

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 5. TEXAS FACILITIES COMMISSION

CHAPTER 116. PROPERTY MANAGEMENT DIVISION

SUBCHAPTER A. STATE OWNED PROPERTY 1 TAC §116.3

Introduction and Background

The Texas Facilities Commission (the "Commission") adopts an amendment to Chapter 116, §116.3, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8849). During its rule review, published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6941), the Commission reviewed and considered Texas Administrative Code, Title 1, Part 5, Chapter 116 for re-adoption, revision, or repeal in accordance with Texas Government Code §2001.039 (West 2008). The Commission considered, among other things, whether the agency rulemaking authority and business necessity associated with the adoption of the rules continued to exist. No comments were received during the proposed rule review. The Commission determined that the chapter should be re-adopted with amendments. Accordingly, the Commission proposed an amendment to §116.3. Notice of the proposed amendment was published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8849).

Justification for the Rule

Section 116.3 sets out the procedure for submitting maintenance, repair, and modification service requests. Subsection (a) specifically sets out the procedure for submitting maintenance service requests. In order to reflect current agency processes and procedures, the Commission adopts an amendment to this subsection. The amendment deletes the word "facsimile." The Commission no longer accepts maintenance service requests by facsimile. The adopted amendment is necessary to reflect the current process and procedures of the agency.

The Commission received no comments concerning the proposed amendment.

Statutory Authority

The rule amendment is adopted under Texas Government Code §2165.0012, which authorizes the Commission to adopt rules to administer Chapter 2165.

Cross Reference to Statute

The statutory provisions affected by the amendment are those set forth in Chapter 2165 of the Texas Government Code.

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 29, 2016.

TRD-201601457

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: April 18, 2016

Proposal publication date: December 11, 2015

For further information, please call: (512) 475-2400



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 33. ADVANCED TELECOMMUNI- CATIONS SERVICES

1 TAC §354.1432

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations, with changes to the proposed text as published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 559). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The rule amendment is a result of House Bill (H.B.) 1878, 84th Legislature, Regular Session, 2015, which clarifies that physicians shall be reimbursed for telemedicine medical services provided in a school-based setting, even if the physician is not the patient's primary care physician, if certain conditions are met. The rule amendment updates the Medicaid rule for telemedicine services to reflect the additional requirements outlined in the bill.

COMMENTS

The 30-day comment period ended on February 14, 2016. During the 30-day comment period, HHSC received written comments from Children's Hospital Association of Texas, Children's Health, Texas Nurses Association, Texas Medical Association, and Texas Hospital Association.

Summaries of each comment and HHSC's responses follow:

Comment: Three commenters noted that proposed §354.1432(1)(G)(iv) should refer to the definition of health professional provided in Texas Government Code §531.0217(a)(1). The proposed rule text of §354.1432(1)(G)(iv) referred instead to Texas Government Code §531.0271(a)(1).

Response: HHSC has corrected the citation in §354.1432(1)(G)(iv) from Texas Government Code §531.0271(a)(1) to Texas Government Code §531.0217(a)(1) and changed "health care professional" to "health professional."

Comment: One commenter noted that the language of H.B. 1878 refers to "health professional," rather than to "health care professional," as is reflected in the proposed amendments to §354.1432, and requests that HHSC modify the term as used in §354.1432(G)(iv) to align with both H.B. 1878 and Texas Government Code §531.0217(a)(1).

Response: HHSC has corrected §354.1432(G)(iv) to include the term "health professional," rather than "health care professional."

Comment: Two commenters requested that HHSC clarify how far in advance and at what frequency parent or legal guardian consent for a telemedicine medical service must be obtained.

Response: HHSC considers medical and behavioral health services delivered via advanced telecommunications technology interchangeable with the same medical or behavioral health services delivered in-person. HHSC expects that all consent to treatment requirements applicable to medical or behavioral health services delivered in-person are observed for medical and behavioral health services delivered via advanced telecommunications technology. HHSC lacks the statutory authority to offer guidance on federal and state consent to treatment requirements.

Comment: Two commenters requested that HHSC clarify that the language "as applicable" in §354.1432(1)(E) allows parents to choose not to share any treatment summaries with their child's primary care provider.

Response: HHSC agrees that a parent can opt out of sharing treatment summaries for a telemedicine visit with their child's primary care physician, and this is addressed in §354.1432(1)(E)(i). However, as noted in the Preamble to the proposed rules, treatment notifications are also not required to be provided to a primary care physician if the child receiving treatment does not have a designated primary care physician, and it is this situation to which "as applicable" refers. HHSC will replace "as applicable" with "unless the patient does not have a primary care physician or provider" in §354.1432(1)(E) to make the rule clearer.

Comment: Two commenters suggested that HHSC replace "must receive" with "must be offered" in §354.1432(1)(F), in recognition that some parents may refuse to accept the treatment summary or list of possible primary care physicians.

Response: HHSC accepts the comment and will replace "must receive" with "must be offered" in §354.1432(1)(F).

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1432. *Telemedicine and Telehealth Benefits and Limitations.*

Telemedicine medical services and telehealth services are a benefit under the Texas Medicaid program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission or its designee (HHSC).

(1) Conditions for reimbursement applicable to telemedicine medical services.

(A) The telemedicine medical services must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement include:

- (i) consultations;
- (ii) office or other outpatient visits;
- (iii) psychiatric diagnostic interviews;
- (iv) pharmacologic management;
- (v) psychotherapy; and
- (vi) data transmission.

(B) The services must be provided in compliance with 22 TAC Chapter 174 (relating to Telemedicine).

(C) The patient site must be:

- (i) an established medical site;
- (ii) a state mental health facility; or
- (iii) a state supported living center.

(D) For a child receiving telemedicine medical services in a primary or secondary school-based setting, advance parent or legal guardian consent for a telemedicine medical service must be obtained.

(E) The patient's primary care physician or provider must be notified of a telemedicine medical service, unless the patient does not have a primary care physician or provider.

(i) The patient receiving the telemedicine medical service, or the patient's parent or legal guardian, must consent to the notification.

(ii) For a telemedicine medical service provided to a child in a primary or secondary school-based setting, the notification must include a summary of the service, including:

- (I) exam findings;
- (II) prescribed or administered medications; and
- (III) patient instructions.

(F) If a child receiving a telemedicine medical service in a primary or secondary school-based setting does not have a primary care physician or provider, the child's parent or legal guardian must be offered:

(i) the information in subparagraph (E)(ii) of this paragraph; and

(ii) a list of primary care physicians or providers from which to select the child's primary care physician or provider.

(G) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician or provider, are reimbursed if:

- (i) the physician is enrolled as a Medicaid provider;

(ii) the patient is a child who receives the service in a primary or secondary school-based setting;

(iii) the parent or legal guardian of the patient provides consent before the service is provided; and

(iv) a health professional as defined by Texas Government Code §531.0217(a)(1) is present with the patient during the treatment.

(2) Conditions for reimbursement applicable to telehealth services.

(A) The telehealth services must be designated for reimbursement by HHSC. Designated telehealth services will be listed in the Texas Medicaid Provider Procedures Manual.

(B) The services must be provided in compliance with standards established by the respective licensing or certifying board of the professional providing the services.

(C) The patient site must be:

(i) an established health site;

(ii) a state mental health facility; or

(iii) a state supported living center.

(D) The patient site presenter must be readily available for telehealth services. However, if the telehealth services relate only to mental health, a patient site presenter does not have to be readily available except when the patient may be a danger to himself or to others.

(E) Before receiving a telehealth service, the patient must receive an in-person evaluation for the same diagnosis or condition, with the exception of a mental health diagnosis or condition. For a mental health diagnosis or condition, the patient may receive a telehealth service without an in-person evaluation provided the purpose of the initial telehealth appointment is to screen and refer the patient for additional services and the referral is documented in the medical record.

(F) For the continued receipt of a telehealth service, the patient must receive an in-person evaluation at least once during the previous 12 months by a person qualified to determine a need for services.

(G) Both the distant site provider and the patient site presenter must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

(H) Written telehealth policies and procedures must be maintained and evaluated at least annually by both the distant site provider and the patient site presenter and must address:

(i) patient privacy to assure confidentiality and integrity of patient telehealth services;

(ii) archival and retrieval of patient service records; and

(iii) quality oversight mechanisms.

(3) Conditions for reimbursement applicable to both telemedicine medical services and telehealth services.

(A) Preventive health visits under Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment program, are not reimbursed if performed using telemedicine medical services or telehealth services. Health care or

treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, chapters 111 and 159 of the Occupations Code, and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

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 April 4, 2016.

TRD-201601569

Karen Ray

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Texas Health and Human Services Commission

Effective date: May 15, 2016

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

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §10.610

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, §10.610, concerning Tenant Selection Criteria, without changes to the proposal as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26). The rule is repealed in connection with the adoption of new §10.610, concerning Written Policies and Procedures, which was proposed concurrently in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26).

REASONED JUSTIFICATION. The repeal of §10.610 concerning Tenant Selection Criteria will allow for the concurrent adoption of new §10.610 concerning Written Policies and Procedures.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from January 1, 2016, through February 1, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The repeal affects no other code, article, or statute.

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 April 4, 2016.

TRD-201601566

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Texas Department of Housing and Community Affairs

Effective date: April 24, 2016

Proposal publication date: January 1, 2016

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10 TAC §10.610

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, §10.610, concerning Written Policies and Procedures, with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26). This new section is being adopted concurrently with the repeal of existing §10.610, concerning Tenant Selection Criteria. Changes were made to the proposed text in response to public comment.

REASONED JUSTIFICATION. The purpose the new rule is to provide guidance and clarification related to required policies and procedures, through a restructuring of the rule, to effectuate compliance with federal civil rights laws.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from January 1, 2016, through February 1, 2016. Comments were received from (1) Abby Allen, (2) Lori Erbst, (3) Luann Kolander, (4) Lucy Defendini, and (5) Patricia Hensley.

COMMENT SUMMARY: §10.610(b)(3) relating to households participating in a federal, state or local government rental assistance programs--Commenter (1) observes that the minimum income standard of 2.5 times the tenant portion of rent or, when the tenant portion of rent is \$50 or less, a minimum income standard of \$2500 annually for households that participate in a federal, state or local government rental assistance program does not mathematically harmonize. If the tenant's portion of rent was \$50, \$50 multiplied 2.5 times is \$125 monthly and \$1500 annually, but the rule allows for the minimum income standard to be \$2500 annually instead of the \$1500 annually. Conversely, if the tenant portion of rent was \$51, the minimum income standard would be \$1530 annually (\$51 x 2.5 x 12), which yields a lower minimum income standard than what is allowed for when the household tenant portion is less than \$50. The commenter suggests that this approach is illogical and could lead to Fair Housing discrimination complaints as owners could be accused

of discriminating against those residents with lower than \$50 portion by requiring them to have a higher minimum income standard. The commenter supports the \$2500 annually standard as reasonable, but proposes that the threshold for when the \$2500 could be used be increased from \$50 to \$83.

STAFF RESPONSE: Staff agrees with the Commenter's concerns but not the proposed resolution. Instead, the rule has been updated to read "The minimum income standard for households participating in a voucher program is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually."

COMMENT SUMMARY: §10.610(b)(1)(D)(iii) relating to assistance/service animals--Commenter (3) represents that she is committed to reasonably accommodating persons with disabilities who require an assistance/service animal, but expresses concern regarding the health and safety of all residents. The Commenter contends that, to mitigate the potential impact of assistance/service animals on other residents, that all animals, including assistance/service animals, be approved and registered before the assistance/service animal is allowed to live at the property. The Commenter outlines a registration process and proposes that rules are needed for assistance/service animals related to restraints/behavior, animal supervision, and sanitary standards.

STAFF RESPONSE: Staff recommends no change in response to the comment. Under the Fair Housing Act ("FHA"), to which all multifamily properties in the Department's portfolio are subject, assistance animals are defined as animals that are not pets. While the ADA has refined the definition and specific requirements for service animals, HUD Notice FHEO-2013-01 concludes that the definition of "service animal" contained in ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHA or Section 504. In addition, under the FHA and Section 504, assistance animals are not considered pets. Neither the FHA nor Section 504 requires a service/assistance animal to be individually trained or certified. To determine if an animal is a service/assistance animal, the owner is prohibited from asking about the nature or extent of a person's disability, but can make two (2) inquiries: 1) Is this a service/assistance animal that is required because of a disability? and 2) What work or task has the animal been trained to perform? An owner is further prohibited from requiring documentation, such as proof that the animal has been certified, trained or licensed as a service/assistance animal.

In response to the concerns regarding the behavior of a service/assistance animal, HUD Notice FHEO-2013-01 expands on an owner's recourse options. Service/assistance animals must be permitted to accompany the individual with the disability to all areas of a Development where persons are normally allowed to go unless: 1) the specific animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or 2) the specific animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. This Notice states that under Section 504 and the FHA, if a property has extended a reasonable accommodation and a pet's behavior rises to the level that HUD's guidance has considered in the notice, the Development, on a case by case basis should meet with the tenant to discuss the issue where possible, submit a notice to the tenant regarding the service animal's behavior, and may request modi-

fications in behavior or assurances that behavior will not reoccur as a condition to retaining the accommodation for the service animal. The referenced notice also provides that a housing provider may require a tenant to cover the cost of housing repairs for damage the animal causes to the dwelling unit or common areas, reasonable wear and tear excepted, if it is the provider's practice to assess tenants for any damage they cause to the premises. As a reminder, however, no deposits may be charged for a reasonable accommodation and no pet deposits may be charged for service animals.

COMMENT SUMMARY: §10.610(b)(1)(A)(i) and (ii) regarding inclusion of income and rent limits and student restrictions/exceptions in the Tenant Selection Criteria--Commenters (2), (4), and (5) all expressed that to list all income limits and rent limits in the Tenant Selection Criteria would be too confusing. Commenters (2) and (5) propose that only the highest tier of income and rent restrictions be required. As described by Commenter (5), when an applicant qualifies for a lower tier and none is available, it confuses and frustrates that applicant. Commenter (2) asserts that further clarification is needed, but does not express what needs clarifying or what the Department could do to further clarify. Commenter (4) was the only commenter who suggests that including student restrictions and exceptions to those restrictions in the Tenant Selection Criteria for combined properties would be confusing for the applicants and residents; but, offers no reason as to why it would be confusing, nor was any alternative proposed.

STAFF RESPONSE: Staff recommends no change in response to these comments. For a unit to be considered a program unit, the unit must meet three (3) conditions 1) that it is occupied with a household whose gross income is equal to/less than the income limit for that household size; 2) that the gross rent is equal to/less than the rent limit for that bedroom size; and 3) that the unit is suitable for occupancy. While these are the three (3) main tenets of multifamily programs administered by the Department, another provision that would immediately disqualify a household is the student status of each member in the household. All multifamily programs administered by the Department have income limits and most programs have student restrictions. In some cases, a property could have multiple programs, each of which has their own income limits and/or student rules. When a property has multiple programs, in most cases, the qualifying income limits and applicable student rules are different under each program. An applicant would have no other way of understanding the expectation that they would need to have a gross income less than a specific predetermined limit; or, that, even if the household is income eligible, being a student could affect their ability to occupy a unit. Including income limits and student restrictions/exceptions in the Tenant Selection Criteria would eliminate applicants, who know they would not income qualify or that their household consists of ineligible students, from submitting application and paying an application fee, thus mitigating the administrative burden on staff and applicants.

COMMENT SUMMARY: §10.610(b) and (e)(4)(B) regarding record retention of Tenant Selection Criteria--The rule, as proposed, requires that the Tenant Selection Criteria under which an applicant was screened must be included in the household's file or, in the case an applicant is denied, be maintained with the denied application. Commenter (2) alleges that the Tenant Selection Criteria is 10+ pages and that it would be overkill to print those 10+ pages for every applicant's application. She describes their current process of maintaining a signature page only with the application and proposes that all revised Tenant

Selection Criteria be kept in a binder in date order for easy reference.

STAFF RESPONSE: Staff recommends no change in response to the comment. Prior to the rule being presented today, the policies outlined in this proposed rule were required, but expected to be part of one larger policy referred to as the "Tenant Selection Criteria". The rule is being revised to allow for Owners to comply by maintaining each policy and/or procedure separately. Of all the policies required under the proposed rule, the only policy expected to be maintained in a tenant or denied applicant file is the Tenant Selection Criteria under which that household was considered. While the Department applauds the Commenter's diligence in maintaining a signature page, there is no current requirement that the Tenant Selection Criteria be signed. Further, beyond suggesting that this is "overkill" no other reason was offered for consideration.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The new section affects no other code, article, or statute.

§10.610. Written Policies and Procedures.

(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation.

(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section available in the leasing office or wherever applications are taken.

(3) All policies must have an effective date. Any changes require a new effective date.

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.

(1) The criteria must include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:

(i) The income and rent limits;

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and,

(iii) Fees and/or deposits required as part of the application process.

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(i) The screening criteria must avoid the use of vague terms such as "elderly," "bad credit," "negative rental history," "poor housekeeping," or "criminal history" unless terms are clearly defined within the criteria made available to applicants.

(ii) Applicants must be provided the names of any third party screening companies upon request.

(C) Occupancy Standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statements:

(i) The Development will comply with state and federal fair housing and antidiscrimination laws; including, but not limited to, consideration of reasonable accommodations requested to complete the application process. Chapter 1, Subchapter B of this title provides more detail about reasonable accommodations.

(ii) Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.

(iii) Specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s).

(E) Notice to applicants and current residents about Violence Against Women Reauthorization Act of 2013 ("VAWA") protections.

(F) Specific age requirements if the Development is operating as Housing for Older Persons under the Housing for Older Persons Act of 1995 as amended (HOPA), or as required by federal funds to have an Elderly Preference, and in accordance with a LURA.

(2) The criteria must not:

(A) Include preferences for admission, unless such preference is:

(i) Allowed for under program rules; or,

(ii) The property receives Federal assistance and has received written approval from HUD, USDA, or VA for such preference.

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or,

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and,

(B) A timeframe in which the Owner will respond to a request.

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation or special needs set aside program;

(C) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or,

(D) Require a household to rent a unit that has already been made accessible.

(d) Wait List Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait list;

(B) How preferences are applied; and,

(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR 8.27 and Chapter 1, Subchapter B of this title.

(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(e) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven (7) days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based; and,

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the property.

(3) The Development must keep a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process;

(B) The specific reason for which an applicant was denied, the date the decision was made; and,

(C) The date the denial notice was mailed or hand-delivered to the applicant.

(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:

(A) A copy of the written notice of denial; and,

(B) The Tenant Selection Criteria policy under which an applicant was screened.

(f) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules;

(B) Include information on rights under VAWA;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and,

(D) Include information on the appeals process if one is used by the property.

(g) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:

(1) How security deposits will be handled for both the current unit and the new unit;

(2) How transfers related to a reasonable accommodation will be addressed; and,

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All 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 April 4, 2016.

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Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-2330



10 TAC §10.620

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 10,

Uniform Multifamily Rules, §10.620, concerning Monitoring for Non-Profit Participation, HUB, or CHDO Participation, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 32).

REASONED JUSTIFICATION. The purpose of the amendment is to codify the new requirement in the HOME Final Rule, 24 CFR Part 92, as it relates to long-term monitoring of a Community Housing and Development Organization ("CHDO") for HOME Developments that were awarded funds from the CHDO set aside on or after August 23, 2013, into the Department's Monitoring Rules.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from January 1, 2016, through February 1, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The amendments affect no other code, article, or statute.

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 April 4, 2016.

TRD-201601565

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 24, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 475-2330



CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts without changes amendments to 10 Texas Administrative Code Chapter 80, §§80.3, 80.30, 80.32, 80.36, 80.41, 80.71, 80.73 and 80.90 relating to the regulation of the manufactured housing program. The rules are adopted without changes to the proposed text and will not be republished in the *Texas Register*. The proposed amendments were published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 883).

The rules are adopted for clarification purposes.

The rules as proposed on February 5, 2016, are adopted as final rules and are effective thirty (30) days following the date of publication in the *Texas Register* of notice that the rules are adopted.

The following is a restatement of the rules' factual basis:

Section 80.3(f): Revised to clarify the installer is also eligible to request an industry inspection per §1201.355(b) of the Standards Act.

Section 80.30(f): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.30(g): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.32(u): The new section clarifies how long a person has to exercise their right of rescission without penalty or charge.

Section 80.36(a): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.36(d): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.41(d)(6)(B): The new subparagraph enables the continuing education provider to submit their renewal application and fee and continue operating. This will be most beneficial in the event that a renewal is pending and the regularly scheduled board meetings are postponed and or rescheduled, or canceled due to lack of a quorum.

Section 80.41(f)(1): The revision will assist in preventing former license holders whose license was revoked, suspended, and/or denied from applying for a salesperson's license when they may be viewed as unsuitable to work in the manufactured housing industry.

Section 80.71(d): Adds new subsection to clarify that the Department may serve the notice of hearing on the respondent to the last known address as shown by the Department's records.

Section 80.71(f): Adds new subsection to clarify the process when a default is granted by the administrative law judge without issuance of a default proposal for decision.

Section 80.73(e): Clarifies the timeframe in which the Department requires the licensee to submit the completed service or work orders.

Section 80.73(f): Revised to remind license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

Section 80.90(a)(6): Revised to include personal property in the designation for use as a dwelling that requires evidence of a satisfactory habitability inspection by the Department.

There were no comments received during the comment period and no requests were received for a public hearing to take comments on the rules.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

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

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

TRD-201601543

Joe A. Garcia

Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs

Effective date: May 15, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 475-2206

SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §§80.30, 80.32, 80.36

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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 April 1, 2016.

TRD-201601544

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Effective date: May 15, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 475-2206

SUBCHAPTER D. LICENSING

10 TAC §80.41

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

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

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

TRD-201601545

Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: May 15, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 475-2206



SUBCHAPTER E. ENFORCEMENT

10 TAC §80.71, §80.73

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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 April 1, 2016.

TRD-201601546

Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: May 15, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 475-2206



SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.90

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

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

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

TRD-201601547

Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: May 15, 2016
Proposal publication date: February 5, 2016
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1025

The Texas Education Agency adopts new §74.1025, concerning individual graduation committee (IGC) review. The new section is adopted with changes to the proposed text as published in the December 4, 2015 issue of the *Texas Register* (40 TexReg 8717). The new rule reflects requirements implemented by Senate Bill (SB) 149, 84th Texas Legislature, Regular Session, 2015.

REASONED JUSTIFICATION. Texas Education Code, §39.025(a), prohibits a student from receiving a high school diploma until the student has performed satisfactorily on state end-of-course (EOC) assessments. Students must perform satisfactorily on the following five EOC assessments: Algebra I, Biology, English I, English II, and U.S. History.

The 84th Texas Legislature, Regular Session, 2015, passed SB 149, requiring each school district and open-enrollment charter school to establish an IGC for each 11th or 12th grade student who fails to comply with the EOC assessment performance requirements for not more than two courses. The committee must be established at the end of or after the student's 11th grade year to determine whether a student may qualify to graduate. A student may not graduate under this provision before the student's 12th grade year. SB 149 requires the commissioner to adopt rules to establish alternative IGC members, establish a timeline for decisions by IGCs, and require district reporting of certain data related to IGCs through the Public Education Information Management System (PEIMS). Timelines in the adopted new rule facilitate the ability for districts and charters to properly report students who graduate based on an IGC decision and to receive credit for these students as graduates.

New §74.1025, Individual Graduation Committee Review, identifies the required members of an IGC and establishes rules for identifying alternative members of a committee in the event that required members are unavailable. The rule also establishes a timeline by which IGCs must be established for eligible students and by which IGC decisions for a given school year must be finalized. It also establishes school district PEIMS reporting requirements related to the IGC.

Adopted new 19 TAC §74.1025 contains the following changes since published as proposed.

In response to public comment, §74.1025(c) was modified to add language to specify that a school district or charter school may

not convene an initial IGC after June 10 or before the start of the next school year.

In response to public comment, §74.1025(d) was modified to clarify that in order for a student to be included as a graduate for a given school year, an IGC must make a determination regarding graduation no later than August 31. Language was also added to specify that determinations regarding graduation made after August 31 will require the student to be reported as a graduate in the subsequent school year.

In addition, new §74.1025(m) was added to clarify that the IGC requirements do not apply to students who receive special education services.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began December 4, 2015, and ended January 4, 2016. Following is a summary of the public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 74, Curriculum Requirements, Subchapter BB, Commissioner's Rules Concerning High School Graduation, §74.1025, Individual Graduation Committee Review.

Comment. One district administrator expressed concerns with the timelines proposed in 19 TAC §74.1025(c) and (d) for IGC actions. The commenter stated that requiring the IGC to be established by June 1 and decisions implemented by August 31 does not provide incentives for students to retake the assessment(s) during their senior year.

Agency Response. The agency disagrees and has determined that sufficient time is provided within this window to allow students to take the July retest administration. Furthermore, each district and open-enrollment charter school is required by 19 TAC §101.3022(e) to provide students with the opportunity to retake an EOC exam on which the student failed to perform satisfactorily. In response to other comments, however, the agency modified 19 TAC §74.1025(c) at adoption to change the deadline by which a school district must initially convene an IGC to June 10 to allow for schools to receive EOC reports and convene an IGC.

Comment. One district administrator inquired whether the proposed rules would allow students who start working on their required IGC work during the school year to elect not to take any more EOCs exams.

Agency Response. The agency provides the following clarification. Section 101.3022(e) requires school districts and open-enrollment charter schools to provide students with the opportunity to retake an EOC exam on which the student failed to perform satisfactorily.

Comment. One district administrator stated that allowing students to skip retest opportunities would not count negatively or positively toward accountability and would be unfair to districts that are requiring students to continue to retest.

Agency Response. The agency provides the following clarification. Section 101.3022(e) requires school districts and open-enrollment charter schools to provide students with the opportunity to retake an EOC exam on which the student failed to perform satisfactorily.

Comment. Houston Independent School District (ISD) requested that in proposed 19 TAC §74.1025(c), the June 1 deadline by which a school district must establish an IGC for eligible students be eliminated or, if not eliminated, revised to June 21. The commenter added that the proposed rule would

impose an undue burden on schools working to support seniors who need results from spring STAAR® EOC testing to qualify for an IGC. The commenter stated that the proposed rules afford such a limited amount of time that it would be extremely difficult to comply with the requirements, especially for larger high schools and/or schools with large numbers of at-risk students.

Agency Response. The agency agrees that the deadline to convene an IGC for eligible students should be moved back to allow time for EOC reporting to be received by schools. The agency modified 19 TAC §74.1025(c) at adoption to change the deadline to June 10 to allow for schools to receive EOC reports and convene an initial IGC.

Comment. The Texas School Alliance stated that the proposed rule language is generally aligned to the provisions in Senate Bill 149.

Agency Response. The agency agrees. The agency also modified 19 TAC §74.1025 at adoption to respond to other comments.

Comment. The Texas School Alliance stated that proposed 19 TAC §74.1025(c), the deadline by which a school district must establish an IGC for eligible students, may unnecessarily preclude students from the opportunity to graduate in the summer, particularly if the students become eligible for the IGC based on summer retest results, if there is any delay in receiving spring test scores back from the state assessment contractor or the school uses a year-round or other atypical calendar. The Texas School Alliance suggested instead either requiring districts to adopt local policies that establish a deadline or establishing a sliding deadline based on a specific number of days prior to local graduation dates so that students' opportunities are consistent across the state.

Agency Response. The agency agrees that the deadline to convene an IGC for eligible students should be moved back to allow time for EOC reporting to be received by schools. However, the agency disagrees that allowing time for results from summer retest opportunities is necessary for an initial convening of an IGC. In response to this and other comments, the agency modified 19 TAC §74.1025(c) at adoption to change the deadline to June 10 to allow for schools to receive EOC reports and convene an initial IGC.

Additionally, the agency provides the following clarification. The deadline in proposed 19 TAC §74.1025(c) is the date by which a school district must establish an initial IGC for eligible students, not the date by which an IGC must make a determination regarding graduation.

Comment. The Texas School Alliance stated that in proposed 19 TAC §74.1025(d), the August 31 deadline by which an IGC determination must be made, together with the June 1 deadline to convene an IGC, create a very narrow window of opportunity at the start of the school year in which to establish an IGC and make determinations for students who hope to graduate in December. It is especially critical for mobile students since the transmission of pertinent records from one district to another may not be completed in time for an IGC to be established, much less to reach a determination, by August 31. The Texas School Alliance suggested either allowing districts to adopt local policies that determine the last date by which IGCs can determine whether students have met requirements to graduate or establishing a sliding deadline based on a specific number of days, preferably 30 days, into the term by which IGCs must reach determinations regarding graduation.

Agency Response. The agency provides the following clarification. The rules do not prohibit an IGC from making a determination prior to the start of the next school year. In response to this and other comments, the agency modified 19 TAC §74.1025(d) at adoption to read, "In order for a student to be included as a graduate in the school district's or charter school's graduation data in the school year in which the student meets the requirements provided by law to graduate under individual graduation committee provisions, an individual graduation committee must make a decision to award a diploma no later than August 31 immediately following that school year. A student who graduates as a result of an individual graduation committee decision after August 31 shall be reported on the subsequent year's graduation data."

Comment. The Texas School Alliance stated that proposed 19 TAC §74.1025(g) calls for the principal to "designate a teacher certified in the subject of the EOC assessment," who is most familiar with the student's performance in the subject, to serve on the IGC if the student's teacher is not available. While the intent is good, the rule may impose hardships for certain schools, particularly those that are small and/or highly specialized. The Texas School Alliance offered the following proposed solution: allow for other suitable teachers, campus instructional support personnel, or administrators to serve as an IGC member in the event that the teacher described by the proposed rule language is not available to serve on the IGC.

Agency Response. The agency disagrees and has determined that it is important to include a teacher with subject matter expertise on the committee and that the language is appropriate as proposed.

Comment. Northeast ISD stated that the deadline for convening an IGC proposed in 19 TAC §74.1025(c) is problematic for two main reasons. First, the results of EOC assessments will not be available until June 3, 2016, possibly after the allowable time for establishing an IGC. A short timeframe between the May test results and June 1 IGC deadline would create an unnecessary burden on high schools with large at-risk student populations. Second, students may retake STAAR® assessments in July. Some students may become eligible for an IGC after the summer test administration schedule and the June 1 deadline. Based on the proposed rules, an IGC could not be convened before the start of the next school year and newly eligible students from the summer test administration would not be qualified to participate in a summer graduation ceremony. Northeast ISD requested that the restriction in 19 TAC §74.1025(c) on when a school district may establish an IGC for eligible students be eliminated entirely.

Agency Response. The agency disagrees that the June deadline should be eliminated entirely and has determined that a deadline by which an IGC must be initially convened is necessary for consistency in reporting data related to IGCs. In response to this and other comments, the agency modified 19 TAC §74.1025(c) at adoption to read, "A school district or an open-enrollment charter school may not establish an initial individual graduation committee for eligible students after June 10 or before the start of the next school year. Once the individual graduation committee has been established, it is the original individual graduation committee for that student."

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §28.0258(c), which requires the commissioner of education to establish by rule a procedure for the appointment of alternative individual graduation committee members in the event that a required member is unable to

serve. The rule is required to include the appointment of an advocate for the student if the student's parent or person standing in parental relation to the student is unable to serve. TEC, §28.0258(i), requires the commissioner to establish by rule a timeline for an individual graduation committee to make a determination regarding whether a student is qualified to graduate. TEC, §28.0259, requires the commissioner to adopt rules regarding the requirement that school districts report through the Public Education Information Management System (PEIMS) information regarding the number of students for whom an individual graduation committee was established and the number of students who were awarded a diploma based on the decision of an individual graduation committee.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §28.0258 and §28.0259, as added by Senate Bill 149, 84th Texas Legislature, 2015.

§74.1025. *Individual Graduation Committee Review.*

(a) Effective beginning with the 2014-2015 school year, in accordance with the Texas Education Code (TEC), §28.0258, §101.3022 of this title (relating to Assessment Requirements for Graduation), and the course requirements in Chapter 74, Subchapter B, of this title (relating to Graduation Requirements), a school district or an open-enrollment charter school may award a high school diploma to a student who has taken but failed to achieve the end-of-course (EOC) assessment graduation requirements for no more than two courses if the student has qualified to graduate by means of an individual graduation committee.

(b) A school district or an open-enrollment charter school shall establish an individual graduation committee at the end of or after a student's 11th grade year to determine whether the student may qualify to graduate. A student may not qualify to graduate as a result of an individual graduation committee decision before the student's 12th grade year.

(c) A school district or an open-enrollment charter school may not establish an initial individual graduation committee for eligible students after June 10 or before the start of the next school year. Once the individual graduation committee has been established, it is the original individual graduation committee for that student.

(d) In order for a student to be included as a graduate in the school district's or charter school's graduation data in the school year in which the student meets the requirements provided by law to graduate under individual graduation committee provisions, an individual graduation committee must make a decision to award a diploma no later than August 31 immediately following that school year. A student who graduates as a result of an individual graduation committee decision after August 31 shall be reported in the subsequent year's graduation data.

(e) If a student leaves a school district after an original individual graduation committee has been established and before that original individual graduation committee awards a high school diploma to the student, any other district that later enrolls the student shall request information from the student's original individual graduation committee of record and shall implement the original individual graduation committee recommendations to the extent possible.

(f) The individual graduation committee shall consist of the following:

- (1) the principal or principal's designee;
- (2) for each EOC assessment instrument on which the student failed to perform satisfactorily, the teacher of the course;

(3) the department chair or lead teacher supervising the teacher described by paragraph (2) of this subsection; and

(4) as applicable:

(A) the student's parent or person standing in parental relation to the student;

(B) a designated advocate if the person described by subparagraph (A) of this paragraph is unable to serve; or

(C) the student, at the student's option, if the student is at least 18 years of age or is an emancipated minor.

(g) In the event that the teacher identified in subsection (f)(2) of this section is unavailable, the principal shall designate a teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area as an alternate member of the committee.

(h) In the event that the student's parent or person standing in parental relation to the student is unavailable to participate in the individual graduation committee, the principal shall designate an advocate with knowledge of the student to serve as an alternate member of the committee.

(i) Each school district and open-enrollment charter school shall report through the Public Education Information Management System (PEIMS) the following:

(1) the number of students each school year for which an individual graduation committee is established; and

(2) the number of students each school year who are awarded a diploma based on the decision of an individual graduation committee.

(j) A district shall maintain documentation to support the decision of the individual graduation committee to award or not award a student a high school diploma.

(k) This section only applies to a student classified by the school district or open-enrollment charter school as an 11th or 12th grade student in the 2014-2015, 2015-2016, or 2016-2017 school year.

(l) Provisions of this section expire September 1, 2017. A student may graduate by means of an individual graduation committee if the student has qualified for an individual graduation committee under the TEC, §28.0258, and the individual graduation committee convened prior to September 1, 2017.

(m) A student receiving special education services is not subject to the individual graduation committee requirements in the TEC, §28.0258, or the provisions of this section. As provided in §89.1070 of this title (relating to Graduation Requirements) and §101.3023 of this title (relating to Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

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 30, 2016.
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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: April 19, 2016

Proposal publication date: December 4, 2015

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



CHAPTER 153. SCHOOL DISTRICT PERSONNEL SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1013

The Texas Education Agency (TEA) adopts new §153.1013, concerning suicide prevention training. The new section is adopted without changes to the proposed text as published in the January 15, 2016 issue of the *Texas Register* (41 TexReg 566) and will not be republished. The adopted new rule provides a schedule for conducting suicide prevention training to all existing school district and open-enrollment charter school educators, establishes when new school district and open-enrollment charter school educators are to be trained, addresses how previous training can be credited, and describes locally maintained paperwork requirements.

REASONED JUSTIFICATION. House Bill (HB) 1386, 82nd Texas Legislature, Regular Session, 2011, added the Health and Safety Code (HSC), §161.325, which required the Department of State Health Services, in coordination with the TEA, to provide a list of recommended best practice-based suicide prevention programs for implementation in public elementary, junior high, middle, and high schools. The statute provides that each school district may select from the list a program or programs appropriate for implementation in the district.

Senate Bill 460, 83rd Texas Legislature, Regular Session, 2013, amended the HSC, §161.325, to require each school district to provide suicide prevention training for teachers, counselors, principals, and all other appropriate personnel. A school district was required to provide the training at an elementary campus only to the extent that sufficient funding and programs were available. School districts were allowed to implement a program on the list of recommended best practice-based suicide prevention programs to meet the requirements of this legislation. School districts that provided this training were required to train school district employees at least one time and maintain the records of the training to include the name of each employee who participated in training.

HB 2186, 84th Texas Legislature, Regular Session, 2015, amended the Texas Education Code, §21.451(d), to require all school districts and open-enrollment charter schools to provide suicide prevention training to all existing educators on a schedule adopted in rule by the TEA. The legislation also requires all new school district and open-enrollment charter school educators to be trained on an annual basis as part of new employee orientation. School districts and open-enrollment charter schools may select training programs from the list of recommended best practice-based programs or they may conduct an independent review of an online program that complies with guidelines developed by the TEA.

Adopted new 19 TAC §153.1013 requires school districts and open-enrollment charter schools to provide suicide prevention training to all new educators as part of new employee orientation during the 2016-2017 school year and each subsequent school year. The adopted new rule also requires that the training be provided to all currently employed educators by September 30, 2016, and allows for training provided to existing educators on or after September 1, 2013, to meet these suicide prevention training requirements under certain conditions.

In accordance with the HSC, §161.325, the adopted new rule requires school districts to continue to maintain records that include the name of each educator who participated in the suicide prevention training. Additionally, the adopted new rule encourages open-enrollment charter schools to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

The TEA has posted guidelines for suicide prevention training on its website and informed school districts and open-enrollment charter schools about the new requirements through TEA correspondence on August 26, 2015.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began January 15, 2016, and ended February 16, 2016. Following is a summary of the public comment received and corresponding agency response regarding proposed new 19 TAC Chapter 153, School District Personnel, Subchapter BB, Commissioner's Rules Concerning Professional Development, §153.1013, Suicide Prevention Training.

Comment. The Texas Classroom Teachers Association (TCTA) commented in support of the new rule as proposed. The TCTA stated that it appreciates and supports the way the proposed training schedule finds a balance between other educator training requirements and suicide prevention training.

Agency Response. The agency agrees that the proposed schedule provides a balanced approach to ensuring that all educators receive suicide prevention training.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §21.451(d), as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015, which requires the Texas Education Agency to adopt in rule a schedule by which each school district and open-enrollment charter school will provide suicide prevention training to its educators.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §21.451(d), as amended by House Bill 2186, 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 28, 2016.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: April 17, 2016

Proposal publication date: January 15, 2016

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



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

The Texas Board of Nursing (Board) adopts amendments to §211.6, concerning Committees of the Board. The amendments are being adopted without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1076) and will not be republished.

Reasoned Justification

The amendments are adopted under the authority of the Occupations Code §301.151 and §301.1595. Section 301.1595 of the Nursing Practice Act requires the Board to adopt rules regarding the purpose, structure, and use of advisory committees. The section also enumerates additional issues that the Board must address by rule. The adopted amendments are necessary to ensure compliance with the requirements of §301.1595 and for consistency with amendments to §213.23 of this title (relating to Decision of the Board) that are being adopted simultaneously with these rule amendments and published elsewhere in this issue of the *Texas Register*.

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

Second, the adopted amendments clarify that committee members will be appointed by the Board and that the majority of the members of a committee must be present at a meeting in order to establish a quorum. This amendment is consistent with the provisions of Texas Government Code Chapter 552 and Texas Occupations Code §301.1595.

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

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

Finally, the adopted amendments include provisions that are consistent with other amendments that are being made to §213.23 (Decision of the Board) of this chapter, simultaneously with these rule amendments. These changes clarify that the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties, including consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1). These

adopted changes are being published elsewhere in this issue of the *Texas Register*.

How the Adopted Section Will Function

Adopted §211.6(b)(3) provides that the Board's Disciplinary Committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

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

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

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

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

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

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

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

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

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

The amendments are adopted under the Occupations Code §301.151 and §301.1595.

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

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

Section 301.1595(b) states that an advisory committee shall provide independent expertise on Board functions and policies, but may not be involved in setting Board policy. Section 301.1595(c) states that the Board shall adopt rules regarding the purpose, structure, and use of advisory committees, including rules on: the purpose, role, responsibility, and goal of an advisory committee; the size and quorum requirements for an advisory committee; the composition and representation of an advisory committee; the qualifications of advisory committee members, such as experience or area of residence; the appointment procedures

for advisory committees; the terms of service for advisory committee members; the training requirements for advisory committee members, if necessary; the method the Board will use to receive public input on issues addressed by an advisory committee; and the development of Board policies and procedures to ensure advisory committees meet the requirements for open meetings under Chapter 551, Government Code, including notification requirements.

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

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

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

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Texas Board of Nursing

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



CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.23

The Texas Board of Nursing (Board) adopts amendments to §213.23, concerning Decision of the Board. The amendments are being adopted without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1078) and will not be republished.

Reasoned Justification

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

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

The Board has considered and resolved default dismissals from SOAH at its regularly scheduled quarterly meetings since the enactment of §155.501(d) in 2011. Since that time, the number of default dismissals has continued to increase. In addition to the consideration of default dismissals at the Board's quarterly

meetings, the adopted amendments make clear that the Eligibility and Disciplinary Committee of the Board may also consider and resolve default dismissals from SOAH. This amendment is intended to increase the Board's efficiency in resolving these cases and to assist in the management of the Board's quarterly meeting agendas.

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

How the Adopted Section Will Function

Adopted §213.23(a) provides that either the Board or the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

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

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

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

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

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

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

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

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

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

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

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



22 TAC §213.32

The Texas Board of Nursing (Board) adopts an amendment to §213.32, concerning Corrective Action Proceedings and Schedule of Administrative Fines. The amendment is being adopted without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1079) and will not be republished.

Reasoned Justification

The amendment is adopted under the authority of the Occupations Code §301.151 and §301.652.

In 2009, the Nursing Practice Act (NPA) was amended to grant the Board authority to resolve contested cases through the use of corrective actions. Pursuant to the Occupations Code §301.652, a corrective action may consist of a fine, remedial education, or a combination of a fine or remedial education. Further, a corrective action is not a disciplinary action.

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

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

How the Adopted Section Will Function

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

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

The amendment is adopted under the Occupations Code §301.151 and §301.652.

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

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

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

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CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.8

The Texas Board of Nursing (Board) adopts amendments to §214.8, relating to Students. The amendments are adopted without changes to the proposed text published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1328) and will not be re-published.

REASONED JUSTIFICATION. The amendments to §214.8 are adopted under the Occupations Code §301.151 and §301.157 and are necessary to provide the Board the opportunity to monitor program growth that could be considered high risk for student success and program longevity. The editorial amendments to the rule make the rule's references internally consistent with other sections in the chapter and provide clear guidance to the public.

Background

The amendments were considered at the July 31, 2015 and September 18, 2015, meetings of Board's Advisory Committee on Education (Committee). Following its discussions, the Committee voted to recommend rule amendments to the Board that would require Board approval for a twenty-five percent (25%) or greater increase in annual student enrollment. The Committee voiced concerns that an unreasonably rapid expansion in program enrollment could lead to understaffing, shortage of clinical placements, and poor student outcomes, including low passage rates on the national licensure examination.

The adopted amendments are intended to ensure a program's continuing success by requiring Board approval when a vocational nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. In evaluating a program's request, the Board will consider whether the program's projected increase in enrollment is well supported; if the program has sufficient resources to implement the increase without negatively affecting the current student population; how well the program's enrollment management plan supports the requested increase; what effect the change of enrollment may have on faculty workload; whether clinical placement and utilization will be negatively impacted; and the program's plan to evaluate the effect of the enrollment increase on the program's success. The Board's review and approval process is intended to assist programs in identifying potential risks that could negatively affect their student populations when increases in enrollment are not sufficiently planned for or are not well supported.

The factors enumerated in the adopted rule, as well as the twenty-five percent (25%) benchmark, are derived from the standards of the Accreditation Commission for Education in Nursing (ACEN). For increases in enrollment, ACEN requires its accredited programs to submit a substantive change proposal to be considered and either granted or denied based upon consideration of substantially similar factors as those contained in the

Board's adopted rule. Under the Board's rules [§214.4(c)(5) - (13)], programs with national nursing accreditation are exempted from the Board's ongoing approval requirements, provided that the program's accreditation requirements are substantially equivalent to the standards set forth in Board rule. As such, the adopted rule will require non-accredited programs to meet the same standards for increases in enrollment that accredited programs must already meet, thus placing all programs on an equal footing.

The remaining adopted amendments to §214.8(c) - (j) are editorial in nature and remove outdated and obsolete references and terminology from the section. For example, portions of the rule text that referenced outdated titles for §213.28 and §213.29 have been updated to reference the new titles of those sections. Additionally, the term "chemical dependency" has been changed to "substance use disorder" for consistency with recent changes to other Board rules (§§213.27, 213.28, and 213.29) and with recent changes to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

HOW THE SECTIONS WILL FUNCTION. Adopted §214.8(b) requires Board approval when a vocational nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. Under the adopted amendments, the program must notify the Board of its intent to expand its enrollment at least four months prior to implementing the change. The Executive Director, as authorized by the Board, or the Board itself will then consider whether to grant the program's request based upon a review of the factors specified in the rule. Those factors include: (1) the comparison of previous to projected nursing program enrollment by headcount; (2) enrollment projections and enrollment management plan; (3) the change of enrollment on faculty workload; (4) clinical placement/utilization; (5) additional resources required by the enrollment increase; and (6) the program's plan to evaluate the effect of the enrollment increase on the program's success.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Board did not receive any comments on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §301.151 and §301.157.

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

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under Chapter 301 and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board. Section 301.157(b)(3) states that the Board may prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses.

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accred-

ited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157(d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157(d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who: (A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; (B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and (C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state 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.

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Texas Board of Nursing

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



CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.8

The Texas Board of Nursing (Board) adopts amendments to §215.8, relating to Students. The amendments are adopted without changes to the proposed text published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1332) and will not be re-published.

REASONED JUSTIFICATION. The amendments to §215.8 are adopted under the Occupations Code §301.151 and §301.157 and are necessary to provide the Board the opportunity to monitor program growth that could be considered high risk for student success and program longevity. The editorial amendments to the rule make the rule's references internally consistent with other sections in the chapter and provide clear guidance to the public.

Background

The amendments were considered at the July 31, 2015, and September 18, 2015, meetings of Board's Advisory Committee on Education (Committee). Following its discussions, the Committee voted to recommend rule amendments to the Board that would require Board approval for a twenty-five percent (25%) or greater increase in annual student enrollment. The Committee voiced concerns that an unreasonably rapid expansion in program enrollment could lead to understaffing, shortage of clinical placements, and poor student outcomes, including low passage rates on the national licensure examination.

The adopted amendments are intended to ensure a program's continuing success by requiring Board approval when a professional nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. In evaluating a program's request, the Board will consider whether the program's projected increase in enrollment is well supported; if the program has sufficient resources to implement the increase without negatively affecting the current student population; how well the program's enrollment management plan supports the requested increase; what effect the change of enrollment may have on faculty workload; whether clinical placement and utilization will be negatively impacted; and the program's plan to evaluate the effect of the enrollment increase on the program's success. The Board's review and approval process is intended to assist programs in identifying potential risks that could negatively affect their student populations when increases in enrollment are not sufficiently planned for or are not well supported.

The factors enumerated in the adopted rule, as well as the twenty-five percent (25%) benchmark, are derived from the standards of the Accreditation Commission for Education in Nursing (ACEN). For increases in enrollment, ACEN requires its accredited programs to submit a substantive change proposal to be considered and either granted or denied based upon consideration of substantially similar factors as those contained in the Board's adopted rule. Under the Board's rules [(c)(5)-(13)], programs with national nursing accreditation are exempted from the Board's ongoing approval requirements, provided that the program's accreditation requirements are substantially equivalent to the standards set forth in Board rule. As such, the adopted rule will require non-accredited programs to meet the same standards for increases in enrollment that accredited programs must already meet, thus placing all programs on an equal footing.

The remaining adopted amendments to §215.8(c)-(j) are editorial in nature and remove outdated and obsolete references and terminology from the section. For example, portions of the rule text that referenced outdated titles for §213.28 and §213.29 have

been updated to reference the new titles of those sections. Additionally, the term "chemical dependency" has been changed to "substance use disorder" for consistency with recent changes to other Board rules (§§213.27, 213.28, and 213.29) and with recent changes to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

HOW THE SECTIONS WILL FUNCTION. Adopted §215.8(b) requires Board approval when a professional nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. Under the adopted amendments, the program must notify the Board of its intent to expand its enrollment at least four months prior to implementing the change. The Executive Director, as authorized by the Board, or the Board itself will then consider whether to grant the program's request based upon a review of the factors specified in the rule. Those factors include: (1) the comparison of previous to projected nursing program enrollment by headcount; (2) enrollment projections and enrollment management plan; (3) the change of enrollment on faculty workload; (4) clinical placement/utilization; (5) additional resources required by the enrollment increase; and (6) the program's plan to evaluate the effect of the enrollment increase on the program's success.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Board did not receive any comments on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §301.151 and §301.157.

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

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under Chapter 301 and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board. Section 301.157(b)(3) states that the Board may prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses.

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accredited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157(d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157(d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who: (A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; (B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and (C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state 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.

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Texas Board of Nursing

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



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.9

The Texas State Board of Examiners of Psychologists adopts the repeal of §461.9, Subdoctoral Licensure, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9439). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary to reflect the consolidation of the substance of this rule with the newly adopted Board rule §463.8.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



22 TAC §461.17

The Texas State Board of Examiners of Psychologists adopts amendments to §461.17, Profile Information, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9440). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comply with the person first respectful language requirement set forth in Chapter 392 of the Texas Government Code.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.8

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.8, Licensed Psychological Associate, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9440). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks

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22 TAC §463.8

The Texas State Board of Examiners of Psychologists adopts new rule §463.8, Licensed Psychological Associate, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9441). The rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervision into a more intuitive format. The adopted new rule sets forth the same requirements for licensure as the current rules, but will eventually require the supervised experience necessary for licensure to be obtained as part of an organized course of study. The adopted new rule will also expand licensure opportunities by allowing applicants who possess a doctoral degree that is primarily psychological in nature, but who do not also have a master's degree, the ability to apply for licensure as a psychological associate. Lastly, the adopted new rule incorporates the designation of the title for an individual licensed under this rule, currently found in Board rule §461.9.

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

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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22 TAC §463.9

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.9, Licensed Specialist in School Psychology, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9442). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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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22 TAC §463.9

The Texas State Board of Examiners of Psychologists adopts new rule §463.9, Licensed Specialist in School Psychology, with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9442). The rule will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervision into a more intuitive format. The adopted new rule sets forth the same requirements for licensure as the current rule, and seeks to clarify the requirements for licensure.

A general comment was received regarding the adoption of the new rule.

Comment

The Board received a comment expressing concerns that subsection (c)(1) of the proposed rule was in direct conflict with subsection (c)(2) in that (c)(1) requires only a minimum of 1 hour of face-to-face supervision, whereas (c)(2) requires a minimum of 2 hours of face-to-face supervision.

Response

The Board does not find that any such conflict exists. Subsection (c)(1) is simply a restatement of the current law, but will be superseded by subsection (c)(2) on September 1, 2017 pursuant to subsection (c)(3). The Board believes the most prudent approach is to allow for a reasonable period of transition, thus giving licensees and training programs time to adapt their standards and practices.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.9. Licensed Specialist in School Psychology.

(a) Application Requirements. A completed application for licensure as a specialist in school psychology includes the following, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements):

(1) Documentation of an appropriate graduate degree;

(2) Documentation from the National School Psychologists' Certification Board sent directly to the Board indicating the applicant holds current valid certification as a Nationally Certified School Psychologist (NCSP); or documentation of the following sent directly to the Board:

(A) transcripts that verify that the applicant has met the requirements set forth in subsection (b) of this section;

(B) proof of the internship required by subsection (c) of this section if the applicant did not graduate from either a training program approved by the National Association of School Psychologists (NASP) or a training program in school psychology accredited by the American Psychological Association (APA); and

(C) the score that the applicant received on the School Psychology Examination sent directly from the Education Testing Service; and

(3) Reference letters from three different individuals licensed as psychologists or specialists in school psychology, or credentialed in school psychology in their respective jurisdictions.

(b) Training Qualifications.

(1) Applicants for licensure as a specialist in school psychology who hold a valid NCSP certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship requirements of this rule.

(2) Applicants for licensure who do not hold a valid NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited academic institution. Applicants applying under this paragraph must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited academic institution. A maximum of 12 internship hours may be counted toward the 60 hour requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology. Applicants applying under this paragraph must submit evidence of graduate level coursework as follows:

(A) Psychological Foundations, including:

(i) biological bases of behavior;

(ii) human learning;

(iii) social bases of behavior;

(iv) multi-cultural bases of behavior;

(v) child or adolescent development;

(vi) psychopathology or exceptionalities;

(B) Research and Statistics;

(C) Educational Foundations, including any of the following:

(i) instructional design;

(ii) organization and operation of schools;

(iii) classroom management; or

(iv) educational administration;

(D) Assessment, including:

(i) psychoeducational assessment;

(ii) socio-emotional, including behavioral and cultural, assessment;

(E) Interventions, including:

(i) counseling;

(ii) behavior management;

(iii) consultation;

(F) Professional, Legal and Ethical Issues; and

(G) A Practicum.

(c) Completion of internship.

(1) Applicants must have completed a minimum of 1200 hours, of which 600 must be in a public school. A formal internship or other site-based training must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled or be obtained in accordance with Board rule §463.11(c)(1) and (c)(2)(C) of this title (relating to Licensed Psychologist). The internship in the public school must

be supervised by an individual qualified in accordance with Board rule §465.38 of this title (relating to Psychological Services in the Schools). Internship which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, or is under Board disciplinary order, may be considered for specialist in school psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and must be obtained in not less than one or more than two academic years. These individuals must be designated as interns. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(2) Applicants must have completed an internship with a minimum of 1200 hours. The internship must also meet the following criteria:

(A) At least 600 of the internship hours must have been completed in a public school.

(B) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Board rule §463.11(d)(1) and (d)(2)(C) of this title.

(C) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(D) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(E) Unless authorized by the Board, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(F) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(G) Internship hours must be obtained in not less than one or more than two academic years.

(H) An individual completing an internship under this rule must be designated as an intern.

(I) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(J) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(3) Paragraph (2) of this subsection, along with all of its subparts, shall take effect, supersede, and take the place of paragraph (1) of this subsection on September 1, 2017.

(d) Additional Requirements. In addition to the requirements of subsection (a) through (c) of this section, applicants for licensure as a specialist in school psychology must meet the requirements imposed under §501.255(a)(2) - (9) of the Psychologists' Licensing Act.

(e) Examinations. Applicants must take the National School Psychology Examination and obtain at least the current cut-off score for the NCSP certification before applying for licensure as a specialist in school psychology. Following approval to sit for Board exams, an applicant must take and pass the Jurisprudence Examination within the time required by Board rule §463.19.

(f) Trainee Status.

(1) An applicant for the specialist in school psychology license who has not yet passed the Board's Jurisprudence Examination, but who otherwise meets all licensing requirements under this rule, may practice in the public schools under the supervision of a Licensed Specialist in School Psychology, as a trainee for not more than one year.

(2) A trainee status letter shall be issued to an applicant upon proof of licensing eligibility, save and except proof of passage of the Board's Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A trainee's status shall be suspended or revoked upon a showing of probable cause of a violation of the Board's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The one year period for trainee status shall not be tolled by any suspension of the trainee status.

(5) Following official notification from the Board upon passage of the Jurisprudence Examination or the expiration of one year, whichever occurs first, an individual's trainee status shall terminate.

(6) An individual practicing under trainee status must be designated as a trainee.

(g) Provision of psychological services in the public schools by unlicensed individuals. An unlicensed individual may provide psychological services under supervision in the public schools if:

(1) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education;

(2) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Board that has not been denied, returned, or gone void under Board rule §463.2 of this title (relating to Application Process); or

(3) the individual has been issued a trainee status letter.

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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22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.10, Provisionally Licensed Psychologists. The

repeal is adopted without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9444). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts new rule §463.10, Provisionally Licensed Psychologists. The rule is adopted without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9445). The rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervision into a more intuitive format. The adopted new rule sets forth the same requirements for licensure as the current rule, and will allow applicants to begin the application process up to 60 days prior to receiving their degree. The adopted new rule also establishes the status of provisional trainee for those applicants who have not yet passed the EPPP or Jurisprudence Examination, but who wish to begin acquiring the supervised experience needed for full licensure.

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

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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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22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.11, Licensed Psychologist. The repeal is adopted without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9446). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts new rule §463.11, Licensed Psychologist. The rule is adopted with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9447) and will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervi-

sion into a more intuitive format. The adopted new rule requires applicants to complete a formal internship as part of their doctoral program, complete a total of 3,500 hours of supervised experience, and expands the number of formal internship programs specifically recognized by rule. The adopted new rule also requires the post-doctoral supervised experience be obtained as a provisional trainee or provisionally licensed psychologist, and clearly identifies the time frames for obtaining supervised experience. Lastly, the adopted new rule simplifies and clarifies the procedure for addressing gaps in an applicant's supervised experience.

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

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.11. Licensed Psychologist.

(a) Application Requirements. Application for licensure as a psychologist may be made upon passage of, or exemption from the Oral Examination. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation indicating passage of or exemption from the Board's Oral Examination.

(3) Documentation of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal internship must be documented by the Director of Internship Training.

(4) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Experience may be obtained only in either a full-time or half-time setting.

(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements.

(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.

(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.

(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.

(F) When supervised experience is interrupted, the Board may waive upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months. Any consecutive experience obtained before or after the gap must be at least six months unless the supervisor remains the same. Waivers for such gaps are rarely approved and must be requested in writing and include sufficient documentation to permit verification of the circumstances supporting the request. No waiver will be granted unless the Board finds that the supervised experience for which the waiver is sought was adequate and appropriate. Good cause is defined as:

(i) unanticipated discontinuance of the supervision setting,

(ii) maternity or paternity leave of supervisee,

(iii) relocation of spouse or spousal equivalent,

(iv) serious illness of the supervisee, or serious illness in supervisee's immediate family.

(G) A rotating internship organized within a doctoral program is considered to be one placement.

(H) The experience requirement must be obtained after official enrollment in a doctoral program.

(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board Order or Board Order and assist all supervisees in finding appropriate alternate supervision.

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist or a licensed psychological associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a licensed specialist in school psychology may use his or her title so long as the supervised experience takes

place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) The supervisee and supervisor must clearly inform those receiving psychological services as to the supervisory status of the individual and how the patient or client may contact the supervising licensed psychologist directly.

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).

(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-internship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this subsection. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which he or she does not have sufficient training and experience, of which a formal internship year is considered to be an integral requirement.

(d) Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been received after obtaining either provisional trainee status or provisional licensure, and at least 1,750 of which must have been obtained through a formal internship that occurred prior to conferral of the doctoral degree. Following the conferral of a doctoral degree, 1,750 hours obtained while employed in the delivery of psychological services in an exempt facility or in another jurisdiction, under the supervision of a licensed psychologist, may be substituted for the minimum of 1,750 hours of supervised experience required as a provisional trainee or provisionally licensed psychologist.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(B) Gaps Related to Supervised Experience.

(i) Unless a waiver is granted by the Board, an application for a psychologist's license will be denied if a gap of more than 2 years exists between:

(I) the date an applicant's doctoral degree was officially conferred and the date the applicant began obtaining their hours of supervised experience under provisional trainee status or provisional licensure; or

(II) the completion date of an applicant's hours of supervised experience acquired as a provisional trainee or provisionally licensed psychologist, and the date of application.

(ii) The Board shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(I) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Act, during any gap period;

(II) proof of annual professional development, which at a minimum meets the Board's professional development requirements, during any gap period;

(III) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(IV) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(C) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(D) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(E) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(F) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(G) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(H) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(I) Unless authorized by the Board, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(J) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use his or her title so long as the supervised experience takes place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Board rule.

(2) Formal Internship. The formal internship hours must be satisfied by one of the following types of formal internships:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact.

(vii) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-internship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete 3,500 hours of supervised experience meeting the requirements of paragraph (1) of this subsection, at least 1,750 of which must have been received as a provisional trainee or provisionally licensed psychologist. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(4) Licensure Following Retraining.

(A) In order to qualify for licensure after undergoing retraining, an applicant must demonstrate the following:

(i) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing retraining;

(ii) completion of a formal, accredited post-doctoral retraining program in psychology which included at least 1,750 hours in a formal internship;

(iii) retraining within the two year period preceding the date of application for licensure under this rule, or continuous employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act since receiving their doctoral degree; and

(iv) upon completion of the retraining program, at least 1,750 hours of supervised experience after obtaining either provisional trainee status or provisional licensure.

(B) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

(e) Effective Date of Change Regarding Supervised Experience. Subsection (d), along with all of its subparts, shall take effect, supersede, and take the place of subsection (c) on September 1, 2017.

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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22 TAC §463.30

The Texas State Board of Examiners of Psychologists adopts amendments to §463.30, Licensing for Military Service Members, Veterans and Spouses, with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9451). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comply with the changes made to Ch. 55, Occupations Code, by Texas S.B. 1307, 84th Leg., R.S. (2015) and Texas H.B. 3742, 84th Leg., R.S. (2015).

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.30. *Licensing for Military Service Members, Veterans and Spouses.*

(a) Military Service Members, Veterans and Spouses.

(1) A license may be issued to a military service member, military veteran, or military spouse, as those terms are defined by Chapter 55, Occupations Code, provided that the following documentation is provided to the Board:

(A) if the applicant is a military spouse, proof of marriage to a military service member; and

(B) proof that the applicant holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(C) proof that within the five years preceding the application date, the spouse held the license in Texas.

(2) An applicant applying for licensure under paragraph (1) of this subsection must provide documentation from all other jurisdictions in which the applicant is licensed that indicate that the applicant has received no disciplinary action from those jurisdictions regarding a mental health license.

(3) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license under this rule, other than paragraph (1)(B) and (C) of this subsection and the jurisprudence examination, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. When making this determination, the Executive Director must consult with the Board's Applications Committee and consider the committee's input and recommendations. In the event the Executive Director does not follow a recommendation of the Applications Committee, he or she must submit a written explanation to the Applications Committee explaining why its recommendation was not followed. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted, or where the applicant has an unacceptable criminal history.

(4) Alternative demonstrations of competency to meet the requirements for licensure. The following provisions provide alternative demonstrations of competency to the Board's licensing standards.

(A) Licensed Specialist in School Psychology. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and evidence of the required coursework or National Association of School Psychologists certification, and passage of the National School Psychology Examination. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, 450 internship hours, and passage of the Examination for Professional Practice in Psychology (EPPP) at the Texas cut-off. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and passage of the EPPP at the Texas cut-off. All other requirements for licensure are still required.

(D) Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: two years of supervised experience. All other requirements for licensure, including the requirements of this paragraph, are still required.

(5) Determination of substantial equivalency for licensing requirements in another state. The applicant must provide to the Board proof that the state in which the applicant is licensed has standards for licensure that are substantially equivalent to the requirements of this Board for the applicable license type:

(A) Licensed Specialist in School Psychology (the license required to provide psychological services in the public schools).

(i) The completion of a training program in school psychology approved/accredited by the American Psychological Association or the National Association of School Psychologists or a master's degree in psychology with specific course work as set forth in Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology); and

(ii) Passage of the National School Psychology Examination.

(B) Licensed Psychological Associate (the graduate level license that requires supervision by a licensed psychologist).

(i) Graduate degree that is primarily psychological in nature and the degree is at least 42 hours with at least 27 hours in psychology courses;

(ii) Passage of the EPPP at the master's level at 55%; and

(iii) A minimum of 450 hours of practicum, internship, or experience in psychology, under the supervision of a licensed psychologist.

(C) Provisionally Licensed Psychologist (the doctoral level license that must be supervised by a licensed psychologist).

(i) Doctoral degree in psychology; and

(ii) Passage of the EPPP at the doctoral level at 70%.

(D) Licensed Psychologist (the doctoral license that is required to practice independently).

- (i) Doctoral degree in psychology;
- (ii) Passage of the EPPP at the doctoral level of 70%;
- (iii) Two years of supervised experience by a licensed psychologist; and
- (iv) Passage of an oral examination.

(6) Renewal of License Issued to Military Service Members, Veterans, and Spouses. A license issued pursuant to this rule shall remain active until last day of licensee's birth month following a period of one year from the date of issuance of the license, at which time it will be subject to all renewal requirements.

(b) Applicants with Military Experience.

(1) A military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(A) Licensed Specialist in School Psychology. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters, 450 hours of supervised experience. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(D) Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year of post-doctoral supervised experience. All other requirements for licensure are still required.

(2) An applicant with an honorable discharge from the United States military either during the application process or within the three year period preceding the date the application is received by the Board, is considered to have met the requirement for one of the three reference letters.

(3) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

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

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists adopts amendments to §465.1, Definitions, with changes to the proposed text as published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 569). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted seeks to clarify certain definitions relevant to Board rule §465.18, and seeks to clarify that forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Act.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.1. Definitions.

The following terms have the following meanings:

(1) "Client" has the same meaning as "patient."

(2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.

(3) "Forensic psychological services" are services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. However, forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Improvement Act (IDEIA).

(4) "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, a federal, state, or local governmental entity, an attorney, or an administrative body including federal and private disability benefits providers to assist in addressing a forensic referral question.

(5) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological

services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(6) "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

(7) "Multiple Relationship" means any relationship between a licensee and another individual involving a professional relationship and a non-professional relationship.

(8) "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview. However, a person who is the subject of a forensic evaluation is not considered to be a patient under these rules.

(9) "Professional relationship" is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization.

(10) "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(11) "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(12) "Recognized member of the clergy," as used in §501.004(a)(4) of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3).

(13) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments, treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(14) "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(15) "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

(16) "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the

authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provision of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(17) "Child custody evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.101.

(18) "Adoption evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.151.

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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22 TAC §465.2

The Texas State Board of Examiners of Psychologists adopts the repeal of §465.2, Supervision, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9453). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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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22 TAC §465.2

The Texas State Board of Examiners of Psychologists adopts new rule §465.2, Supervision, with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9453). The rule will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted reflects a collaborative effort by the Board and its stakeholders to align the rules governing supervision with generally acknowledged practice standards, and to consolidate the rules governing supervision into a more intuitive format. The adopted new rule also serves to provide greater protection to the public by establishing clarity and guidance in areas such as documentation of supervision, amounts of direct supervision, and the permissible number of supervisees.

General comments were received regarding the adoption of the new rule.

Comment

The comments received from Texas Association of School Psychologists (TASP) were generally supportive of the proposed changes. TASP requested clarification of proposed §465.2(b)(5), and voiced opposition to the following proposed changes: Repeals of supervision requirement for LSSPs during the first year of licensure; Requiring a supervisor's signature on all educational documents completed for students by supervisees; Requiring three years of independent practice experience within the public schools before being eligible to serve as a supervisor and Supervision rules applying to practicum students.

Response

With regard to TASP's request for clarification, it is the Board's intent, by and through the adoption of proposed §465.2(b)(5), to recognize the long-standing practice whereby students and individuals acting under the supervision of a qualified supervisor, provide supervision as part of their education and training. Such activity is already permitted under §501.004 of the Psychologists' Licensing Act, thus the proposed rule merely seeks to recognize this important training component.

With regard to the comments in opposition, the Board declines to withdraw or repeal the proposed changes. The Board is required by Texas Occupations Code Ann. §501.260 to develop and implement rules of practice that comply with nationally recognized standards for the practice of school psychology. The Board believes that the proposed changes help ensure this statutory requirement is met, while also reducing the regulatory complexity and burden on licensees. The Board also believes that requiring three years of independent practice within the public schools will ensure the competency of supervisors, adequacy of supervision, and provide a greater measure of protection for the public than the current rules provide. Lastly, the Board disagrees that the proposed rule changes will apply to practicum students. Nothing in the proposed changes operate to override or detract from the exemptions afforded in Texas Occupations Code Ann. §501.004, nor does the express text of the proposed changes impose any requirements on practicum students. Rather, the proposed changes are directed toward and will only affect those individuals who are subject to the Board's jurisdiction.

Comment

The commenter disagreed with the proposed change requiring three years of independent practice experience within the public schools before being eligible to serve as a supervisor.

Response

The Board declines to repeal the proposed change. The Board is required by Texas Occupations Code Ann. §501.260 to develop and implement rules of practice that comply with nationally recognized standards for the practice of school psychology. The Board believes that the proposed change helps ensure this statutory requirement is met, and also believes that requiring three years of independent practice within the public schools will ensure the competency of supervisors, adequacy of supervision, and provide a greater measure of protection for the public than the current rules provide.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) A licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. Methods of supervision may include remote or electronic means if:

(A) adequate supervision can be provided through remote or electronic means;

(B) the difficulties in providing full-time in-person supervision place an unreasonable burden on the delivery of psychological services; and

(C) no more than fifty percent of the supervision takes place through remote or electronic means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.252(b)(2), or 501.260(b)(3) of the Act must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements, or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Board. A licensee shall inform all supervisees of any Board order restricting their license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing their supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) An individual subject to this subsection may allow a supervisee, as part of a required practicum, internship, or period of supervised experience required for licensure with this Board, to supervise others in the delivery of psychological services.

(6) For provisional trainees, a supervisor must provide at least one hour of individual supervision per week and may reduce the amount of weekly supervision on a proportional basis for provisional trainees working less than full-time.

(7) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists and Licensed Psychological Associates must be under the supervision of a Licensed Psychologist and may not engage in independent practice.

(2) A Provisionally Licensed Psychologist who is licensed in another state to independently practice psychology and is in good standing in that state, and who has applied for licensure as a psychologist may during the time that the Board is processing the applicant's application for licensure as a psychologist, practice psychology without supervision. However, upon notification from the Board that an applicant has not met the qualifications for licensure as a psychologist, the

provisionally licensed psychologists must obtain supervision within 30 days in order to continue to practice.

(3) A provisionally licensed psychologist may, as part of a period of supervised experience required for full licensure with this Board, supervise others in the delivery of psychological services.

(4) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and trainees. The following rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well as all interns and trainees working toward licensure as a specialist in school psychology.

(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.

(2) Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology, who has a minimum of three years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(3) Supervisors must sign educational documents completed for students by the supervisee, including student progress reports for which the supervisee is providing psychological or counseling services, student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(4) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program; and

(E) the supervisee's trainee or licensure status.

(5) Supervisors must ensure that each individual completing any portion of the internship required by Board rule §463.9, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(6) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

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 30, 2016.

TRD-201601507

Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists

Effective date: April 19, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 305-7700



22 TAC §465.3

The Texas State Board of Examiners of Psychologists adopts amendments to §465.3, Providers of Psychological Services, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9455). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will prevent duplicate provisions, and assist with the consolidation and clarification of rules related to supervision under Board rule §465.2.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700



22 TAC §465.6

The Texas State Board of Examiners of Psychologists adopts amendments to §465.6, Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9455). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will prevent duplicate provisions, and assist with the consolidation and clarification of rules related to supervision under Board rule §465.2.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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For further information, please call: (512) 305-7700



22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts the repeal of §465.38, Psychological Services for Public Schools, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9456). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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TRD-201601491

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 20, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 305-7700



22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts new rule §465.38, Psychological Services for Public Schools. The rule is adopted with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9457) and will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing licensure and supervision into a more intuitive format. The adopted new rule also reflects a more singular focus toward the practice standards applicable to LSSPs, rather than commingling those standards with licensing and supervision requirements.

General Comments were received regarding the adoption of the new rule.

Comment

The comment received from Disability Rights of Texas is generally supportive of the proposed changes.

Response

While the Board generally agrees with this comment, the Board would note that it is federal law that requires school districts to get informed consent, not the LSSPs.

Comment

The commenter suggested deleting the term "public" from the phrase "Texas public schools" in subsection (c), thus enabling LSSPs to practice in private schools.

Response

The Board declines to propose such a change because such a change would exceed the scope of the Rules Advisory Committee's recommendations and the focus of this set of revisions. Any requests for such changes should be made in accordance with Board rule §461.19.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.38. *Psychological Services for Public Schools.*

(a) This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological

service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) A Licensed Specialist in School Psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.

(2) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in Texas public schools, including charter schools. A person utilizing this license may not provide psychological services in any context or capacity outside of their employment or contract with public schools.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or LSSP. Only individuals who meet the requirements of Board rule §465.6 of this title (relating to Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles) may refer to themselves as School Psychologists. No individual may use the title Licensed School Psychologist. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs;

(B) Those individuals listed in Board rule §463.9(g) of this title (relating to Licensed Specialist in School Psychologists); and

(C) Individuals seeking to fulfill the licensing requirements of Board rule §463.8 of this title (relating to Licensed Psychological Associate), Board rule §463.10 of this title (relating to Provisionally Licensed Psychologists), or Board rule §463.11 of this title (relating to Licensed Psychologist).

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy. Such contracting must be on a short term or part-time basis, and shall not involve the broad range of school psychological services listed in subsection (b)(1) of this rule.

(3) An LSSP who contracts with a school district to provide school psychological services may not subcontract services which they have been contracted to provide.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

- (1) Texas Education Code;
- (2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232q;
- (3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq;
- (4) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;
- (5) Section 504 of the Rehabilitation Act of 1973.
- (6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101.

(g) Informed Consent. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Board rules, is necessary. Licensees providing psychological services under subsection (e)(2) however, must obtain informed consent as otherwise required by the Board rules.

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

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 Darrel D. Spinks
 Executive Director
 Texas State Board of Examiners of Psychologists
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 For further information, please call: (512) 305-7700

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.11

The Texas State Board of Examiners of Psychologists adopts amendments to §469.11, Legal Actions Reported and Reciprocal Discipline, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9458). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will clarify reporting requirements and help to ensure that Board resources are not wasted by reviewing arrests which never result in any formal charges being filed or any final disposition being entered. Such an adopted amendment will also help ensure that the privacy of licensees is protected. Lastly, the adopted amendment will clarify reporting requirements for administrative actions, and expand the duty to report such actions to include federal investigations and agreements related to Medicare and Medicaid fraud.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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 For further information, please call: (512) 305-7700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER E. PURCHASING

31 TAC §3.51

The General Land Office (GLO) adopts new §3.51, relating to Enhanced Contract Monitoring, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1080). The text will not be republished.

INTRODUCTION AND BACKGROUND

The adopted provisions will establish a new rule for enhanced contract monitoring. This new rule has been undertaken as a result of the passage of Senate Bill (S.B.) 20 during the 84th Texas Legislature, which amended portions of Chapter 2261 of the Texas Government Code (TGC).

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

The adopted rule will set forth the agency's procedure to meet S.B. 20's requirement to conduct enhanced monitoring of contracts, the factors that are to be considered, the requirement of establishing procedures to administer the monitoring, and the requirement of reports being delivered to the agency's governing body.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the new rule.

STATUTORY AUTHORITY

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

STATUTES AFFECTED

Chapter 2261 of the Texas Government Code is affected by the adoption.

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

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601558

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Effective date: April 24, 2016

Proposal publication date: February 12, 2016

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.353

The Comptroller of Public Accounts adopts new §3.353, concerning sales tax holiday--certain emergency preparation supplies, with changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1345). This section implements Senate Bill 904, 84th Legislature, 2015, which enacted Tax Code, §151.3565. Effective September 1, 2015, Tax Code, §151.3565 exempts from the sales and use tax the sale of certain emergency preparation supplies during the last weekend of April.

Subsection (a) contains definitions. Paragraph (1) defines the term "emergency preparation item." This definition is taken from Tax Code, §151.3565(b). Paragraph (2) defines the term "exemption period." This definition is taken from Tax Code, §151.3565(a). Paragraphs (3) and (4) define the terms "layaway sales" and "rain check," respectively. Both definitions are taken from §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products).

The comptroller received written comments from Jim Sheer representing the Texas Retailers Association. The comments expressed concern that the term "emergency or rescue ladder," which appears in subsection (a)(1)(C), is unclear. This term is commonly understood to mean a collapsible or chain ladder designed to hang from a window sill. Language is added in subsection (a)(1)(C) to give an example of a collapsible or chain ladder designed to hang from a window sill.

Subsection (b) addresses exempt sales. Much of this subsection is derived from §3.365 of this title (relating to Sales Tax Holiday--Clothing, Shoes, and School Supplies) and §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products) for consistency. Paragraph (1) states sales tax is not due on the sale of eligible items during the exemption period. Paragraph (2) provides there is no limit on the number of eligible items that

may be purchased during the exemption period. Paragraph (3) provides for the purchase of multiple exempt items. Paragraph (4) addresses how the exemption applies to the rental or lease of eligible items.

Subsection (c) identifies those items which are not eligible for the exemption set out in Tax Code, §151.3565. This subsection is derived from Tax Code, §151.3565(b) and from similar provisions in §3.365 and §3.369 of this title.

The comptroller also received written comments from Mr. Sheer requesting clarification on the taxability of charges for warranty plans associated with exempt purchases. Subsection (c)(6) of this section provides that services performed on or related to emergency preparation items are not exempt. The sale of a warranty plan is taxable. See §3.292 of this title (Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). Language is added in subsection (c)(6) to address the taxability of warranty plans.

Subsection (d) addresses the application of the exemption to pre-packaged items which contain both exempt and non-exempt items. This subsection is derived from §3.369 of this title.

Subsection (e) addresses whether an item described in subsection (a)(1) satisfies the definition of an emergency supply item based upon the total sales price of the item, including delivery or shipping and handling charges, discounts, coupons, promotions, and rebates. This subsection is derived from similar provisions in §3.365 and §3.369 of this title. Paragraph (1) explains how delivery or shipping and handling charges affect the total sales price of an item. Paragraph (2) addresses how discounts offered by the seller affect the total sales price of an item. Paragraph (3) addresses how coupons affect the total sales price of an item. Paragraph (4) addresses how buy one, get one free or reduced price promotions affect the total sales price of an item. Paragraph (5) provides that rebates do not affect the total sales price of an item for purposes of the exemption.

The comptroller received additional written comments from Mr. Sheer expressing concern that the treatment of delivery charges in the section does not reflect the industry practice of separately charging for delivery. The definition of sales price from Tax Code, §151.007 includes delivery fees. Subsection (e)(1) includes delivery charges in the sales price, regardless of whether the charges are separately stated. Based on the statutory provision, the comptroller declines to make any changes.

In addition, the comptroller received written comments from Doug Duffie, CPA. The comments expressed concern that the language on rebates in subsection (e)(5) does not match prior comptroller policy. Sales tax holidays present unique circumstances, including the 72-hour exemption duration and the inclusion or exclusion of certain items based on total sales price. Subsection (e)(5) is amended to clarify that rebates that occur after the exemption period are not considered in determining qualification under this section.

Subsection (f) addresses the application of the exemption with respect to purchases made via lay-away and means other than in person. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

Subsection (g) addresses the application of the exemption with respect to purchases made by use of a rain check. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

Subsection (h) addresses the exchange of items purchased tax-free pursuant to this section. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

Subsection (i) addresses returns of items purchased tax-free pursuant to this section after the exemption period has ended. This subsection is derived from similar provisions in §3.365 and §3.369 of this title. Paragraph (1) identifies the 30-day period following an exemption period. Paragraph (2) explains that the 30-day period set out in subsection (i) is for sales and use tax purposes only and is not intended to change a seller's policy regarding returned items.

Subsection (j) addresses the documentation required to be maintained by a seller of emergency preparation supplies during an exemption period. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

The new section is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2, and taxes, fees, or other charges or refunds which the comptroller administers under other law.

The new section implements Tax Code, §151.3565 (Emergency Preparation Supplies for Limited Period).

§3.353. *Sales Tax Holiday--Certain Emergency Preparation Supplies.*

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

(1) Emergency preparation item--

(A) A portable generator used to provide light or communications or to preserve perishable food in the event of a power outage, the sales price of which is less than \$3,000;

(B) a storm protection device manufactured, rated, and marketed specifically to prevent damage to a glazed or non-glazed opening during a storm, the sales price of which is less than \$300;

(C) an emergency or rescue ladder, such as a collapsible or chain ladder designed to hang from a window sill, the sales price of which is less than \$300; or

(D) an item listed in this subparagraph, the sales price of which is less than \$75:

(i) a reusable or artificial ice product;

(ii) a portable, self-powered light source;

(iii) a gasoline or diesel fuel container;

(iv) a AAA cell, AA cell, C cell, D cell, 6 volt, or 9 volt battery, or a package containing more than one battery, other than an automobile or boat battery;

(v) a nonelectric cooler or ice chest for food storage;

(vi) a tarpaulin or other flexible waterproof sheeting;

(vii) a ground anchor system or tie-down kit;

(viii) a mobile telephone battery or battery charger;

(ix) a portable self-powered radio, including a two-way radio or weatherband radio;

(x) a fire extinguisher, smoke detector, or carbon monoxide detector;

(xi) a hatchet or axe;

(xii) a self-contained first aid kit; or

(xiii) a nonelectric can opener.

(2) Exemption period--The period beginning at 12:01 a.m. on the Saturday before the last Monday in April and ending at 12 midnight on the last Monday in April.

(3) Layaway sales--A transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the merchandise.

(4) Rain check--A document assuring that a person can take advantage of a sale or special offer made by a seller at a later time if the item offered is not available.

(b) Exempt sales.

(1) Sales or use tax is not due on the sale of an emergency preparation item during the exemption period.

(2) Any person can purchase emergency preparation items tax-free during the exemption period. There is no limit to the number of emergency preparation items one person can purchase tax-free during the exemption period. An exemption or resale certificate is not required to purchase an emergency preparation item tax-free during the exemption period.

(3) The exemption applies to each emergency preparation item sold during the exemption period, regardless of how many emergency preparation items are sold on the same invoice. For example, a person can purchase two generators with a sales price of \$2,500 each, even though the total price on the invoice exceeds \$3,000.

(4) Emergency preparation items may be rented or leased tax-free, including under a "rent to own" contract, if the rental or lease contract is executed during the exemption period. Extensions or renewals of rental or lease contracts do not qualify for the exemption unless executed during the exemption period.

(c) Taxable sales. The exemption under this section does not apply to:

(1) tangible personal property that is not an emergency preparation item, as that term is defined in subsection (a)(1) of this section, for example, camp stoves, camping supplies, chainsaws, extension ladders, step-ladders, plywood, tents, or automobile or boat batteries;

(2) a portable generator with a sales price of \$3,000 or more;

(3) a storm protection device or emergency or rescue ladder with a sales price of \$300 or more;

(4) any item listed in subsection (a)(1)(D) of this section with a sales price of \$75 or more;

(5) repair or replacement parts for an emergency preparation item that do not otherwise qualify for exemption; or

(6) services performed on or related to emergency preparation items as well as warranty plans and extended protection plans. For example, repair services for an eligible portable generator are taxable as the repair of tangible personal property. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property) for more information.

(d) Sales of pre-packaged combinations containing both exempt and taxable items.

(1) When an emergency preparation item is sold together in a pre-packaged combination with an item that is not eligible for the exemption described in subsection (b) of this section, the full price of the pre-packaged combination is subject to sales tax, unless the price of the emergency preparation item is separately stated. For example, a portable generator and a portable cooking device sold as a set for a single price is taxable regardless of the price of the generator or the package. A separately-stated charge for the portable generator is eligible for the sales tax exemption during the exemption period if the sales price of the portable generator is less than \$3,000.

(2) When an emergency preparation item is sold in a pre-packaged combination that contains as a free gift an item that is not eligible for the exemption described in subsection (b) of this section, the emergency preparation item may qualify for the exemption under this section if the price of the set is the same as the price of the emergency preparation item sold separately. For example, a portable generator with a sales price of less than \$3,000 may be sold in a package with a free extension cord. If the price of the set is the same as the price of the portable generator sold separately, the product that is being sold is the portable generator, which is exempt from tax if sold during the exemption period. See §3.301 of this title (relating to Promotional Plans, Coupons, Retailer Reimbursement) for additional information on the seller's tax responsibility for the free item.

(e) Sales price. Whether an item described in subsection (a)(1) of this section satisfies the definition of an emergency supply item, and can be purchased tax-free during the exemption period, depends upon the sales price of the item.

(1) Delivery or shipping and handling charges. Delivery or shipping and handling charges are included as part of the total sales price of an item of tangible personal property, regardless of whether the charges are separately stated.

(A) The addition of delivery or shipping and handling charges to the price of an item may result in the item no longer qualifying as an emergency preparation item. For example, a portable generator with a sales price of \$2,999 is eligible for the exemption during the exemption period. A generator that sells for \$2,999 and is delivered for a charge of \$25, for a total sales price of \$3,024, does not qualify as an emergency preparation item and sales tax is due on the total sales price of \$3,024, even if the sale occurs during the exemption period.

(B) Delivery or shipping and handling charges which are part of the sales price of an exempt item are exempt so long as the total charge does not exceed the limits set forth in this exemption. For example, a portable generator with a sales price of \$1,999 and delivery charge of \$50, for a total sales price of \$2,049, is eligible for the exemption during the exemption period. The total sales price of \$2,049, is exempt.

(2) Discounts. A seller may offer discounts to reduce the sales price of an item described in subsection (a)(1) of this section in order to qualify the item as an emergency preparation item. When a discount is given during the exemption period to reduce the sales price of an item described in subsection (a)(1) of this section, the item can qualify as an emergency preparation item based on the reduced sales price.

(3) Coupons. When sellers accept a coupon as a part of the sales price of any item of tangible personal property, the value of the coupon is excluded from the sales price as a cash discount, regardless of whether the seller is reimbursed for the amount that the coupon represents. When a coupon is used during the exemption period to reduce the sales price of an item described in subsection (a)(1) of this section, the item can qualify as an emergency preparation item based on the reduced sales price.

(4) Buy one, get one free or for a reduced price. The total price of an item that is advertised as "buy one, get one free," or "buy one, get one for a reduced price," cannot be averaged across two items in order for both to qualify for the exemption under this section as emergency preparation items. For example, an emergency rescue ladder with a sales price of \$400 that is advertised as buy one, get one free does not qualify as an emergency preparation item based on the sales price even though the purchaser is receiving two emergency rescue ladders and the average sales price of each would be \$200.

(5) Rebates. Rebates that are paid to a purchaser after the exemption period do not affect the sales price of an item purchased for purposes of determining whether an item qualifies for exemption under this section. The full amount of the sales price, before the rebate, is used to determine whether an item meets the definition of an emergency preparation item.

(f) Layaway sales and purchases by means other than in person.

(1) The sale of an emergency preparation item under a layaway plan or purchased by mail, telephone, email, Internet, custom order, or any other means other than in person qualifies for exemption when either:

(A) the purchaser places on layaway the emergency preparation item during the exemption period and the seller accepts the order for immediate delivery upon full payment, even if delivery is made after the exemption period;

(B) the purchaser places the order and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period; or

(C) final payment on the layaway order is made by, and the merchandise is given to, the purchaser during the exemption period.

(2) For purposes of this subsection, the seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order, or assignment of an "order number" to a telephone order. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

(g) Rain checks. Emergency preparation items purchased during the exemption period with use of a rain check qualify for the exemption regardless of when the rain check was issued. The issuance of a rain check during the exemption period will not qualify an emergency preparation item for the exemption if the item is purchased after the exemption period.

(h) Exchanges.

(1) Tax is not due on an emergency preparation item purchased during the exemption period but exchanged, after the exemption period ends, for an emergency preparation item of equal or lesser value.

(2) Tax is due on the difference in sales price of an emergency preparation item purchased during the exemption period but exchanged, after the exemption period ends, for another emergency preparation item of greater value that would qualify for exemption if purchased during the exemption period.

(i) Returned merchandise. For a 30-day period after the temporary exemption period, when a customer returns an emergency preparation item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item.

(1) This 30-day period begins the Tuesday immediately following the end of the exemption period and ends 30 calendar days later with no exclusions for weekend days or holidays.

(2) This 30-day period is set solely for the purpose of designating a time period during which the purchaser must provide documentation that shows that sales tax was paid on returned merchandise. The 30-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

(j) Documenting exempt sales. A seller is not required to obtain an exemption certificate on sales of eligible items during the exemption period; however, the seller's records should clearly identify the type of item sold, the date on which the item was sold, and the sales price of each exempt item sold.

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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Lita Gonzalez

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Comptroller of Public Accounts

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 178. TEXAS STATE VETERANS CEMETERIES

40 TAC §178.6

The Texas Veterans Land Board (VLB) adopts an amendment to §178.6, relating to Texas State Veterans Cemeteries. The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1219) and will not be republished.

Introduction and Background

The adopted amendment will remove language related to fees for the interment of eligible relatives of veterans.

Section 164.005 of the Texas Natural Resources Code authorizes the VLB to operate or enter into agreements with third parties for the operation of veterans cemeteries. The Veterans Land Board works in conjunction with the United States Department of Veterans Affairs on the construction of the cemeteries. The adopted amendment will clarify the operation of the cemeteries, particularly the fees associated with the burials of eligible relatives of veterans.

The adopted amendment to §178.6 eliminates the fees for the interment of eligible relatives of veterans. The VLB shall approve all fees, expenses, and charges for the interment, disinterment, and related services for the Texas State Veterans cemeteries as described in adopted §178.6 relating to Fees.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

Amendments to §178.6 are adopted under Texas Natural Resources Code §164.004, which provides the VLB with the authority to adopt rules necessary and convenient to administer Chapter 164, §§164.001 - 164.019, Texas Natural Resources Code.

STATUTES AFFECTED

Texas Natural Resources Code Chapter 164, §§164.001 - 164.019 are 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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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER G. HIGHWAY IMPROVEMENT CONTRACT SANCTIONS

43 TAC §§9.102, 9.107, 9.111, 9.113, 9.114

The Texas Department of Transportation (department) adopts amendments to §§9.102, 9.107, 9.111, 9.113, and 9.114, concerning Highway Improvement Contract Sanctions. The amendments to §9.107 are adopted with changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1106). The amendments to §§9.102, 9.111, 9.113, and 9.114 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The legislature and department policy have declared that it is the department's duty to: (1) promote the health, safety, welfare, convenience, and enjoyment of the traveling public; and (2) protect the public investment in the interstate and primary systems.

By statute, the department awards highway improvement contracts to the lowest qualified bidder (Transportation Code, §223.0041). Contractors that acquire work and then do not advance the work in a timely manner negatively impact the traveling public and business along the construction corridor. There are many reasons that contribute to contractors' schedules not being met; some of these reasons are outside of the

contractor's control. The amendments provided under these rules allow the department to take action against a contractor whose schedules are not being met due to factors that are under its control. These rules are not applicable to projects awarded prior to its effective date.

Amendments to §9.102, Definitions, delete the definition of "affiliated entity" because the definition has proven too vague to be helpful in imposing sanctions on affiliates. The amendments re-designate the paragraphs of this section accordingly. A new substantive provision for determining affiliated entities for the purposes of Chapter 9, Subchapter G, is added in §9.113.

Amendments to §9.107, Grounds for Sanctions, add a new ground for which sanctions may be imposed. Under the new provision, a sanction may be imposed if the department determines, using the criteria specified in the provision, that a contractor fails to timely complete a project.

Amendments to §9.111, Application of Sanction, add to the chart in Figure: 43 TAC §9.111(c) the descriptions of various sanctions that may be imposed by the executive director for a contractor's failure to timely complete projects under contract, as determined under §9.107(b).

Amendments to §9.113, Indirect Sanction on an Affiliated Entity, add a new provision to be used to determine if entities are affiliated for the purposes of Chapter 9, Subchapter G. To ensure conformity between Subchapters B and G of Chapter 9, the new provision refers to the criteria provided under 43 TAC §9.12(d) for determining the affiliation of two or more entities. The provision is added at the beginning of the section, as new subsection (a); the existing subsections are re-designated accordingly, with an amendment to a cross reference to reflect the re-designation of existing subsection (c).

Amendments to §9.114, Lessening or Removal of Sanction, change a reference to a subsection in §9.113 from §9.113(b) to §9.113(c) to reflect the re-designation of subsections within that section, as described above.

COMMENTS

The department received a comment from an individual supporting the adoption of the amendments to the rules. The department also received a comment that suggested changes to §9.107(b).

Comment: The Associated General Contractors of Texas commented that the rule should expressly allow the relevant contractor to comment on a preliminary determination by the district and any mitigation efforts undertaken by the contractor to alleviate any damage caused by failing to timely complete a project. They also suggested that the Chief Engineer approve the final judgment of the District Engineer before any sanction is considered. Finally, they understood that "debarment is automatically invoked when the rule criteria is met."

Response: The department concurs in part with those comments. In response to the comment, the department has amended proposed §9.107(b) to provide that as a condition for imposing a sanction for failure to timely complete projects under contract a preliminary determination must be sent to the contractor in question after which the contractor is provided the opportunity to respond and to point out any mitigating factors.

However, the department does not agree that the rule should expressly require that the chief engineer approve the final judgment of the district engineer before any sanction is considered because that provision is to be used only to determine if a con-

tractor fails to timely complete a project and therefore, whether contractor conduct may warrant sanction by the executive director. The chief engineer is already part of the sanction review process that makes recommendations to the executive director when a putative violation of §9.107(b) is an issue. Finally, the commenter is incorrect that the new rules automatically recommend debarment; §9.111, as amended, recommends a limit on the contract amount as a sanction, although other sanctions or a suspension may also be considered and imposed by the executive director, as appropriate.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§9.107. Grounds for Sanction.

(a) Sanctions may be imposed under this section for:

(1) failure to execute a highway improvement contract after a bid is awarded, unless the contractor honors a bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Bid);

(2) the rejection by the commission of two or more bids by the contractor during the 36-month period preceding the month in which the determination is being made because of contractor error;

(3) the department's declaration of a contractor in default on a highway improvement contract;

(4) violation of §10.101 of this title (relating to Required Conduct); or

(5) failure to timely complete projects under contract.

(b) Before a sanction may be imposed for the ground provided in subsection (a)(5) of this section, the district engineer of the district in which the project is located must provide to the contractor a preliminary determination for the sanction using the factors set out in this subsection. The ground provided in subsection (a)(5) is found to exist if the district engineer, after considering any contractor response to the preliminary determination and any mitigating factors, determines that:

(1) the contractor:

(A) has not completed the project within the time allowed under the contract, as adjusted by all applicable change orders; or

(B) has used more than 80 percent of the time allocated for the project, as adjusted by all applicable change orders, and the percent of allocated time used divided by the percent of the contract completed, both as adjusted by all applicable change orders, is greater than 1.2; and

(2) the contractor is more than 10 percent behind on all of its other contracted department projects, as adjusted by all applicable change orders.

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

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CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts amendments to §§21.31, 21.33, and 21.41 and new §21.57, concerning Utility Accommodation, and amendments to §21.962 and §21.963, concerning Leasing of Right of Way to Saltwater Pipeline Operators. The amendments and new section are adopted without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 100) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

House Bill 497, 84th Legislature, Regular Session, 2015, amended §91.901, Natural Resources Code, to expand the definition of "saltwater pipeline facility" to include saltwater intended to be used in drilling or operating an oil or gas well. The goal of HB 497 is to facilitate the use of state right of way and the construction of saltwater pipelines as a mechanism of transporting saltwater needed for exploration and production to and from drill sites, to disposal and other types of wells. Those statutory changes necessitate changes to 43 TAC Chapter 21, Subchapters C and R.

Amendments to §21.31, Definitions, modify the definition of "saltwater" to include water intended to be used in the exploration of oil or gas. The amendments also add the definition of "temporary pipeline facility."

Amendments to §21.33, Applicability, clarify that a temporary saltwater pipeline facility is exempt from conformance with the provisions for high-pressure pipelines.

Amendments to §21.41, Overhead Electric and Communication Lines, repeal existing Figure: 43 TAC §21.41(c), Horizontal Clearances, and substitute a new Horizontal Clearances table, which updates the existing table to reflect current standards used for the state highway system's right of ways.

New §21.57, Temporary Saltwater Pipeline, authorizes the installation of a temporary saltwater pipeline on highway right of way for a term not to exceed 180 days. The section limits the size of the pipe to 12 inches or less and operation pressure to 60 pounds per inch or less.

Amendments to §21.962, Definitions, modify and expand the definition for "saltwater pipeline facility" to include facilities that conduct saltwater intended to be used in the exploration for or production of oil or gas.

Amendments to §21.963, Lease of Right of Way for a Saltwater Pipeline Facility, add that the lease term for above-ground saltwater facilities may not exceed 180 days.

COMMENTS

No comments concerning the proposed amendments and new section were received.

SUBCHAPTER C. UTILITY ACCOMMODATION

43 TAC §§21.31, 21.33, 21.41, 21.57

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

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 R. LEASING OF RIGHT OF WAY TO SALTWATER PIPELINE OPERATORS

43 TAC §21.962, §21.963

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

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