

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 98. DENTAL SUPPORT ORGANIZATIONS

The Office of the Secretary of State (hereinafter referred to as "Office") adopts new rules under Chapter 98, concerning dental support organizations (DSOs). The Office adopts §98.5 without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9404). The Office adopts §§98.1, 98.2, 98.3 and 98.4 with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9404). The changes to proposed §§98.1, 98.2, 98.3 and 98.4 are adopted to address certain comments raised during the comment period, and are limited to clarification and procedural, non-substantive modifications. Sections 98.1 - 98.4 will be republished.

Section 98.1 is added to define relevant terms. Paragraph (1) defines the term "dental support agreement." Paragraph (2) defines the term "non-dentist owner." Paragraph (3) defines "Professional Entity."

Section 98.2 specifies the procedures for registering with the secretary of state as well as renewing a registration as a DSO.

Section 98.3 provides that a registration for a DSO is valid for one year and must be renewed annually. The section also provides clarification as to the time period in which DSOs must first register.

Section 98.4 sets forth the procedures and time periods to submit a certificate of correction.

Section 98.5 is added to set forth the required fees under Chapter 73 of the Business & Commerce Code. Subsection (a) sets forth the fee for registering or renewing the registration of a DSO. Subsection (b) sets forth the fee for filing a statement of correction.

Three comments were received regarding adoption of the new rules.

Steve Bresnan, on behalf of the Association of Dental Support Organizations, submitted the following comments. The Office's response to each comment is included with the description of each comment:

1. The first comment requests clarification regarding when DSOs are required to register. The comment suggests that DSOs in existence as of the effective date of the rules, with dental support agreements in existence as of the effective date of the rules, be required to register no later than 90 days

after the effective date of the rules. However, based on the language of SB 519, it is the position of this Office that the statute provides for the timing of all registrations. In order to clarify what is already provided in SB 519, §98.3(c) and (d) are added to provide specific language as to the timing of the initial registration for DSOs.

2. The second comment requests that the proposed rules be amended to include that registration is required where the agreements are between a professional entity owned by one or more dentists and services are provided to such a professional entity. After careful review, the Office finds that such a change to the rules would be unnecessary because the language of SB 519 specifies that a dental support organization is defined as "an entity that, under an agreement, provides two or more business support services to a dentist." The types of agreements contemplated by the statute, whether entered into with a professional entity or a dentist, still provide support services to a dentist. As a result, the Office understands that registration would be required whether or not the parties to an agreement include a professional entity. However, to assist with some clarification, the Office has added a definition to §98.1(3) to define professional entity, has clarified §98.2(b)(2) to refer to the support services being provided to the dentist under a dental support agreement, has modified the definition of a dental support agreement in §98.1(1) to refer to support services being provided to a dentist under an agreement, and has included the name of the professional entity through which dental services are provided, if any, to the registration requirements in §98.2(b)(2)(B).

3. The third comment requests changes to the language of the proposed rules, where they refer to "applicant" and "application [for registration]." Specifically, it generally requests that the Office replace words such as "applicant" and "application" with "registrant" and "registration", respectively, contending that the former language implies that the Office has regulatory authority not given to it by SB 519, and thus allegedly exceeds the authority of this Office. After careful review, the Office rejects the notion that the language implies regulatory authority the Office does not have because the Office retains the authority to reject registrations for various reasons when the registration does not facially comply with the statutory requirements (i.e., is missing information required by §73.004 of the Business and Commerce Code) or does not include the required fee, both of which the comment itself recognizes are within the Office's authority. However, the Office is not opposed to the language suggested in the third comment and therefore amends §§98.2, 98.3, and 98.4 to replace references to "applicant" and "application" (as well as "application for registration") with "registrant" and "registration" or "registration form", as requested.

4. The fourth comment requests an extension to the time period for submitting a statement of correction each quarter, to 45 days after the end of the calendar quarter during which a change in

the original registration occurs. The Office has amended §98.4 to include this 45-day time period.

5. The fifth comment requests an amendment to the proposed rules to remove the requirement that the registration include trade names. The fifth comment also contends that §98.2(b)(2)(B) is surplus language as the DSO registrant's name is already on the registration; however, the Office notes that §98.2(b)(2)(B) refers to information to be provided regarding the dentist, not the DSO, and, in any event, as amended, §98.2(b)(2)(B) now refers to the name of a professional entity through which a dentist provides services, in accordance with the Office's response to the second comment. The Office also amends §98.2 and §98.3 to remove references to trade names, and only refer to legal names, and has clarified that the DSO must include a legal name in any Statement of Correction in §98.4(b)(1).

6. The sixth comment addresses the registration form and did not request any changes to the proposed rules. The Office has not made any modifications to the proposed rules based on the sixth comment.

7. The seventh comment requests that the requirement regarding notarizations be removed and that a registration be signed by a person authorized to signed on behalf of the registrant and include in the form an attestation to that effect. The Office incorporates this change by removing the notarization requirement in §98.3 and §98.4.

Craig S. Armstrong, on behalf of the Texas Dental Association, sent in a comment in support of the proposed rules.

Jordan Dixon, clerk of the Senate Committee on Health and Human Services, submitted a question regarding whether the rules contained a clarification of the registration deadlines in SB 519; this has been addressed in the adopted rules in response to Mr. Bresnan's first comment as described above.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §98.1

#### STATUTORY AUTHORITY

The rule is adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rule is adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

#### §98.1. Definitions.

Words and terms defined in Chapter 73 of the Business & Commerce Code shall have the same meaning in this chapter. In addition the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Dental Support Agreement--The agreement under which a dental support organization provides two or more business support services to a dentist.

(2) Non-Dentist Owner--A person, including a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity,

who is not a licensed dentist but maintains 10% or more ownership in a dental support organization.

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

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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## SUBCHAPTER B. REGISTRATION AND RENEWAL OF DENTAL SUPPORT ORGANIZATIONS

### 1 TAC §98.2, §98.3

#### STATUTORY AUTHORITY

The rules are adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rules are adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

#### §98.2. *Registration and Renewal of Dental Support Organizations.*

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

(1) A completed registration form (See Form 3801);

(2) Payment of the filing fee stated in §98.5 of this chapter (relating to Filing Fees); and

(3) A registrant contact sheet (See Form 3802).

(b) A registration or renewal must comply with the Business & Commerce Code, §73.004, and also provide:

(1) For the dental support organization:

(A) The legal name; and

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

(2) For each dentist who is being provided two or more business support services under a dental support agreement:

(A) The dentist's name and business address;

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

(C) A disclosure of the business support services provided pursuant to any dental support agreement the dental support organization has.

(3) For each person who owns 10% or more of the dental support organization:

- (A) The name and address of the owner; and
- (B) Whether the owner is a dentist or non-dentist owner.

(c) Each registration shall be signed by a person authorized to act by or on behalf of the dental support organization.

*§98.3. Timing of Registration.*

(a) Registrations will expire annually on December 31 of each year. Renewals may be submitted from 90 days prior to expiration until January 31 of the year for which the next registration will be effective, by submitting a completed registration form and paying the filing fee, except as provided in subsection (b) of this section.

(b) In the event a dental support organization meets the requirements for registration under §73.004 of the Business & Commerce Code after January 31, the dental support organization must file an application for registration within 90 days after the date of execution of a dental support agreement.

(c) The initial registration for a dental support organization that has entered into a dental support agreement prior to February 1, 2016 must be filed not later than January 31, 2017.

(d) The initial registration for a dental support organization that first enters into a dental support agreement on or after February 1, 2016 must be filed not later than the 90th day after the date the agreement is executed.

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**SUBCHAPTER C. STATEMENT OF CORRECTION**

**1 TAC §98.4**

**STATUTORY AUTHORITY**

The rule is adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rule is adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

*§98.4. Corrections.*

(a) A dental support organization must submit a statement of correction if, during the quarter, any information provided in the registration changes.

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

- (1) The legal name of the dental support organization;
- (2) The date of the last filed registration;
- (3) Any identification number assigned by the secretary of state assigned to the dental support organization; and
- (4) A statement identifying the information that has changed.

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

- (1) First quarter (January 1 - March 31) - Statement of correction due not later than the 45th day after March 31.
- (2) Second quarter (April 1 - June 30) - Statement of correction due not later than the 45th day after June 30.
- (3) Third quarter (July 1 - September 30) - Statement of correction due not later than the 45th day after September 30; and
- (4) Fourth quarter (October 1 - December 31) - Statement of correction due not later than the 45th day after December 31.

(d) Each statement of correction shall be signed by a person authorized to act by or on behalf of the dental support organization.

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

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**SUBCHAPTER D. FILING FEES**

**1 TAC §98.5**

**STATUTORY AUTHORITY**

The rule is adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rule is adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

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## TITLE 16. ECONOMIC REGULATION

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

#### CHAPTER 120. LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 120, §§120.1, 120.10, 120.20, 120.21, 120.26, 120.65, 120.67 - 120.70, 120.90 and 120.95, regarding the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9413). These rules will not be republished.

The Commission adopts new rules at 16 TAC Chapter 120, §§120.22 - 120.25, 120.66 and 120.80 with changes to the proposed text as published in December 25, 2015, issue of the *Texas Register* (40 TexReg 9413). These rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 120 are necessary to implement S.B. 202 and to regulate the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 25 TAC Chapter 140, Subchapter K, regarding the Dyslexia Therapists and Dyslexia Practitioners program, which are still in effect.

Sections 120.1, 120.10, and 120.65 - 120.69 are adopted with an effective date of April 15, 2016, to enable the Department to form the Dyslexia Therapists and Practitioners Advisory Committee in advance of the date that the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program begins operation at the Department. The remaining rule sections

are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program on October 3, 2016.

The adopted new §120.1 provides the statutory authority to regulate licensed dyslexia therapists and practitioners.

The adopted new §120.10 creates the definitions to be used in this chapter.

The adopted new §120.20 establishes the application criteria.

The adopted new §120.21 establishes the licensing requirements for dyslexia therapists.

The adopted new §120.22 establishes the licensing requirements for dyslexia practitioners.

The adopted new §120.23 creates the examination guidelines.

The adopted new §120.24 sets the requirements for training programs.

The adopted new §120.25 creates the continuing education requirements for all licenses in this program.

The adopted new §120.26 sets the parameters for renewing a license.

The adopted new §120.65 establishes the authority and membership of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.66 creates the duties of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.67 sets the terms and vacancies process for the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.68 provides for a presiding officer of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.69 sets the parameters and provides instruction for calling a meeting of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.70 creates the responsibilities for license holders.

The adopted new §120.80 establishes the fees related to the licensed dyslexia therapists and licensed dyslexia practitioners program.

The adopted new §120.90 creates professional standards that all licensees must adhere to. This section also establishes the basis on which disciplinary action may be taken.

The adopted new §120.95 provides information on how the public may reach the department to file a complaint against a license holder.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9413). The deadline for public comments was January 25, 2016. The Department held a public hearing on the proposed rules on January 12, 2016. The Department received written comments from four interested parties and three oral comments, including two from the Academic Language Therapy Association on the proposed rules during the 30-day public comment period.

Comment--Three commenters expressed general approval of the proposed rules, including specifically the provisions for on-line renewal and updating personal information, the requirement to conduct background checks on applicants, the requirement for the advisory committee meetings to be held in compliance with the Open Meetings Act, the focus in the rules on what is best for the public, the availability of the toll-free complaint line, the consideration of dyslexia treatment as a health profession, and not charging subscription or convenience fees.

*Department Response*--The Department acknowledges and appreciates the expressions of satisfaction with the proposed rules. No changes have been made to the rules in response to these comments.

Comment--Three commenters expressed concern about the meaning and implications of the phrase "...Academic Language Therapy Association or its equivalent, as approved by the department..." appearing in the rules in relation to certifications and to continuing education programs offered or approved by the Academic Language Therapy Association (ALTA). The commenters expressed concern about whether the future Dyslexia Therapists and Practitioners Advisory Committee members would play a role in the approvals, and how those members would be chosen to serve on the committee.

*Department Response*--The Texas Occupations Code, Chapter 403 does not require or authorize the Department to accept only ALTA certifications or programs or approvals of programs of continuing education. Therefore the Department has included this language to recognize that ALTA is currently approved but that other providers or a successor entity to ALTA could be approved in the future. The Dyslexia Therapists and Practitioners Advisory Committee members would be involved in the evaluation of other providers, but the power to approve them is reserved to the Department. The Department conducts the recruitment and examination of the credentials of potential committee members, and the presiding officer of the Commission appoints the members upon approval by the Commission. The member selection process is governed by Texas Occupations Code, Chapter 51 and 16 TAC Chapters 60 and 120 (these rules). The Department and Commission have considerable experience applying the requirements for evaluating and selecting qualified candidates for multiple advisory bodies. No change has been made to the rules in response to this comment.

Comment--Five commenters expressed concern that licensees who obtained therapist licensure without a master's degree in the past might now be required to obtain a master's degree in order to renew their licenses. One of the commenters requested that the rules include a provision stating that the master's degree requirement will not now be imposed on dyslexia therapists who are currently licensed.

*Department Response*--The Department will continue to renew licenses that were validly issued under the requirements applicable at the time of issuance as long as all current renewal requirements are satisfied, including completion of continuing education requirements and payment of fees. Requirements for renewal of the therapist license do not include the requirement to hold a master's degree. The Department will not impose at renewal, retroactively or otherwise, requirements for initial licensure that were not applicable at the time of issuance. However, all applicants for new or renewal licenses may be subject to new requirements that are imposed by law. Applicants who let their licenses lapse and who no longer qualify to late-renew the license

must meet the current requirements for licensure. No change has been made to the rules in response to these comments.

Comment--Three commenters suggested that the term "academic language teacher" should be removed from the rules because there is no longer such a credential.

*Department Response*--The Department agrees and has removed the term "academic language teacher" from the rule.

Comment--Two commenters pointed out that there are not two dyslexia licensing examinations available as indicated in §120.23 and §120.66.

*Department Response*--The Department agrees and has modified §120.23 and §120.66 to make the correction.

Comment--Three commenters expressed concern that §120.24 lists only one of the requirements specified in Texas Occupations Code §403.106(a), and are concerned that the requirements in the statute are still applicable.

*Department Response*--All requirements in Texas Occupations Code, Chapter 403 and in the adopted rules are applicable and enforceable. Most of the provisions in Chapter 403 are not repeated in the rules in the interest of clarity and brevity. The §403.106(a)(11) provision was included in the rule in order to update the referenced version of the cited publication only. A clarifying change was made to the rule in §120.24 to include the applicability of Texas Occupations Code §403.106.

Comment--One commenter questioned the ability of the Department and the advisory committee to determine whether a training program meets the requirements of Texas Occupations Code §403.106, as provided in proposed rule §120.24(b), due to the special expertise required to make such a determination.

*Department Response*--The requirement for the Department to consult with the advisory committee to determine whether a training program meets the requirements of §403.106 is located in §403.106(c). The repetition of this requirement in rule is not necessary therefore, the Department has removed it. It is within the Department's power to summon all necessary resources to make any such determination as needed.

The Department made changes to the proposed rules based on written comments and oral comments received during the public hearing held on January 12, 2016. At its meeting on March 9, 2016, the Commission adopted the proposed rules with the recommended changes and with separate effective dates. Sections 120.1, 120.10, and 120.65 - 120.69 are adopted with an effective date of April 15, 2016, and the remaining sections are adopted with an effective date of October 1, 2016.

#### **16 TAC §§120.1, 120.10, 120.65 - 120.69**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 403, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the adoption.

#### *§120.66. Duties.*

The committee shall advise the department regarding rules relating to the licensure and regulation of dyslexia therapists and dyslexia practitioners, including continuing education requirements and the approved examination for licensure.

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

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Executive Director

Texas Department of Licensing and Regulation

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



## 16 TAC §§120.20 - 120.26, 120.70, 120.80, 120.90, 120.95

The new rules are adopted under Texas Occupations Code, Chapters 51 and 403, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the adoption.

### §120.22. *Dyslexia Practitioner Licensing Requirements.*

(a) A person who holds current certification as an academic language practitioner issued by the Academic Language Therapy Association or its equivalent, as approved by the department, may be licensed as a dyslexia practitioner if the person has earned a bachelor's degree from an accredited public or private institution of higher education.

(b) A person who qualifies for licensure under subsection (a), is not required to provide documentation to the department that the person meets the requirements of Occupations Code §403.104(a)(2) - (5), Eligibility for Licensed Dyslexia Practitioner License.

(c) A licensed dyslexia practitioner may practice only in an educational setting, including a school, learning center, or clinic.

### §120.23. *Examination.*

(a) The examination designated and approved by the department for licensure as a dyslexia therapist is the Alliance National Registration Examination, Therapist Level, administered by the Academic Language Therapy Association.

(b) The examination designated and approved by the department for licensure as a dyslexia practitioner is the Alliance National Registration Examination, Practitioner Level, administered by the Academic Language Therapy Association.

(c) The applicable licensure examination requirement is waived for a person who holds current certification as an academic language therapist or academic language practitioner issued by the Academic Language Therapy Association, or its equivalent, as approved by the department.

### §120.24. *Requirements for Training Programs.*

(a) For purposes of determining whether an applicant satisfies the training requirements for a license under the Act, a multisensory structured language education training program completed by the applicant must meet the requirements in Occupations Code, §403.106 and must have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning

Dyslexia and Related Disorders" (2014) or a revised version of that publication approved by the department.

(b) Training programs accredited by the International Multisensory Structured Language Education Council (IMSLEC), meet the requirements of the Act.

### §120.25. *Continuing Education.*

(a) A license holder must complete 20 clock-hours of continuing education during each two-year licensure period.

(b) Continuing education credit taken by a license holder for renewal shall be acceptable if the experience falls in one or more of the following categories and meets the requirements of subsection (c):

(1) academic courses at a regionally accredited college or university;

(2) in-service educational programs, training programs, institutes, seminars, workshops and conferences;

(3) instructing or presenting education programs or activities at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences not to exceed five clock-hours each continuing education period;

(4) publishing a book or an article in a peer review journal not to exceed five clock-hours each continuing education period; or

(5) successful completion of a self-study program, not to exceed ten clock-hours each continuing education period.

(c) Continuing education credit taken by a license holder, shall be in one or more of the following content areas:

(1) basic language and/or learning disorders;

(2) applied multisensory practice and methodology;

(3) curricula in academic language therapy;

(4) related research in medicine, psychology, education, or linguistics; or

(5) professional practice, including relevant laws, rules, and ethics of practice.

(d) Continuing education experience shall be credited as follows:

(1) Completion of course work at or through an accredited college or university, shall be credited for each semester hour on the basis of ten clock-hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs that meet the criteria of subsection (c)(2) or (3), shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) A clock-hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) Continuing education programs, as described in subsection (c)(2) and (3), must be offered or approved by the Academic Language Therapy Association or its equivalent, as approved by the department.

(5) Successful completion of continuing education experience, as described in subsection (c)(2) and (3), is evidenced by a certificate of completion or attendance issued by the approved sponsoring organization of the course.

(6) Successful completion of continuing education experience, as described in subsection (b)(4), is evidenced by submission of a copy of the publication.

(7) Successful completion of continuing education experience, described in subsection (b)(5), is evidenced by a certificate of completion presented by the sponsoring organization of the self-study program.

(e) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours, are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(f) The audit process shall be as follows.

(1) The department shall select for audit, a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) All license holders selected for audit shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A license holder who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until the required continuing education documents are received, accepted and approved by the department.

(g) Licenses will not be renewed until continuing education requirements have been met.

(h) A person who fails to complete continuing education requirements for renewal may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(i) The department may not grant continuing education credit to any license holder for:

(1) education incidental to the regular professional activities of a license holder, such as learning occurring from experience or research;

(2) professional organization activity, such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (a); or

(4) performance of duties that are routine job duties or requirements.

#### *§120.80. Fees.*

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a license will be issued or renewed.

(b) All fees paid to the department are nonrefundable.

(c) Licensing fees are as follows:

(1) application and initial license--\$150

(2) renewal--\$150

(d) Late renewal fees for licenses issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(e) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(f) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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

Filed with the Office of the Secretary of State on March 18, 2016.

TRD-201601281

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: October 1, 2016

Proposal publication date: December 25, 2015

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



## **TITLE 19. EDUCATION**

### **PART 2. TEXAS EDUCATION AGENCY**

#### **CHAPTER 74. CURRICULUM REQUIREMENTS**

##### **SUBCHAPTER A. REQUIRED CURRICULUM 19 TAC §74.6**

The State Board of Education (SBOE) adopts new §74.6, concerning required curriculum. The new section is adopted without changes to the proposed text as published in the December 25, 2015 issue of the *Texas Register* (40 TexReg 9419) and will not be republished. The rule action adopts charts indicating the alignment of the College and Career Readiness Standards (CCRS) and the Texas Essential Knowledge and Skills (TEKS), as required by House Bill (HB) 1613, 84th Texas Legislature, Regular Session, 2015.

**REASONED JUSTIFICATION.** In 2006, the 79th Texas Legislature required the Texas Education Agency (TEA) and the Texas Higher Education Coordination Board (THECB) to establish vertical teams composed of public school educators and faculty from institutions of higher education that would develop college- and career-ready standards in the areas of English/language arts, mathematics, science, and social studies. The work of the vertical teams was organized in three phases. The first phase entailed a series of team meetings to create the CCRS for the four subject areas. Phase two required the vertical teams to make recommendations regarding alignment of the TEKS with the CCRS. Phase three required the vertical teams to develop or establish instructional strategies, professional development materials, and online support materials for students who need additional assistance in preparing to successfully perform college-level work. Teams also engaged in a series of gap analyses to ensure alignment between the adopted TEKS and the CCRS.

The THECB adopted the CCRS in January 2008. The commissioner of education approved the CCRS, and the SBOE incorporated them into the TEKS as follows: English language arts and reading TEKS in 2008; mathematics and science TEKS in 2009; and social studies TEKS in 2010.

The 84th Texas Legislature, Regular Session, 2015, passed HB 1613, amending the Texas Education Code (TEC), §28.008, to require the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the TEKS. New 19 TAC §74.6 adopts in rule charts demonstrating the alignment of the TEKS with the mathematics, science, social studies, and cross-disciplinary CCRS. The SBOE will adopt a chart demonstrating the alignment of the TEKS with the English/language arts CCRS following adoption of revisions to the English and Spanish language arts and reading TEKS.

New 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, §74.6, College and Career Readiness and Texas Essential Knowledge and Skills Alignment, was approved by the SBOE for first reading and filing authorization at its November 20, 2015 meeting and for second reading and final adoption at its January 29, 2016 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2016-2017 school year. The earlier effective date is necessary in order to meet the statutory requirement for the approval of the alignment.

**SUMMARY OF COMMENTS AND RESPONSES.** No public comments were received on the proposal.

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code, §28.008, as amended by HB 1613, 84th Texas Legislature, Regular Session, 2015, which requires the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the TEKS.

**CROSS REFERENCE TO STATUTE.** The new section implements the Texas Education Code, §28.008, as amended by HB 1613, 84th Texas Legislature, Regular Session, 2015.

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

Filed with the Office of the Secretary of State on March 17, 2016.

TRD-201601270

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: April 6, 2016

Proposal publication date: December 25, 2015

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



## CHAPTER 102. EDUCATIONAL PROGRAMS

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

#### 19 TAC §102.1003

The Texas Education Agency (TEA) adopts new §102.1003, concerning the high-quality prekindergarten grant program. The new section is adopted with changes to the proposed text as published in the February 5, 2016 issue of the *Texas Register* (41 TexReg 903). The adopted new section outlines the requirements of a new grant program authorized by House Bill (HB) 4, 84th Texas Legislature, Regular Session, 2015.

**REASONED JUSTIFICATION.** Texas Education Code (TEC), §29.165, as added by HB 4, 84th Texas Legislature, 2015, requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program.

In accordance with the TEC, §29.165, adopted new 19 TAC §102.1003, High-Quality Prekindergarten Grant Program, outlines school district and charter school eligibility for grant funding and qualifications for students eligible to receive instruction under the grant program.

In accordance with TEC, §29.167, adopted new §102.1003(c) requires school districts and charter schools to implement a curriculum that addresses all of the Texas Prekindergarten Guidelines (updated 2015). Adopted new §102.1003(d) requires districts and charter schools to measure the progress of each student in meeting the recommended outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool selected from the commissioner's list of approved prekindergarten instruments in order to be eligible to receive grant funding under this program. In response to public comment, a reference to the statutory requirement related to kindergarten readiness assessments was added at adoption (§102.1003(d)(2)).

Also in accordance with TEC, §29.167, the adopted new rule outlines the requirements teachers must meet in order to provide instruction in a high-quality prekindergarten program. In response to public comment, the following changes were also made at adoption.

Documented completion of the Texas School Ready Training Program (TSR Comprehensive) was added as an additional qualification (§102.1003(e)(5)).

Language was adjusted to clarify that professional development must be completed in the Texas Prekindergarten Guidelines in addition to other relevant topics related to high-quality prekindergarten and that not all professional development must be completed solely related to the Texas Prekindergarten Guidelines (§102.1003(e)(6)).

The requirement related to professional development completed prior to the 2016-2017 school year was amended to reference the Texas Prekindergarten Guidelines that were approved prior to 2015 (§102.1003(e)(6)).

The requirement that at least half of the professional development hours be completed in face-to-face training opportunities was removed and the reference to "master teachers" was replaced with "specialists in early childhood education" (§102.1003(e)(6)).

In accordance with TEC, §29.168, the adopted rule also identifies the family engagement components that districts and charter schools are required to address in a family engagement plan in order to be eligible to receive grant funding under this program. In response to public comment, a requirement that a district or

charter make the family engagement plan available on the district, charter, or campus website was added (§102.1003(f)).

In accordance with TEC, §29.169, the adopted new rule also identifies reporting requirements related to the grant program. In response to public comment, the requirement for districts and charters to report the results of the district's or charter school's kindergarten students on a kindergarten readiness instrument was adjusted from 100% to 95% (§102.1003(g)).

In response to public comment, the following statutory requirement was added to the rule as new §102.1003(i), "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

**SUMMARY OF COMMENTS AND AGENCY RESPONSES.** The public comment period on the proposal began February 5, 2016, and ended March 7, 2016. Following is a summary of the public comments received and corresponding agency responses regarding proposed new 19 TAC 102, Educational Programs, Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs, §102.1003, High-Quality Prekindergarten Grant Program.

**Comment.** The Waterford Institute asked if the prekindergarten curriculum needs to be identified and written into the grant application.

**Agency Response.** This comment is outside the scope of the rulemaking process.

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children asked for confirmation that a locally developed curriculum can satisfy the curriculum requirements outlined in proposed §102.1003(c) and be reported as the curriculum used under proposed §102.1003(g)(1).

**Agency Response.** The agency provides the following clarification. Districts may implement and report a locally developed curriculum that addresses all of the Texas Prekindergarten Guidelines to satisfy the curriculum requirements outlined in proposed §102.1003(c) and reporting requirements under proposed §102.1003(g)(1).

**Comment.** The superintendent of KIPP Houston Public Schools expressed hope that the agency would allow participating school districts and public charter schools the opportunity to vet and update the state's selected list of suggested literacy and mathematics curriculum.

**Agency Response.** The agency provides the following clarification. The state does not have a list of suggested literacy and mathematics curricula. Decisions regarding curriculum have been left to local discretion.

**Comment.** The Texas Association of School Administrators expressed support for the flexibility in proposed new §102.1003(c) that allows districts to make decisions locally about the schedule and delivery of instruction on the ten domains in the revised Texas Prekindergarten Guidelines.

**Agency Response.** The agency agrees and has maintained language as proposed.

**Comment.** The Waterford Institute asked whether an approved progress monitoring instrument must be used or if districts can

purchase a curriculum and progress monitoring instrument separately.

**Agency Response.** The agency provides the following clarification. Under TEC, §29.169(c), an assessment instrument administered to a prekindergarten program class must be selected from a list of appropriate prekindergarten assessment instruments identified by the commissioner.

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding physical development to the list of required domains to be measured using a progress monitoring instrument under proposed §102.1003(d)(1).

**Agency Response.** The agency disagrees and has determined that in order to measure student progress toward kindergarten readiness the list of domains to be measured is appropriate as proposed.

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended amending §102.1003(d)(2) to include a reference to TEC, §28.006(b), which outlines the requirements in state law related to kindergarten reading instruments.

**Agency Response.** The agency agrees and has amended TEC, §102.1003(d)(2), to read, "the preparation of each student for kindergarten using a kindergarten readiness instrument for reading as described in TEC, §28.006."

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, Stand for Children, and an individual recommended aligning the target percentage of kindergarten students for whom kindergarten readiness instrument results are reported with the agency's accountability "safe guard" targets for participation on STAAR of 95%.

**Agency Response.** The agency agrees and has amended §102.1003(g)(3)(B) to read, "the results for at least 95% of the district's or charter school's kindergarten students on the kindergarten readiness instrument."

**Comment.** United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children expressed concern that if progress monitoring is tied to reported program evaluation, teachers might be incentivized to inflate the results and then prekindergarten will look strong but ineffective if the results do not show in kindergarten. The commenters asked if sampling would be permissible.

**Agency Response.** The agency provides the following clarification. The agency has determined that sampling would not be permissible. Under TEC, §29.1532, a district that administers an assessment instrument to students in prekindergarten classes must report to the agency a description and the results of each type of assessment instrument.

**Comment.** Lumin Education asked for clarification regarding whether a child with an individualized education program (IEP) would be exempt from the requirement that a district or charter report the results of a kindergarten readiness instrument for 100% of students.

Agency Response. The agency provides the following clarification. In response to other comments, the agency has amended §102.1003(g)(3)(B) to read "the results for at least 95% of the district's or charter school's kindergarten students on the kindergarten readiness instrument."

Comment. Lumin Education expressed full support for the choice of using a "progress monitoring tool" rather than an assessment or test. The commenter indicated that focusing on progress at this age is more valuable and informative than having a child take a test.

Agency Response. The agency agrees and has maintained language as proposed.

Comment. An individual asked if a district will have to complete the full Circle assessment, including measures on science, social studies, physical health development, etc., or if the district will only have to complete the components addressed in the new rule.

Agency Response. The agency provides the following clarification. A school district or charter school would be required to measure the progress of each student in social and emotional development, language and communication, emergent literacy reading, emergent literacy writing, and mathematics.

Comment. The superintendent of KIPP Houston Public Schools asked if I-Station will continue to be free for districts that participate in the new prekindergarten grant.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. The Association of Texas Professional Educators expressed the belief that granting school districts maximum flexibility in choosing how to measure state-determined student success metrics and avoiding the appearance of preferential treatment of one or a limited number of vendors are both highly advantageous goals and stated that the agency should allow grantees to choose vendor(s) either on or outside of the commissioner's list to monitor progress in the content areas listed in §102.1003(d)(1).

Agency Response. The agency provides the following clarification. Under TEC, §29.169(c), an assessment instrument administered to a prekindergarten program class must be selected from a list of appropriate prekindergarten assessment instruments identified by the commissioner.

Comment. The Waterford Institute asked if the family engagement plan must include home visits.

Agency Response. The agency provided the following clarification. Home visits are not specifically required in the rule. A school district has the authority to identify the specific strategies it will use to meet the required components of the family engagement plan.

Comment. Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding language to proposed §102.1003(f) that would require districts to publish the family engagement plan on the district or school website.

Agency Response. The agency agrees and has amended §102.1003(f) to read, "To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall develop, implement, and make available on

the district, charter, or campus website a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven."

Comment. The superintendent of KIPP Houston Public Schools commented that the proposed rule contains 40 requirements for a family engagement plan and suggested that this list should be scaled down significantly.

Agency Response. The agency provides the following clarification. The rule requires that a family engagement plan include six components. The strategies that follow the term "such as" for each of the six required components in the rule are examples and are not required to be included in the family engagement plan.

Comment. The Texas Association of School Administrators asked for confirmation that examples of family engagement strategies following the phrase "such as" are examples only and that a district's grant application will not be penalized if only a portion of the examples are included in its family engagement program.

Agency Response. The agency provides the following clarification. The strategies that follow the term "such as" for each of the six required components in the rule are examples only and are not required to be included in the family engagement plan.

Comment. Texans Care for Children recommended revising the proposed rule to address TEC, §29.167(d), which states that a school district must attempt to maintain an average ratio in any prekindergarten class of not less than one certified teacher or teacher's aide for every 11 students. The commenter also recommended clarifying in the proposed rule or through guidance provided to districts a process to demonstrate that a district either meets the ratio requirement or is making a reasonable attempt to do so. This commenter suggested that the process could include requiring each district to report the average teacher/aide-to-student ratio in each prekindergarten class and submit a written plan to the Texas Education Agency to remedy any classroom ratio over 11:1 over a three-year period.

Agency Response. The agency agrees with the addition of language that would require districts and charters to attempt to maintain an average teacher- or teacher aide-to-student ratio. In response to this and other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

The agency disagrees that a process should be included to require a district or charter to submit a written plan to remedy any classroom ratio over 11:1 over a three-year period because statute only requires that districts and charters attempt to meet the ratio.

The agency also provides the following clarification. Data will be collected to allow the agency to calculate the teacher- or teacher aide-to-student ratio in prekindergarten classrooms without requiring school districts and charters to specifically report the ratio.

Comment. Literacy Connexus commented that it endorsed the comments of Texans Care for Children regarding the need for a required student-to-teacher class ratio, optimally at the recommended 11:1 ratio.

Agency Response. The agency disagrees and has determined that statute only requires that districts and charters attempt to meet the student-to-teacher ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. Two Montessori school principals expressed support of the rule as proposed. The commenters expressed agreement with the lack of specification around class size or student-to-teacher ratios.

Agency Response. The agency agrees and has determined that districts have the authority to identify class size and student-to-teacher ratios appropriate for their programs.

Comment. An individual expressed a desire to see student-to-teacher ratios addressed in the rule and suggested a cap of not more than 18:1.

Agency Response. The agency disagrees and has determined that statute only requires that districts and charters attempt to meet the student-to-teacher ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. An individual recommended taking a step toward a student-to-teacher ratio of 11:1.

Agency Response. The agency agrees and has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The Texas Center for Public Policy Priorities recommended including nationally recognized class-size limits and staff-child ratios in the criteria for a high-quality program.

Agency Response. The agency disagrees and has determined that statute only requires that districts and charters attempt to meet the student-to-teacher ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The chief of staff for Representative Mary Gonzalez asked why the teacher-to-student ratio/class size language included in House Bill 4 was excluded from the proposed rule and asked whether there must be a rule that references the language of the enabling statute if legislative language exists.

Agency Response. The agency provides the following clarification. Administrative rules do not need to repeat language

that already exists in statute. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The Texas Classroom Teachers Association expressed the belief that the statutory requirement for school districts to attempt to maintain a 1:11 staff/student ratio must be included in the rule.

Agency Response. The agency agrees and has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. Raise Your Hand Texas commented that the proposed rule does not offer guidance or collect information regarding TEC, §29.167(d), which requires a district or charter school to attempt to maintain a prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students. The commenter stated that the commissioner should require districts to submit documentation describing their plans and procedures to maintain this ratio in an effort to align with bill language and promote transparency.

Agency Response. The agency disagrees with the comment that districts should be required to submit documentation describing plans and procedures to maintain the ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The superintendent of KIPP Houston Public Schools expressed agreement with the lack of prescribed student-to-teacher ratio.

Agency Response. The agency agrees and has determined that districts have the authority to identify class size and student-to-teacher ratios appropriate for their programs.

Comment. One teacher expressed concern regarding the grant program's certification requirements for prekindergarten teachers. The commenter recommended grandfathering the credentials of teachers who are already teaching prekindergarten for the grant program.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. One teacher expressed concern that teachers would be expected to pay for new certification and/or training requirements and that if teachers must complete training or coursework during the school day, the cost of employing substitute teachers would not be covered.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. One teacher expressed concern that the certification requirements for prekindergarten teachers under the grant pro-

gram would force teachers currently teaching prekindergarten out of the classroom.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. An early childhood program supervisor commented that the teacher qualifications seem to discount the value of an early childhood teacher certification from the State Board for Educator Certification (SBEC). She further commented that while a Child Development Associate (CDA) provides valuable preparation on early childhood development, it does not appear to prepare teachers for their role in preparing children to enter the K-12 world academically. The commenter also stated that the qualifications do not seem to respect the value of the university coursework of a new teacher.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. One administrator expressed concern that while the professional development requirements are welcomed, districts will need more time and support for implementation. The commenter stated that sorting through documentation to see which teachers need additional hours, coordinating a flexible professional development plan that includes all of the required components, and effectively executing the plan by the end of the 2016-2017 school year will be a challenge.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified, including allowing teachers multiple years to comply with the professional development option.

Comment. One administrator suggested that education service centers either offer face-to-face trainings that meet the requirements of the grant or assist districts in coordinating multi-district cooperatives for providing some of the training.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. One administrator suggested reducing the training requirements for the first year from 30 to 15 hours.

Agency Response. The agency disagrees and has determined that 30 hours is equivalent to one week of training and is appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's qualification requirements for prekindergarten teachers in §102.1003(e).

Comment. Collaborative for Children stated that the group felt that 12 college credit hours in early childhood education or early childhood development would be another helpful and important equivalent to a CDA credential to add to proposed new §102.1003(e). The commenter stated that the National Association for the Education of Young Children (NAEYC) has already defined this as an equivalent to a CDA.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's qualification requirements for prekindergarten teachers in §102.1003(e).

Comment. The Children's Learning Institute, Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas,

First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended the addition of the Texas School Ready Training Program (TSR Comprehensive) as an additional qualification under the teacher qualification requirements in proposed §102.1003(e).

Agency Response. The agency agrees and has added new §102.1003(e)(5) to read, "documented completion of the Texas School Ready Training Program (TSR Comprehensive)."

Comment. Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended amending proposed new §102.1003(e)(5)(B) to require teachers who have not completed the first 30 hours of required training for the grant programs to complete 10 hours within the first six weeks of the school year or, if hired after the school year starts, within six weeks after the hire date.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program allow for appropriate flexibility. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended amending proposed new §102.1003(e)(5)(C) to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph are completed in face-to-face training opportunities (which may include the use of distance based technology) that include experiential learning, practical application, and direct interaction with specialists in early childhood education (including hours interacting with an instructional coach)."

Agency Response. The agency disagrees that the rule should state "face-to-face training opportunities (which may include the use of distance based technology)" because the statement appears to be contradictory and would likely create confusion. However, in response to this and other comments, the agency has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. Early Matters (Houston) and an early childhood program supervisor commented that it would be helpful to clarify that a district's prekindergarten teacher training plan will allow districts to continue to provide professional development for prekindergarten teachers in topics other than the ten domains of the revised Texas Prekindergarten Guidelines because districts train teachers on a variety of necessary skills, such as classroom management. The commenter agreed that teachers need to have quality early childhood-specific training, but also indicated that participating school districts and charter schools should have the flexibility to ensure that prekindergarten teachers get all of the training they need to be effective teachers.

Agency Response. The agency agrees and has amended proposed new §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state "...all ten domains in the

Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. Early Matters (Houston) commented that the requirement that half of a teacher's continuing professional education (CPE) hours be face-to-face will likely be problematic for some smaller and rural districts and that technological advancements have made remote instruction, including coaching to individual teachers, widely available and effective. The commenter requested that the agency consider amending the rule to allow for such remote and technological training.

Agency Response. The agency agrees and has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding neurological basis of learning, learning environment, academic and nonacademic learning through play, family engagement, and informal assessments to the topics that must be covered in the required training in proposed new §102.1003(e).

Agency Response. The agency disagrees with the recommendation to include a specific list of additional professional development topics because it could be overly limiting for districts and charters. However, in response to this and other comments, the agency has amended proposed §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state "...all ten domains in the Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding a requirement that not later than the 2017-2018 school year and forward, districts implement a prekindergarten instructional coach training program that should include individualized coaching linked to classroom observation and child progress monitoring results.

Agency Response. The agency disagrees and has determined that statutory authority does not exist to include such a requirement in the grant program.

Comment. The superintendent of Austin Independent School District commented that, as currently worded, no teacher could qualify under proposed §102.1003(e)(5)(A) because the prekindergarten guidelines were not updated until late 2015 and recommended that the language be amended to reference the Texas Prekindergarten Guidelines as they existed prior to the 2015 update.

Agency Response. The agency agrees and has amended proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to read, "prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines that were approved prior to 2015 in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period."

Comment. The superintendent of Austin Independent School District commented that the term "master teachers" as referenced in proposed §102.1003(e)(5)(C) is not defined and would

be too limiting and suggested adding a definition and including "specialists in early childhood education."

Agency Response. The agency agrees and has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. The Texas Classroom Teachers Association expressed concern that the enabling statute provides that prekindergarten teachers in school districts are eligible if the district received approval from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom and the commenter does not believe that a reasonable interpretation of "district's prekindergarten-specific instructional training plan" is that a district must ensure that its prekindergarten teachers complete 150 hours of continuing professional education in prekindergarten. The commenter requested that the proposed rule language be stricken.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Classroom Teachers Association commented that teachers who are certified to teach prekindergarten have already demonstrated, by virtue of passing the relevant certification examination, that they have the knowledge and skills that the state has deemed necessary in order to be able to teach prekindergarten. The commenter added that to require them to complete additional training in order to be eligible to teach in the prekindergarten grant program requires more of them than their counterpart prekindergarten teachers who do not hold the appropriate certificate to teach prekindergarten and is unnecessary. The commenter requested that the proposed rule language be stricken.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. The Texas Classroom Teachers Association noted that although TEC, §29.167(c), provides that a school district may allow a teacher employed by the district to receive the training required to be awarded a CDA credential from a regional education service center, the proposed rule does not include this provision and requested that it be included.

Agency Response. The agency disagrees and has determined that it is not necessary to address the method by which a teacher meets one of the qualifications in the rule.

Comment. The Texas Association of School Administrators asked if the requirement in proposed new §102.1003(e)(5)(A) is above and beyond the 150 CPE hours a teacher needs to retain his or her teaching certificate as required by 19 TAC §232.13, or if it is intended to satisfy the certification requirement.

Agency Response. The agency provides the following clarification. The agency has removed the reference to CPE in proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to increase flexibility in the professional development that may be used to meet the requirement.

Comment. The Texas Association of School Administrators asked how teachers will be expected to complete training if there are no approved providers on the TEA-approved provider list for CPE.

Agency Response. The agency provides the following clarification. The agency has removed the reference to CPE in proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to increase flexibility in the professional development that may be used to meet the requirement.

Comment. The Texas Association of School Administrators expressed concern that the requirements in proposed new §102.1003(e)(5) are onerously weighted against public school teachers and discredits those with experience teaching in a public school prekindergarten classroom by not counting that experience as one of the additional qualifications.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. The Texas Association of School Administrators expressed the belief that the proposed rule exceeds the authority of TEC, §29.167(b)(2)(D), that dictates a district-specific training plan by mandating a one-size-fits-all state-level versus district-specific training.

Agency Response. The agency disagrees and provides the following clarification. The agency has removed the reference to CPE in proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), and has clarified that professional development must address the Texas Prekindergarten guidelines in addition to other relevant topics related to high-quality prekindergarten to increase flexibility in the professional development that may be used to meet the requirement.

Comment. The Texas Association of School Administrators expressed the belief that proposed new §102.1003(e)(5) does not allow a district with established high-quality prekindergarten programs to continue to provide its own quality professional development to the teachers participating in the grant program.

Agency Response. The agency disagrees. In response to other comments the agency has amended proposed §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state "...all ten domains in the Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. The Texas Association of School Administrators expressed concern that the requirement in proposed new §102.1003(e)(5)(A) is not a feasible option because the updated guidelines were not available until February 2016.

Agency Response. The agency agrees and has amended proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to read, "prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines that were approved prior to 2015 in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period."

Comment. The Texas Association of School Administrators recommended that the language in proposed new §102.1003(e)(5) be stricken.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Association of School Administrators recommended that the rule allow prekindergarten teachers who have the EC-4 or EC-6 certification and at least two years of experience in a public prekindergarten setting to satisfy the additional qualification needed for eligibility.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified and the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Association of School Administrators recommended that the rule allow those who obtained the prekindergarten endorsement when it was an option in SBEC rule to have satisfied the additional qualification requirement.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified and the teacher credentials identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Association of School Administrators recommended that a rule be added that allows flexibility for a district to meet the needs of its young students when developing a district prekindergarten-specific instructional training plan and that aligns with TEC, §29.167(b)(D).

Agency Response. The agency agrees and has amended §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state, "...all ten domains in the Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. An individual asked whether teachers will have to complete the 150 cumulative hours of professional development every five years or only for the first five years.

Agency Response. The agency provides the following clarification. A teacher would only need to complete the 150 cumulative hours once and not every five years.

Comment. Two individuals asked what is considered a master teacher.

Agency Response. The agency provides the following clarification. The agency has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. Raise Your Hand Texas asked whether all 150 hours of professional development must be related to the prekindergarten guidelines.

Agency Response. The agency provides the following clarification. The agency has amended proposed new §102.1003(e)(5), adopted as §102.1003(e)(6), to clarify that the professional development must address all ten domains in the Texas Prekindergarten Guidelines (updated 2015) in addition to other relevant topics related to high-quality prekindergarten.

Comment. Raise Your Hand Texas asked whether teachers who have completed the 150 required hours with 30 hours in early childhood must continue to complete 30 hours of their next 150 hours in CPE related to the prekindergarten guidelines for as long as their district receives grant funding.

Agency Response. The agency provides the following clarification. In order to use the teacher qualifications in proposed new §102.1003(e)(5), adopted as §102.1003(e)(6), all 150 hours must be related to high-quality prekindergarten. A teacher would not be required to continue to complete hours of professional development beyond the 150-hour requirement for this purpose.

Comment. Raise Your Hand Texas commented that the requirements in proposed new §102.1003(e)(5) are unclear as to their application to charter schools and indicated an understanding that the provisions of TEC, Chapter 29, Subchapter E-1, apply to both school districts and charter schools that receive a grant.

Agency Response. The agency agrees that the provisions of the high-quality prekindergarten program grant apply to both school districts and charter schools and clarifies that the teacher qualifications in proposed new §102.1003(e) also apply to both school districts and charter schools.

Comment. The superintendent of KIPP Houston Public Schools asked for a definition of "master teacher."

Agency Response. The agency provides the following clarification. In response to this and other comments the agency has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. The Texas Association of School Administrators asked if documented completion of the Texas School Readiness Training Program would be added to the rule.

Agency Response. The agency provides the following clarification. In response to other comments the agency has added new §102.1003(e)(5) to read, "documented completion of the Texas School Ready Training Program (TSR Comprehensive)."

Comment. The Texas Charter Schools Association requested that the commissioner of education use his authority to allow for the greatest flexibility, while still ensuring quality, in the teacher requirements for open-enrollment charter schools. The commenter suggested that one method of granting such a request would be to provide for a waiver from the teacher certification requirement thus providing open-enrollment charter schools with the opportunity to access the grant funds.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B. The comment regarding the granting of a waiver is outside the scope of the rulemaking process.

Comment. A.W. Brown Fellowship-Leadership Academy and Tekoa Academy of Accelerated Studies STEM School recommended adding language to require a teacher at an open-enroll-

ment charter school to meet the requirements outlined in TEC, §12.129, rather than be certified under TEC, Chapter 21. The commenter stated that requiring prekindergarten charter school teachers to be state certified would place an undue burden on charter schools without an attendant benefit.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B.

Comment. Lumin Education strongly urged the agency to make the qualifications for prekindergarten teachers inclusive of and consistent with the qualifications allowed for charter school teachers and asked that the qualification be listed as certified or a qualification listed under the proposed §102.1003(e)(1)-(5).

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B.

Comment. KIPP Houston Charter School urged the agency to consider creating flexibility for proven prekindergarten programs with regard to the requirement for a Chapter 21 certified teacher and to consider rewarding good performance with an ease in regulation.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B.

Comment. The superintendent of KIPP Houston Public Schools urged the agency to consider clarifying the commissioner's ability to waive the teacher certification requirement for proven public charter school prekindergarten programs.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B. The comment regarding the granting of a waiver is outside the scope of the rulemaking process.

Comment. The Texas Center for Public Policy Priorities requested that the agency clarify that grant awards will be based on actual children enrolled in prekindergarten and not based on average daily attendance counts.

Agency Response. The agency provides the following clarification. Grant awards will be based on the number of actual children enrolled.

Comment. The Texas Center for Public Policy Priorities requested that the agency set the grant amount at the maximum to better assist districts in implementing a high-quality program.

Agency Response. The agency disagrees and has maintained language as proposed. The amount of funding per qualifying student will be determined based on the total amount of appropriated funding, the number of eligible grant applicants, and the number of qualifying students served by each eligible grant applicant.

Comment. The superintendent of Austin Independent School District requested clarification on the ability of a school district to decline the grant if the cost to implement the statute and rule exceeds the grant funds awarded.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. The CEO of Community Family Centers asked if any provisions were considered for partnerships and/or contractual opportunities with nonprofits providing quality early childhood education.

Agency Response. The agency provides the following clarification. Under TEC, §29.171, a school district that participates in the grant program may enter into a contract with an eligible private provider to provide services or equipment for the program.

Comment. The Association of Texas Professional Educators recommended requiring school districts and charter schools to preregister their intent to apply for funding for an upcoming school year by a cutoff date and establishing a timeline by which the agency will inform preregistered potential applicants what the minimal award under the program would be. The commenter stated that allowing districts and charters to knowledgeably plan their resource allocation with a higher degree of information and certainty would promote better stewardship of limited education dollars.

Agency Response. This comment is outside the scope of the rulemaking process.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §29.1532, as amended by House Bill (HB) 4, 84th Texas Legislature, 2015, which adds a requirement that school districts that offer prekindergarten classes, including a high-quality prekindergarten program class, report a description and the results of each type of assessment instrument if the district elects to administer an assessment instrument to students enrolled in district and campus prekindergarten program classes and report curricula used in the district's prekindergarten program classes; TEC, §29.165, as added by HB 4, 84th Texas Legislature, 2015, which requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program; TEC, §29.166, as added by HB 4, 84th Texas Legislature, 2015, which addresses the student qualifications and general school district and charter eligibility for funding under this grant program; TEC, §29.167, as added by HB 4, 84th Texas Legislature, 2015, which requires school districts and charter schools to select and implement a curriculum for a high-quality prekindergarten grant program that includes the prekindergarten guidelines established by the TEA, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative. This section also outlines requirements that each teacher of a prekindergarten program class must meet, including employment as a prekindergarten teacher in a school district that has received approval from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom, and allows for equivalent qualifications; TEC, §29.168, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district or charter school to develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. The local family engagement plan must be based on the family engagement strategies established by the TEA in collaboration with other state agencies; TEC, §29.169, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data

from the results of program evaluations available to parents; and TEC, §29.172, as added by HB 4, 84th Texas Legislature, 2015, which permits the commissioner of education to adopt rules necessary to implement this grant program.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §§29.1532, 29.165-29.169, and 29.172, as amended and added by HB 4, 84th Texas Legislature, 2015.

§102.1003. *High-Quality Prekindergarten Grant Program.*

(a) From funds appropriated for this purpose, all eligible school districts and open-enrollment charter schools may receive grant funding for each qualifying student in average daily attendance in a high-quality prekindergarten program in the district or charter school.

(1) The amount of funding per qualifying student will be determined based on the total amount of appropriated funding, the number of eligible grant applicants, and the number of qualifying students served by each eligible grant applicant. Funding under this program for each qualifying student in attendance for the entire instructional period on a school day shall not exceed \$1,500.

(2) Each applicant seeking funding through the high-quality prekindergarten grant program authorized by the Texas Education Code (TEC), §29.165, must submit an application in a format prescribed by the Texas Education Agency (TEA) through a request for application (RFA).

(3) Each applicant must meet all the requirements established under the TEC, Chapter 29, Subchapter E-1.

(b) An eligible applicant receiving funds under this program must provide educational services to qualifying students. A student qualifies for additional funding under this grant program if the student is four years of age on September 1 of the year the student begins the program and:

(1) is unable to speak and comprehend the English language;

(2) is educationally disadvantaged;

(3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;

(4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;

(5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or

(6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by the Texas Family Code, §262.201.

(c) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten grant program that addresses all of the Texas Prekindergarten Guidelines (updated 2015) in the following domains:

(1) social and emotional development;

(2) language and communication;

(3) emergent literacy reading;

- (4) emergent literacy writing;
- (5) mathematics;
- (6) science;
- (7) social studies;
- (8) fine arts;
- (9) physical development and health; and
- (10) technology.

(d) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall measure:

(1) the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:

- (A) social and emotional development;
- (B) language and communication;
- (C) emergent literacy reading;
- (D) emergent literacy writing; and
- (E) mathematics; and

(2) the preparation of each student for kindergarten using a kindergarten readiness instrument for reading as described in TEC, §28.006.

(e) To be eligible to receive grant funding under this program, each teacher of a high-quality prekindergarten grant program must be certified under the TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:

- (1) a Child Development Associate (CDA) credential;
- (2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
- (3) at least eight years' experience of teaching in a nationally accredited child care program;
- (4) a graduate or undergraduate degree in early childhood education or early childhood special education;
- (5) documented completion of the Texas School Ready Training Program (TSR Comprehensive); or
- (6) be employed as a prekindergarten teacher in a school district that has ensured that:

(A) prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines that were approved prior to 2015 in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;

(B) teachers who have not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class complete:

(i) the first 30 hours of 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines (updated 2015) in addition to other

relevant topics related to high-quality prekindergarten before the end of the 2016-2017 school year; and

(ii) complete the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches.

(f) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall develop, implement, and make available on the district, charter, or campus website a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

(1) The following terms, when used in this section, shall have the following meanings.

(A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.

(B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.

(2) The family engagement plan shall:

(A) facilitate family-to-family support using strategies such as:

(i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;

(ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and

(iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;

(B) establish a network of community resources using strategies such as:

(i) building strategic partnerships;

(ii) leveraging community resources;

(iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;

(iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;

(v) identifying support from various agencies, including mental and physical health providers;

(vi) partnering with local community-based organizations to create a family-friendly transition plan for students arriving from early childhood settings;

(vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;

(viii) communicating short- and long-term program goals to all stakeholders; and

(ix) identifying partners to provide translators and culturally relevant resources reflective of home language;

(C) increase family participation in decision making using strategies such as:

(i) developing and supporting a family advisory council;

(ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;

(iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;

(iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;

(v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;

(vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;

(vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and

(viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;

(D) equip families with tools to enhance and extend learning using strategies such as:

(i) designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;

(ii) providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;

(iii) equipping families with resources and skills to support their children through the transition to school and offering opportunities for families and children to visit the school in advance of the prekindergarten school year;

(iv) providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;

(v) providing families with information, best practices, and training related to age-appropriate developmental expectations;

(vi) emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;

(vii) collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;

(viii) encouraging families to reflect on family experiences and practices in helping children; and

(ix) assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;

(E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:

(i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;

(ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and

(iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and

(F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:

(i) conducting goal-oriented home visits to identify strengths, interests, and needs;

(ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;

(iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;

(iv) ensuring an evaluation plan is an initial component that guides action;

(v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and

(vi) ensuring teachers play a role in the family engagement evaluation process.

(g) In a format prescribed by the TEA, a school district or an open-enrollment charter school that receives funding under this grant shall:

(1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (c) of this section;

(2) report a description and the results of each prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (d) of this section; and

(3) report:

(A) a description of each kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (d) of this section; and

(B) the results for at least 95% of the district's or charter school's kindergarten students on the kindergarten readiness instrument.

(h) A school district or an open-enrollment charter school that receives funding under this grant shall:

(1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by measuring student progress; and

(2) make data from the results of program evaluations available to parents.

(i) A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students.

(j) A school district or an open-enrollment charter school that receives funding under this grant may only use the funding to improve the quality of the district's or charter school's high-quality prekindergarten program. Program funds must be used in accordance with the requirements stated in the RFA.

(k) A school district or an open-enrollment charter school that receives funding under this grant shall maintain locally and provide at the TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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

Filed with the Office of the Secretary of State on March 17, 2016.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

### SUBCHAPTER C. HIGH SCHOOL

#### 19 TAC §113.49

The State Board of Education (SBOE) adopts new §113.49, concerning Texas essential knowledge and skills (TEKS) for social studies. The new section is adopted without changes to the proposed text as published in the December 25, 2015 issue of the *Texas Register* (40 TexReg 9435) and will not be republished. The adoption adds TEKS for a new personal financial literacy one-half credit elective course.

**REASONED JUSTIFICATION.** The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending the Texas Education Code (TEC), §28.025, to change the high school graduation programs from the current minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. The 83rd Texas Legislature also passed HB 2662, amending the TEC, §28.0021, to require school districts and open-enrollment charter schools offering a high school program to provide a one-half credit elective course in personal financial literacy. In August 2013, the SBOE held a work session to discuss changes to the graduation requirements in order to align with legislative requirements from

the 83rd Texas Legislature, Regular Session, 2013, including a discussion of the new courses required by HB 5 and HB 2662. At the January 2014 meeting, the SBOE approved the final adoption of new 19 TAC Chapter 74, Curriculum Requirements, Subchapter B, Graduation Requirements. At that time, the SBOE also discussed new course development priorities.

At the April 2014 meeting, the board prioritized the new courses to be developed and requested that Texas Education Agency (TEA) staff move forward with the development of TEKS for two new mathematics courses, the one-half credit elective course in personal financial literacy, a one-credit career and technical education personal financial literacy course approved to satisfy a mathematics credit, and a one-credit combined world geography/world history course. In April 2014, the board approved for second reading and final adoption proposed revisions to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, to align rules for the required secondary curriculum with requirements from the 83rd Texas Legislature, Regular Session, 2013.

A committee of secondary and postsecondary educators and business and industry representatives was convened in Austin in May 2015 for a face-to-face meeting to begin working on recommendations for the personal financial literacy elective course. The committee conducted three additional virtual meetings to finalize its first draft recommendations. The course development committee also made additional recommendations to its proposal in response to feedback from the Texas Council on Economic Education and the Texas Social Studies Supervisors Association. The recommendations of the course development committee were presented to the SBOE at its November 2015 and January 2016 meetings for consideration in accordance with statutory requirements that the SBOE adopt TEKS for a new personal financial literacy one-half credit elective course.

New 19 TAC Chapter 113, Texas Essential Knowledge and Skills for Social Studies, Subchapter C, High School, §113.49, Personal Financial Literacy, (One-Half Credit), Adopted 2016, was approved by the SBOE for first reading and filing authorization at its November 20, 2015 meeting and for second reading and final adoption at its January 29, 2016 meeting.

**SUMMARY OF COMMENTS AND RESPONSES.** Following is a summary of the public comments received and the corresponding responses regarding proposed new 19 TAC §113.49.

**Comment.** Two administrators asked if the requirement in 19 TAC §74.1(b) to offer a personal financial literacy course can be fulfilled by offering a career and technical education course that addresses personal financial literacy.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One administrator asked if the proposed new Personal Financial Literacy course would be offered as a one-half credit course.

**Response.** The SBOE provides the following clarification. The board took action to approve §113.49, Personal Financial Literacy, as a one-half credit course.

**Comment.** One parent asked if the proposed course is going to replace §118.4, Economics with Emphasis on the Free Enterprise System and Its Benefits.

**Response.** The SBOE provides the following clarification. Economics with Emphasis on the Free Enterprise System and Its

Benefits is a required course that satisfies the economics graduation requirement. The Personal Financial Literacy elective course will not replace Economics with Emphasis on the Free Enterprise System and Its Benefits, nor will it satisfy the economics graduation requirement.

Comment. One administrator stated that §118.4, Economics with Emphasis on the Free Enterprise System and Its Benefits, includes student expectations related to personal financial literacy but that trying to cover them and all the Economics student expectations is extremely difficult.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One parent inquired whether the proposed Personal Financial Literacy course is a new course or already in effect. The commenter stated that he is interested in the course for his children in the future.

Response. The SBOE provides the following clarification. The SBOE took action to approve §113.49, Personal Financial Literacy, for implementation beginning with the 2016-2017 school year.

Comment. One teacher suggested offering personal financial literacy courses in elementary and middle schools. The commenter added that the proposed course would require modifications to be taught at earlier grade levels, but stated that the topic is too important to be offered as an elective and only in high school.

Response. The SBOE disagrees and determined that personal financial literacy instruction is already appropriately addressed in the mathematics TEKS for Kindergarten-Grade 8.

Comment. One parent asked whether the proposed course is a high school course.

Response. The SBOE provides the following clarification. The SBOE took action to approve §113.49, Personal Financial Literacy, to provide a one-half credit high school elective course in personal financial literacy.

Comment. One community member expressed support for the proposed new Personal Financial Literacy TEKS. The commenter added that this course will help students learn how to be financially mature in our society and wished she had been given the opportunity to take the course in high school.

Response. The SBOE agrees and has determined that the course would benefit many students.

Comment. One administrator stated that a district in the commenter's service area is considering offering the proposed new course to eighth grade students.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that the proposed course will be very beneficial to students and recommended it be a required course rather than an elective.

Response. The SBOE agrees that the course would benefit many students but determined that the course is appropriate as a high school elective as proposed.

Comment. One administrator stated that the proposed new Personal Financial Literacy course is a good course to offer as an elective.

Response. The SBOE agrees and has determined that the course is appropriate as a high school elective.

Comment. One administrator asked whether the proposed new Personal Financial Literacy course would satisfy a social studies or mathematics graduation requirement.

Response. The SBOE provides the following clarification. Under statute, TEC, §28.0021, the Texas Essential Knowledge and Skills must include instruction in personal financial literacy in one or more courses offered for high school graduation, including a course that meets the requirements for a one-half credit elective course. The SBOE took action to approve the course as a social studies elective course as proposed.

Comment. One administrator and one community member questioned the inclusion of §113.49(b) in the introduction of the concept of constitutional republics. The commenters stated that the content seems out of place in this particular course.

Response. The SBOE disagreed and has determined that the introduction for the course was appropriate as proposed.

Comment. Two administrators asked whether teachers of the proposed new course will be required to have a social studies composite, economics, or other specific social studies teaching certificate.

Response. This comment is outside the scope of the proposed rulemaking.

#### STATUTORY AUTHORITY.

The new section is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the SBOE to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.0021, which requires each school district and each open-enrollment charter school that offers a high school program to provide an elective course in personal financial literacy that meets the requirements for a one-half elective credit, using materials approved by the SBOE; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.0021, and 28.025.

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

Filed with the Office of the Secretary of State on March 17, 2016.

TRD-201601273

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.9

The Comptroller of Public Accounts adopts amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1083). 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.

No comments were received regarding adoption of the amendment.

This amendment is adopted 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).

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

Filed with the Office of the Secretary of State on March 16, 2016.

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Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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



##### SUBCHAPTER NN. FIREWORKS TAX

###### 34 TAC §3.1281

The Comptroller of Public Accounts adopts amendments to §3.1281, concerning fireworks tax, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1085). The amendments are adopted 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).

No comments were received regarding adoption of the amendment.

The amendments are adopted 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).

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

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Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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### CHAPTER 19. STATE ENERGY CONSERVATION OFFICE

#### SUBCHAPTER A. GENERAL PROVISIONS

###### 34 TAC §19.2

The Comptroller of Public Accounts adopts an amendment to §19.2, concerning state energy conservation office business location and mailing address, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6873). The amendment updates SECO's physical address.

One comment was received regarding this amendment. Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed amendment. No response to this comment is necessary.

The amendment is adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The amendment implements Government Code, Chapter 447, regarding the State Energy Conservation Office.

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

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## SUBCHAPTER B. STATE FACILITY ENERGY AND WATER MANAGEMENT

### 34 TAC §§19.12 - 19.14, 19.16, 19.17

The Comptroller of Public Accounts adopts amendments to §19.12, concerning application, and §19.14, concerning energy and water management plan, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6873). The comptroller also adopts amendments to §19.13, concerning definitions; §19.16, concerning long range utility services plan; and §19.17, concerning utility consumption data reporting, with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6873).

The amendment to §19.12 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by clarifying the responsibilities and reporting requirements for Providing Agencies and Tenant Agencies.

The amendment to §19.13 updates the definitions to reflect changes made in other sections of Chapter 19. The proposed amendment adds the definitions of "Energy and Water Management Plan," "Providing agency," "SECO," "Tenant agency," and "Utility consumption data," and removes definitions that are no longer used in this chapter.

The amendment to §19.14 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by renaming this section as "Energy and Water Management Plan," replacing the "Resource Efficiency Plan" with the "Energy and Water Management Plan," and outlining the submission and implementation requirements for the plan.

The amendment to §19.16 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by removing the requirement to submit the Long Range Utility Services Plan to the State Energy Conservation Office (SECO) and requiring SECO to post guidelines for the plan on its website. It also removes duplicative language by deleting the term "State Energy Conservation Office."

The amendment to §19.17 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by requiring agencies to report utility consumption data, and directing agencies and institutions to prepare and submit the data in accordance with the guidelines located on SECO's website by October 31 of each year. The amendment also removes the requirement that "each state agency or institution of higher education review and audit utility billings and contracts to detect billing errors" because this requirement is already stated in Government Code, §447.007(c). The amendment also renames the section "Utility Consumption Data Reporting." Due to the submission schedule of this rulemaking, the date for first submission of

utility consumption data described in §19.17(c) as "beginning October 31, 2015" has been deleted from the proposed text as unnecessary. Additionally, the word "report" has been changed to "submit" in §19.17(a) and the words "submission of" has been added between "for" and "utility" in §19.17(b) to make the language consistent with the language in other rules in this chapter.

Three comments were received regarding these amendments.

Cyrus Reed with the Lone Star Chapter of the Sierra Club requests the addition of the words "energy and water use" between "utility" and "reduction" in the definition of "Energy and Water Management Plan" in §19.13(1). The comptroller agrees with this comment and adopts the change.

Mr. Reed comments that §19.16 should clarify that a Long Range Utility Services Plan may include any self-generation storage or demand response efforts. In response to this comment, a definition of "Long Range Utility Services Plan" has been added as new §19.13(3), which clarifies that a Long Range Utility Services Plan may include any self-generation storage or demand response efforts.

Mr. Reed also suggests that the submission of a Long Range Utility Services Plan should be required under §19.16, not "upon request," and should be published on a publicly available website. The comptroller declines to adopt the change requiring submission to SECO because it is unnecessary, but accepts the change requiring publication on a publicly available website, which enhances access to these plans and promotes transparency.

Dawn Jones with the Texas Workforce Commission asks for clarification as to due dates for the Energy and Water Management Plan under §19.14(c) and Utility Data Consumption Reporting under §19.17(c). The comptroller responds that the due date for each document is October 31 of each year.

Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed amendments. No response to this comment is necessary.

The amendments are adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The amendments implement Government Code, Chapter 447 (State Energy Conservation Office).

#### §19.13. Definitions.

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

(1) Energy and Water Management Plan--A comprehensive plan prepared by a state agency or institution of higher education that includes a progress report of utility energy and water use reduction measures, goals for reducing utility consumption, a strategy and implementation schedule, a description of methods of financing improvements, and an employee awareness plan.

(2) Institution of higher education--Has the meaning that is assigned by Education Code, §61.003.

(3) Long Range Utility Services Plan--A long range plan for the delivery of reliable, cost-effective utility services for a state agency or institution of higher education, including any on-site generation, energy storage or demand response.

(4) Providing agency--A state agency or institution of higher education that occupies or manages a state-owned building and is responsible for paying utility bills.

(5) SECO--The Comptroller of Public Accounts State Energy Conservation Office or legally designated successor.

(6) State agency--Any department, commission, board, office, or other agency in the executive, judicial, or legislative branch of state government that exists under the constitution or a statute of this state and that has authority that is not limited to a geographical portion of the state.

(7) Tenant agency--A state agency or institution of higher education that occupies a building managed by another party and is not responsible for building renovation projects. A tenant agency may or may not be responsible for directly paying utility bills.

(8) Utility--Electricity, gas, thermal, or other energy resource, water, and wastewater.

(9) Utility consumption data--The measured amount of the agency's or institution's water, electricity, gasoline, or natural gas usage.

*§19.16. Long Range Utility Services Plan.*

(a) Requirement. A state agency or institution of higher education that purchases utilities shall prepare a long range plan for the delivery of reliable, cost-effective utility services for the agency or institution.

(b) Guidelines. SECO shall post guidelines for the Long Range Utility Services Plan on its website.

(c) Frequency. The agency or institution shall update the Long Range Utility Services Plan at least every five years to support five-year construction and major renovation planning.

(d) Posting/Submission. The plan shall be:

- (1) posted on a publicly available website; and
- (2) submitted to SECO upon request.

*§19.17. Utility Consumption Data Reporting.*

(a) Requirement. Each state agency or institution of higher education shall submit utility consumption data to SECO.

(b) Guidelines. SECO shall post guidelines for the submission of utility consumption data on its website.

(c) Frequency. Utility consumption data shall be submitted no later than October 31 of each year.

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

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Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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



**34 TAC §§19.15, 19.18, 19.19**

The Comptroller of Public Accounts adopts the repeal of §19.15, concerning implementation of resource efficiency plan recommendations; §19.18, concerning semiannual reporting; and §19.19, concerning extension of time, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6876).

The repeal for §19.15 removes the requirements relating to the Resource Efficiency Plan, which is no longer required by Government Code, §447.009. Instead, the statute replaced the Resource Efficiency Plan with the Energy and Water Management Plan, which is addressed in the amendment to §19.14 of this chapter.

The repeal of §19.18 removes the requirements relating to semiannual reporting, which are no longer required by the State Energy Conservation Office (SECO).

The repeal of §19.19 removes the requirements relating to extension of time to submit any required plan or report, and clarifies that no extensions will be permitted since SECO has a limited amount of time after the deadline to submit this information to the legislature.

One comment was received regarding these repeals. Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed repeal of §19.15 and §19.19. No response to this comment is necessary.

The repeals are adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The repeals implement Government Code, Chapter 447.009 (State Energy Conservation Office).

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

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## SUBCHAPTER C. ENERGY CONSERVATION DESIGN STANDARDS

### 34 TAC §§19.31 - 19.34

The Comptroller of Public Accounts adopts amendments to §19.31, concerning requirement to use design standards; §19.33, concerning major renovation projects; and §19.34, concerning submission of certification and compliance documentation, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6877). The comptroller also adopts an amendment to §19.32, concerning energy and water conservation design standards,

with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6877).

The amendment to §19.31 removes duplicative language by deleting the term "State Energy Conservation Office."

The amendment to §19.32 updates the energy conservation design standards and water conservation design standards for new construction or major renovation of existing buildings in compliance with Government Code, §447.004, which requires the State Energy Conservation Office (SECO) to establish and publish mandatory energy and water conservation design standards for state buildings or major renovation projects and to review and update the standards biennially. The amendment also clarifies that the standards apply to state agencies and institutions of higher education, and removes duplicative language by deleting the term "State Energy Conservation Office." The effective dates in subsection (a)(1) and (2) have been changed from "January 1, 2016," to "June 1, 2016" due to the submission schedule of this rulemaking. Additionally, the date of the Water Conservation Design Standards has been changed from "April 2015" to "April 2016" in subsection (b) to correct a typographical error in the proposed text.

The amendment to §19.33 clarifies major renovation projects by specifying that the implementation costs are those associated with energy and water efficiency improvements, and that the cost estimate is the engineering cost estimate.

The amendment to §19.34 requires agencies and institutions to use the certification form located on SECO's website, and removes duplicative language by deleting the term "State Energy Conservation Office."

Three comments were received regarding these amendments.

Jonathan Kleinman with AIQUEOUS suggests the following changes to the Water Conservation Design Standards for State Buildings and Institutions of Higher Education Facilities under §19.32(b):

1. Add the following to the list of Standards' goals in the Overview section: "Highlight the auxiliary and embedded energy savings associated with implemented water conservation measures." The comptroller declines to adopt this change because the suggested addition is covered in existing Item 4.
2. Change "alternate water source" to "alternative onsite water" in the definition section to align it with the definitions in H.B. 1902, passed in the 2015 legislative session. The comptroller agrees with this comment and adopts this change. In addition, the definition of "graywater" has been changed to conform with the definition of that term in H.B. 1902.
3. Add "multi-stream rotational" to the list of water-conserving technology described in Item 3 of the Standards for Irrigation. The comptroller agrees with this comment and adopts this change.
4. Add "digitally-connected soil moisture sensors" to the list of weather-based irrigation controllers described in Item 6 of the Standards for Irrigation. In response to this comment, the comptroller adds "soil moisture sensors" to Item 7, instead of making this change in Item 6.
5. Add "for irrigation system operation" to the end of Item 13 of the Standards for Irrigation. The comptroller agrees with this comment and adopts this change.

6. Consider specifying a percentage of non-turf, non-planted permeable areas or stating that such areas need to be integrated into the overall landscape design, and maximized as consistent with the building programming needs in the Standards for Landscape Design. The comptroller declines to make this change because specifying a percentage will be too challenging for compliance purposes. The approach is to provide more vegetation instead of turf grass area, and planted area is typically surrounded by mulch.

7. For major renovation, recommend an economic feasibility study for converting landscaped areas to non-turf, non-planted permeable areas and retiring irrigation zones, as appropriate. The comptroller declines to adopt this change because this is a list of standards, not best practices.

8. Define "minimal irrigation" in Item 5 of the Standards for Landscape Design. In response to this comment, the comptroller deletes the words "minimal irrigation" from Item 5.

9. Consider adding a requirement for commissioning of water conservation measures in the Standards for Heating, Ventilation and Air Conditioning that is parallel with any requirements for commissioning of energy efficiency measures. The comptroller declines to adopt this change because a commissioning practice is a best practice, not a standard; however, this comment will be considered for any future list of best practices.

10. Consider specifying that "harvesting and delivery" in Item 3 of the Standards for Heating, Ventilation and Air Conditioning specifically refer to "condensate water." The comptroller agrees with this comment and adopts this change.

11. Consider using the term "alternative onsite water" in the Rainwater Harvesting, Reclaimed Water, Recycled Water, and Reuse section to align it with recent legislation. The comptroller agrees with this comment and adopts this change.

12. Consider a requirement for system commissioning in the Rainwater Harvesting, Reclaimed Water, Recycled Water, and Reuse section. The comptroller declines to make this change because a commissioning practice is a best practice, not a standard; however, this comment will be considered for any future list of best practices.

13. In the Plumbing Fixtures and Pumps section, require an economic feasibility study for waterless urinals and toilets, where building programming is consistent with such a design. The comptroller declines to adopt this change because the standards for plumbing fixtures and pumps were recommended by the Water Conservation Standards Working Group, based on their experience and practical constraints, and based on the water saving performance standards in 30 TAC §290.252.

14. Consider including a requirement in Item 2 of the Standards for Plumbing Fixtures that toilets meet a 0.8 gpf standard. The comptroller declines to adopt this change because these standards were recommended by the Water Conservation Standards Working Group, based on their experience and practical constraints.

15. Consider including a requirement in Item 5 of the Standards for Plumbing Fixtures that showerheads meet a 1.5 gpm standard, as well as manual shutoff valves for when occupants need to leave a shower for a period of time and wish to maintain hot water temperature. The comptroller declines to adopt this change because these standards were recommended by the Water Conservation Standards Working Group, based on their experience and practical constraints.

16. In Item 1 of the Standards for Garbage Disposal, require an economic feasibility study to assess composting as an alternative to food waste disposal. The comptroller declines to adopt this change because the Water Conservation Working Group agreed that composting may not be a suitable or reasonable approach for a commercial operation; particularly in consideration of sanitary health constraint aspects and maintenance of an installation.

17. Correct a typographical error in the title of the Pools, Spas, and Special Water Features section. The comptroller agrees with this comment and adopts this change.

18. Clarify what "where practical" means for requiring pool covers in Item 4 of the Standards for Pools and Spas. The comptroller declines to adopt this change because agencies determine the practicality of covering pools and spas based on shape, size, economic feasibility and other factors.

19. In Item 1 of the Standards for Special Water Features, consider establishing a limit to annual potable water consumption for a special water feature, rather than simply a capacity limit. The comptroller declines to adopt this change because these limits are dependent on a variety of external factors.

Cyrus Reed with the Lone Star Chapter of the Sierra Club suggests that SECO allow the 2015 International Energy Conservation Code (IECC) to be used as an alternate code to the proposed American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA), 90.1-2013 standards. The comptroller agrees with this comment and adopts this change in §19.32.

Mr. Reed also expresses concern with the current blanket exemption for historic buildings in §19.32. The comptroller declines to adopt this change because no changes to the historic building exemption are being proposed in this rulemaking.

Doug Lewin with the South-central Partnership for Energy as a Resource (SPEER) recommends that the historic buildings exemption be replaced in §19.32 with language from the 2015 International Energy Conservation Code relating to historic buildings. The comptroller declines to adopt this change because no changes to the historic building exemption are being proposed in this rulemaking.

Mr. Lewin with also recommends that §19.33 regarding Major Renovation Projects be deleted in its entirety. The comptroller declines to adopt this change because Government Code, §447.004(a) requires SECO to define "major renovation project."

The amendments are adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The amendments implement Government Code, §447.004 regarding design standards.

*§19.32. Energy and Water Conservation Design Standards.*

(a) SECO adopts by reference the following minimum energy standards for state agencies and institutions of higher education:

(1) for any new construction or major renovation project, except low-rise residential buildings, with a design assignment made on or after June 1, 2016, the energy conservation design standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA), Energy Standard for Buildings, ASHRAE/IESNA Stan-

dard 90.1-2013, and any errata sheet for 90.1-2013 that is published by the ASHRAE Standards Committee or the 2015 International Conservation Code as published by the International Code Council, provided however the following buildings or structures are exempt from compliance with this section:

(A) a building or structure that is listed in the State or National Register of Historic Places;

(B) a building or structure that is designated as a historic property under local or state designation law or survey;

(C) a building or structure that is certified as a contributing resource with a National Register listed or locally designated historic district; or

(D) with an opinion or certification by the State Historic Preservation Officer or Keeper of the National Register of Historic Places, a building or structure that is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district;

(2) for any new construction or major renovation project of a low-rise residential building with a design assignment made on or after June 1, 2016, the residential chapter of the 2015 International Energy Conservation Code as published by the International Code Council.

(b) Effective June 1, 2016, SECO adopts by reference the "Water Conservation Design Standards for State Buildings and Institutions of Higher Education Facilities" prepared by SECO, dated April 2016, as the water conservation design standards for any new construction or major renovation project.

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

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Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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## SUBCHAPTER D. LOAN PROGRAM FOR ENERGY RETROFITS

### 34 TAC §§19.41 - 19.45

The Comptroller of Public Accounts adopts amendments to §19.41, concerning description of program; §19.43, concerning eligibility; and §19.45, concerning project funding and repayment, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6878). The comptroller also adopts amendments to §19.42, concerning definitions, and §19.44, concerning fund availability, with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6878).

The amendment to §19.41 clarifies that water efficiency measures are eligible for LoanSTAR funding and removes duplicative language by deleting the term "State Energy Conservation Office."

The amendment to §19.42 expands the definition of "building" to include not only the structure, but also the associated site where energy or water consumption takes place; clarifies the definition of "Estimated simple payback period," while specifying that interest is included in the total estimated utility cost reduction measure costs; clarifies that water efficiency measures are eligible for LoanSTAR funding by adding the word "water," and by changing references from "energy" to "utility" and from "conservation" to "cost reduction"; removes "public junior colleges" from the definition of "public sector institution" because they are included within an "institution of higher education," which is currently part of the definition of "public sector institution"; clarifies that certain measures that do not save energy but can result in lower utility costs are eligible for LoanSTAR funding by changing "conservation" to "cost reduction"; adds the definitions of "Utility Assessment Report," "Utility Cost Reduction Measure" and "Utility Cost Reduction Project"; removes the definitions of terms that are no longer used in this subchapter; and removes duplicative language by deleting the term "State Energy Conservation Office." The word "and," between the comma and "engineering," has been deleted in the third sentence of paragraph (2), and the acronym "UCRM" has been changed to "UCRMs" in the second sentence of paragraph (10), to correct typographical errors in the proposed text.

The amendment to §19.43 clarifies that water efficiency measures are eligible for LoanSTAR funding by changing references from "energy" to "utility" and from "conservation" to "cost reduction"; clarifies loan eligibility requirements by providing that the loan candidates must own and occupy the buildings where the proposed projects will take place; clarifies the types and requirements of eligible Utility Cost Reduction Measures; and provides that a Utility Assessment Report must be prepared by a State of Texas licensed professional engineer in a format that follows the LoanSTAR Program guidelines located on the SECO website, unless SECO specifically waives this requirement.

The amendment to §19.44 simplifies the fund availability notification process. The title of the section is also changed to "Fund Availability" to more accurately reflect the amended content.

The amendment to §19.45 clarifies the term for repayment of a loan; that loan disbursement is on a reimbursement basis; that the borrower will receive a Loan Repayment Schedule upon completion and acceptance of a project by SECO; and that there is no penalty for the early repayment of a loan.

Two comments were received regarding these amendments.

Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed amendments. No response to this comment is necessary.

Cyrus Reed with the Lone Star Chapter of the Sierra Club suggests changing §19.43(2)(M) to read: "thermal or electric energy storage systems than help reduce or shift demand." The comptroller declines to adopt this change because the current text of §19.43(2)(M) is sufficiently broad to include these systems.

The amendments are adopted under Government Code, §2305.011(f), which authorizes the comptroller to "establish procedures and adopt rules as necessary to administer" the LoanSTAR program.

The amendments implement Government Code, §2305.032 regarding the LoanSTAR program.

§19.42. *Definitions.*

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

(1) Building--A structure and its associated site where energy or water consumption takes place.

(2) Estimated simple payback period--The estimated number of years necessary for the savings from the utility cost reduction measure (UCRM) improvements to equal the cost of installing the improvements. The formula used in this determination is the total estimated UCRM costs (including audit, metering, installation, equipment, and engineering design, but excluding interest) divided by the annual estimated utility cost savings. For Energy Savings Performance Contracts only, the formula used in this determination is the total estimated UCRM costs (including audit, metering, installation, equipment, engineering design, and interest) divided by the annual estimated utility cost savings.

(3) Facility--Any major energy or water using group of buildings in geographic proximity to each other or a major energy or water using system that one or more public sector institutions own and occupy.

(4) Interest rate--The percentage of the loan amount charged on an annual basis by SECO to a borrower for the use of the LoanSTAR program proceeds.

(5) Loan agreement--The written agreement between an applicant and SECO that details all terms and requirements under which the loan is issued, including the intended use of the loan proceeds.

(6) LoanSTAR Program--The state Revolving Loan Program that SECO administers and which funds Utility Cost Reduction Projects. The program is comprised of five elements: energy and water audits, energy and water efficiency retrofits or enhancements, a revolving loan financing mechanism, program monitoring, and evaluation.

(7) Project cost--All costs that SECO determines to be directly related to the identification, design, implementation, metering, and monitoring of UCRM.

(8) Public sector institution--Any state agency; community college; institution of higher education as defined in Education Code, §61.003; unit of local government including a county, city, town, or public hospital; a public school; or political subdivision of the state.

(9) Utility Assessment Report (UAR)--A technical report which identifies and documents energy, water, and other cost saving measures. This report must be submitted to SECO by potential LoanSTAR borrowers for financing approval. The UAR is prepared by a State of Texas licensed professional engineer.

(10) Utility Cost Reduction Measure (UCRM)--A commercially available energy efficient device, technique, or technology that is designed to reduce energy consumption, peak energy demand, water consumption or utility costs at an existing facility that a public sector institution owns and occupies, and that is permanently affixed to the building or is permanently installed on the site. Retrofit measures that result from renewable energy resources are eligible UCRMs.

(11) Utility Cost Reduction Project--The identification, design, installation, monitoring, and evaluation of one or more energy and water efficient measures that are designed to reduce energy consumption, peak energy demand, water consumption, or utility cost.

§19.44. *Fund Availability.*

Fund Availability. From time to time, SECO may publish a Notice of Loan Fund Availability (NOLFA) regarding the availability of

LoanSTAR loans under this subchapter. The notice shall be published in the *Texas Register* or the *Electronic Business Daily*, and on the SECO website.

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

Filed with the Office of the Secretary of State on March 18, 2016.

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Don Neal

Chief Deputy 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 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

##### 37 TAC §219.25

The Texas Commission on Law Enforcement (Commission) adopts amended §219.25, concerning License Requirements for Persons with Military Special Forces Training, with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7593).

This amended rule updates the qualifications to take the state licensing examination. New licensing standards are added and service time restrictions are removed. A special forces training course is added and the amended rule eliminates the need for the individual to show proof of completion.

These amendments are necessary to streamline the licensing process for persons with military special forces training.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.315, License Requirements for Persons with Military Special Forces Training.

*§219.25. License Requirements for Persons with Military Special Forces Training.*

(a) In this section, "special forces" means a special forces component of the United States armed forces, including:

- (1) the United States Army Special Forces;
- (2) the United States Navy SEALs;
- (3) the United States Air Force Pararescue;
- (4) the United States Marine Corps Force Reconnaissance;

and

(5) any other component of the United States Special Operations Command approved by the commission.

(b) An applicant qualifies to take the basic licensing examination if the applicant:

- (1) meets minimum licensing standards;
- (2) has provided military service records documenting that the applicant has served in the special forces;
- (3) successfully completes a training course developed for special forces veterans; and
- (4) completes a supplemental peace officer training course.

(c) The effective date of this section is May 1, 2016.

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

Filed with the Office of the Secretary of State on March 16, 2016.

TRD-201601262

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

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Proposal publication date: October 30, 2015

For further information, please call: (512) 936-7713



## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER G. GENERAL PROVISIONS

The Texas Juvenile Justice Department (TJJD) adopts amendments to the following rules without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735): §380.9931 (Student Trust Fund), §380.9951 (Training for Juvenile Correctional Officers), and §380.9955 (Staffing Requirements for Juvenile Correctional Officers).

TJJD also adopts amendments to the following rules with changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735): §380.9909 (Access to Youth Information and Records) and §380.9933 (Spending Money for Released Youth).

TJJD also adopts the repeal of the following rules without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735): §380.9901 (Confidentiality Regarding Youth Alcohol and Drug Abuse) and §380.9911 (Youth Masterfile Records).

The changes to the proposed text of §380.9909 consist of correcting minor grammatical errors.

The changes to the proposed text of §380.9933 consist of correcting a cross-reference to another TJJD rule.

#### JUSTIFICATION FOR CHANGES

The justification for these amended and repealed rules is the availability of rules that have been updated to conform to current law and to more accurately reflect TJJD's current organizational structure and practices. The rule changes will also promote more

effective supervision of youth by allowing for modified staffing patterns in high-restriction facilities.

Additional public benefits anticipated as a result of the rule changes are standardization of practices for forwarding youths' personal funds upon their departure from TJJD facilities and ensuring youth have enough spending money to purchase meals if traveling by public transportation to reach their homes or parole placements.

#### SUMMARY OF CHANGES

The repeal of §380.9901 allows for information from this rule to be consolidated into the amended §380.9909.

The amended §380.9909: 1) clarifies that this rule applies to all youth committed to TJJD; 2) removes a statement that indicated TJJD would not provide records in response to a request from a confined youth or his/her agent; 3) removes requirements concerning access to youth orders of adjudication and sealing of youth records as this information is addressed in state law; 4) adds circumstances under which TJJD may allow access to records that have been designated as restricted access, such as when the juvenile court gives permission to provide the records to a party in a civil suit when the person who is the subject of the records has put facts relating to the person's records at issue, or when the person who is the subject of the records is an applicant for enlistment in the military and gives permission to provide the records to military personnel; 5) clarifies that TJJD will allow access to records that have been designated as restricted access by the person who is the subject of the records *on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records*; and 6) removes the requirement for TJJD to reply that no record exists when TJJD receives a request for information about records that have been designated by court order as restricted access, as this is no longer required under Texas Family Code §58.207.

The amended §380.9909 also adds requirements previously found in §380.9911, such as provisions relating to custody, transportation, and storage of youth records and information.

Additionally, the amended §380.9909 adds requirements previously found in §380.9901, such as provisions relating to identifying the types of drug and alcohol information that are confidential and requirements for notifying youth of the confidential nature of this information.

The repeal of §380.9911 allows for certain information from this rule to be consolidated into the amended §380.9909.

The amended §380.9931: 1) clarifies that TJJD is not responsible for funds that are lost or stolen after being transferred to a youth's possession upon release or discharge; 2) clarifies that the 15-day hold TJJD places on money orders does not apply to U.S. Postal Service money orders; 3) clarifies that youth in high-restriction facilities are not permitted to handle withdrawn funds; 4) adds a requirement to notify the youth when TJJD must withdraw funds from a youth's account when TJJD is charged for a problem with a deposit, such as a charge for insufficient funds; 5) clarifies that TJJD will establish a savings account for a youth who has a balance of at least \$5,100 and the youth is expected to stay at the current facility for at least six months; 6) adds a requirement for youth who establish savings accounts to maintain at least \$100 in their student trust fund accounts; 7) clarifies that when a youth is moved to a contract residential facility that does not have a banking system, TJJD does not forward the student trust fund balance to the new facility. Instead, TJJD holds

the funds until the youth designates a third party to receive the funds or personally requests the funds once he/she is released from the facility; 8) clarifies that when a youth is paroled to a home location, the total amount of his/her trust fund is provided unless the youth has a balance over \$50, in which case the youth is provided up to \$50 in cash and a check for the remainder is mailed to the parole officer to be picked up by the youth at the first parole meeting; 9) adds requirements for forwarding the balance of a youth's student trust fund when a youth is discharged from TJJD and is sent to any type of residential placement, such as adult prison, an Immigration and Customs Enforcement detention facility, or a group home; and 10) adds a requirement for TJJD to hold the funds in a youth's student trust fund account until the account is cleared of any questions that prevented it from being closed upon the youth's departure from the facility.

The amended §380.9933 increases the amount provided to youth upon discharge or release from \$10 to \$15, which applies only when youth do not have at least \$15 in their student trust fund accounts. The amended rule also clarifies that youth who have at least \$15 available in their student trust fund accounts are provided an amount of cash upon release as specified in §380.9931.

The amended §380.9951 reduces the amount of training juvenile correctional officers (JCOs) must receive before assuming sole-supervision responsibility from 300 hours to 240 hours. The rule now requires at least 60 hours of additional training within the first year of employment. The amended rule also requires the training topics to include trauma-informed care and the signs and symptoms of human trafficking.

The amended §380.9955 generally requires JCOs to rotate assigned stations at least once every 12 months, rather than every six months. The amended rule also generally requires a JCO to serve at least 12 months in another station, rather than six months, before returning to a previously assigned station. Additionally, the amended rule clarifies that a JCO who does not meet the requirements for sole supervision may be included in the staff-to-youth ratio if the JCO has completed training in appropriate restraint techniques, first aid, and cardiopulmonary resuscitation.

#### SUMMARY OF PUBLIC COMMENTS

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

#### RULE REVIEW

In the Proposed Rules section of the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735), TJJD published a notice of intent to review §§380.9901, 380.9909, 380.9911, 380.9931, 380.9933, 380.9951, and 380.9955, as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has determined that the reasons for adopting §380.9901 and §380.9911 no longer exist. Accordingly, these rules are repealed as previously described in this notice.

TJJD has determined that the reasons for adopting §§380.9931, 380.9951, and 380.9955 continue to exist. Accordingly, these rules are readopted without changes as previously described in this notice.

TJJD has also determined that the reasons for adopting §380.9909 and §380.9933 continue to exist. Accordingly, these

rules are readopted with changes as previously described in this notice.

## DIVISION 1. YOUTH RECORDS

### 37 TAC §380.9901, §380.9911

#### STATUTORY AUTHORITY

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

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

Filed with the Office of the Secretary of State on March 18, 2016.

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



### 37 TAC §380.9909

#### STATUTORY AUTHORITY

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

§380.9909. *Access to Youth Information and Records.*

(a) Purpose. This rule establishes controls on access to Texas Juvenile Justice Department (TJJD) youth records and information in compliance with federal and state laws and regulations that limit access to youth records.

(b) Applicability. This rule applies to all youth committed to TJJD.

(c) General Provisions. Records and information concerning youth:

- (1) must be marked "confidential;"
- (2) must remain in the custody and control of authorized personnel at all times;
- (3) may not be disclosed except as allowed by law; and
- (4) must be stored and transported in a manner that ensures security and confidentiality.

(d) Access by a Youth or Parent.

(1) In the interest of protecting TJJD youth and the public, TJJD may disclose records and other information concerning a youth to the youth and the youth's parent or guardian only if the disclosure would not:

(A) materially harm the treatment and rehabilitation of the youth; or

(B) substantially decrease the likelihood of TJJD receiving information from the same or similar sources in the future.

(2) If TJJD decides it is appropriate to disclose information to the parent or guardian concerning a youth who is at least 18 years old, TJJD may do so only with the youth's written consent.

(e) Educational Information.

(1) Educational information is made available in accordance with Title 20 of the United States Code §1232g and Title 34 of the Code of Federal Regulations (CFR).

(2) A TJJD youth who is at least 18 years old may access his/her own educational information or grant consent to another individual to access his/her information. If the youth is under the age of 18, the parent or guardian has the right to access the youth's educational information or grant consent to another individual to access the youth's educational information.

(3) TJJD may disclose educational information of a youth who is at least 18 years old to a parent without the youth's consent if the parent is claiming the youth as a "dependent student" as defined in Section 152 of the Internal Revenue Code.

(4) No consent is necessary if TJJD is releasing educational information on a youth to school officials within TJJD or to the school district where the youth seeks to attend.

(f) Alcohol and Drug Treatment Records.

(1) Access to youth records that contain certain information identifying the youth as chemically dependent or as a substance abuser may be disclosed only as provided in 42 CFR Part 2. Confidentiality requirements for this type of information are more restrictive than requirements in other regulations.

(2) Drug and alcohol information that may not be released includes any information that:

(A) would identify a youth as an alcohol or drug abuser; or

(B) is obtained for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(3) At the time of admission, youth diagnosed as alcohol or drug abusers must:

(A) be informed that federal laws protect the confidentiality of their alcohol and drug abuse records; and

(B) be given a written copy of the summary of the federal law and regulations.

(4) If a document contains information regarding alcohol and drug abuse but it also contains other information that may appropriately be released, TJJD must redact the alcohol and drug abuse information unless appropriate release forms have been completed.

(g) Restricted Access to Youth Records. If records have been designated as restricted access by court order pursuant to Texas Family Code §58.201, et seq., TJJD must not permit access to these records except:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Texas Government Code §411.082; or

(2) by the person who is the subject of the records, on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records; or

(3) by TJJD for research purposes; or

(4) with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit; or

(5) with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

(h) Release of Information upon Escape. TJJJ may disseminate the following information upon an escape of a youth:

(1) the youth's name, including other names by which the youth is known;

(2) the youth's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the youth; and

(4) if necessary to protect the welfare of the community, any other information that reveals dangerous tendencies of the youth or expedites the apprehension of the youth.

(i) Access under Federal Protection and Advocacy Systems. Pursuant to Title 42 of the United States Code §10805 and §15043, federal law provides for a federally funded system of mental health advocates and a federally funded system of advocates for the developmentally disabled and grants those advocates access to facilities and TJJJ records for the purpose of investigating abuse and neglect of the mentally ill or developmentally disabled.

(j) Health Insurance Portability and Accountability Act.

(1) TJJJ is not a covered entity under the Health Insurance Portability and Accountability Act (HIPAA) because it does not engage in covered transactions as defined by 45 CFR §160.103. Records created by an entity covered by HIPAA are subject to TJJJ's regular confidentiality rules and procedures.

(2) Protected health information generated by HIPAA-covered contract providers (University of Texas Medical Branch) to youth in high-restriction facilities and halfway house programs is the property of TJJJ. The status of the source of the information does not impose HIPAA restrictions on the use of that healthcare information.

(3) To the extent that any healthcare information obtained by TJJJ may be covered by HIPAA as it applies to youth at high-restriction facilities and halfway houses, that healthcare information is for the governmental uses and purposes enumerated in 45 CFR §164.512, including but not limited to:

(A) the provision of healthcare to that youth;

(B) the health and safety of that youth or other youths;

(C) the health and safety of the officers or employees of or others at a high-restriction facility or halfway house;

(D) the health and safety of such individuals and officers or other persons responsible for the transporting of youths or their transfer from one institution, facility, or setting to another;

(E) law enforcement on the premises of a high-restriction facility or halfway house; and

(F) the administration of the safety, security, and good order of a high-restriction facility or halfway house.

(4) A contract healthcare provider who is a HIPAA-covered entity and provides services to TJJJ youth other than those in high-restriction facilities or halfway houses is required as a condition of the contract to secure all necessary consents or authorizations to provide to or obtain from TJJJ protected health information.

(k) Release of Certain Information for a Legitimate Need. TJJJ may disclose information regarding a youth's location and committing court to a person having a legitimate need for the information (e.g., to provide a location for a bench warrant or service of process to be issued the youth).

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



## DIVISION 2. YOUTH FUNDS

### 37 TAC §380.9931, §380.9933

#### STATUTORY AUTHORITY

The amendment to §380.9331 is adopted under Texas Human Resources Code §242.063, which requires TJJJ to adopt rules governing the administration of the student trust fund.

The amendment to §380.9933 is adopted under Texas Human Resources Code §245.106, which requires TJJJ to adopt rules that establish an amount of money to be provided to each child released under supervision.

§380.9933. *Spending Money for Released Youth.*

(a) The Texas Juvenile Justice Department (TJJJ) provides \$15 in cash from TJJJ funds to each youth who:

(1) is released or discharged from a residential facility operated by TJJJ;

(2) will travel by public transportation to his/her home placement; and

(3) does not have at least \$15 available to withdraw from his/her student trust fund account.

(b) A youth who has at least \$15 available to withdraw from his/her student trust fund account is provided cash from his/her student trust fund account in accordance with §380.9931 of this title upon release or discharge.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



## DIVISION 3. JUVENILE CORRECTIONAL OFFICERS

### 37 TAC §380.9951, §380.9955

#### STATUTORY AUTHORITY

The amended rules are adopted under Texas Human Resources Code §242.009, which requires TJJD to adopt rules to administer the training and staffing requirements for juvenile correctional officers set forth in this section.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

#### CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission (HHSC) on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts amendments to §109.105 in Subchapter A, General Rules; amendments to §§109.205, 109.217, 109.221, 109.223 and 109.231, in Subchapter B, Division 1, Board for Evaluation of Interpreters (BEI) Interpreter Certification; amendments to §109.315, in Division 2, BEI Court Interpreter Certification; and new §§109.451, 109.453, and 109.457 in new Division 4, BEI Medical Interpreter Certification.

The amendment to §109.217 is adopted with changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7973). The amendments to §§109.105, 109.205, 109.221, 109.223, 109.231, and 109.315; and new §§109.451, 109.453, and 109.457 are adopted without changes; therefore, the sections will not be republished.

#### BACKGROUND AND JUSTIFICATION

DARS has recently completed an agency initiative to develop a new medical interpreter performance test (called the BEI Medical Performance Test) for the BEI Interpreter Certification program. The test is designed for interpreters seeking medical certification. Interpreters certified as medical interpreters assist persons who are deaf or hard of hearing in communicating with medical professionals in settings such as hospitals or medical offices.

In partnership with the University of Arizona, DARS Office for Deaf and Hard of Hearing Services (DHHS) has also developed

the American Sign Language (ASL) Proficiency Test and Performance Test for persons who are deaf or hard of hearing and who are seeking interpreter certification. The ASL Proficiency Test and Performance Test will replace the current test for persons who are deaf or hard of hearing and who are seeking interpreter certification.

HHSC, on behalf of DARS, is adopting new rules for the Medical Performance Test and amending existing BEI rules to incorporate the new ASL Proficiency Test and Performance Test. Rules for the BEI Interpreter Certification program fee schedule will be amended to include new fees for these tests. Test fees help defray the costs of test development, administration, and rating.

Additionally, Senate Bill (S.B.) 1307, 84th Legislature, Regular Session, 2015, requires rule amendments that pertain to military personnel. Senate Bill 1307 addresses exceptions to the requirements for military personnel and spouses of military personnel, which are applicable to the BEI Interpreter Certification program. Rule amendments address fee waivers for military personnel applying for certification when the applicant otherwise meets all requirements, as required by S.B. 807, 84th Legislature, Regular Session, 2015.

#### SECTION-BY-SECTION SUMMARY

HHSC, on behalf of DARS, adopts amendments to §109.105, Definitions, to add a new definition for "certified medical interpreter."

HHSC, on behalf of DARS, adopts amendments to §109.205, Definitions, to add definitions of "active duty" and "armed forces of the United States" and to modify definitions for "military service member," "military spouse," and "military veteran" to align with S.B. 1307.

HHSC, on behalf of DARS, adopts amendments to §109.217, Qualifications and Requirements for a BEI Certificate, to establish the option to take an ASL proficiency test and a performance test for persons who are deaf or hard of hearing. This rule section establishes eligibility requirements and clarifies that applicants must pass the American Sign Language (ASL) Proficiency Test to take the Performance Test. In addition, this rule section eliminates the prerequisite and performance tests previously required of persons who are deaf or hard of hearing and who are seeking certification.

HHSC, on behalf of DARS, adopts amendments to §109.221, Validity of Certificates and Recertification, to extend the time by two years for a person who has served in the military to earn all continuing education units, in accordance with S.B. 1307.

HHSC, on behalf of DARS, adopts amendments to §109.223, Certificate Renewal, to allow a person who has served in the military and who has an expired court certificate to renew certification within two years, in accordance with S.B. 1307.

HHSC, on behalf of DARS, adopts amendments to §109.231, Schedule of Fees, to establish a fee for persons taking the Medical Performance Test and the ASL Proficiency Test and Performance Test for persons who are deaf or hard of hearing. It eliminates the prerequisite and performance tests previously required of persons who are deaf or hard of hearing and who are seeking certification. It establishes application fees for persons who have taken the BEI test in another state and want to become Texas certified as Basic, Advanced, or Master. In addition, this rule section is amended to address the waiver of fees for military personnel, in accordance with S.B. 807.

HHSC, on behalf of DARS, adopts amendments to §109.315, Qualifications and Requirements of Court Certificate, to allow military service members and military veterans to be issued an expedited BEI court interpreter certificate, in accordance with S.B. 1307.

HHSC, on behalf of DARS, adopts new §109.451, Purpose, to establish a new Division 4, BEI Medical Interpreter Certification.

HHSC, on behalf of DARS, adopts new §109.453, Legal Authority, to establish the legal authority for medical certification under the BEI program.

HHSC, on behalf of DARS, adopts new §109.457, Qualifications and Requirements for Medical Certificate, to establish the qualifications and requirements for a person applying for medical interpreter certification. This rule section is also being added to establish an annual renewal requirement and a five-year continuing education requirement.

#### COMMENTS

DARS received comments from twelve commenters during the 30-day comment period. A summary of the comments along with the agency's responses follow.

Comment: Three commenters supported the changes to the proposed rules. One commenter supported the requirements of the 20 clock hours for medical recertification and the prerequisite certification for taking the medical test as required by §109.457, relating to Qualifications and Requirements for Medical Certificate.

Response: DARS agrees with these comments.

Comment: One commenter, relating to §109.105, Definitions, inquired if a medical certificate should be added to the definition of "specialty certificate."

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The term specialty certificate has been removed from §109.217, Qualifications and Requirements for a BEI Certificate, and is only referenced as a definition. At this time, medical certificate is not added to this definition.

Comment: One commenter, relating to §109.217, stated that the use of the American Sign Language (ASL) Proficiency Test may not be useful when many interpreters work in K-12 and other educational settings and not the public sector.

Response: The ASL Proficiency Test is for individuals who are deaf or hard of hearing. Interpreter candidates who are deaf or hard of hearing are required to pass the ASL Proficiency Test to be eligible for the performance test for persons who are deaf or hard of hearing. The ASL Proficiency Test is not geared for a particular setting.

Section 109.217 is being adopted with a change in order to correct an editorial error. Subsection (c)(2) should include an "and" instead of a period in order to include subsection (c)(3) as part of the requirement to take a BEI performance test.

Comment: Two commenters, relating to the new rules proposed for Division 4, BEI Medical Interpreter Certification, are concerned about the current shortage of interpreters and to impose a medical interpreter certification would add to the shortage. One commenter inquired when requirement of a medical certification would begin.

Response: Based on DARS's review of the comments and DARS' recommendation, these rules are being adopted without change, as medical certification is not required to interpret in medical settings. Establishing a voluntary certification would not impact the availability of qualified interpreters but rather enhance the field by providing an alternative means to qualify interpreters in medical settings. The new medical test is scheduled for release in the spring of 2016.

Comment: Four commenters requested that §109.457, Qualifications and Requirements for Medical Certificate, allow for grandfathering certified BEI Advanced and Master certificate holders who have many years of experience in medical interpreting.

Response: Based on DARS's review of the comments and DARS' recommendation, this rule is being adopted without change. Medical certification is optional for interested interpreters when working with hospitals and physicians and is not required to interpret in medical settings. This is the first time that DARS has used medical certification; therefore, there is no grandfathering for this certification.

Comment: One commenter, relating to §109.457, inquired if the medical certification was for both sign language and oral interpreters as there is a need for both modes of interpreting in a medical setting.

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The Medical Performance Test is designed for sign language interpreters. DARS may develop a test for oral interpreters as funding becomes available.

Comment: One commenter, relating to §109.457, inquired if persons who are deaf could take the Medical Performance Test. One commenter asked if interpreters who are deaf could interpret in medical settings since they are not eligible to take the Medical Performance Test.

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The medical test is designed to test the skills of interpreters who can hear at the conversational level. Medical certification is not required to interpret in medical settings and deaf interpreters could still interpret in a medical setting.

Comment: One commenter, relating to §109.457, requested that interpreters applying for certification be required to have a background check and take a Tuberculosis (TB) test. The commenter stated that one hospital and a school system required interpreters to have a TB test before interpreting at their facilities, which makes it a hardship on interpreter referral agencies to find interpreters willing to take the TB test. Since this is requested, it would be better to require a background check and TB test when the interpreter updates the certification.

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The BEI program focuses on the skill sets needed to become certified rather than on employment requirements that individual employers may establish for interpreters.

Comment: Four commenters inquired about the training requirements to take the Medical Performance Test as required by §109.457. Comments included defining a credit hour, counting experience towards training, requiring types of medical training, considering mentoring for training, and receiving credit for past courses. The commenters also inquired if a study guide will be

provided and will recommendations from the HHSC Advisory Committee on Qualifications for Healthcare Translators be a guide to determine training types. One commenter stated that content knowledge of medical terms and procedures are essential.

Response: Based on DARS's review of the comments and DARS' recommendation, this rule is being adopted without change. Credit hours are used to mean clock hours and are consistent with language currently in rule. In addition, experience does not qualify towards training and DARS DHHS must approve training, including mentoring and workshops. Policy will be developed to provide additional guidance on training requirements. A study guide will be developed and published to the DARS website. No restrictions have been established by these proposed rules as to when courses may be taken.

## SUBCHAPTER A. GENERAL RULES

### 40 TAC §109.105

#### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

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

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For further information, please call: (512) 424-4050



## SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS

### DIVISION 1. BEI INTERPRETER CERTIFICATION

#### 40 TAC §§109.205, 109.217, 109.221, 109.223, 109.231

#### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

#### §109.217. *Qualifications and Requirements for a BEI Certificate.*

(a) To apply for or to take any examination for a BEI Certificate, an applicant must:

- (1) be at least 18 years old;
- (2) have earned a high school diploma or its equivalent;

and

(3) not have a criminal conviction that could qualify as grounds for denial, probation, suspension, or revocation of a BEI certificate, or other disciplinary action against any holder of a BEI certificate.

(b) To take the written Test of English Proficiency or to take the American Sign Language Proficiency Test for persons who are deaf or hard of hearing, an applicant must have:

- (1) met all the criteria in subsection (a) of this section; and
- (2) earned at least 30 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher.

(c) To take a BEI performance test, an applicant must have:

- (1) met all the criteria in subsection (a) of this section;
- (2) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, unless the applicant is applying for a court, medical, or trilingual certificate or except as provided in subsections (e) and (f) of this section; and

(3) earned a passing score on the Test of English Proficiency, unless the applicant is applying for a court, medical, or trilingual certificate; or

(4) earned a passing score on the American Sign Language Proficiency Test if the applicant is deaf or hard of hearing.

(d) To apply for and to be issued a BEI certificate, an applicant must have:

- (1) met all criteria in subsection (a) of this section; and
- (2) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, except as provided in subsections (e) and (f) of this section; and earned a passing score on the requisite examination for the certificate level sought.

(e) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, is exempt from the educational or degree requirements in subsections (b), (c), and (d) of this section, as long as the BEI certificate remains active and valid.

(f) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, and who applies for an additional BEI certificate level after January 1, 2012, may be exempt from the educational or degree requirements of subsections (b), (c), and (d) of this section, if, at the time the certificate holder applies for, takes, and passes any BEI examination for the additional certificate, the BEI certificate holder:

(1) has an active and valid BEI certificate that is fully compliant with BEI's annual certificate maintenance and five-year recertification rules and requirements;

(2) is not under any type of active or pending disciplinary action from BEI or DHHS; and

(3) satisfies all other rules and requirements applicable to the additional BEI certificate level sought.

(g) A certified interpreter wanting to take a higher level BEI performance test must have the following prerequisite certificate for the corresponding BEI performance test:

Figure: 40 TAC §109.217(g)

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

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## DIVISION 2. BEI COURT INTERPRETER CERTIFICATION

### 40 TAC §109.315

#### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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## DIVISION 4. BEI MEDICAL INTERPRETER CERTIFICATION

### 40 TAC §§109.451, 109.453, 109.457

#### STATUTORY AUTHORITY

The adopted new rules are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

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