~shall~~] be referred to the Consumer Protection Division of the Office of the Attorney General of Texas for investigation and resolution.

(2) - (4) (No change.)

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

Filed with the Office of the Secretary of State on February 1, 2016.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 4. RULES APPLYING TO
ALL PUBLIC INSTITUTIONS OF HIGHER
EDUCATION IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.11

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §4.11, concerning the Common Admission Application Forms. The amended rule adds needed definitions and reorganizes old subsections of the rule to better group related topics. Old language is amended to reflect the multiple common admissions applications that are available and to reflect that two-year public institutions are now required to accept Apply Texas applications. New language indicates institutions failing to pay their share of the cost by the due date may be denied access to incoming application data until such time that payments are received.

Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Booker has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be an improved understanding of the Apply Texas System requirements and options by participating institutions of higher education. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jerel Booker, J.D., THECB, P.O. Box 12788, Austin, Texas 78711 or via email at applytexasapplication@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §51.762, which provides the Coordinating Board with the authority to adopt rules for the Apply Texas Admission Application Forms.

The amendments affect Texas Education Code, §51.762.

§4.11. *Common Admission Application Forms.*

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Apply Texas Advisory Committee--An advisory committee composed of representatives of general academic teaching institutions, community college districts, public state colleges, and public technical institutes, authorized by Texas Education Code, §51.762 and established in accordance with Board rules, Chapter 1, Subchapter G, §§1.128 - 1.134 of this title (relating to Apply Texas Advisory Committee), to provide the Texas Higher Education Coordinating Board assistance in developing and implementing admissions application forms and procedures.

(2) Apply Texas System--the state's system for applying for admission to Texas public institutions of higher education. The System includes an access portal for completing application forms; help desks to provide users assistance; and a portal through which Texas high school counselors access status data regarding student progress in applying for admission to and financial aid for college.

[(a) A common application form for freshman and undergraduate transfer applications is hereby adopted by the Coordinating Board pursuant to Texas Education Code, §51.762. The form is adopted in both a printed format, distributed each August to Texas high schools and available at www.collegeforalltexas.com, and in an electronic format (www.applytexas.org). The Board, with the assistance of an advisory committee established by, and in accordance with, Board rules, Chapter 1, Subchapter G, §§1.128 - 1.134 of this title (relating to Apply Texas Advisory Committee), will review the form and recommend any changes for subsequent academic years.]

(b) Acceptance of Admission Applications.

(1) Public community [~~junior~~] colleges, public state colleges, and public technical institutes shall [~~must~~] accept freshman and undergraduate transfer applications submitted using the Board's electronic common admission application forms [~~form~~].

(2) General academic teaching institutions shall [~~must~~] accept freshman and undergraduate transfer applications submitted using either the Board's electronic or printed forms [~~format~~].

(c) Application Forms. Adjustments to Paper Forms. When sending a printed common application form to a student with or without other materials, an institution shall not alter the form in any way and shall include instructions for completing the form, general application information, and instructions for accessing a list of deadlines for all institutions.

~~[(e) Each general academic teaching institution shall collect information regarding gender, race/ethnicity, and date of birth as part of the application process and report this information to the Coordinating Board.]~~

~~[(d) All general academic teaching institutions shall adhere to the following guidelines:]~~

~~[(1) No general academic teaching institution shall pre-print its own name on the printed common application form, and no general academic teaching institution's name or logo shall appear on the form.]~~

~~[(2) When sending the common application to a student along with other supplemental information or when inserting it into a viewbook, it shall be included with no alterations and shall include the instructions for completing the application, the general application information and the list of deadlines for all general academic teaching institutions.]~~

~~(d) [(e) Outreach to Public High Schools. The Coordinating Board shall ensure that copies of the freshman common admission application forms [form] and information for their [its] use are available [for distribution] to appropriate personnel at each Texas public high school. The Coordinating Board will work with institutions and high schools to ensure that all high schools have access to either the printed or electronic common application forms [form]. [Participating institutions may charge a reasonable fee for the filing of a common application form.]~~

(e) Data to be Collected.

(1) Common application forms are to include questions needed for determining an applicant's residence status with regard to higher education and other information the Board considers appropriate.

(2) Each general academic teaching institution, public community college, public state college, and public technical institute shall collect information regarding gender, race/ethnicity, and date of birth as part of the application process and report this information to the Coordinating Board. Common application forms do not have to be the source of those data.

(3) Institutions of higher education may require an applicant to submit additional information within a reasonable time after the institution has received a common application form.

(f) Publicity. The Board shall publicize in both electronic and printed formats the availability of the common admission forms.

(g) [(f) Subcontract for Technical Support. The Coordinating Board shall enter into a contract with a public institution of higher education to maintain the electronic common application system for use by the public in applying for admission to participating institutions and for distribution of the electronic application to the participating institutions designated by the applicant.

(h) Costs.

(1) Participating institutions may charge a reasonable fee for the filing of a common application form.

(2) Operating costs of the system will be paid for by all institutions required to use the common application plus independent and health-related institutions that contract to use the electronic application.

(3) Each participating institution shall pay a portion of the cost based on the percentage of its enrollment compared to the total enrollment of all participating institutions based on the [previous year's] certified enrollment data of the most recent fall semester. The Coordinating Board will monitor the cost of the system and notify the institutions on an annual basis of their share of the cost. Billings for the services for the coming year will be calculated and sent to the institutions by September 1 [July 15th] of each fiscal year and payments must be received no later than December 1[5] of each fiscal year.

(4) The Coordinating Board shall send participating institutions reminders of payment amounts and the due date. Institutions failing to pay their share of the cost by the due date may be denied access to in-coming application data until such time that payments are received.

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

Filed with the Office of the Secretary of State on February 1, 2016.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.1

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §21.1 concerning the General Provisions. This section regarding the interest and sinking fund is amended to reflect current student loan bond covenants and industry standards.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the institution's ability to better meet the needs of their student populations and local community's workforce. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@thecb.state.tx.us. Comments will

be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

The amendments affect Texas Education Code, §52.17.

§21.1. Fund Requirements for Student Loan Bonds Interest and Sinking Fund.

(a) There shall be deposited into the interest and sinking fund the following:[:]

(1) Money received in each Fiscal Year as repayment of student loans granted under the General Provisions of the Student Financial Assistance Act of 1975. The accumulated amount for all outstanding bonds at each fiscal year end shall be sufficient to pay the interest on and principal due in the ensuing fiscal year.

(2) Money transferred by the Board from the Student Loan Auxiliary Fund to the extent permitted by law, including Subchapter F of the General Provisions of the Student Financial Assistance Act of 1975, the Interest and Sinking Fund in the event funds on deposit in the Interest and Sinking Fund are insufficient to pay principal of and interest on any of previously issued bonds and additional bonds; and to the extent permitted by law, including Subchapter F of the General Provisions of the Student Financial Assistance Act of 1975, to transfer to other funds and accounts established by the Board to comply with covenants related to maintaining the tax-exempt status of the bonds.

(3) Accrued interest earned by the interest and sinking account, if any.

(4) In the event funds on deposit in the Interest and Sinking Fund are insufficient to pay principal of and interest on any of all outstanding bonds at year end, money required by the Constitutional Provision and the General Provisions of the Student Financial Assistance Act of 1975 is to be transferred into the Interest and Sinking Fund by the Comptroller out of first moneys coming into the State Treasury in each Fiscal Year not otherwise appropriated by the State Constitution.

~~{(1) From the proceeds of the bonds, an amount of money sufficient to pay the interest on the bonds for a period of 24 months from the date of the bonds. Such funds so deposited should remain in the interest and sinking fund until used for the original purpose for which they were deposited. Bond resolutions provide that on the direction of the board, such money may be transferred to the Texas opportunity plan fund to the extent that it will not be needed because of money received as repayment of student loans and interest thereon, and such transfers should be made only when loan demand has exceeded expectations and no other source of funds for loans is available. It is the intent of this procedure to reduce transfers between funds to a minimum.}~~

~~{(2) From the proceeds of the bonds, an amount which, when added to the amount now to the credit of the reserve portion, will be equal to the average annual principal and interest requirements on the bonds and the outstanding bonds. Such funds so deposited in the reserve portion of the interest and sinking fund should remain in the reserve portion and be used only in cases of emergency when no other source of funds is available other than first monies coming into the state treasury, or to make final payments of principal and interest to become due on the bonds. The amount of average annual principal and interest requirements shall be recomputed only at such times as immediately after each sale of additional bonds; or, in the event no bond sales occur during a fiscal year, only at the close of a fiscal year.}~~

~~{(3) Money received in each fiscal year as repayment of student loans granted under the Act and interest thereon, including interest payments received from the federal government on behalf of student borrowers, sufficient to pay the interest on and principal of bonds to become due during the ensuing fiscal year and sufficient to maintain the reserve portion equal to the average annual principal and interest requirements on all bonds, outstanding bonds, and additional bonds at the time unpaid.}~~

~~{(4) Money required by the constitutional provision and the Act to be transferred into the interest and sinking fund by the state treasurer out of first monies coming into the treasury of the State of Texas in each fiscal year not otherwise appropriated by the constitution.}~~

~~{(5) Money in the interest and sinking fund, including the reserve portion, shall be used only for the purpose of paying interest on and principal of the bonds.}~~

(b) The board may transfer funds, in excess of the ensuing fiscal year requirement above, to the Texas Opportunity Plan Fund or the Student Loan Auxiliary Fund at the beginning of each ensuing fiscal year.

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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19 TAC §§21.9 - 21.11

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.9 - 21.11, concerning General Provisions. Section 21.9 is repealed (House Bill 700, 84th Texas Legislature) as it is no longer relevant. Section 21.10 and §21.11 are repealed and readopted to reflect renumbering and new language.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, there is no impact on the public as a result of administering these sections. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theqb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

The repeals affect Texas Education Code §56.465.

§21.9. *Collection of Tuition Set Aside for Texas B-On-Time Loan Program.*

§21.10. *Exclusion of Certain Resources in Determining Need for State Aid.*

§21.11. *Priority Deadline for Applying for State Aid.*

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

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19 TAC §21.9, §21.10

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes new §21.9 and §21.10, concerning General Provisions. These sections are being repealed and replaced with new sections to reflect renumbering and new language. New §21.10 is revised to eliminate reference to the first academic year (2013-2014, or later) to which the financial aid priority application deadline was applicable.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the institution's ability to better meet the needs of their student populations and local community's workforce.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

The new sections affect Texas Education Code, §56.008.

§21.9. *Exclusion of Certain Resources in Determining Need for State Aid.*

The right of a person to receive payments or benefits from the Higher Education Savings Plan, Prepaid Tuition Unit Undergraduate Education Program: Texas Tomorrow Fund II, or the Texas Save and Match Program, authorized in the Texas Education Code, Chapter 54, Subchapters G, H, or I, is not to be considered an asset of the person or otherwise included in the person's household income or other financial resources for purposes of determining the person's eligibility for a TEXAS grant or other state-funded financial assistance.

§21.10. *Priority Deadline for Applying for State Aid.*

(a) All general academic teaching institutions shall use March 15 as their priority application deadline for application for state financial assistance for the following year.

(b) The priority deadline is not to serve as a determination of eligibility for state financial assistance, but otherwise eligible students who apply on or before the deadline shall be given priority consideration for available state financial assistance before other applicants.

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

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SUBCHAPTER D. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM: ALL LOANS MADE BEFORE FALL SEMESTER, 1971, NOT SUBJECT TO THE FEDERALLY INSURED STUDENT LOAN PROGRAM

19 TAC §21.100

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §21.100 concerning the Hinson-Hazlewood College Student Loan Program: All Loans Made Before Fall Semester, 1971, Not Subject To The Federally Insured Student Loan Program. Senate Bill 215, 83rd Texas Legislature, repealed Texas Education Code, §52.56, which required the Coordinating Board to provide an annual report on the operations of the Texas Opportunity Plan Fund. Since §52.56 has been repealed, it is appropriate to delete §21.100 from the rules.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Puls has also determined that for each year of the first five years the section is in effect, there is no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Chapter 52, which provides the Coordinating Board with the authority to adopt rules to implement the Hinson-Hazlewood College Student Loan Program: All Loans Made Before Fall Semester, 1971, Not Subject To The Federally Insured Student Loan Program

The repeal affects Texas Education Code, §52.56, which was repealed in FY 2013 (Senate Bill 215, 83rd Texas Legislature).

§21.100. *Annual Report.*

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

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SUBCHAPTER H. TEACHER EDUCATION LOAN PROGRAM

19 TAC §§21.191 - 21.207

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.191 - 21.207 concerning the Teacher Education Loan Program. The 71st Texas Legislature repealed the Teacher Education Loan Program in 1989, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 54, §54.101, which provided the Coordinating Board with the authority to adopt rules to implement the Teacher Education Loan Program.

The repeals relate to Texas Education Code, Chapter 54, former §54.101, which was repealed in 1989.

§21.191. *Purpose.*

§21.192. *Administration.*

§21.193. *Delegation of Powers and Duties.*

§21.194. *Designation of Institutional Representative.*

§21.195. *Definitions.*

§21.196. *Qualifications for Loans.*

§21.197. *Allocation of Funds.*

§21.198. *Amount of Loan.*

§21.199. *Notification of Availability of Teacher Education Loans.*

§21.200. *Payments to Students.*

§21.201. *Student Status.*

§21.202. *Period of Loans.*

§21.203. *Loan Interest.*

§21.204. *Repayment of Loans.*

§21.205. *Loan Cancellation.*

§21.206. *Postponements.*

§21.207. *Enforcement of Collection.*

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

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SUBCHAPTER I. FUTURE TEACHER LOAN PROGRAM

19 TAC §§21.221 - 21.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.221 - 21.241 concerning the Future Teacher Loan Program. The 71st Texas Legislature repealed the program in 1989, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, §60.03 which, prior to the program's repeal in 1989, provided the Coordinating Board with the authority to adopt rules to implement the Future Teacher Loan Program.

The repeal relates to Texas Education Code, former §60.03, which was repealed in 1989.

§21.221. *Purpose.*

§21.222. *Administration.*

§21.223. *Delegation of Powers and Duties.*

§21.224. *Definitions.*

§21.225. *Loans.*

§21.226. *Eligible Institutions.*

§21.227. *Qualifications for Loans.*

§21.228. *Allocation of Funds.*

§21.229. *Amount of Loan.*

§21.230. *Reasonable Expenses for a Student.*

§21.231. *Notification of Availability of Future Teacher Loans.*

§21.232. *Identification of Student Records.*

§21.233. *Preloan Interview.*

§21.234. *Payments to Student.*

§21.235. *Student Status.*

§21.236. *Period of Loans.*

§21.237. *Loan Interest.*

§21.238. *Repayment under Provisions of Public Law 89-329, the Higher Education Act of 1965, as Amended, of Loans of Deceased or Disabled Borrowers.*

§21.239. *Repayment of Loans.*

§21.240. *Cancellation of Certain Loan Repayments.*

§21.241. *Enforcement of Collections.*

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

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SUBCHAPTER L. PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

19 TAC §§21.301 - 21.325

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.301 - 21.325 concerning the

Paul Douglas Teacher Scholarship Program. Federal legislation rescinded funding for this program in 1995, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

Dr. Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Title V Part C (formerly Part D), of the Higher Education Act of 1965, as amended, which provides the Coordinating Board with the authority to adopt rules to implement the Paul Douglas Teacher Scholarship Program.

The repeal affects Title V Part C (formerly Part D), of the Higher Education Act of 1965, as amended and administered under 34 CFR Part 653.

§21.301. *Purpose.*

§21.302. *Administration.*

§21.303. *Delegation of Powers and Duties.*

§21.304. *Definitions.*

§21.305. *Scholarship.*

§21.306. *Eligible Institutions of Higher Education.*

§21.307. *Qualifications for Scholarships.*

§21.308. *Criteria for Selecting Scholars.*

§21.309. *Special Consideration.*

§21.310. *Award Amounts.*

§21.311. *Criteria for Subsequent Scholarships.*

§21.312. *Application Priority Deadlines.*

§21.313. *Notification of Availability of Paul Douglas Teacher Scholarship.*

§21.314. *Expenditure of Funds.*

§21.315. *Payments to Students.*

§21.316. *Student Status.*

§21.317. *Scholarship Conditions.*

§21.318. *Noncompliance with the Scholarship Conditions.*

§21.319. *Period of Loan.*

§21.320. *Loan Interest.*

§21.321. *Repayment of Loans.*

§21.322. *Minimum Repayment Amounts.*

§21.323. *Deferments.*

§21.324. *Enforcement of Collection.*

§21.325. *Provisions for Disability and Death.*

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

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SUBCHAPTER O. EARLY CHILDHOOD CARE PROVIDER STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.465 - 21.477

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.465 - 21.477 concerning the Early Childhood Care Provider Student Loan Repayment Program. No funds have been appropriated for this program since FY2005.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 61, §61.871, which provided the Coordinating Board with the authority to adopt rules to implement the Early Childhood Care Provider Student Loan Repayment Program.

The repeals relate to Texas Education Code, Chapter 61, former §§61.871 - 61.879, which no longer appear in the statute.

§21.465. *Purpose.*

§21.466. *Definitions.*

§21.467. *Priorities of Application Acceptance and Selection Criteria.*

§21.468. *Eligible Education Loan.*

§21.469. *Qualifications for Participation.*

§21.470. *Participation Agreement.*

§21.471. *Amount of Repayments and Limitations.*

§21.472. *Repayments During the Required Two-Year Service Period.*

§21.473. *Repayments Beyond the Required Two-Year Service Period.*

§21.474. *Terms of Early Childhood Care Provider Loans.*

§21.475. *Enforcement of Collection.*

§21.476. *Provisions for Disability and Death.*

§21.477. *Dissemination of Information.*

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

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SUBCHAPTER S. BORDER COUNTY DOCTORAL FACULTY EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.590 - 21.596

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §§21.590 - 21.596 concerning the Border County Doctoral Faculty Education Loan Repayment Program. The intent of these amendments is to clarify the definition of eligible institution, align the description of eligible lender and eligible loans with the description used for other loan repayment program rules, and provide more information on the application process.

Section 21.590 is re-titled "Authority and Purpose" and amended to eliminate the redundant scope statement and add the words "eligible" and "Texas" to the purpose statement.

Section 21.591 regarding eligible institution is amended to state that medical and dental units are not considered eligible institutions for purposes of this program. Additionally, for institutions that are not the main campus, both the main campus and the campus where the faculty member works must be located in a Texas county that borders Mexico to qualify a faculty member for participation in the program. A definition for Board is also added.

Section 21.592 is re-titled "Application Process". The amendments to this section provide a description of the application process, including the role of the institutional presidents and/or their designees in inviting faculty to submit an application, establishing objective ranking criteria, and submitting the applications to the Board in priority order.

Section 21.593 is re-titled "Priority Applications and Ranking Criteria." This amendment suggests possible ranking criteria, mirroring criteria documented by officials at some participating institutions in recent years.

Section 21.594 is re-titled "Eligible Lender and Eligible Education Loan" and amended to align with the description that appears for this section in other state loan repayment programs.

Section 21.595 is amended to state that the faculty member must have received a doctoral degree from an institution that is accredited by a recognized accrediting agency. Subsection (b) is

shortened to state "eligible institution", which is defined. Subsection (c) clarifies that applications are submitted by faculty to institutional officials. This section's outline format is also amended to conform to that of other sections.

Section 21.596 is amended to state that the annual repayment shall be payable to the servicer(s) or holder(s) of the loan(s), in keeping with the procedure for all loan repayment programs.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the institution's ability to recruit and retain eligible faculty.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Chapter 61, §61.708, which provided the Coordinating Board with the authority to adopt rules to implement the Border County Doctoral Faculty Education Loan Repayment Program.

The amendments relate to Texas Education Code, Chapter 61, §§61.701, 61.7021, and 61.703 - 61.708.

§21.590. *Authority, Scope, and Purpose.*

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §§61.701- 61.708 [~~§61.701 through §61.708~~].

~~[(b) Scope. The rules define applicable terms and provide the conditions for eligibility and repayment of education loans for persons who have received a doctoral degree on or after September 1, 1994, from an institution of higher education and are employed as a full-time faculty member with instructional duties in an eligible institution of higher education that is located in a county that borders Mexico.]~~

(b) [(e)] Purpose. The purpose of these rules is to implement the Border County Doctoral Faculty Education Loan Repayment Program in order to recruit and retain persons holding a doctoral degree to become and/or remain full-time faculty with instructional duties in eligible [Texas] institutions of higher education located in Texas counties that border Mexico.

§21.591. *Definitions.*

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

(1) Eligible Institution of Higher Education--A public [or private and independent] institution as defined in the Texas Education Code, §61.003, except for medical and dental units, located in a Texas county that borders Mexico and, if it is not the main campus of the institution, whose main campus is located in a Texas county that borders Mexico. [and an out-of-state institution of higher education that is accredited by a recognized accrediting agency.]

(2) - (5) (No change.)

(6) Board--The Texas Higher Education Coordinating Board.

§21.592. *Application Process [Dissemination of Information].*

(a) The Board shall distribute rules and application [pertinent] information regarding [about] the Border County Doctoral Faculty Education Loan Repayment Program to the presidents and/or their designees and to the personnel office at each eligible institution of higher education [located in a Texas county that borders Mexico], appropriate professional associations, and other entities.

(b) Institutional presidents and/or their designees shall establish objective criteria for ranking applications, invite eligible faculty to submit applications to them or their designees, and rank the applications in priority order according to instructions from the board.

(c) By the deadline established by the board, institutional presidents and/or their designees shall submit faculty applications to the board, ranked in priority order, and accompanied by a written description of the ranking criteria.

§21.593. *Priority Applications and Ranking Criteria [Priorities of Application Acceptance].*

(a) Acceptance of applicants will depend upon the availability of appropriated funds. Renewal applicants will be given priority over first-time applicants. ~~[Prior conditional approval shall be communicated to eligible faculty, contingent upon availability of funds and the applicant's having met all program requirements at the end of the service period.]~~

(b) The ranking criteria established for eligible faculty who are first-time applicants may include, but are not limited to the following: length of service to the institution, ratio of income to student loan debt, total amount of student loan debt, institutional need in terms of academic disciplines, and documented excellence in job performance.

§21.594. *Eligible Lender and Eligible Education Loan.*

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate and graduate education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation.

(b) To be [An education loan that is] eligible for repayment, an education loan must [is one that]:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate or graduate education [was obtained through a lender for the purpose of attending an eligible institution of higher education];

~~[(2) is evidenced by a promissory note:]~~

~~[(A) for funds obtained through a federal or state loan program for higher education:]~~

~~[(B) with language that clearly indicates that loan proceeds must be used for direct and indirect expenses at an eligible institution; or]~~

~~[(C) for consolidating education loan:]~~

(2) [(3)] [is] not be in default at the time the application is received by the board; [and]

(3) [(4)] [does] not entail an [a service] obligation to provide service for loan forgiveness through another program;[-]

(4) not be subject to repayment through another student loan repayment program or loan forgiveness program or repayment assistance provided by the faculty member's employer at the time of application;

(5) be evident from documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for the faculty member's undergraduate or graduate education, if the loan was consolidated with other loans; and

(6) not be an education loan from an insurance policy or pension plan.

§21.595. Eligible Faculty.

To be eligible for participation in the program, an applicant must:

(1) have received a doctoral degree on or after September 1, 1994, from an institution of higher education that is accredited by a recognized accrediting agency;

(2) be employed as a full-time faculty member with instructional duties in an eligible institution [of higher education that is located in a county that borders Mexico]; and

(3) submit a completed application to the institutional president or his/her designee [board, agreeing to meet the conditions of loan repayment through the program].

§21.596. Repayment of Education Loans.

Eligible education loans of qualified faculty members shall be repaid under the following conditions:

(1) the annual repayment(s) shall be made payable [eo-payable] to the servicer(s) or [faculty member and] the holder(s) of the loan(s);

(2) the annual repayment(s) shall be made upon the faculty member's completion of the service period; and

(3) the maximum annual loan repayment amount shall be \$5,000 for a period of up to 10 years.

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

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SUBCHAPTER DD. MINORITY DOCTORAL INCENTIVE PROGRAM OF TEXAS

19 TAC §§21.970 - 21.980

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.970 - 21.980 concerning the Minority Doctoral Incentive Program of Texas. No funds have been appropriated for this program since the 2004-2005 biennium.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each

year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, §56.162, which provides the Coordinating Board with the authority to adopt rules to implement the Minority Doctoral Incentive Program of Texas.

The repeals affect Texas Education Code, §§56.161 - 56.171.

§21.970. *Authority and Purpose.*

§21.971. *Definitions.*

§21.972. *Eligible Lender or Holder.*

§21.973. *Eligible Education Loan.*

§21.974. *Responsibilities of Institutional Personnel.*

§21.975. *Qualifications for Participation in the Program.*

§21.976. *Priority of Application Acceptance.*

§21.977. *Responsibilities and Liabilities of the Eligible Doctoral Student.*

§21.978. *Guarantee of Payment of Education Loans.*

§21.979. *Repayment of Education Loans.*

§21.980. *Appeals for Exceptions.*

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600460

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER LL. EARLY CHILDHOOD CARE PROVIDER STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.2050 - 21.2056

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.2050 - 21.2056 concerning the Early Childhood Care Provider Student Loan Repayment Program. No funds have been appropriated for this program since FY2005.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 61, §61.871, which provided the Coordinating Board with the authority to adopt rules to implement the Early Childhood Care Provider Student Loan Repayment Program.

The repeals relate to Texas Education Code, Chapter 61, former §§61.871 - 61.879, which no longer appear in the statute.

§21.2050. *Authority and Purpose.*

§21.2051. *Definitions.*

§21.2052. *Priorities of Application Acceptance and Selection Criteria.*

§21.2053. *Eligible Education Loan.*

§21.2054. *Qualifications for Participation.*

§21.2055. *Amount of Repayments and Limitations.*

§21.2056. *Dissemination of Information.*

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600437

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 170. PAIN MANAGEMENT

22 TAC §170.3

The Texas Medical Board (Board) proposes amendments to §170.3, concerning Minimum Requirements for the Treatment of Chronic Pain.

The amendments are related to pain management agreements.

Section 170.3(4)(C) adds new language relating to limitations on the number of physicians who may prescribe to a patient dangerous and scheduled drugs for the treatment of chronic pain. The new language now allows a covering physician acting in compliance with Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services) to prescribe dangerous and scheduled drugs for the treatment of chronic pain. New language also specifies that if a patient is treated for acute chronic pain by a physician other than the physician who is party to the pain management agreement or the covering physician, that the patient must inform notify the primary or covering physician, at the next date of service, about the prescription. The rule sets out specific requirements for the content of this notification.

The amendments to paragraph (4)(D) amend the exception to the one pharmacy requirement of pain management agreements by eliminating the requirement that the designated pharmacy be out of stock of the drug prescribed, and substituting broader language involving "circumstances for which the patient has no control or responsibility, that prevent the patient from obtaining prescribed medications at the designated pharmacy under the agreement." The amendment includes the requirement that if such circumstances apply and a prescription is filled at a pharmacy other than the designated pharmacy, the patient inform the primary or covering physician of the circumstances and the name of the pharmacy that dispensed the medication.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify the minimum requirements for pain management agreements and provide reasonable flexibility to patients subject to such agreements. A further public benefit is that issues of diversion and doctor shopping will be more effectively regulated by the Board.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with this rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 107, Texas Occupations Code.

§170.3. *Minimum Requirements for the Treatment of Chronic Pain.*

A physician's treatment of a patient's pain will be evaluated by considering whether it meets the generally accepted standard of care and whether the following minimum requirements have been met:

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

(4) Agreement for treatment of chronic pain. A proper patient-physician relationship for treatment of chronic pain requires the

physician to establish and inform the patient of the physician's expectations that are necessary for patient compliance. If the treatment plan includes extended drug therapy, the physician must use a written pain management agreement between the physician and the patient outlining patient responsibilities, including the following provisions:

(A) the physician may require laboratory tests for drug levels upon request;

(B) the physician may limit the number and frequency of prescription refills;

(C) only the [one] physician or another physician covering for the physician in compliance with Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services), may [with] prescribe dangerous and scheduled drugs for the treatment of chronic pain. For any prescriptions issued for medications to treat acute or chronic pain by a person other than the physician or covering physician, the terms of the agreement must require that at or before the patient's next date of service, the patient notify the primary or covering physician about the prescription(s) issued. The terms of the agreement must require that such notice include at a minimum the name and contact information for the person who issued the prescription, the date of the prescription, and the name and quantity of the drug prescribed;

(D) only one pharmacy designated by the patient will be used for prescriptions for the treatment of chronic pain, with an exception for those circumstances for which the patient has no control or responsibility, that prevent the patient from obtaining prescribed medications at the designated pharmacy under the agreement. For such circumstances, the agreement's terms must require that at or before the patient's next date of service, the patient notify the primary or covering physician of the circumstances and identify the pharmacy that dispensed the medication [unless the designated pharmacy under the agreement is out of stock of the drug prescribed at the time that the prescription is communicated by the physician to the pharmacy or patient presents to have the drug dispensed]; and

(E) reasons for which drug therapy may be discontinued (e.g. violation of agreement).

(5) - (7) (No change.)

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600461
Mari Robinson, J.D.
Executive Director
Texas Medical Board

Earliest possible date of adoption: March 13, 2016
For further information, please call: (512) 305-7016



CHAPTER 174. TELEMEDICINE

22 TAC §174.11

The Texas Medical Board (Board) proposes amendments to §174.11, concerning On-Call Services.

The amendment to §174.11 amends and adds language to refer readers to Chapter 177 of this title (relating to Business Organizations) and newly proposed Subchapter E, concerning Physi-

cian Call Coverage Medical Services, which was proposed for amendment in the January 29, 2016, issue of the *Texas Register* (41 TexReg 766). The subchapter provides physicians guidance and sets forth the requirements relating to on-call services and agreements. The proposed amendment to relocate the substantive requirements related to the topic of "on-call" services to Chapter 177 results from the Board's meetings with stakeholders who expressed the need for more clarity with respect to the application of the rule and whether it applied to all physicians or just those physicians practicing in the area of telemedicine. The removal of the substantive requirements for "on-call" services from Chapter 174 of this title (relating to Telemedicine), and relocation of the call coverage topic to Chapter 177 of this title, will alleviate such confusion and provide more clarity as to the rules' applicability.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to improve all physicians' understanding of the rules relating to call coverage and clearly provide guidance and parameters necessary for allowing physicians to provide continuity of care to patients in Texas while protecting patient health and welfare, through the elimination of the strict rule of reciprocity and relocation.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§174.11. *On-Call [On-call] Services.*

Physicians, who ~~[are of the same specialty and provide reciprocal services; may]~~ provide on-call telemedicine medical services must meet the requirements set forth under Chapter 177, Subchapter E of this title (relating to Business Organizations and Agreements, Physician Call Coverage Medical Services) [for each other's active patients].

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600459
Mari Robinson, J.D.
Executive Director
Texas Medical Board

Earliest possible date of adoption: March 13, 2016
For further information, please call: (512) 305-7016

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

Introduction. The Texas Board of Nursing (Board) proposes amendments to §211.6, concerning Committees of the Board. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.1595.

Background. Section 301.1595 of the Nursing Practice Act requires the Board to adopt rules regarding the purpose, structure, and use of advisory committees. The section also enumerates additional issues that the Board must address by rule. The proposed amendments are necessary to ensure compliance with the requirements of §301.1595 and for consistency with amendments to §213.23 of this chapter (relating to Decision of the Board) that are being proposed simultaneously with this proposal and published elsewhere in this issue of the *Texas Register*.

First, the proposed amendments remove reference to the Deferred Disciplinary Action Pilot Program Advisory Committee from the rule text. This committee ceased operation when the deferred disciplinary action pilot program ended and was scheduled to be abolished no later than January 1, 2014 by the provisions of the rule. As such, the proposed amendments eliminate the obsolete provision from the rule.

Second, the proposed amendments clarify that committee members will be appointed by the Board and that the majority of the members of a committee must be present at a meeting in order to establish a quorum.

Third, the proposed amendments reiterate the statutory requirement of §301.1595(d) that, although a Board member may serve as a liaison to a committee and report to the Board the recommendations of the committee for consideration by the Board, the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Fourth, although the Board assigns topics to its committees for evaluation and recommendation, the proposed amendments make clear that committee members may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge. Further, the proposed amendments permit committee members to request and/or receive training to assist them in completing their work.

Finally, the proposed amendments include provisions that are consistent with changes that are being simultaneously proposed to §213.23 (Decision of the Board) of this chapter. These changes clarify that the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties, including consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Texas Government Code §2001.058(d-1). These proposed changes are being published elsewhere in this issue of the *Texas Register*.

Section by Section Overview. Proposed amended §211.6(b)(3) provides that the Board's Disciplinary Committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of

Administrative Hearings pursuant to Texas Government Code §2001.058(d-1).

Proposed amended §211.6(f)(1)(E) eliminates the Deferred Disciplinary Action Pilot Program Advisory Committee from the rule.

Proposed amended §211.6(f)(2) states that members shall be appointed by the Board.

Proposed amended §211.6(f)(3) states that the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Proposed amended §211.6(f)(5) provides that each committee's work and usefulness shall be evaluated periodically.

Proposed amended §211.6(f)(6) provides that the committees will provide notice of meetings on the Secretary of State's web site to allow the public an opportunity to participate.

Proposed amended §211.6(f)(8) states that committees may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge.

Proposed amended §211.6(f)(9) requires the majority of the members of a Committee to be present at a meeting in order to establish a quorum.

Proposed amended §211.6(f)(13) states that committee members may request and/or receive training as necessary to assist them in completing their work.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of requirements that comply with statutory mandates. Further, the proposed amendments more clearly delineate the role and use of the Board's advisory committees. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on March 13, 2016 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §301.151 and §301.1595.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1595(a) provides that the Board may appoint advisory committees to perform the advisory functions assigned by the Board.

Section 301.1595(b) states that an advisory committee shall provide independent expertise on Board functions and policies, but may not be involved in setting Board policy.

Section 301.1595(c) states that the Board shall adopt rules regarding the purpose, structure, and use of advisory committees, including rules on: the purpose, role, responsibility, and goal of an advisory committee; the size and quorum requirements for an advisory committee; the composition and representation of an advisory committee; the qualifications of advisory committee members, such as experience or area of residence; the appointment procedures for advisory committees; the terms of service for advisory committee members; the training requirements for advisory committee members, if necessary; the method the Board will use to receive public input on issues addressed by an advisory committee; and the development of Board policies and procedures to ensure advisory committees meet the requirements for open meetings under Chapter 551, Government Code, including notification requirements.

Section 301.1595(d) provides that a Board member may not serve as a member of an advisory committee, but may serve as a liaison between an advisory committee and the Board. A Board member liaison that attends advisory committee meetings may attend only as an observer and not as a participant. Further, a Board member liaison is not required to attend advisory committee meetings. Finally, the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Section 301.1595(e) states that to the extent of any conflict with Chapter 2110, Government Code, this section and Board rules adopted under this section control.

Cross Reference to Statute. The following statutes are affected by this proposal:

Rule §211.6: Occupations Code §301.151 and §301.1595

§211.6. *Committees of the Board.*

(a) (No change.)

(b) Eligibility and Disciplinary Committee.

(1) - (2) (No change.)

(3) Duties and powers. The disciplinary committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, ~~and~~ administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

(4) - (5) (No change.)

(c) - (e) (No change.)

(f) Advisory Committees. The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate or required by law.

(1) The board has established the following committees that advise the board on a continuous basis or as charged by the Board:

(A) - (D) (No change.)

~~{(E) the Deferred Disciplinary Action Pilot Program Advisory Committee (DDAPPAC) assists the Board in overseeing and evaluating the deferred disciplinary action pilot program under §213.34 of this title (relating to Deferred Disciplinary Action Pilot Program). The DDAPPAC shall be abolished when the deferred disciplinary action pilot program under §213.34 of this title comes to an end, but in no event later than January 1, 2014. The DDAPPAC is comprised of representatives from the following:}~~

~~{(i) Texas Association of Vocational Nurse Educators (TAVNE);}~~

~~{(ii) Licensed Vocational Nurses Association of Texas (LVNAT);}~~

~~{(iii) Texas League of Vocational Nurses (TLVN);}~~

~~{(iv) Texas Organization of Associate Degree Nursing (TOADN);}~~

~~{(v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE);}~~

~~{(vi) Texas Nurses Association (TNA);}~~

~~{(vii) Texas Organization of Nurse Executives (TONE);}~~

~~{(viii) Coalition for Nurses in Advanced Practice; and}~~

~~{(ix) other members approved by the Board, including members of public advocacy organizations.}~~

(2) Members shall be appointed by the Board. The Board may amend ~~the~~ committee memberships as needed.

(3) A board member or members appointed by the President of the board or the board may serve as a liaison(s) to a committee and report to the Board the recommendations of the committee for consideration by the Board. The role of a Board member liaison, however, is limited to clarifying the Board's charge and intent to the advisory committee.

(4) (No change.)

(5) Each committee's work and usefulness shall be evaluated periodically ~~annually~~.

(6) The committees will provide notice of meetings~~; as feasible,~~ on the Secretary of State's web site to allow the public an opportunity to participate.

(7) (No change.)

(8) Committees may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge. ~~[The committee may consult with the board liaison(s) to authorize the committee to investigate identified topics or issues pending the development and communication of a formal charge by the Board.]~~

(9) The majority of the members of a Committee must be present at a meeting in order to establish a quorum. Committee members will be expected to attend meetings. The chairperson has the dis-

cretion to recommend the dismissal of a member who does not regularly attend. The Board or Executive Director has the authority to approve the dismissal of a member.

(10) - (12) (No change.)

(13) Committee members may request and/or receive training as necessary to assist them in completing their work.

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

Filed with the Office of the Secretary of State on January 28, 2016.

TRD-201600364

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 305-6822



CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.23

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.23, concerning Decision of the Board. The amendments are proposed under the authority of the Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and the Government Code §2001.056 and §2001.058(d-1).

Background. In September 2011, the State Office of Administrative Hearings (SOAH) adopted §155.501(d). This rule permitted SOAH, in default proceedings where notice was adequate, to dismiss a matter from its docket and remand the case to the referring agency for final disposition. During the 84th Legislative Session, the Texas Legislature enacted amendments (House Bill 2154) to the Government Code §2001.058(d-1) authorizing the dismissal and remand of default cases.

The Board has considered and resolved default dismissals from SOAH at its regularly scheduled quarterly meetings since the enactment of §155.501(d) in 2011. Since that time, the number of default dismissals has continued to increase. In addition to the consideration of default dismissals at the Board's quarterly meetings, the proposed amendments make clear that the Eligibility and Disciplinary Committee of the Board may also consider and resolve default dismissals from SOAH. This amendment is intended to increase the Board's efficiency in resolving these cases and to assist in the management of the Board's quarterly meeting agendas.

The proposed amendments also affect an individual's submission of information to the Board. Currently, the Board permits individuals to appear at its regularly scheduled quarterly meetings to address the Board prior to its deliberation and vote on a proposal for decision (PFD). In order to do so, however, the Board's current rule requires the submission of written information to the Board within certain prescribed time frames. The time frames vary, depending upon whether or not a modification is being proposed to a PFD. The proposed amendments, however, eliminate this distinction, and instead, impose a single time frame for any individual wishing to appear before the Board or submit written information for the Board's consideration regarding a PFD and/or

default dismissal from SOAH. This proposed change is intended to simplify the process for individuals and to enable more timely preparation of the Board's quarterly meeting agenda and appearance schedules.

Section by Section Overview. Proposed amended §213.23(a) provides that either the Board or the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Texas Government Code §2001.058(d-1).

Proposed amended §213.23(e) provides that parties shall have an opportunity to file written exceptions and/or briefs with the Board. Further, an individual wishing to file written exceptions and/or a brief for the Board's consideration must do so no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. Additionally, an individual wishing to make an oral presentation regarding a proposal for decision or default dismissal must request to do so, and file written exceptions and/or a brief, no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. The Board will not consider any requests for an oral presentation and/or any written exceptions and/or briefs submitted in violation of these requirements.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of requirements that better enable the Board to resolve contested cases in a timely and efficient manner and to manage its workload in a more orderly and efficient manner. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on March 13, 2016 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If

a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and the Government Code §2001.056 and §2001.058(d-1).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.463(a) states that, unless precluded by Chapter 301 or other law, the Board may dispose of a complaint by stipulation; agreed settlement; agreed order; or dismissal.

Section 301.463(b) states that an agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under Chapter 301 and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.

Section 301.463(c) states that an agreed order is a public record.

Section 301.463(a) provides that the Board by rule shall adopt procedures governing informal disposition of a contested case under §2001.056, Government Code; and an informal proceeding held in compliance with §2001.054, Government Code.

Section 2001.056 states that, unless precluded by law, an informal disposition may be made of a contested case by stipulation; agreed settlement; consent order; or default.

Section 2001.058(d-1) provides that, on making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under §2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.

Cross Reference To Statute. The following statutes are affected by this proposal:

Rule §213.23: Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and Government Code §2001.056 and §2001.058(d-1).

§213.23. Decision of the Board.

(a) Except as to those matters expressly delegated to the executive director for ratification, either the Board or the Eligibility and Disciplinary Committee of the Board, may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

(b) - (d) (No change.)

(e) Following the issuance of a proposal for decision or default dismissal, parties shall have an opportunity to file written exceptions and/or briefs with the Board [~~concerning a proposal for decision~~]. An opportunity shall be given to file a response to written exceptions

and/or briefs. An individual wishing to file written exceptions and/or a brief for the Board's consideration must do so no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. An individual wishing to make an oral presentation regarding a proposal for decision or default dismissal must request to do so, and file written exceptions and/or a brief, no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. The Board will not consider any requests for an oral presentation and/or any written exceptions and/or briefs submitted in violation of these requirements. [The following requirements govern the submission of written exceptions and/or briefs to the Board:]

{(1) Individuals wishing to file written exceptions and/or briefs with the Board, but not wishing to make an oral presentation to the Board concerning a proposal for decision: A Respondent wishing to file written exceptions and/or briefs with the Board concerning a proposal for decision must do so no later than 10 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. The Board will not consider any written exceptions and/or briefs submitted in violation of this requirement.}]

{(2) Individuals wishing to make an oral presentation to the Board concerning a proposal for decision: An individual wishing to make an oral presentation to the Board must file written exceptions and/or briefs with the Board. If no modification is proposed to the proposal for decision, an individual must file written exceptions and/or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. If a modification is proposed to the proposal for decision, an individual must file a written response to the proposed modification, written exceptions, and/or briefs with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. An individual will not be permitted to make an oral presentation to the Board if the individual does not comply with these requirements.}]

(f) - (l) (No change.)

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

Filed with the Office of the Secretary of State on January 28, 2016.

TRD-201600365

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 305-6822



22 TAC §213.32

Introduction. The Texas Board of Nursing (Board) proposes an amendment to §213.32, concerning Corrective Action Proceedings and Schedule of Administrative Fines. The amendment is proposed under the authority of the Occupations Code §301.151 and §301.652.

Background. In 2009, the Nursing Practice Act (NPA) was amended to grant the Board authority to resolve contested

cases through the use of corrective actions. Pursuant to the Occupations Code §301.652, a corrective action may consist of a fine, remedial education, or a combination of a fine or remedial education. Further, a corrective action is not a disciplinary action.

The Board is required, pursuant to the Health Care Quality Improvement Act of 1986 and the Social Security Act, to report disciplinary actions to the National Practitioner Data Bank (NPDB). The Board also reports disciplinary actions to other members of the Nurse Licensure Compact under the Occupations Code Chapter 304. However, because a corrective action is not a disciplinary action, the Board does not report corrective actions to NPDB or to other nursing boards.

The proposed amendment affects individuals who are practicing in Texas on a nurse licensure privilege, but who maintain their home state residence in another nurse licensure compact state. The proposed amendment clarifies that corrective actions will not be available to these individuals for the resolution of a contested case matter in Texas. The proposed amendment conforms to the Board's practice since 2009 in this regard. Although corrective actions are currently utilized for the resolution of minor practice violations, the Board has determined that offering corrective actions to individuals practicing in Texas on a nurse licensure privilege is not appropriate because this information would not be reported to other state boards of nursing who may have an interest in their licensees' conduct in Texas.

Section by Section Overview. Proposed amended §213.32(4) provides that an agreed corrective action will not be available to an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of a rule that maintains effective communication between the Board and other nursing boards in the Nurse Licensure Compact regarding the conduct of their licensees in Texas. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendment will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendment because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on March 13, 2016, to James W. Johnston, General Counsel, Texas Board of Nursing,

333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the Occupations Code §301.151 and §301.652.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: may be a fine, remedial education, or any combination of a fine or remedial education; is not a disciplinary action under Subchapter J; and is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. Section 301.652(b) provides that the Board by rule shall adopt guidelines for the types of violations for which a corrective action may be imposed.

Cross Reference To Statute. The following statutes are affected by this proposal:

Rule §213.32: Occupations Code §301.151 and §301.652.

§213.32. *Corrective Action Proceedings and Schedule of Administrative Fines.*

A corrective action may be imposed by the Board as specified in the following circumstances.

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

(4) The opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director as a condition of settlement by agreement and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001. An agreed corrective action will not be available to an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

(5) - (7) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600328

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 305-6822



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER E. PURCHASING

31 TAC §3.51

INTRODUCTION AND BACKGROUND

The General Land Office (GLO) proposes new §3.51 in Chapter 3, Subchapter E, relating to Enhanced Contract Monitoring. The proposed new §3.51 will establish a new rule for enhanced contract monitoring. This new rule proposal has been undertaken as a result of the passage of Senate Bill (SB) 20 during the 84th Texas Legislature, which amended portions of Chapter 2261 of the Texas Government Code (TGC).

SB 20 modifies Chapter 2261 of the TGC to require state agencies to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The proposed new rule sets forth the agency's procedure to meet SB 20's requirement to conduct enhanced monitoring of contracts, the factors that are to be considered, the requirement of establishing procedures to administer the monitoring, and the requirement of reports being delivered to the agency's governing body.

FISCAL IMPACTS

Anne Idsal, Chief Clerk, has determined that for each year of the first five years the new section as proposed is in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the new section. This rule will not have any fiscal impact or affect on state or local governments as monitoring of contracts is not a new requirement. The new requirement is the identification of contracts that warrant a more in-depth level of monitoring by the GLO.

PUBLIC BENEFIT AND EMPLOYMENT IMPACT

Chief Clerk Anne Idsal has also determined that for each year of the first five years the proposed new rule is in effect, the public will benefit from the enhanced monitoring as the proposed rule will help ensure that contracts are awarded in line with the state's contract procurement laws and administered in line with the agency's contract manager's manual.

Chief Clerk Anne Idsal has further determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code, §2001.022.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rulemaking. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on

private real property interests inasmuch as the property subject to the proposed rulemaking is owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed new rule, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873. Comments may also be sent by facsimile at (512) 463-6311 or by email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The new rule is proposed under of the Texas Government Code §2261.253, which requires state agencies to establish, in agency rule, a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the governing body of the agency.

STATUTORY SECTIONS AFFECTED

Chapter 2261 of the Texas Government Code is affected by the proposed new rule.

§3.51. Enhanced Contract Monitoring Program.

(a) The General Land Office (GLO) shall identify contracts that require enhanced monitoring.

(b) In determining which contracts require enhanced monitoring, the GLO shall consider factors including:

- (1) contract amount;
- (2) risk;
- (3) special circumstances of project; and
- (4) scope of goods or services provided.

(c) The GLO shall adopt procedures to administer the enhanced contract monitoring program.

(d) Enhanced contract monitoring reports shall be regularly provided to the commissioner, chief clerk, and when applicable, to the School Land Board or the Veterans Land Board.

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600393

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 475-1859



PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.8

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to 31 TAC §519.8, Eligible Pay Rates. Specifically, this proposed amendment changes the maximum pay rate that is eligible for reimbursement from the State Board. The current pay rate of \$15.00 per hour is being increased to \$20.00 per hour.

Mr. Kenny Zajicek, Fiscal Officer, State Board has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering this amended rule.

Mr. Zajicek has also determined that for the first five-year period this amended rule is in effect, the public benefit anticipated as a result of administering this rule will be the possibility of improved district operations by districts being able to compete with the public workforce for qualified employees.

There are no anticipated costs to small businesses or individuals resulting from this amended rule.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 231.

The amendment is proposed under Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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

§519.8. Eligible Pay Rates.

The State Board hereby establishes a maximum pay rate of \$20.00 [~~\$15.00~~] per hour not to exceed a maximum of 40 hours per week. With the prior approval of the State Board a district may exceed the maximum pay rate or maximum hours per week. Expenditures for wages or salaries that are above the maximum pay rate or expenditures for hours over the maximum hours per week will not otherwise be eligible for reimbursement.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600442

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Earliest possible date of adoption: March 13, 2016

For further information, please call: (254) 773-2250 x252



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 2. LEGAL SERVICES BOND DIVISION

34 TAC §§1.51, 1.52, 1.54 - 1.56, 1.58 - 1.60

The Comptroller of Public Accounts proposes the repeal of §§1.51, concerning presentation of municipal bonds and other public securities for registration before issuance; 1.52, concerning certificates provided; 1.54, concerning registration numbers; 1.55, concerning release of bonds after registration; 1.56, concerning maintenance of transcript of proceedings for each bond issue; 1.58, concerning registration of bond ownership; 1.59; concerning conversion of form of a bond from bearer bond to registered bond and from registered bond to bearer bond and presentation for exchange; and 1.60, concerning form of registration certificates to be printed on bonds. These sections are being repealed due to a change from paper to electronic registration that has occurred over time in public security registration practices under Government Code, Chapter 1203.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rules will be by removing outdated provisions from the Texas Administrative Code. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Tom Smelker, Division Director, Treasury Operations Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These repeals are proposed under Government Code, §1203.026, which provides the comptroller with the authority to adopt rules relating to the comptroller's performance of registration of public securities under Chapter 1203.

The proposed repeals do not affect Government Code, Chapter 1203, Subchapters A, B, and C, §1203.001 et seq.

§1.51. Presentation of Municipal Bonds and Other Public Securities for Registration Before Issuance.

§1.52. Certificates Provided.

§1.54. Registration Numbers.

§1.55. Release of Bonds After Registration.

§1.56. Maintenance of Transcript of Proceedings for Each Bond Issue.

§1.58. Registration of Bond Ownership.

§1.59. Conversion of Form of a Bond from Bearer Bond to Registered Bond and from Registered Bond to Bearer Bond and Presentation for Exchange.

§1.60. Form of Registration Certificates To Be Printed on Bonds.

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

Filed with the Office of the Secretary of State on January 28, 2016.



CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts proposes amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. The amendment corrects grammar in subsection (b)(2)(A)(ii) - (viii) and (x) - (xii). The amendment will update the statute cite in subsection (e)(1)(A). Additionally, the amendment will correct grammar in the itemized list of taxes under subsection (e)(1)(A). The amendment inserts a new subparagraph (B) which requires franchise tax information reports to be filed electronically pursuant to SB 1364, 84th Legislature, 2015. Subsection (i)(2)(A)(i) is amended for readability. This amendment memorializes a policy change effective for reports due on or after September 1, 2015, and edits the section to improve readability.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes, and clarifying the rule's provisions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §111.0626 (Collection Procedures).

§3.9. Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.

(a) Voluntary electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2, by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered with the comptroller to use an approved reporting method, such as WebFile, or the taxpayer is filing a return or report other than a return showing a tax liability; and

(2) the method of electronic transmission of each return or report complies with any requirements established by the comptroller and is compatible with the comptroller's equipment and facilities.

(b) Required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625.

(1) Taxpayers who have paid the comptroller a total of \$100,000 or more in a single category of payments or taxes during the preceding state fiscal year, and who the comptroller reasonably anticipates will pay at least that amount during the current fiscal year, shall transfer all payment amounts in that category of payments or taxes during the subsequent calendar year to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies).

(2) Taxpayers who paid at least \$10,000, but less than \$100,000, in a single category of payments or taxes during the preceding state fiscal year, and who the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes to the comptroller by means of electronic funds transfer as set out in subparagraph (C) of this paragraph.

(A) This paragraph applies only to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax [~~taxes~~];
- (iii) gas severance tax [~~taxes~~];
- (iv) oil severance tax [~~taxes~~];
- (v) franchise tax [~~taxes~~];
- (vi) gasoline tax [~~taxes~~];
- (vii) diesel fuel tax [~~taxes~~];
- (viii) hotel occupancy tax [~~taxes~~];
- (ix) insurance premium taxes;
- (x) mixed beverage gross receipts tax [~~taxes~~];
- (xi) mixed beverage sales tax [~~taxes~~]; and
- (xii) motor vehicle rental tax [~~taxes~~].

(B) The comptroller may add or remove a category of payments or taxes to or from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include, but are not limited to, TexNet, electronic check (WebEFT), and the electronic transmission of credit card information. The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer required under this paragraph to use electronic funds transfer who cannot comply due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

(c) Payment date for electronic transfer of funds.

(1) A taxpayer making payment using TexNet. Pursuant to §15.33 of this title (relating to Determination of Settlement Date), a person who enters payment information into TexNet may choose either to accept the settlement date that TexNet offers or enter a settlement date up to 30 days from the business day after payment is submitted.

TexNet will offer the business day following the day on which payment information is entered into TexNet, provided that the information is entered by 6:00 p.m. central time on any business day.

(2) A taxpayer who files combined tax returns and makes payments through the electronic data interchange (EDI) system must submit the payment information to the comptroller by 2:30 p.m. central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection.

(3) A taxpayer who makes payment by an electronic funds transfer method approved by the comptroller other than TexNet or the EDI system must transmit payment information by 11:59 p.m. central time on the date payment is due.

(d) The administrative rules found in Chapter 15 of this title on electronic funds transfer under Government Code, §404.095 using TexNet apply to all such payments to the comptroller.

(e) Required electronic filing of certain reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626.

(A) Pursuant to Tax Code, §111.0626(a)(1), taxpayers who are required to use electronic funds transfer for payments of certain taxes must also file report data electronically, including reports required by the International Fuel Tax Agreement. This requirement applies to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax [taxes];
- (iii) gas severance tax [taxes];
- (iv) oil severance tax [taxes]; and
- (v) motor fuel tax [taxes].

(B) Pursuant to Tax Code, §111.0626(a)(2), taxpayers who owe no tax and are required to file an information report under Tax Code, §171.204 must file the information report electronically.

(C) [(B)] Pursuant to Tax Code, §111.0626(b-1), taxpayers who paid \$50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application provided by the comptroller, software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph only applies after issuance to the taxpayer of the 60 days notice required by subsection (f) of this section.

(2) Reports by brewers, manufacturers, wholesalers, and distributors of alcoholic beverages required by Tax Code, Chapter 151, Subchapter I-1.

(A) For purposes of this paragraph, a "seller" means a person who is a brewer with a brewer's self-distribution permit, manufacturer with a manufacturer's self-distribution license, wholesaler, winery, distributor, or package store local distributor, as described in Tax Code, §§151.461(1) - (4) and (6), 151.465, and 151.466; and a "retailer" means a person who holds one or more of the permits listed in Tax Code, §151.461(5).

(B) On or before the 25th day of each month, each seller holding a comptroller-issued tax identification number must file a report of alcoholic beverage sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller. The report must contain the following information:

(i) each Texas Alcoholic Beverage Commission (TABC) permit or license associated with the seller's comptroller-issued tax identification number;

(ii) the TABC permit or license number for each seller location from which a sale was made to a retailer during the preceding calendar month;

(iii) the TABC permit or license number, comptroller-issued tax identification number, and TABC trade name and physical address (street name and number, city, state, and zip code) of each retail location to which the seller sold alcoholic beverages during the preceding calendar month;

(iv) the information required by Tax Code, §151.462(b) regarding the seller's monthly sales to each retailer holding a separate TABC permit or license, including:

(I) the individual container size of each product, such as the individual bottle or can container size, sold to retailers;

(II) the brand name of the alcoholic beverage sold;

(III) the beverage class code for distilled spirits, wine, beer, or malt beverage;

(IV) the Universal Product Code (UPC) of the alcoholic beverage sold;

(V) the number of individual containers of alcoholic beverages sold for each brand, UPC, and container size. Multi-unit packages, such as cases, must be broken down into the number of individual bottles or cans;

(VI) the total selling price of the containers sold;

and
(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(C) If a person fails to file a report required by subparagraph (B) of this paragraph, or fails to file a complete report, the comptroller may:

(i) suspend or cancel one or more permits issued to the person under Tax Code, §151.203;

(ii) impose a civil penalty under Tax Code, §151.703(d);

(iii) impose a criminal penalty under Tax Code, §151.709; and/or

(iv) notify the TABC of the failure and the TABC may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(D) In addition to the penalties imposed under subparagraph (C) of this paragraph, if a person violates Tax Code, Chapter 151, Subchapter I-1, or this paragraph, the comptroller shall collect from the seller an additional civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues.

(E) The requirements of this paragraph apply to sales occurring on or after September 1, 2011.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212, on or before the 25th day of each month each wholesaler or distributor of cigarettes shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(D) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(E) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105, on or before the 25th day of each month each wholesaler or distributor of cigars or tobacco products shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including the city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(D) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer;

(E) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(F) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(5) Except as provided by Tax Code, §111.006, information contained in the reports required by paragraphs (2), (3), and (4) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552.

(6) The reports required by paragraphs (2), (3), and (4) of this subsection are required in addition to any other reports required by the comptroller.

(7) The reports required by paragraphs (2), (3), and (4) of this subsection must be filed each month even if no sales were made to retailers during the preceding month.

(f) Notification of affected persons. The comptroller shall notify taxpayers who are affected by subsection (b) or (e)(1) of this section no less than 60 days before the first required electronic transmittal of report data or payment.

(g) A taxpayer who is required to file report data electronically under subsection (e)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (e)(3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(h) Pursuant to Tax Code, §111.063, the comptroller may impose separate penalties of 5.0% of the tax due for failure to pay the tax

due by electronic funds transfer, as required by this section, or for failure to file a report electronically, as required by Tax Code, §111.0626.

(i) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051, must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment. Protested tax payments are not required to be submitted by electronic funds transfer.

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. A written statement of protest that fully and in detail sets out each reason for recovery of the payment must accompany the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery [actually received] at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600385

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 475-0387



SUBCHAPTER NN. FIREWORKS TAX

34 TAC §3.1281

The Comptroller of Public Accounts proposes amendments to §3.1281, concerning fireworks tax. The amendments are proposed to implement the provisions of Senate Bill 761, 84th Legislature, 2015, which repealed the tax on fireworks effective September 1, 2015.

The section is amended by adding new subsection (a) indicating that the rule applies to periods prior to September 1, 2015. All subsequent subsections are relettered accordingly.

Relettered subsection (d) is amended to correct the title of §3.286 (Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement the repeal of Tax Code, Chapter 161 (Fireworks Tax).

§3.1281. *Fireworks Tax.*

(a) This section applies to sales made prior to September 1, 2015. Effective September 1, 2015, the fireworks tax is repealed.

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

(1) Consignment sale--An arrangement where a consignee pays a distributor only for items that the consignee sells and returns any unsold items.

(2) Fireworks--Any composition or device that is designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation that is classified as Division 1.4G explosives by the United States Department of Transportation in 49 C.F.R. Part 173 as of September 1, 1999. Examples of fireworks include items that are commonly known as firecrackers, bottle rockets, Roman candles, and shooting stars.

(3) Retail sale--Any sale of fireworks directly to the public.

(4) Sales tax--The tax imposed by Tax Code, Chapter 151.

(c) [(b)] Imposition. A 2.0% tax is imposed on the retail sale of fireworks in Texas. The fireworks tax imposed under Tax Code, Chapter 161, is in addition to any state and local sales taxes that are due on the retail sale of fireworks.

(d) [(e)] Collection. Each seller must collect the fireworks tax from the purchaser on the total price of each retail sale of fireworks in Texas. The fireworks tax is collected in the same manner as sales tax. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules[; and Criminal Penalties]) for information on the collection and remittance of sales tax.

(e) [(4)] Consignment sales. For Texas tax purposes, distributors who make consignment sales of fireworks are considered the sellers of the fireworks and are responsible for reporting and remitting the sales and fireworks taxes due on all retail sales made by consignees.

(f) [(e)] Exclusions and exemptions.

(1) The following items are excluded from the fireworks tax base, but retail sales of these items may be subject to sales tax:

(A) a toy pistol, toy cane, toy gun, or other device that uses a paper or plastic cap;

(B) a model rocket or model rocket motor that is designed, sold, and used for the purpose of propelling a recoverable aero model;

(C) a propelling or expelling charge that consists of a mixture of sulfur, charcoal, and potassium nitrate;

(D) a novelty or trick noisemaker;

(E) a pyrotechnic signaling device or distress signal that is designed for marine, aviation, or highway use in an emergency situation;

(F) a fusee or railway torpedo for use by a railroad;

(G) a blank cartridge that is sold for use in a radio, television, film, or theater production, for signal or ceremonial purposes in athletic events, or for industrial purposes; or

(H) a pyrotechnic device that is sold for use by a military organization.

(2) No fireworks tax is due on a sale that is exempt from sales tax.

(3) A seller who accepts a valid and properly completed resale or exemption certificate for sales tax is not required to collect the fireworks tax. All sales that are unsupported by valid resale or exemption certificates or by other exemption documentation acceptable under the law are considered to be retail sales, and the seller will be liable for the fireworks tax on those sales.

(g) [(f)] Reports. A seller must report the fireworks tax to the comptroller on forms that the comptroller prescribes. A seller who fails to receive the correct form from the comptroller is not relieved of the responsibility for filing a fireworks tax report and for payment of the tax by the due date.

(h) [(g)] Due dates for reports and payments. A seller must report and remit fireworks tax on or before the applicable due date for the sales period as specified in this section.

(1) The due dates are:

(A) August 20 for tax collected on sales that occur during:

(i) the period that begins May 1 and ends at midnight on May 5 at a location that is not more than 100 miles from the Texas-Mexico border in a county in which the commissioners court has approved the sale of fireworks during that period; and

(ii) the period that begins on June 24 and ends at midnight on July 4; and

(B) February 20 for tax collected on sales that occur during the period that begins December 20 and ends at midnight on January 1.

(2) Reports and remittances that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(3) Reports submitted by mail must be postmarked on or before the due date to be considered timely.

(4) Reports filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(i) ~~(h)~~ Prepayment and timely filing discounts.

(1) The 1.75% sales tax prepayment discount does not apply to fireworks tax.

(2) A seller who timely files the fireworks report and pays the tax due on or before the applicable due date may retain 0.5% of the gross fireworks tax due.

(j) ~~(i)~~ Late filing of reports and payment of tax due; penalty and interest.

(1) If the tax is paid or postmarked one to 30 days after the due date, a penalty of 5.0% of the tax due is imposed.

(2) If the tax is paid or postmarked more than 30 days after the due date, a penalty of 10% of the tax due is imposed.

(3) If the tax is paid or postmarked more than 60 days after the due date, interest is also due on the late payment. Interest is applied at the applicable annual rate to the amount of the delinquent tax due, exclusive of any late penalty. The comptroller publishes the annual interest rate online at www.window.state.tx.us and by phone at 1-877-44RATE4.

(4) A late filing penalty of \$50 is imposed for each report that is not filed on or before the due date. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period. The \$50 penalty is due in addition to any other penalties assessed for the reporting period.

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

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. JUVENILE PROBATION DEPARTMENT GENERAL STANDARDS

The Texas Juvenile Justice Department (TJJD) proposes to repeal §§341.1 - 341.4, 341.9, 341.10, 341.20, 341.29, 341.35 - 341.41, 341.47 - 341.51, 341.65 - 341.71, and 341.80 - 341.91, relating to Juvenile Probation Department General Standards.

TJJD simultaneously proposes new §§341.100, 341.102, 341.200, 341.202, 341.300, 341.302, 341.400, 341.500, 341.502, 341.504, 341.506, 341.600, 341.602, 341.604, 341.606, 341.700, 341.702, 341.704 - 341.706, 341.708, 341.710, 341.712, 341.800, 341.802, 341.804, 341.806, 341.808, 341.810, 341.812, and 341.814, relating to General Standards for Juvenile Probation Departments.

SECTION-BY-SECTION SUMMARY

The repeal of §341.1 will allow for the content to be revised and republished as §341.100.

The repeal of §341.2 will allow for the content to be revised and republished as §341.200.

The repeal of §341.3 will allow for the content to be revised and republished as §341.202.

The repeal of §341.4 will allow for the content to be revised and republished as §341.102.

The repeal of §341.9 will allow for the content to be revised and republished as §341.300.

The repeal of §341.10 will allow for the content to be revised and republished as §341.302.

The repeal of §341.20 will allow for the content to be revised and republished as §341.502.

The repeal of §341.29 will allow for the content to be revised and republished as §341.400.

The repeal of §341.35 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.36 will allow for the content to be revised and republished as §341.500.

The repeal of §§341.37 - 341.41 will allow for the content to be revised and republished within new §341.504 and §341.506.

The repeal of §341.47 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.48 will allow for the content to be revised and republished as §341.600.

The repeal of §341.49 will allow for the content to be revised and republished as §341.602.

The repeal of §341.50 will allow for the content to be revised and republished as §341.604.

The repeal of §341.51 will allow for the content to be revised and republished as §341.606.

The repeal of §341.65 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.66 will allow for the content to be revised and republished as §341.702.

The repeal of §341.67 will allow for the content to be revised and republished as §341.704.

The repeal of §341.68 will allow for the content to be revised and republished as §341.706.

The repeal of §341.69 will allow for the content to be revised and republished as §341.708.

The repeal of §341.70 will allow for the content to be revised and republished as §341.710.

The repeal of §341.71 will allow for the content to be revised and republished as §341.712.

The repeal of §341.80 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.81 will allow for the content to be revised and republished as §341.800.

The repeal of §341.82 will allow for the content to be revised and republished as §341.802.

The repeal of §341.83 will allow for the content to be revised and republished as §341.804.

The repeal of §341.84 will allow for the content to be revised and moved to new §341.808.

Specifically, the revised chapter will no longer require each juvenile probation officer (JPO) to receive 20 hours of training in empty-hand defense tactics before carrying a firearm in the course of the JPO's duties. New §341.808 will require each juvenile probation department that authorizes a JPO to carry a firearm to specify in the department's policies and procedures the amount of required training in empty-hand defense tactics and intermediate weapons before the JPO may carry a firearm in the course of the JPO's duties. The provision in §341.84 requiring the use of force by a JPO who carries a firearm to be consistent with Chapter 9 of the Texas Penal Code will be reflected in new §341.808. Additionally, the provision in §341.84 requiring a JPO who carries a firearm to also carry an intermediate weapon will be reflected in new §341.808.

The repeal of §341.85 will allow for the content to be revised and republished as §341.806.

The repeal of §341.86 will allow for the content to be revised and republished as §341.808.

The repeal of §341.87 will allow for the content to be revised and republished as §341.810.

The repeal of §341.88 will allow for the content to be revised and republished as §341.812.

Section 341.89 is proposed for repeal to eliminate certain provisions that are redundant with other sections within the chapter. Additionally, the repeal will allow for certain provisions in §341.89 to be revised and addressed by other sections within the revised chapter. For example, the revised chapter will no longer require JPOs who carry firearms to receive 20 hours of continuing education in certain firearms-related topics every two years. However, new §341.808 will require each juvenile probation department that authorizes a JPO to carry a firearm to specify in its policies and procedures the amount of required continuing education in those firearms-related topics. The repeal of §341.89 will also allow for the requirement for firearms-related training to be provided by an instructor approved by the Texas Commission on Law Enforcement to be moved to new §341.808.

Section 341.90 is proposed for repeal because it duplicates information found elsewhere in the chapter.

Section 341.91 is proposed for repeal to allow new §341.808 to address the justification for discharging a firearm and to address whether use of striking weapons is allowable. However, new §341.808 will not authorize or prohibit any specific practices in this regard. New §341.808 will require each juvenile probation department that authorizes a JPO to carry a firearm to establish in its policies and procedures the circumstances and limitations under which a JPO who carries a firearm may use force. New §341.808 will also require such policies and procedures to specify the type(s) of intermediate weapons to be used.

New §341.100 revises and republishes information currently found in §341.1. Changes include: 1) consolidating definitions throughout the chapter into one rule; 2) adding definitions of Alternative Referral Plan, Criminogenic Needs, Department, Initial Disposition, Inter-County Transfer, Intern, Juvenile, Juvenile Board, Resident, Responsivity Factors, TCOLE, Title IV-E Approved Facility, TJJJD Mental Health Screening Instrument, Transport Personnel, and Volunteer; 3) deleting the definitions of Alleged Victim, Case Plan, Case Plan Review, Courtesy Supervision, Exit Plan, Referral, On-Duty, Paper Complaint, Paper Formalized, and Substitute Care Provider; 4) changing the term Approved Physical Restraint to Approved Personal Restraint Technique and revising the definition to match existing definitions in other TAC chapters adopted by TJJJD; 5) clarifying the definition of Approved Mechanical Restraint Devices to reflect that the devices must be commercially available, removing the requirement for the juvenile board to adopt the approved mechanical restraint devices, adding Soft Restraints to the list of TJJJD-approved devices, and removing Anklets and Wristlets from the list of TJJJD-approved devices; and 6) changing the definition of Intermediate Weapons to reflect that electronic restraint devices, irritants, and impact weapons are examples of intermediate weapons, rather than the only allowable types of such weapons.

New §341.102 republishes information currently found in §341.4.

New §341.200 revises and republishes information currently found in §341.2. Changes include: 1) removing the requirement for the juvenile board to specify the responsibilities and functions of the juvenile probation department and the chief administrative officer; 2) clarifying that the required ratio of one juvenile probation officer for every 100 annual referrals is based on formal referrals; 3) clarifying that a person designated by the juvenile board (rather than the juvenile board itself) must participate in community resource coordination groups; 4) clarifying that the signs provided by TJJJD relating to complaint procedures must be posted in English and Spanish; 5) combining the items relating to research studies and experimentation and moving the combined item from §341.3 to §341.200; 6) providing more explanation regarding what constitutes prohibited experimentation; 7) clarifying that if the juvenile board designates a board member or staff member to approve research studies on behalf of the board, the designation must be in writing; and 8) adding a requirement that for juvenile boards who adopt an alternative referral plan under Texas Family Code §53.01(d), the most recent version of the plan must be submitted to TJJJD's general counsel.

New §341.202 revises and republishes information currently found in §341.3. Changes include: 1) clarifying that the requirement to establish a deferred prosecution policy applies only if the juvenile board adopts a fee schedule for the collection of deferred prosecution fees, removing the specific reference to the \$15 maximum monthly fee, and referring to the Family

Code section that contains the monthly maximum; 2) adding a requirement for the policy on volunteers and interns to include a prohibition on having unsupervised contact with juveniles if the volunteer/intern has a criminal history that does not meet the requirements of 37 TAC Chapter 344 and removing the requirement for the policy to require the volunteer/intern sign-in log to record the names of the juveniles contacted or served; 3) clarifying that the zero-tolerance policy refers to sexual abuse as defined in 37 TAC Chapter 358 and adding that the policy must address conduct by volunteers, interns, and contractors; 4) adding a requirement for the juvenile board to establish a policy that specifies whether juveniles under age 17 who have been transferred for criminal prosecution under Family Code §54.02 may be detained in a juvenile facility pending trial; and 5) adding a requirement for the juvenile board to establish a policy that specifies whether juvenile probation officers may take a juvenile into custody and whether force is allowed in doing so. If force is allowed, the policy must address certain topics related to use of force, such as training, circumstances when force is authorized, prohibited conduct, and documentation.

New §341.300 revises and republishes information currently found in §341.9. Changes include requiring the annual review of policies and procedures to occur within the same calendar month as the previous year's review, rather than once every 365 days.

New §341.302 republishes information currently found in §341.10.

New §341.400 revises and republishes information currently found in §341.29. Changes include: 1) adding several items to the list of duties that may be performed only by certified juvenile probation officers (i.e., acting as the primary supervising officer in a collaborative supervision agreement; taking a child into custody under applicable Texas Family Code sections; serving as the designated inter-county transfer officer and performing the duties required by Texas Family Code §51.072; referring a child to a local mental health or mental retardation authority as required by Texas Family Code §54.0408; explaining to the juvenile and parent/guardian/custodian who will have access to the juvenile's record and when the record may be eligible for restricted access or sealing; and providing a written copy of the explanation); 2) clarifying that persons hired as juvenile probation officers who are not yet certified may perform the duties of a certified officer if they have completed 40 hours of training including the mandatory topics listed in 37 TAC Chapter 344 (rather than an unspecified number of training hours covering the duties currently listed in §341.29); and 3) clarifying that a non-certified officer may continue to perform duties of a certified officer as long as the application for certification has been filed by the deadline in Chapter 344.

New §341.500 revises and republishes information currently found in §341.36. Changes include: 1) clarifying that a mental health screening is not required if a licensed mental health professional completes a clinical assessment within the established time frame; and 2) clarifying that the person who administers the mental health screening instrument must have received training from TJJD or its predecessor agency or from a person who is documented to have received training from TJJD or its predecessor agency.

New §341.502 revises and republishes information currently found in §341.20. Changes include: 1) adding a requirement to complete the risk and needs assessment at least once every six months after disposition; and 2) clarifying that the risk and

needs assessment is required before each disposition in a child's case (in the event there is more than one disposition).

New §341.504 establishes basic requirements for a juvenile probation department's policies and procedures relating to case management.

New §341.506 establishes requirements for case plans. This new section significantly revises information currently found in §§341.37 - 341.41. Changes include: 1) requiring completion of the case plan within 30 days after initial disposition, rather than 60 days; 2) requiring the case plan to address relevant criminogenic need(s), goals, action steps, responsible persons, time frames, and status; 3) removing the requirement to complete signed case plan reviews every six months; 4) adding a requirement for the juvenile probation officer to document monthly discussions with the juvenile and parent/guardian/custodian regarding the juvenile's progress; 5) adding a requirement for the juvenile probation officer to document monthly updates to the status of the case plan goals and action steps; 6) adding an exemption from certain case plan requirements while an inter-county transfer request is being processed; 7) requiring documentation when the parent/guardian/custodian cannot be located or is unable or unwilling to participate in case planning; and 8) adding an exemption from all requirements of §341.506 for juveniles who receive specialized case plans under the Title IV-E foster care program or the Special Needs Diversionary Program.

New §341.600 republishes information currently found in §341.48 with minor, non-substantive wording changes.

New §341.602 republishes information currently found in §341.49 with minor, non-substantive wording changes.

New §341.604 republishes information currently found in §341.50 with minor, non-substantive wording changes.

New §341.606 revises and republishes information currently found in §341.51. Changes include narrowing backup and restoration requirements to apply only to juvenile probation departments who do not use the Juvenile Case Management System (JCMS).

New §341.700 limits Subchapter G (Restraints) to apply only to juveniles who are not residents of a secure pre-adjudication detention facility, secure post-adjudication correctional facility, or non-secure correctional facility.

New §341.702 revises and republishes information currently found in §341.66. Changes include: 1) adding transport personnel as individuals who are authorized to use restraints; and 2) clarifying that the criteria for using restraints (i.e., imminent or active self-injury, injury to others, serious property damage) and the requirement to terminate the restraint when the criteria are no longer present does not apply to restraints used during routine transportation or when a juvenile probation officer takes a juvenile into custody.

New §341.704 revises and republishes information currently found in §341.67. Changes include: 1) replacing the term face down with prone or supine position to match wording used in other TAC chapters adopted by TJJD; and 2) adding that restraints that place anything around the juvenile's neck are prohibited.

New §341.705 requires transport personnel to maintain current certification in cardiopulmonary resuscitation, first aid, and a TJJD-approved personal restraint technique.

New §341.706 revises and republishes information currently found in §341.68. Changes include: 1) adding that using mechanical restraints during routine transportation and taking a juvenile into custody are not required to be documented as restraints unless cooperation is compelled through the use of a personal restraint or the juvenile receives an injury related to the restraint event; 2) requiring that documentation of a restraint must include a narrative description of the event from each staff member who participated in the restraint; and 3) clarifying that the documentation must indicate the specific type of personal restraint hold or type of mechanical restraint applied.

New §341.708 revises and republishes information currently found in §341.69. Changes include: 1) changing the required frequency of retraining in the personal restraint technique to be once every 365 calendar days or as required by the specific restraint technique, whichever time frame is shorter (instead of once every two years); and 2) moving the requirement for juvenile probation departments to use only TJJD-approved personal restraint techniques to this section from §341.65.

New §341.710 revises and republishes information currently found in §341.70. Changes include: 1) specifying that mechanical restraint devices must have documented inspections at least once each year within the same calendar month as the previous year's inspection; 2) adding a requirement to restrict faulty or malfunctioning mechanical restraint devices from use until they are repaired; 3) adding a requirement for all maintenance of mechanical restraint equipment to adhere to the manufacturer's guidelines; 4) clarifying that mechanical restraints may not be used to secure a juvenile in a prone, supine, or lateral position with arms and hands behind his/her back and secured to his/her legs; and 5) moving the requirement for juvenile probation departments to use only TJJD-approved mechanical restraint devices to this section from §341.65.

New §341.712 revises and republishes information currently found in §341.71. Changes include deleting the provision that excludes routine transportation and taking a juvenile into custody from the requirement to document the use of mechanical restraints. That provision is now addressed in new §341.706.

New §341.800 revises and republishes information currently found in §341.81. Changes include: 1) clarifying that a juvenile probation officer is not disqualified from carrying a firearm if he/she has been found to be a designated perpetrator in a TJJD abuse, neglect, or exploitation investigation if that designation has since been overturned; and 2) removing the provision that states this subchapter does not authorize an officer to carry a firearm while not on duty. There is no longer a definition of on duty in this chapter. Instead, the chapter will now use the statutory phrase in the course of the officer's official duties when describing when an officer is authorized to carry the firearm.

New §341.802 revises and republishes information currently found in §341.82. Changes include: 1) increasing the deadline to 30 calendar days (instead of five workdays) for submitting required documents to TJJD after receiving the initial or renewal firearms proficiency certificate; and 2) adding a requirement for the juvenile probation department to include its current weapons-related policies and procedures when submitting required documents to TJJD.

New §341.804 revises and republishes information currently found in §341.83. Changes include removing the requirement for a juvenile probation officer who carries a firearm to notify TJJD if the officer is arrested for, charged with, or convicted of

any criminal offense. New §341.806 requires the chief administrative officer to notify TJJD in such cases.

New §341.806 revises and republishes information currently found in §341.85. Changes include: 1) removing the requirement for the chief administrative officer or the supervisor of an officer who carries a firearm to comply with all requirements of this subchapter. New §341.808 requires the juvenile probation department to determine any such responsibilities and address them in department policies and procedures; 2) removing the requirement for the juvenile probation department to notify the Texas Commission on Law Enforcement within 24 hours when the department rescinds its authorization for an officer to carry a firearm or when an officer who carries a firearm separates from employment; 3) clarifying that an internal investigation must be conducted whenever an officer does any of the following during the course of his/her official duties: uses an empty-hand defense tactic in an incident involving another person; draws or uses an intermediate weapon in an incident involving another person; or draws or discharges a firearm in any incident; 4) specifying that in cases where the chief administrative officer is the subject of the investigation, the juvenile board or the board's designee must conduct the investigation; 5) removing use of empty-hand defense tactics as an incident that requires the officer to be placed on administrative leave or reassigned to a no-contact position; 6) specifying that an officer must be placed on administrative leave or reassigned to a no-contact position when the officer, in the course of his/her official duties, draws or uses an intermediate weapon in an incident involving another person or draws or discharges a firearm in any incident; and 7) adding a requirement for the chief administrative officer to ensure TJJD is notified within 24 hours after the chief administrative officer learns that an officer who carries a firearm is arrested for, charged with, or convicted of a criminal offense.

New §341.808 revises and republishes information currently found in §341.86. Changes include adding that, in juvenile probation departments that authorize a juvenile probation officer to carry a firearm, the department's weapons-related policies and procedures must: 1) specify the amount of training in empty-hand defense tactics and intermediate weapons that is required before an officer may carry a firearm; 2) specify the amount of continuing education required for officers who carry a firearm; 3) specify the duties and training requirements of a chief administrative officer or direct supervisor when the direct supervisor does not carry a firearm but supervises an officer who does carry a firearm; 4) require all weapons-related training to be received from a Texas Commission on Law Enforcement-certified instructor; 5) state whether intermediate weapons are to be purchased and maintained by the department or by the officer; 6) specify whether the firearm must be fully loaded when carried or worn in the course of official duties (this replaces a requirement that it must always be fully loaded); 7) specify how the officer must carry or display his/her identifying credentials when carrying a firearm in the course of official duties (this replaces a requirement to always display them); 8) specify the type(s) of intermediate weapons to be used; 9) state the manner in which the firearm must be worn or carried (this replaces a requirement to be encased in a holster); 10) require documentation of each incident in which an officer, in the course of official duties, uses an empty-hand defense tactic, uses an intermediate weapon, or draws or discharges a firearm (this replaces a general requirement to define the process for reporting use of force incidents); 11) require an officer to carry an intermediate weapon at all times while carrying a firearm;

and 12) specify the manner in which the intermediate weapon(s) must be carried.

New §341.810 revises and republishes information currently found in §341.87. Changes include specifying that reports to TJJD are required when an officer, in the course of official duties, uses an empty-hand defense tactic in an incident involving another person; draws or uses an intermediate weapon in an incident involving another person; or draws or discharges a firearm in any incident.

New §341.812 revises and republishes information currently found in §341.88. Changes include: 1) removing the requirement for juvenile probation departments to keep the Firearms Proficiency for Juvenile Probation Officers Application in the officer's personnel file; and 2) adding a requirement to keep in the officer's personnel file an acknowledgment that the officer has reviewed the department's current weapons-related policies and procedures.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the new sections and repeals are in effect, there will be no significant fiscal impact for state government as a result of enforcing or administering the sections and repeals. Mr. Meyer has determined that in very limited circumstances there will be a small fiscal impact for local governments; however, insufficient data exist to determine the scope or size of the impact.

PUBLIC BENEFIT/COSTS

James Williams, Senior Director of Probation and Community Services, has determined that for each year of the first five years the new and repealed sections are in effect, the public benefits anticipated as a result of administering the sections will be: 1) more effective probation case plans as a result of basing them on validated risk and needs assessments; 2) enhanced safety and clarified expectations as a result of juvenile probation departments developing local policies to address the taking of juveniles into custody; and 3) more flexibility for juvenile probation departments to develop policies and procedures regarding carrying of handguns and other weapons.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.1. Definitions.

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

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.4

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.2. Administration.

§341.3. Policy and Procedures.

§341.4. Waiver or Variance to Standards.

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

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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.9, §341.10

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.9. Policy and Procedure Manual.

§341.10. *Participation in Community Resource Coordination Groups.*

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

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SUBCHAPTER D. ASSESSMENT AND SCREENING

37 TAC §341.20

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeal is also proposed under Texas Human Resources Code §221.003(e), which requires TJJD to adopt rules to ensure that youth in the juvenile justice system are assessed using a validated risk and needs assessment.

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

§341.20. *Risk and Needs Assessment.*

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

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SUBCHAPTER F. REQUIREMENTS FOR CERTIFIED OFFICERS

37 TAC §341.29

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.29. *Duties of Certified Juvenile Probation Officers.*

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

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SUBCHAPTER G. CASE MANAGEMENT STANDARDS

37 TAC §§341.35 - 341.41

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeals are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments.

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

§341.35. *Definitions.*

§341.36. *Screening.*

§341.37. *Case Planning.*

§341.38. *Field Supervision.*

§341.39. *Residential Placement.*

§341.40. *Level of Supervision.*

§341.41. *Exit Plan.*

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SUBCHAPTER H. DATA COLLECTION STANDARDS

37 TAC §§341.47 - 341.51

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that

provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeals are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

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

- §341.47. *Definitions.*
- §341.48. *Data Coordinator.*
- §341.49. *TJJD EDI Extract.*
- §341.50. *Accuracy of Data.*
- §341.51. *Security of Data.*

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SUBCHAPTER J. RESTRAINTS

37 TAC §§341.65 - 341.71

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

- §341.65. *Definitions.*
- §341.66. *Requirements.*
- §341.67. *Prohibitions.*
- §341.68. *Documentation.*
- §341.69. *Physical Restraint.*
- §341.70. *Mechanical Restraint.*
- §341.71. *Transporting.*

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SUBCHAPTER K. CARRYING OF WEAPONS

37 TAC §§341.80 - 341.91

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

- §341.80. *Definitions.*
- §341.81. *Applicability and Authorization.*
- §341.82. *Documentation Requirements.*
- §341.83. *Responsibilities of a Juvenile Probation Officer Authorized to Carry a Firearm.*
- §341.84. *Use of Force Continuum.*
- §341.85. *Responsibilities of Chief Juvenile Probation Officers or Other Supervising Officer.*
- §341.86. *Written Policies and Procedures.*
- §341.87. *Reporting and Investigating Use of Force Incidents.*
- §341.88. *Records.*
- §341.89. *Training and Qualification Requirements.*
- §341.90. *Disqualifying Conduct.*
- §341.91. *Prohibited Conduct.*

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CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

37 TAC §§341.100, §341.102

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments and to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

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

§341.100. Definitions.

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

(1) Alternative Referral Plan--A procedure that deviates from the requirements of Texas Family Code §53.01(d) regarding referral of cases to the prosecutor.

(2) Approved Personal Restraint Technique ("personal restraint")--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

(3) Approved Mechanical Restraint Devices ("mechanical restraint")--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The only mechanical restraint devices approved for use are the following:

(A) Ankle Cuffs--Metal band designed to be fastened around the ankle to restrain free movement of the legs.

(B) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms.

(C) Plastic Cuffs--Plastic devices designed to be fastened around the wrists or legs to restrain free movement of hands, arms, or legs. Plastic cuffs must be designed specifically for use in human restraint.

(D) Soft Restraints--Non-metallic wristlets and anklets used as stand-alone restraint devices. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the subject's extremities.

(E) Waist Belt--A cloth, leather, or metal band designed to be fastened around the waist and used to secure the arms to the sides or front of the body.

(4) Case Management System--A computer-based tracking system that provides a systematic method to track and manage juvenile offender caseloads.

(5) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including the juvenile probation department of a multi-county judicial district.

(6) Comprehensive Folder Edit--A report generated in the Caseworker or Juvenile Case Management System (JCMS) application that performs an extensive edit of the case file information. This report identifies incorrectly entered data and questionable data that impact the accuracy of the reports and programs.

(7) Criminogenic Needs--Issues, risk factors, characteristics, and/or problems that relate to a person's risk of reoffending.

(8) Data Coordinator--A person employed by a juvenile probation department who is designated to serve and function as the primary contact with TJJD on all matters relating to data collection and reporting.

(9) Department--A juvenile probation department.

(10) Draw--To unholster a weapon in preparation for use against a perceived threat.

(11) EDI Specifications--A document developed by TJJD outlining the data fields and file structures that each juvenile probation department is required to follow in submitting the TJJD EDI extract.

(12) Empty-Hand Defense--Defensive tactics through the use of pressure points, releases from holds, and blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(13) Field Supervision--Supervision ordered by a juvenile court in accordance with Texas Family Code §54.04(d)(1)(A) where the child is placed on probation in the child's home or in the custody of a relative or another fit person.

(14) Formal Referral--An event that occurs only when all three of the following conditions exist:

(A) a juvenile has allegedly committed delinquent conduct, conduct indicating a need for supervision, or a violation of probation;

(B) the juvenile probation department has jurisdiction and venue; and

(C) the office or official designated by the juvenile board has:

(i) made face-to-face contact with the juvenile and the alleged offense has been presented as the reason for this contact; or

(ii) given written or verbal authorization to detain the juvenile.

(15) Initial Disposition--The disposition of probation issued by a juvenile court after a child is:

(A) formally referred to a juvenile probation department for the first time; or

(B) formally referred to a juvenile probation department after any and all previous periods of supervision by the department have ended.

(16) Inter-County Transfer--As described in Texas Family Code §51.072, a transfer of supervision from one juvenile probation department in Texas to another juvenile probation department in Texas for a juvenile who moves or intends to move to another county and intends to remain in that county for at least 60 days.

(17) Intermediate Weapons--Weapons designed to neutralize or temporarily incapacitate an assailant, such as electronic restraint devices, irritants, and impact weapons. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient.

(18) Intern--An individual who performs services for a juvenile justice program or facility through a formal internship program that is sponsored by a juvenile justice agency or is part of an approved course of study through an accredited college or university.

(19) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(20) Juvenile Board--A governing board created under Chapter 152 of the Texas Human Resources Code.

(21) Juvenile Justice Program--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; and

(B) is operated wholly or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) juvenile justice alternative education programs;

(ii) non-residential programs that serve juvenile offenders under the jurisdiction of the juvenile court; and

(iii) juvenile probation departments.

(22) Resident--A juvenile or other individual who has been lawfully admitted into a pre-adjudication secure juvenile detention facility, post-adjudication secure juvenile correctional facility, or a non-secure juvenile correctional facility.

(23) Residential Placement--Supervision ordered by a juvenile court in which the child is placed on probation outside the child's home in a foster home or a public or private institution or agency.

(24) Restraints--Personal or mechanical restraint.

(25) Responsivity Factors--Factors that are not necessarily related to criminal activity but are relevant to the way in which the juvenile reacts to different types of interventions (e.g., learning styles and abilities, self-esteem, motivation for treatment, resistance to change, etc.).

(26) SRSXEdit--An audit program developed by TJJD to assist juvenile probation departments not using the Caseworker or JCMS application with verifying their data prior to submission to TJJD.

(27) Supervision--The case management of a juvenile by the assigned juvenile probation officer or designee through contacts (e.g., face-to-face, telephone, office, home, or collateral contacts) with the juvenile, the juvenile's family, and/or other persons or entities involved with the juvenile.

(28) TCOLE--Texas Commission on Law Enforcement.

(29) Title IV-E Approved Facility--A facility licensed and/or approved by the Texas Department of Family and Protective Services for Title IV-E participation.

(30) TJJD--Texas Juvenile Justice Department.

(31) TJJD Electronic Data Interchange (EDI) Extract--An automated process to extract and submit modified case records from the department's case management system to TJJD. The extract must be completed in accordance with this chapter.

(32) TJJD Mental Health Screening Instrument--An instrument selected by TJJD to assist in identifying juveniles who may have mental health needs.

(33) Transport Personnel--An employee of a juvenile probation department, other than a juvenile supervision officer, whose primary job duty is to transport juveniles.

(34) Volunteer--An individual who performs services for the juvenile probation department without compensation from the department who has:

(A) any unsupervised contact with juveniles in a juvenile justice program or facility; or

(B) regular or periodic supervised contact with juveniles in a juvenile justice program or facility.

§341.102. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, an application for a waiver or variance of any standard in this chapter may be submitted in accordance with §349.200 of this title.

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

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §341.200, §341.202

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.200. Administration.

(a) Local Juvenile Probation Services Administration.

(1) For each autonomous juvenile probation department, the juvenile board must employ a chief administrative officer who meets the standards set forth in Chapter 344 of this title.

(2) When probation services for adult and juvenile offenders are provided by a single probation office, the juvenile board must ensure that the juvenile probation department's policies, programs, and procedures are clearly differentiated.

(b) Referral Ratio. The juvenile probation department shall employ at least one certified juvenile probation officer for each 100 formal referrals made to the juvenile probation department annually.

(c) Participation in Community Resource Coordination Groups.

(1) A person designated by the juvenile board must participate in the system of community resource coordination groups pursuant to Texas Government Code §531.055.

(2) The chair of the juvenile board or his/her designee must serve as representative to the interagency dispute resolution process required by Government Code §531.055.

(d) Notice of Complaint Procedures.

The juvenile board must ensure the English and Spanish signs provided by TJJD relating to complaint procedures are posted in a public area of:

(1) the juvenile probation department; and

(2) any facility operated by the juvenile board or by a private entity through a contract with the juvenile board.

(e) Research Studies and Experimentation.

(1) The juvenile board must establish a policy that prohibits participation by juveniles in research that employs an experimental design to test a medical, pharmaceutical, or cosmetic product or procedure.

(2) Participation by juveniles in any other kind of research is prohibited unless:

(A) the research study is approved in writing by the juvenile board or its designee; and

(B) the juvenile board has established policies that:

(i) govern all authorized research studies;

(ii) prohibit studies that involve medically invasive procedures; and

(iii) adhere to all federal requirements governing human subjects and confidentiality.

(3) If the juvenile board authorizes a board member or staff member to approve research studies on behalf of the board, the authorization must be in writing.

(4) Approved research studies must adhere to all applicable policies of the authorizing juvenile board.

(5) Before a research study approved by the juvenile board begins, the research study must be reported to TJJD in a format prescribed by TJJD.

(6) Results of a completed study must be made available to TJJD upon request.

(f) Alternative Referral Plans. If a juvenile board adopts an alternative referral plan under Texas Family Code §53.01(d), the board must ensure the most recent version of the plan is submitted to the TJJD general counsel.

§341.202. Policies and Procedures.

(a) Personnel Policies. The juvenile board must establish written personnel policies.

(b) Department Policies. The juvenile board must establish written department policies and procedures. These policies must include, at a minimum, the following provisions, if applicable.

(1) Deferred Prosecution.

(A) If the juvenile board adopts a fee schedule for the collection of deferred prosecution fees, the board must establish a written policy that includes the following requirements.

(i) The monthly fee must be determined after obtaining a financial statement from the parent or guardian and may not exceed the maximum set by Texas Family Code §53.03.

(ii) The fee schedule must be based on total parent/guardian income.

(iii) The chief administrative officer or his/her designee must approve in writing the fee assessed for each child including any waiver of deferred prosecution fees.

(B) A deferred prosecution fee may not be imposed if the juvenile board does not adopt a fee schedule and rules for waiver of the deferred prosecution fee.

(2) Volunteers and Interns. If a juvenile probation department utilizes volunteers or interns, the juvenile board must establish policies for the volunteer and/or internship program that include:

(A) a description of the scope, responsibilities, and limited authority of volunteers and interns who work with the department;

(B) selection and termination criteria, including disqualification based on specified criminal history;

(C) a requirement to conduct criminal history searches as described in §344.310 of this title for volunteers and interns who will have direct, unsupervised access to juveniles;

(D) a prohibition on having unsupervised contact with juveniles for volunteers and interns whose criminal history does not meet the requirements in Chapter 344 of this title;

(E) the orientation and training requirements, including training on recognizing and reporting abuse, neglect, and exploitation;

(F) a requirement that volunteers and interns meet minimum professional requirements if serving in a professional capacity; and

(G) a requirement to maintain a sign-in log that documents the name of the volunteer/intern, the purpose of the visit, the date of the service, and the beginning and ending time of the service performed for the department.

(3) Zero-Tolerance for Sexual Abuse. The juvenile board must establish zero-tolerance policies and procedures regarding sexual abuse as defined in Chapter 358 of this title. The policies and procedures must:

(A) prohibit sexual abuse of juveniles under the jurisdiction of the department by department staff, volunteers, interns, and contractors;

(B) establish the actions department staff must take in response to allegations of sexual abuse and TJJD-confirmed incidents of sexual abuse; and

(C) provide for administrative disciplinary sanctions and referral for criminal prosecution.

(4) Pretrial Detention for Certain Juveniles. As required by Texas Human Resources Code §152.0015, the juvenile board must establish a policy that specifies whether a person who has been transferred for criminal prosecution under Texas Family Code §54.02 and is younger than 17 years of age may be detained in a juvenile facility pending trial.

(5) Taking Juveniles into Custody. The juvenile board must establish a policy that specifies whether juvenile probation officers may take a juvenile into custody as allowed by Texas Family Code §§52.01(a)(4), 52.01(a)(6), or 52.015.

(A) If the policy allows juvenile probation officers to take a juvenile into custody, the policy must specify whether the officers are allowed to use force in doing so.

(B) If the policy allows juvenile probation officers to use force in taking a juvenile into custody, the policy must:

(i) address prohibited conduct, circumstances under which force is authorized, and training requirements;

(ii) require each use of force to be documented, except when the only force used is the placement of mechanical restraints on the juvenile.

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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.300, §341.302

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.300. Policy and Procedure Manual.

(a) The chief administrative officer must develop, maintain, and enforce a policy and procedure manual for the juvenile probation department, which must include the policies and procedures of the juvenile probation department as established by the juvenile board.

(b) The chief administrative officer must provide all employees with a copy of or access to the policy and procedure manual, review the manual no later than the last day of the calendar month of the previous year's review, maintain documentation of this review, and update the manual as necessary.

§341.302. Participation in Community Resource Coordination Groups.

The chief administrative officer or his/her designee must serve as the liaison to the local community resource coordination group pursuant to Texas Government Code §531.055.

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SUBCHAPTER D. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS

37 TAC §341.400

STATUTORY AUTHORITY

The new section is proposed under Texas Human Resources Code §221.002(a), which requires TJJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.400. Duties of Certified Juvenile Probation Officers.

(a) The following duties and responsibilities may be performed only by certified juvenile probation officers, except as allowed by subsection (b) of this section:

(1) recommending a disposition in formal court proceedings;

(2) providing final approval of written social history reports;

(3) acting as the primary supervising officer for court-ordered and deferred prosecution cases;

(4) acting as the primary supervising officer in a collaborative supervision agreement under Texas Family Code §51.075;

(5) developing and implementing case plans in accordance with Subchapter E of this chapter;

(6) conducting intake interviews and preliminary investigations and making release decisions under Texas Family Code §53.01, unless another staff member is designated to do so by the juvenile board;

(7) taking a child into custody as authorized by Texas Family Code §§52.01(a)(4), 52.01(a)(6), or 52.015;

(8) serving as the designated inter-county transfer officer and performing the duties required by Texas Family Code §51.072;

(9) referring a child to a local mental health or mental retardation authority as required by Texas Family Code §54.0408;

(10) explaining to the juvenile and to the juvenile's parent, guardian, or custodian, the following, as required by Texas Family Code §58.209:

(A) who will have access to the juvenile's record; and

(B) under what circumstances that record may be eligible for restricted access or sealing; and

(11) providing the juvenile with a written copy of the explanation in paragraph (10) of this subsection.

(b) Subject to the application deadline established in Chapter 344 of this title, an individual hired as a juvenile probation officer who is not yet certified as a juvenile probation officer may perform the duties under subsection (a) of this section if the individual has completed a minimum of 40 hours of training, which must include the mandatory topics required in Chapter 344 of this title.

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SUBCHAPTER E. CASE MANAGEMENT

37 TAC §§341.500, 341.502, 341.504, 341.506

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJJD to adopt reasonable rules that provide minimum standards for various aspects of

the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments. Additionally, §341.500 and §341.502 are proposed under Texas Human Resources Code §221.003(e), which requires TJJD to adopt rules to ensure that youth in the juvenile justice system are assessed using a validated risk and needs assessment and also using a mental health screening instrument or clinical assessment.

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

§341.500. Mental Health Screening.

(a) The TJJD mental health screening instrument must be completed for all juveniles who receive a formal referral to the juvenile probation department, except in the specific circumstances listed in paragraphs (1) - (2) of this subsection.

(1) A clinical assessment by a licensed mental health professional may be substituted for the TJJD mental health screening instrument if the assessment is completed within the time frames listed in subsection (b) of this section.

(2) The department is not required to complete an additional screening if the TJJD mental health screening instrument has been completed within the previous two weeks and is contained in the juvenile's case record.

(b) If the juvenile is not admitted into detention, the TJJD mental health screening instrument must be administered no later than 14 calendar days after the date of the first face-to-face contact between the juvenile and a juvenile probation officer. If the juvenile is admitted into detention, the detention facility is required under §343.404 of this title to administer the TJJD mental health screening instrument within 48 hours after admission and to send the results to the supervising juvenile probation officer.

(c) The individual administering the TJJD mental health screening instrument must have received training from:

(1) TJJD or its predecessor agency on administering the mental health screening instrument; or

(2) an individual who is documented to have received training from TJJD or its predecessor agency on administering the mental health screening instrument.

§341.502. Risk and Needs Assessment.

(a) A juvenile probation department must complete a risk and needs assessment for a juvenile:

(1) before each disposition in a juvenile's case; and

(2) at least once every six months.

(b) The risk and needs assessment instrument must be:

(1) validated; and

(2) approved or provided by TJJD.

(c) The risk and needs assessment instrument must be administered by an individual trained to administer the instrument.

§341.504. Case Management Policies and Procedures.

Each department's case management policies and procedures must:

(1) establish that individualized case management practices are based on a consideration of the following factors, at a minimum:

(A) results of the department's risk and needs assessment instrument;

(B) criminogenic needs;

(C) risk level to reoffend;

(D) responsivity factors; and

(E) involvement of the parent(s), guardian, or custodian; and

(2) require a minimum of one face-to-face contact per month with each juvenile under supervision unless otherwise noted in the case plan.

§341.506. Case Plans.

(a) A case plan must be developed for each juvenile assigned to progressive sanctions level three, four, or five, as defined in Texas Family Code Chapter 59, and for each juvenile given determinate sentence probation under Texas Family Code §54.04(q).

(b) The case plan must be completed within 30 calendar days after the date of initial disposition. The case plan must be:

(1) developed by a juvenile probation officer in coordination with the juvenile and the juvenile's parent, guardian, or custodian;

(2) signed by a juvenile probation officer, the juvenile, and the juvenile's parent, guardian, or custodian; and

(3) retained, with copies provided to:

(A) the juvenile;

(B) the juvenile's parent, guardian, or custodian; and

(C) upon placement of a juvenile in a residential placement, staff at the residential placement.

(c) The case plan must address:

(1) relevant criminogenic need(s), as determined by the department; and

(2) the following information for each criminogenic need addressed in the case plan:

(A) goal(s); and

(B) for each goal:

(i) action step(s);

(ii) person(s) responsible for completing the action step(s);

(iii) time frame for completing the action step(s);

(iv) status of the goal;

(3) identification of relevant community services for the juvenile and the juvenile's parent(s), guardian, or custodian to access while the juvenile is under supervision and after supervision ends;

(4) facility name and phone number, if the juvenile is in a residential placement; and

(5) level of supervision.

(d) Except as noted in subsection (f) of this section, the juvenile probation officer must complete and document the following actions each calendar month after the case plan has been developed:

(1) discuss progress toward meeting case plan goals with:

(A) the juvenile;

(B) the juvenile's parent(s), guardian, or custodian; and
(C) the residential provider where the juvenile is placed,
if applicable; and

(2) update the status and progress toward meeting case plan goals and action steps.

(e) If the parent, guardian, or custodian cannot be located or is unable or unwilling to participate in developing or updating the case plan as required in subsection (b) or (d) of this section, documentation of the reason the parent, guardian, or custodian did not participate must be maintained.

(f) The requirements in subsection (d) of this section do not apply after a request for an inter-county transfer has been submitted and before the sending and receiving counties have agreed on the official start date, as described in Texas Family Code §51.072(f-1).

(g) Within 30 calendar days after the official start date for an inter-county transfer, the receiving county must:

(1) assume responsibility for the monthly updates described in subsection (d) of this section; or

(2) complete a new case plan in accordance with subsections (b) and (c) of this section.

(h) Section 341.506 does not apply to:

(1) juveniles on field supervision in departments that currently participate in Title IV-E reasonable candidacy;

(2) juveniles who have been certified or are pending certification as Title IV-E eligible; or

(3) juveniles who are receiving services under the Special Needs Diversionary Program administered by TJJD.

(i) A case plan is required in accordance with subsections (b) and (c) of this section within 30 calendar days after any of the following events:

(1) a juvenile is discharged from the Title IV-E foster care reimbursement program or is determined to be ineligible for the Title IV-E program;

(2) a juvenile is discharged from the Special Needs Diversionary Program; or

(3) a department ceases to participate in claiming Title IV-E reasonable candidate costs.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



SUBCHAPTER F. DATA COLLECTION

37 TAC §§341.600, 341.602, 341.604, 341.606

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

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

§341.600. *Data Coordinator.*

(a) Training Requirements.

(1) The data coordinator must have a thorough understanding of TJJD's reporting requirements.

(2) The data coordinator must complete training related to data reporting provided by TJJD as required.

(b) Duties.

(1) The data coordinator is responsible for ensuring that all data submitted to TJJD by the juvenile probation department is accurate, timely, and consistent with TJJD's reporting requirements.

(2) The data coordinator must ensure that the TJJD EDI Extract is submitted to TJJD on or before the applicable due date.

§341.602. *TJJD EDI Extract.*

(a) The TJJD EDI Extract must be sent to TJJD electronically.

(b) The extract is due to TJJD no later than the tenth calendar day of each month following the reporting period.

(c) The TJJD EDI Extract data must include all data fields required by the EDI Specifications.

(d) TJJD staff must discuss any proposed changes to the specifications with juvenile probation departments' designated representatives before making substantive changes to the specifications.

§341.604. *Accuracy of Data.*

(a) The juvenile probation department must fill in all applicable data fields for each referral in the department's case management system.

(b) The juvenile probation department must run the Comprehensive Folder Edit or SRSXEdit on a monthly basis.

(c) Errors detected by the Comprehensive Folder Edit must be corrected prior to the next submission of the EDI Extract.

(d) Errors detected by TJJD must be corrected prior to the date provided by TJJD.

§341.606. *Security of Data.*

(a) Each user of the juvenile probation department's case management system must obtain a password to the system. Passwords must not be shared with department employees or other persons.

(b) The juvenile probation department must limit the number of employees who are authorized to delete information in the department's case management system.

(c) Access to the department's case management system must be removed concurrent with the termination of a user's employment.

(d) A juvenile probation department that does not use the Juvenile Case Management System (JCMS) must:

(1) establish and follow a written policy for backup and restoration procedures relating to data in its case management system; and

(2) maintain an off-site backup storage system.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



SUBCHAPTER G. RESTRAINTS

37 TAC §§341.700, 341.702, 341.704 - 341.706, 341.708, 341.710, 341.712

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.700. *Applicability.*

This subchapter applies only to juveniles who are not residents of a juvenile pre-adjudication secure detention facility, a juvenile post-adjudication secure correctional facility, or a non-secure juvenile correctional facility.

§341.702. *Requirements.*

The use of restraints is governed by the following criteria.

(1) Personal restraints may be used only by juvenile probation officers and transport personnel who are trained in the use of the approved personal restraint technique.

(2) Mechanical restraints may be used only by juvenile probation officers and transport personnel who are trained in the use of all approved mechanical restraint devices.

(3) Except during routine transportation or when a juvenile probation officer takes a juvenile into custody under Texas Family Code §52.01 or §52.015, restraints may be used only in instances of threat of imminent or active:

(A) self-injury;

(B) injury to others; or

(C) serious property damage.

(4) Restraints may be used only as a last resort.

(5) Only the amount of force and type of restraint necessary to control the situation may be used.

(6) Restraints must be implemented in such a way as to protect the health and safety of the juvenile and others.

(7) Restraints must be terminated as soon as the juvenile's behavior no longer indicates an imminent threat of self-injury, injury to others, or serious property damage, except during routine transportation or when a juvenile probation officer takes a juvenile into custody.

§341.704. *Prohibitions.*

Restraints that employ a technique listed in this section are prohibited:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, or intimidation;

(2) restraints that deprive the juvenile of basic human necessities, including restroom opportunities, water, food, and clothing;

(3) restraints that are intended to inflict pain;

(4) restraints that put a juvenile in a prone or supine position with sustained or excessive pressure on the back or chest cavity;

(5) restraints that put a juvenile in a prone or supine position with pressure on the neck or head;

(6) restraints that obstruct the airway or impair the breathing of the juvenile, including a procedure that places anything in, on, or over the juvenile's mouth or nose or around the juvenile's neck;

(7) restraints that interfere with the juvenile's ability to communicate;

(8) restraints that obstruct the view of the juvenile's face;

(9) any technique that does not require the monitoring of the juvenile's respiration and other signs of physical distress during the restraint; and

(10) percussive or electrical shocking devices.

§341.705. *Transport Personnel.*

Transport personnel must maintain current certification in the following topics:

(1) cardiopulmonary resuscitation (CPR);

(2) first aid; and

(3) a personal restraint technique approved by TJJD.

§341.706. *Documentation.*

(a) Restraints must be fully documented and the documentation must be maintained, except as noted in subsection (b) of this section. Written documentation regarding the use of restraints must include, at a minimum:

(1) name of the juvenile;

(2) name and title of each staff member who administered the restraint;

(3) narrative description of the restraint event from each staff member who participated in the restraint;

(4) date of the restraint;

(5) duration of each type of restraint (e.g., personal or mechanical), including notation of the time each type of restraint began and ended;

(6) location of the restraint;

(7) events and behavior that prompted the initial restraint and any continued restraint;

(8) de-escalation efforts and restraint alternatives attempted;

(9) type of restraint(s) applied, including, as applicable:

and (A) the specific type of personal restraint hold applied;

and (B) the type of mechanical restraint device(s) applied;

(10) any injury that occurred during the restraint.

(b) The following events are not required to be documented as a restraint, except as noted in subsection (c) of this section:

(1) using mechanical restraints during routine transportation; and

(2) a juvenile probation officer taking a juvenile into custody under Texas Family Code §52.01 or §52.015.

(c) The exception in subsection (b) of this section does not apply when:

(1) the juvenile's cooperation is compelled through the use of a personal restraint;

(2) the juvenile receives an injury in relation to the restraint event or restraint devices.

§341.708. Personal Restraint.

(a) A juvenile probation department may not use a personal restraint technique before it has been approved for use by TJJD.

(b) Staff members who are authorized to use personal restraints must be retrained in the approved personal restraint technique in accordance with the requirements of the technique or at least once every 365 calendar days, whichever time frame is shorter.

§341.710. Mechanical Restraint.

The use of mechanical restraints is governed by the following criteria.

(1) Requirements.

(A) Only approved mechanical restraint devices may be used by the juvenile probation department.

(B) Mechanical restraints must be used only in a manner consistent with their intended use.

(C) Mechanical restraint devices must be inspected at least once each year, no later than the last day of the calendar month of the previous year's inspection. The dates of the inspections must be documented.

(D) Faulty or malfunctioning devices must be restricted from use until they are repaired. Any maintenance performed must adhere to the manufacturer's guidelines.

(2) Prohibitions.

(A) Mechanical restraint devices may not be altered from the manufacturer's design.

(B) A juvenile may not be placed in a prone position while restrained in any mechanical restraint for a period of time longer than necessary to apply the restraint devices.

(C) A mechanical restraint may not be used to secure a juvenile in a prone, supine, or lateral position with the juvenile's arms and hands behind his/her back and secured to his/her legs.

(D) Mechanical restraint devices may not be secured so tightly as to interfere with circulation or so loosely as to cause chafing of the skin.

(E) Mechanical restraint devices may not be used to secure a juvenile to a stationary object.

(F) A juvenile in mechanical restraints may not participate in any physical activity.

(G) Plastic cuffs may be used only in emergency situations.

§341.712. Transporting.

(a) During transportation in a vehicle, the juvenile may not be affixed to any part of the vehicle.

(b) During transportation in a vehicle, a juvenile may not be secured to another juvenile.

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

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Jill Mata

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SUBCHAPTER H. CARRYING OF WEAPONS

37 TAC §§341.800, 341.802, 341.804, 341.806, 341.808, 341.810, 341.812

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

§341.800. Applicability and Authorization.

(a) Applicability. This subchapter applies only to actively certified juvenile probation officers who are authorized to carry firearms under this subchapter.

(b) Authorization to Carry a Firearm.

(1) In accordance with §142.006 of the Texas Human Resources Code, a juvenile probation officer is authorized to carry a firearm during the course of the officer's official duties if:

(A) the juvenile probation officer has been employed for at least one year by the juvenile probation department described in subparagraph (B) of this paragraph;

(B) the chief administrative officer of the juvenile probation department that employs the juvenile probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(C) the juvenile probation officer possesses a certificate of firearms proficiency issued by the Texas Commission on Law Enforcement (TCOLE) under §1701.259 of the Texas Occupations Code.

(2) A juvenile probation officer is disqualified from being authorized to carry a firearm during the course of the officer's official

duties if the officer has been found to be a designated perpetrator in a TJJD abuse, neglect, or exploitation investigation, unless that designation has been overturned.

(3) In accordance with §221.35 of this title, a juvenile probation officer must successfully complete TCOLE's current firearms training program for juvenile probation officers to be authorized to carry a firearm in the course of the officer's official duties.

(4) A license obtained under Chapter 411, Subchapter H, of the Texas Government Code (i.e., a concealed handgun license) does not enable a certified juvenile probation officer to carry a firearm in the course of the officer's official duties and does not satisfy, and may not be accepted in lieu of, the requirements in this subchapter.

§341.802. Documentation Requirements.

(a) Documents Required after Obtaining an Initial Firearms Proficiency Certificate. Within 30 calendar days after receiving the initial firearms proficiency certificate from TCOLE, the chief administrative officer must ensure the following documents are provided to TJJD:

(1) a copy of the Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE; and

(2) a completed, signed, and notarized copy of TJJD's Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form, including the following required attachments:

(A) appropriate documentation that the juvenile probation officer has been subjected to a complete search of local, state, and national records to disclose any criminal record or criminal history;

(B) written documentation from each chief administrative officer who has authorized the juvenile probation officer's participation in the juvenile probation officer firearms proficiency training program that the officer has been examined by a psychologist who was selected by the current employing department and who is licensed by the Texas State Board of Examiners of Psychologists;

(C) a written declaration from the examining psychologist that the juvenile probation officer possesses the requisite psychological and emotional health to carry a firearm in the course of the officer's official duties;

(D) documentation of successful completion of TCOLE's current firearms training program for juvenile probation officers;

(E) documentation of successful completion of the amount of training specified by the department's policies and procedures in the following areas:

(i) use of an empty-hand defense tactic; and

(ii) use of an intermediate weapon; and

(F) the department's current policies and procedures described in §341.808 of this title.

(b) Documents Required after Obtaining Renewed Firearms Proficiency Certificate. Within 30 calendar days after receiving a renewal of a firearms proficiency certificate from TCOLE, the chief administrative officer must ensure the following documents are provided to TJJD:

(1) a copy of the renewed Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE;

(2) a completed, signed, and notarized copy of TJJD's Renewal of Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form;

(3) documentation of successful completion of the amount of continuing education specified by the department's policies and procedures relating to the use of a firearm, intermediate weapon, or empty-hand defense tactic; and

(4) the department's current policies and procedures described in §341.808 of this title.

§341.804. Responsibilities of a Juvenile Probation Officer Authorized to Carry a Firearm.

A juvenile probation officer who is authorized to carry a firearm in accordance with this subchapter must:

(1) comply with the requirements of this subchapter, the officer's department policies and procedures, and the laws of this state and of the United States;

(2) be knowledgeable of the places where firearms or other weapons are prohibited;

(3) immediately report to the chief administrative officer if the officer is arrested for, charged with, or convicted of any criminal offense;

(4) comply with all training, firearms proficiency, and certification requirements in §221.35 of this title;

(5) maintain the firearm and all authorized intermediate weapons in proper working order at all times;

(6) be responsible for the safe handling of the firearm and all authorized intermediate weapons; and

(7) store the firearm and all authorized intermediate weapons in a secure, locked location designed for secure storage of a weapon when the firearm or other weapon is not on the officer's person.

§341.806. Responsibilities of Chief Administrative Officers or Other Supervising Officers.

(a) The chief administrative officer or his/her designee must notify TJJD within 24 hours if:

(1) the department rescinds its authorization for a juvenile probation officer to carry a firearm; or

(2) an officer who is authorized to carry a firearm separates from the department.

(b) An internal investigation must be conducted for all incidents in which a juvenile probation officer, during the course of his/her official duties:

(1) uses an empty-hand defense tactic in an incident involving another person;

(2) draws or uses an intermediate weapon in an incident involving another person; or

(3) draws or discharges a firearm in any incident.

(c) The investigation described in subsection (b) of this section must be conducted by:

(1) the chief administrative officer or his/her designee; or

(2) the juvenile board or the board's designee in cases where the chief administrative officer is the subject of the investigation.

(d) A juvenile probation officer must be immediately placed on administrative leave or reassigned to a position having no contact with juveniles or the relatives of a juvenile involved in the incident

if the juvenile probation officer, while in the course of his/her official duties:

(1) draws or uses an intermediate weapon in an incident involving another person; or

(2) draws or discharges a firearm in any incident.

(e) The administrative leave or reassignment described in subsection (d) of this section must remain in effect until the conclusion of the internal investigation.

(f) The chief administrative officer must ensure that TJJD is notified if an officer who is authorized to carry a firearm is arrested for, charged with, or convicted of any criminal offense. This notification is required within 24 hours after the chief administrative officer learns of the arrest, charge, or conviction.

§341.808. Written Policies and Procedures.

Each juvenile probation department that employs a juvenile probation officer who is authorized to carry a firearm in accordance with the requirements in this subchapter must maintain and implement written policies and procedures that:

(1) define which juvenile probation officers within the department are authorized to carry firearms;

(2) specify the amount of required training hours in the following areas before a juvenile probation officer may carry a firearm in the course of the officer's duties:

(A) use of an empty-hand defense tactic; and

(B) use of at least one intermediate weapon;

(3) specify the amount of continuing education hours required every two years for an officer to continue to carry a firearm in the course of the officer's duties;

(4) require continuing education hours to be in areas that enhance the officer's skills and knowledge relating to the proficient and legal use of a firearm, empty-hand defense tactics, and intermediate weapons in the context of self-defense and defense of third parties, including the following topics, at a minimum:

(A) use of force;

(B) weapons retention; and

(C) crisis intervention;

(5) specify the duties and training requirements of the chief administrative officer or the direct supervisor of a juvenile probation officer in cases where the following circumstances exist:

(A) a juvenile probation officer is authorized to carry a firearm in the course of his/her official duties; and

(B) the direct supervisor of the juvenile probation officer does not carry a firearm in the course of his/her official duties;

(6) require all training described in this section to be received from a TCOLE-certified instructor;

(7) state whether firearms and intermediate weapons are to be purchased and maintained by the department or the individual officer;

(8) require that the firearm and intermediate weapons remain under the control of the officer authorized to carry the firearm and weapon(s);

(9) specify whether the firearm must be fully loaded when carried or worn when the officer is in the course of his/her official duties;

(10) specify how credentials identifying the officer as a certified juvenile probation officer must be carried and/or displayed while the officer is carrying a firearm in accordance with this subchapter;

(11) describe the circumstances and limitations under which the officer is justified to use force, which must be consistent with Chapter 9 of the Texas Penal Code;

(12) specify the firearms to be carried, including the type of firearm, manufacturer, model, and caliber;

(13) specify the type of ammunition authorized for use in the firearm;

(14) specify the type(s) of intermediate weapons to be used;

(15) state whether the firearm must be carried in plain view or concealed and the manner in which it must be worn or carried;

(16) require documentation of each incident in which a juvenile probation officer, while in the course of his/her official duties, uses an empty-hand defense tactic, uses an intermediate weapon, or draws or discharges a firearm;

(17) require the officer to carry an intermediate weapon at all times while the officer is carrying a firearm;

(18) specify the manner in which the intermediate weapon(s) must be carried;

(19) define the process for rescinding or suspending the authorization to carry a firearm;

(20) prohibit the consumption of alcohol while carrying a firearm or intermediate weapon;

(21) define the process for conducting an internal investigation when required by §341.806(b) of this title;

(22) require that a juvenile probation officer be placed on administrative leave or be reassigned to a position having no contact with juveniles or relatives of the juvenile involved in the incident when required by §341.806(d) of this title.

§341.810. Reporting Use of Force Incidents to TJJD and Law Enforcement.

(a) The chief administrative officer or his/her designee must report to TJJD each incident in which a juvenile probation officer, during the course of his/her official duties:

(1) uses an empty-hand defense tactic in an incident involving another person;

(2) draws or uses an intermediate weapon in an incident involving another person; or

(3) draws or discharges a firearm in any incident.

(b) The initial report must be made to TJJD immediately, but no later than four hours after the conclusion of the use of force incident.

(c) The initial report must be made using the toll-free number designated by TJJD.

(d) Within 24 hours after the report by phone, the Juvenile Probation Officer Use of Force Incident Report form must be submitted to TJJD via fax or e-mail.

(e) The chief administrative officer or his/her designee must report to local law enforcement any discharge of a firearm by a juvenile probation officer immediately, but no later than one hour after the time of discharge.

§341.812. Records.

(a) The personnel file of each juvenile probation officer authorized to carry a firearm in accordance with this subchapter must contain a copy of the:

(1) PID Assignment (TCOLE C-1 form);

(2) results of criminal history checks conducted pursuant to the requirements of this subchapter;

(3) Licensee Psychological and Emotional Health Declaration (TCOLE L-3 form);

(4) proof of annual firearms proficiency;

(5) verification of successful completion of TCOLE's firearms training program for juvenile probation officers; and

(6) acknowledgment that the officer has reviewed the department's current policies and procedures specified in §341.808 of this title.

(b) Juvenile probation departments must allow TCOLE, other law enforcement agencies, and TJJD access to records pertaining to firearms and use of force incidents for monitoring and investigation purposes.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER D. SECURE POST- ADJUDICATION CORRECTIONAL FACILITY STANDARDS

The Texas Juvenile Justice Department (TJJD) proposes to amend §343.616, concerning Content of Resident Records, and §343.688, concerning Residential Case Plan Coordination.

TJJD simultaneously proposes to repeal §343.690, concerning Residential Case Plan Review.

SECTION-BY-SECTION SUMMARY

The amended §343.616 will remove references to the case plan and case plan review from the list of documents that must be included in each resident's record. These documents will no longer be required in post-adjudication facilities as a result of proposed changes in Chapter 341 of this title.

The amended §343.688 will no longer require facility staff to complete an initial case plan for each resident upon admission to a secure post-adjudication facility. This amendment corresponds

with changes in Chapter 341 of this title, which are also proposed in this issue of the *Texas Register*. The revised Chapter 341 will require the supervising juvenile probation officer to maintain a juvenile's case plan throughout the duration of the juvenile's time on probation, including time spent in a secure post-adjudication facility. The amended §343.688 will instead require the facility administrator to ensure: 1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews; 2) a staff member who is knowledgeable about the resident's progress in facility programming participates in the monthly reviews with the juvenile probation officer and provides a written monthly summary of the resident's progress in facility programming; and 3) documentation of these monthly activities is maintained in the resident's file.

The repeal of §343.690 is proposed due to corresponding changes in Chapter 341 of this title, which are also proposed in this issue of the *Texas Register*. Post-Adjudication facilities will no longer be required to complete 90-day case plan reviews. The revised Chapter 341 will require the supervising juvenile probation officer to complete monthly status and progress updates, which will encompass any time a youth may spend in a post-adjudication facility.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the sections are in effect, there is no significant fiscal impact for state or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

James Williams, Senior Director of Probation and Community Services, has determined that for each year of the first five years the amended and repealed sections are in effect, the public benefits anticipated as a result of administering the sections will be enhanced continuity of care and reduced duplication of effort through the use of one case plan for a juvenile's entire time on probation, including time in a secure placement.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

37 TAC §343.616, §343.688

STATUTORY AUTHORITY

The amended sections are proposed under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile post-adjudication secure correctional facilities.

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

§343.616. *Content of Resident Records.*

Each resident's record shall include the following:

- (1) delinquent history;
- (2) inventory of cash and property surrendered;

- (3) list of approved visitors;
- (4) name of the assigned probation officer;
- (5) behavioral record, including any special incidents, discipline, or grievances;
- (6) progress reports~~;~~ including the resident's case plan as required in §343.688 of this title and case plan review as required in §343.690 of this title~~;~~ and
- (7) final release or transfer report.

§343.688. [Residential] Case Plan Coordination.

The facility administrator shall ensure that:

(1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews, as described in §341.506 of this title;

(2) a staff member who is knowledgeable about the resident's progress in the facility's programming:

(A) participates in monthly status and progress reviews with the juvenile probation officer; and

(B) provides a monthly written summary of the resident's progress in the facility's programming to the juvenile probation officer; and

(3) documentation of the actions required in paragraphs (1) and (2) of this section is maintained in the resident's file.

{(a) The initial case plan shall be completed no later than 30 calendar days from the resident's date of placement.}

{(b) The case plan shall contain documentation acknowledging that the plan was developed in consultation with the resident; the resident's parent, legal guardian, or custodian; and the supervising juvenile probation officer.}

{(c) The case plan shall contain specific goals for at least the following nine domains:}

- {(1) medical and dental;}
- {(2) safety and security;}
- {(3) recreational;}
- {(4) educational;}
- {(5) mental and behavioral health;}
- {(6) relationship;}
- {(7) socialization;}
- {(8) permanency; and}
- {(9) parent and child participation.}

{(d) The case plan shall be signed by the resident; the resident's parent, legal guardian, or custodian; the facility's designee; and the supervising juvenile probation officer. If the parent, legal guardian, or custodian refuses to participate or sign the case plan or the facility's designee cannot locate the person, the facility's designee shall document this in writing in the resident's case plan.}

{(e) The date of the facility designee's signature on the case plan shall be the case plan completion date.}

{(f) The case plan shall be retained in the resident's case file with documentation verifying that copies were provided to the resident; the resident's parent, legal guardian, or custodian; and the supervising juvenile probation officer.}

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

Filed with the Office of the Secretary of State on February 1, 2016.

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Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 490-7014



37 TAC §343.690

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile post-adjudication secure correctional facilities.

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

§343.690. Residential Case Plan Review.

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

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General Counsel

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For further information, please call: (512) 490-7014



**CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES
SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING**

37 TAC §355.654

The Texas Juvenile Justice Department (TJJD) proposes to amend §355.654, concerning Residential Case Plan and Case Plan Review.

SECTION-BY-SECTION SUMMARY

The amended section will require the facility administrator to ensure: 1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews; 2) a staff member who is knowledgeable about the resident's progress in facility programming participates in the monthly reviews with the juvenile probation officer and provides a written monthly summary of the resident's progress in facility programming; and 3) documentation of these monthly activities is maintained in the resident's file.

This amendment corresponds with changes in Chapter 341 of this title, which are also proposed in this issue of the *Texas Register*. The revised Chapter 341 will require the supervising juvenile probation officer to maintain a juvenile's case plan throughout the duration of the juvenile's time on probation, including time spent in a non-secure facility.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the section is in effect, there is no significant fiscal impact for state or local governments as a result of enforcing or administering the section.

PUBLIC BENEFIT/COSTS

James Williams, Senior Director of Probation and Community Services, has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of administering the section will be enhanced continuity of care and reduced duplication of effort through the use of one case plan for a juvenile's entire time on probation, including time in a non-secure placement.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile non-secure correctional facilities.

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

§355.654. *[Residential] Case Plan Coordination [and Case Plan Review]*.

The facility administrator shall ensure that: [A case plan shall be completed and reviewed for every adjudicated youth in the facility in accordance with requirements of §341.37 and §341.39 of this title.]

(1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews, as described in §341.506 of this title; and

(2) a staff member who is knowledgeable about the resident's progress in the facility's programming:

(A) participates in monthly status and progress reviews with the juvenile probation officer; and

(B) provides a monthly written summary of the resident's progress in the facility's programming to the juvenile probation officer; and

(3) documentation of the actions required in paragraphs (1) and (2) of this section is maintained in the resident's file.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER G. HIGHWAY IMPROVEMENT CONTRACT SANCTIONS

43 TAC §§9.102, 9.107, 9.111, 9.113, 9.114

The Texas Department of Transportation (department) proposes amendments to §§9.102, 9.107, 9.111, 9.113, and 9.114, concerning Highway Improvement Contract Sanctions.

EXPLANATION OF PROPOSED AMENDMENTS

The legislature and department policy have declared that it is the department's duty to: (1) promote the health, safety, welfare, convenience, and enjoyment of the traveling public; and (2) protect the public investment in the interstate and primary systems.

By statute, the department awards highway improvement contracts to the lowest qualified bidder (Transportation Code, §223.0041). Contractors that acquire work and then do not advance the work in a timely manner negatively impact the traveling public and business along the construction corridor. There are many reasons that contribute to contractors' schedules not being met; some of these reasons are outside of the contractor's control. The amendments provided under these rules allow the department to take action against a contractor whose schedules are not being met due to factors that are under its control. This rule is not applicable to projects awarded prior to its effective date.

Amendments to §9.102, Definitions, delete the definition of "affiliated entity" because the definition has proven too vague to be helpful in imposing sanctions on affiliates. The amendments re-designate the paragraphs of this section accordingly. A new substantive provision for determining affiliated entities for the purposes of Chapter 9, Subchapter G, is added in §9.113.

Amendments to §9.107, Grounds for Sanctions, adds a new ground for which sanctions may be imposed. Under the new provision, a sanction may be imposed if the department determines, using the criteria specified in the provision, that a contractor fails to timely complete a project.

Amendments to §9.111, Application of Sanction, add to the chart in Figure: 43 TAC §9.111(c) the descriptions of various sanctions that may be imposed by the executive director for a contractor's failure to timely complete projects under contract, as determined under §9.107(b).

Amendments to §9.113, Indirect Sanction on an Affiliated Entity, add a new provision to be used to determine if entities are affiliated for the purposes of Chapter 9, Subchapter G. To ensure conformity between Subchapters B and G of Chapter 9, the new provision refers to the criteria provided under 43 TAC §9.12(d) for determining the affiliation of two or entities. The provision is added at the beginning of the section, as new subsection (a); the existing subsections are re-designated accordingly, with an amendment to a cross reference to reflect the re-designation of existing subsection (c).

Amendments to §9.114, Lessening or Removal of Sanction, change a reference to a subsection in §9.113 from §9.113(b) to §9.113(c) to reflect the re-designation of subsections within that section, as described above.

FISCAL NOTE

Benjamin H. Asher, Interim Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Tracy D. Cain, P.E., Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Cain has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a lessened administrative overhead and improved enforcement efforts by the department, making enforcement of sanctions more transparent to the public and predictable to sign owners. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§9.102, 9.107, 9.111, 9.113, and 9.114 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Sanction Rules." The deadline for receipt of comments is 5:00 p.m. on March 14, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§9.102. Definitions.

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

~~[(1) Affiliated entity--An entity, regardless of when formed, that has the same or similar management, ownership, or principal employees as the sanctioned or suspended contractor.]~~

~~(1) [(2)] Assistant executive director--An assistant executive director of the Texas Department of Transportation.~~

~~(2) [(3)] Commission--The Texas Transportation Commission.~~

~~(3) [(4)] Contractor--An entity that is eligible to bid on a highway improvement contract or that functions or seeks to function as a subcontractor under a highway improvement contract or as a supplier of materials or equipment to be used in the construction or maintenance of a part of the state highway system.~~

~~(4) [(5)] Debarment--Disqualification of a contractor from entering into an agreement with a state or federal agency.~~

~~(5) [(6)] Department--The Texas Department of Transportation.~~

~~(6) [(7)] Executive director--The executive director of the Texas Department of Transportation.~~

~~(7) [(8)] Highway improvement contract--A contract entered under Transportation Code, Chapter 223, Subchapter A for the construction, reconstruction, or maintenance of a segment of the state highway system, or for the construction or maintenance of a building or other facility appurtenant to a building.~~

~~(8) [(9)] Reprimand--A written warning issued by the department that documents an act or omission committed by a contractor.~~

~~(9) [(10)] Sanction--A consequence imposed on a contractor for failure to comply with this subchapter including suspension, reprimand, prohibition against participation in a specified agreement, or debarment.~~

~~(10) [(11)] Suspension--Immediate, temporary disqualification of a contractor from entering into or attempting to enter into an agreement with the department.~~

§9.107. Grounds for Sanction.

~~(a) Sanctions may be imposed under this section for:~~

~~(1) failure to execute a highway improvement contract after a bid is awarded, unless the contractor honors a bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Bid);~~

~~(2) the rejection by the commission of two or more bids by the contractor during the 36-month period preceding the month in which the determination is being made because of contractor error;~~

~~(3) the department's declaration of a contractor in default on a highway improvement contract; ~~[or]~~~~

~~(4) violation of §10.101 of this title (relating to Required Conduct); ~~or~~[-]~~

~~(5) failure to timely complete projects under contract.~~

~~(b) For purposes of subsection (a)(5) of this section, a contractor fails to timely complete a project if the district engineer of the district in which the project is located determines that:~~

~~(1) the contractor:~~

~~(A) has not completed the project within the time allowed under the contract, as adjusted by all applicable change orders; ~~or~~~~

~~(B) has used more than 80 percent of the time allocated for the project, as adjusted by all applicable change orders, and the~~

percent of allocated time used divided by the percent of the contract completed, both as adjusted by all applicable change orders, is greater than 1.2; and

(2) the contractor is more than 10 percent behind on all of its other contracted department projects, as adjusted by all applicable change orders.

§9.111. Application of Sanction.

(a) The executive director, at the executive director's sole discretion, may impose a sanction that is less severe, but not more severe, than the sanction recommended under subsection (c) of this section.

(b) If a contractor commits multiple violations arising out of separate occurrences, the executive director may impose multiple sanctions in accordance with subsection (c) of this section.

(c) Figure 43 TAC §9.111(c) sets forth guidelines for application of a sanction by assigning, for specific violations of §9.107 of this subchapter (relating to Grounds for Sanction), the sanctions available to the executive director as described in §9.110(a) of this subchapter (relating to Available Sanctions), taking into consideration the factors described in §9.110(b) of this subchapter.

Figure: 43 TAC §9.111(c)

[Figure: 43 TAC §9.111(e)]

§9.113. Indirect Sanction on an Affiliated Entity.

(a) For the purposes of this subchapter, an entity is an affiliated entity of a contractor if the entity and contractor satisfy any of the affiliation criteria provided under §9.12(d)(1) of this chapter. In addition to those affiliation criteria, the department, in making a determination of affiliation, may consider:

(1) the frequency of transactions between the entities; and

(2) the extent to which the entities share equipment, personnel, office space, and finances.

(b) [(a)] A sanction imposed on a contractor under this subchapter will also be imposed as an indirect sanction on an affiliated entity of the contractor.

(c) [(b)] The affiliated entity will receive notice of the indirect sanction that will:

(1) state the sanction and the period of the sanction, if applicable;

(2) summarize the facts and circumstances underlying the sanction;

(3) explain how the sanction was selected, using §9.111(c) of this subchapter (relating to Application of Sanction) as a basis for explanation;

(4) if applicable, inform the affiliated entity of the imposition of a suspension under §9.108(d) of this subchapter (relating to Procedure); and

(5) state that the affiliated entity may appeal the indirect sanction in accordance with subsection (d) [(e)] of this section.

(d) [(e)] An affiliated entity, in accordance with this subsection, may petition the executive director for an informal hearing on the imposition of an indirect sanction or suspension that is imposed on the affiliated entity solely because of its status as an affiliated entity.

(1) Not later than the 30th day after the date of receipt of the written request, the executive director will hold an informal hearing with the affiliated entity to discuss the relationship associated with the affiliation.

(2) Within 15 days after the date the informal hearing is held, the department will conduct a review to determine the affiliation of the entities. The review will include, but is not limited to, consideration of the entities':

(A) intercompany transactions;

(B) equipment;

(C) personnel;

(D) office space;

(E) finances; and

(F) other affiliation criteria.

(3) The executive director will consider the evidence presented and inform the affiliated entity in writing within 30 days of the informal hearing of the final determination to continue or lift the indirect sanction or suspension.

(4) The executive director may grant an exception to the indirect sanction only if the department finds that the operations and control of an affiliated entity affected by an indirect sanction are independent from the directly sanctioned entity.

(5) The granting of a sanction or suspension exception does not remove the affiliation classification between the affected business entities.

(6) The department may conduct follow-up reviews and may recommend that the executive director revoke the exception if the department determines that the affiliated entities are no longer independent.

(e) [(d)] If the executive director does not grant or revoke an exception and determines to continue an indirect sanction or suspension, the affiliated entity may request the opportunity for a hearing before the commission at a regularly scheduled open meeting.

(1) The commission may consider oral presentations and written documents presented by the department and interested parties. The chair will set the hearing and the amount of time allowed for presentation.

(2) The commission's determination of the appeal will be adopted by minute order and reflected in the minutes of the meeting.

(3) The executive director will issue a final order on the indirect sanction based on the commission's determination.

§9.114. Lessening or Removal of Sanction.

(a) A contractor or affiliated entity may request the reduction or removal of a sanction imposed under this subchapter by delivering to the executive director the request in writing and written documentation in support of the request demonstrating changes in the circumstances that were described in the notice of sanction under §9.109 or §9.113(c) [(§9.113(b))] of this subchapter (relating to Notice of Sanction and Indirect Sanction on an Affiliated Entity, respectively).

(b) The executive director, at the executive director's sole discretion, may decide to reduce or remove the sanction. The executive director will send a written notice of the decision to the contractor or affiliated entity.

(c) The executive director will consider not more than one request under this section during any 12-month period.

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

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Texas Department of Transportation

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