

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER C. VOTING SYSTEMS

The Office of the Secretary of State, Elections Division, proposes to repeal and replace 1 TAC §81.52, concerning the use of precinct ballot counters. The proposed new rule provides procedures on the proper use of a precinct ballot counter on election day, during early voting and for the counting of ballots by mail. Additionally, the proposed rule will eliminate the requirement for a continuous audit log printer to be attached to the precinct ballot counter during the early voting by personal appearance period. The requirement is no longer necessary as federal voting system guidelines have been revised to provide additional content and security requirements for internal audit logs. Currently, all precinct ballot counters certified in Texas meet these federal standards.

Keith Ingram, Director of Elections, has determined that for the first five-year period the repeal and new rule are in effect, there will be no increased monetary obligations for state or local government as a result of enforcing or administering the rules. The elimination of the outdated requirement for a continuous audit log printer is expected to reduce costs for local governments, and potentially open opportunities for more vendors to submit their central accumulators for voting system certification in Texas. There will be no effect on small businesses or micro-businesses. There will be no anticipated economic cost to the state or local governments. Mr. Ingram has also determined that for the first five-year period the public benefit anticipated as a result of the rules will be the consistent and uniform guidance provided to entities conducting elections using precinct ballot counters.

Interested persons may submit written comments on the proposed repeal and new rule to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

Comments may also be sent via e-mail to: elections@sos.texas.gov. For comments submitted electronically, please include "Proposed Rule §81.52" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

1 TAC §81.52

The proposed repeal is submitted pursuant to §31.003 of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. The repeal is also submitted pursuant to §122.001 of the Texas Election Code, which provides the Office of the Secretary of State the authority to prescribe additional procedures related to the use voting systems, and §81.002, which applies provisions related to electronic voting systems to early voting.

No other code or statute is affected by the proposal.

§81.52. Precinct Ballot Counters.

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

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

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For further information, please call: (512) 463-5650



1 TAC §81.52

The proposed new rule is submitted pursuant to §31.003 of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. The rule is also submitted pursuant to §122.001 of the Texas Election Code, which provides the Office of the Secretary of State the authority to prescribe additional procedures related to the use voting systems, and §81.002, which applies provisions related to electronic voting systems to early voting.

No other code or statute is affected by the proposal.

§81.52. Precinct Ballot Counters.

(a) Where precinct ballot counters are used to process election results under the Texas Election Code (the "Code"), Chapter 127, the election results shall be processed in accordance with this section.

(b) A precinct ballot counter is defined as a precinct based voting system whereby a voter deposits their ballot into a paper ballot scanner at their precinct or polling place. The scanner is attached to a secure ballot box that contains the voted paper ballots after they have been scanned and tabulated.

(c) In addition to the procedures provided herein and in Chapter 127 of the Code, compliance with the following voting procedures is required for the proper processing of ballots to be tabulated by voting systems specifically designed as precinct ballot counters. The precinct ballot counter can be used as a central scanner in accordance with subsection (f) of this rule for the purpose of counting early voting ballots by mail.

(1) The precinct ballot counter must be set up to reject and return the ballot to the voter rather than outstack the ballot if it is blank, or overvoted. The precinct ballot counter must be capable of rejecting and returning to the voter the ballot if it is undervoted.

(2) The voter shall deposit a ballot directly into a precinct ballot counter. If the machine returns the ballot to the voters, the voter may:

(A) attempt to correct the ballot;

(B) request another ballot once the spoiled ballot is returned to the election officer; or

(C) override the rejection (or request the election official to override the rejection) so that the precinct counter accepts the ballot.

(3) The voter is not entitled to receive more than three ballots. The procedures for handling a spoiled ballot provided by §64.007 of the Code must be followed.

(4) If the precinct ballot counter rejects the ballot for any reason and the voter has received the maximum number of ballots or does not wish to make further changes to the ballot, the voter shall override the rejection (or request the election official to override the rejection) so that the precinct ballot counter accepts the ballot.

(5) The authority conducting the election shall determine whether precinct results will be completed at the precinct polling place or whether a central counting station will be established.

(A) When results are completed at a precinct polling place, the steps in subsections (d)(6) and (e)(11) shall be followed.

(B) When results are completed at a central counting station, the steps in subsections (d)(7) and (e)(12) shall be followed.

(d) Precinct Ballot Counters Used for Voting on Election Day.

(1) Immediately prior to the opening of the polls, the election judge shall inspect the precinct ballot counter to ensure that all locks and seals are properly affixed to the precinct ballot counter.

(2) The election judge shall run a report that shows that zero ballots have been cast on the precinct ballot counter. If the tape properly reads "0" for all candidates and propositions, voting shall begin.

(3) After the polls close or the last voter has voted, whichever is later, the election judge must secure the precinct ballot counter so that no additional ballots can be deposited in to the precinct ballot counter.

(4) The election judge must close or suspend the polls, whichever is applicable, on the precinct ballot counter and print three copies of the results tape or results report, whichever is applicable.

(5) The election judge shall compare the number of ballots recorded on the ballot and seal certificate to the number of ballots listed on the results tape. If a discrepancy of four or more exists, the official tabulation of the ballots shall be conducted at a central counting station in accordance with §127.157(b) - (e) of the Code.

(6) Precinct Returns Completed at the Polling Place.

(A) After the results tapes have been printed, the counted ballots shall be removed from the precinct ballot counter and examined for irregularly marked ballots for processing in accordance with §127.156 of the Code. If there are two or more irregularly marked ballots that were improperly tabulated because of the irregular marks, the ballots shall be separated from the ballots that were properly marked and all of the ballots shall be delivered to a central counting station.

(B) If there is no discrepancy in ballot totals and no irregularly marked ballots, the election official shall review the write-in votes, if any, in accordance with §65.008 of the Code.

(C) The election judge shall then prepare the precinct returns from the results tape printed, and if applicable, from the write-in votes hand tallied by the precinct election judges and clerks.

(D) The precinct returns, voted ballots, electronic media from the precinct ballot counter, precinct election records, and the remaining supplies shall be delivered to the general custodian of election records, immediately after the precinct returns are completed in accordance with §66.053 of the Code.

(E) The custodian shall prepare unofficial election results in accordance with §66.056 of the Code.

(7) Precinct Returns Completed at Central Counting Station.

(A) After the results tapes have been printed, the election judge shall remove the electronic media from the precinct ballot counter.

(B) The electronic media, voted ballots, and precinct election records shall be placed in a secure transfer case, and delivered to the presiding judge of the central counting station in accordance with §127.066(c) of the Code.

(C) At the central counting station, the presiding judge shall open the transfer case and remove the voted ballots and electronic media. The ballots shall be examined for the irregularly marked ballots for processing in accordance with §127.157(c) - (e) of the Code.

(D) If there are no irregularly marked ballots, the electronic media shall be transferred to the manager of the central counting station for accumulation.

(E) Write-in votes shall be reviewed for voter intent by the presiding judge of the central counting station. The results shall be added either manually or electronically to those for ballots counted by the precinct ballot counter.

(F) The presiding judge of the central counting station shall be responsible for preparing precinct returns in accordance with §127.131 of the Code.

(e) Precinct Ballot Counters Used for Early Voting by Personal Appearance.

(1) Precinct ballot counters used during early voting may not be used for voting on election day.

(2) The audit logs maintained by the precinct ballot counter are required to conform to §81.62 of this title.

(3) A precinct ballot counter used during early voting by personal appearance must be secured to prevent tampering by the following procedures.

(A) In accordance with §85.032 of the Code, the ballot box connected to a precinct ballot counter that is used during early voting by personal appearance must have two locks, each with a different

key and must be designed and constructed so that the box can be sealed to detect an unauthorized opening of the box.

(B) The precinct ballot counter must have the capability of being sealed to prevent any unauthorized deposit of ballots in the box.

(4) Immediately prior to the opening of the polls, the early voting clerk or deputy early voting clerk at each early voting location shall inspect the precinct ballot counter to ensure that all locks and seals are properly affixed to the precinct ballot counter.

(5) The early voting clerk or deputy early voting clerk shall run a report that shows that zero ballots have been cast on the precinct ballot counter. Voting shall begin only if the tape properly reads "0" for all candidates and propositions.

(6) At the close of each day's voting, the presiding judge shall print a report showing the total number of ballots cast on the precinct ballot counter through that day.

(7) The precinct ballot counter's doors must be locked and sealed with a numbered seal. The precinct ballot counter must be unplugged and secured for the evening.

(8) Prior to voting on each day of the early voting period, the precinct ballot counter must be plugged back in and a report run to indicate that no unauthorized ballots have been cast on the precinct ballot counter since the previous day's voting.

(A) If the precinct ballot counter is not capable of printing reports that show the total number of ballots cast on the device during the early voting period, the early voting officials at each early voting location shall complete a daily ballot count report by reviewing the public counter on each precinct ballot counter at the beginning of each day of voting and at the end of each day of voting and noting the public count from each reading on the form.

(B) This report will indicate how many ballots were cast on the precinct ballot counter at the start of early voting and at the close of voting each day during the early voting period.

(C) This report must be signed by at least two early voting officials every time an entry is made on the form. If poll watchers are present, they must be permitted to sign the form.

(D) The secretary of state will prescribe a form to be used for this report.

(9) At no time should the early voting clerk or deputy early voting clerk print a results tape. A results tape or results report will be printed by the presiding judge of the early voting ballot board or the presiding judge of the central counting station, as applicable.

(10) The precinct ballot counter, electronic media, voted ballots, and election records shall be secured and transferred to the General Custodian of Election records until election day or the time for counting ballots under §87.0241 may begin. Provisional ballots shall be processed in accordance with §81.175 and §81.176 of this title.

(11) Counting of Early Voting Ballots by Early Voting Ballot Board.

(A) The early voting clerk shall place a notice of the early voting ballot board meeting in the same place and same manner, as any other required notices posted in accordance with §87.023 of the Code.

(B) At the proper time designated for tabulation, the presiding judge of the early voting ballot board must inspect the precinct ballot counter to determine whether the seals are intact

and that they match the serial numbers listed on the ballot and seal certificate.

(C) If the seals are not intact, the early voting results from the precinct ballot counter may not be used and those early voting ballots must be re-counted either manually or with a different tabulation device, if available.

(D) If the seals are intact, the presiding judge shall print a report to show that no unauthorized ballots have been cast on the precinct ballot counter since the conclusion of early voting by personal appearance.

(E) If the report confirms that no unauthorized ballots were cast on the precinct ballot counter, the election judge shall close or suspend the polls and print three copies of the results tape or results report, whichever is applicable, unless instructed to print more by the general custodian of election records.

(F) The number of ballots recorded on the ballot and seal certificate shall be compared to the number of ballots listed on the results tape or results report, whichever is applicable. If a discrepancy of four or more exists, the official tabulation of the ballots shall be conducted at a central counting station in accordance with §127.156 of the Code.

(G) The counted ballots shall be removed from the precinct ballot counter and examined for irregularly marked ballots for processing in accordance with §127.157(b) - (e) of the Code.

(H) If there is no discrepancy of four or more in ballot totals and not more than two irregularly marked ballots, the presiding judge of the early voting ballot board shall prepare early voting precinct returns using the printed results tapes, and any tally sheets used for the manual counting of write-in votes, if applicable. The early voting results shall be transferred to the general custodian of election records.

(12) Counting of Early Voting Ballots by a Central Counting Station.

(A) The early voting clerk shall place a notice on the bulletin board of the hour and location of the central counting station, in addition to any other required notices.

(B) At the proper time designated for tabulation, the presiding judge of the central counting station must inspect the precinct ballot counter to determine whether the seals are intact and that they match the serial numbers listed on the ballot and seal certificate.

(C) If the seals are not intact, the early voting results from that precinct ballot counter may not be used and the early voting ballots must be re-counted either manually or with a different tabulation device, if available.

(D) If the seals are intact, the election official must break the seals on the precinct ballot counter, close or suspend the polls and print three copies of the results tape or results report, whichever is applicable, unless instructed to print more by the general custodian of election records.

(E) The number of ballots recorded on the ballot and seal certificate shall be compared to the number of ballots listed on the results tape or results report, whichever is applicable. If a discrepancy of four or more exists, the official tabulation of the ballots shall be conducted at a central counting station in accordance with §127.156 of the Code.

(F) The counted ballots shall be removed from the precinct ballot counter and examined for irregularly marked ballots for processing in accordance with §127.157(b) - (e) of the Code.

(G) If there is no discrepancy of four or more in ballot totals and not more than two irregularly marked ballots that must be reconciled, the electronic media contained in the precinct ballot counter shall be given to the presiding judge for accumulation of early voting results. The printed results shall be maintained with the election records for that election.

(f) Counting of Early Voting by Mail Ballots on a Precinct Ballot Counter.

(1) Early voting ballots by mail may be counted on a precinct ballot counter.

(2) If a precinct ballot count was used during early voting by personal appearance, the same precinct ballot counter may be used to count early voting ballots by mail. The following requirements must be met:

(A) All appropriate documentation including rosters and voting history must be maintained separately for early voting ballots cast by mail and early voting ballots cast in person.

(B) The presiding judge of the early voting ballot board or presiding judge of the central counting station, whichever is applicable, shall print a report that shows no unauthorized ballots were cast on the precinct ballot counter after the close of early voting by personal appearance. The report shall show that the total number of ballots from early voting is equal to the number of ballots cast on the machine.

(C) The presiding judge shall remove from the precinct ballot counter the voted ballots from early voting in person and place them in a secure container.

(D) The presiding judge shall scan the early voting by mail ballots that were accepted for counting.

(E) Upon completion of the scanning, the early voting by mail ballots shall be removed from the precinct ballot counter, and shall be placed in a secure container.

(F) The early voting in person ballots and the early voting by mail ballots may be stored in the same container, but must be maintained separately within that container.

(3) The presiding judge of the central counting station or the presiding judge of the early voting ballot board, whichever is applicable, shall record the total number of early voting by mail ballots that were run through the precinct ballot scanner on the ballot and seal certificate.

(4) The presiding judge of the central counting station or the presiding judge of the early voting ballot board, whichever is applicable shall print two copies of the results tape or results report, whichever is applicable, unless instructed to print more by the general custodian of election records.

(5) The presiding judge shall verify that the total number of ballots scanned on the precinct ballot counter is equal to the sum of the total number of ballots scanned from early voting by personal appearance at that location and the total number of early voting by mail ballots scanned on the precinct ballot counter.

(6) Upon completion of the verification of ballot numbers, the presiding judge shall then complete the remaining steps listed under subsection (d)(11)(F) or (d)(12)(F), whichever is applicable.

(g) Any deviation from this procedure must be approved in writing by the Secretary of State.

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

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General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5650



SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §§81.60 - 81.62

The Office of the Secretary of State, Elections Division, proposes amendments to 1 TAC §§81.60 - 81.62.

The proposed amendment to §81.60 provides that the application for approval of a voting system will be available on the Office of the Secretary of State's website. The proposed amendment also requires the requisite copies of the application to be submitted in an electronic format approved by the Office of the Secretary of State, and requires the application include the technical data package. Finally, the proposed amendment removes duplicative language, and updates references to federal certification repositories.

The proposed amendment to §81.61 removes references to the Federal Election Commission, which no longer oversees federal voting system guidelines, and revises the language of the rule to appropriately refer to the Election Assistance Commission, which was created by the Help America Vote Act of 2002, and revises the rule to refer to the current federal voting system standards.

The proposed amendment to §81.62 will eliminate the requirement for a continuous feed printer dedicated to a real-time audit log to be included with a central accumulator. Federal voting system guidelines have been revised to provide additional content and security requirements for internal audit logs. Further, in 2009, §§129.051 - 129.057 were added to the Texas Election Code, which provides for pre-election security procedures, secure transportation of voting system equipment, secure access to voting equipment, and a prohibition on voting system equipment being connected to the internet. The improvements to the internal audit logs and the additional security provisions eliminate the requirement for the continuous feed printer.

Keith Ingram, Director of Elections, has determined that for the first five-year period the rules are in effect, there will be no increased monetary obligations for state or local government as a result of enforcing or administering the rules. The elimination of the outdated requirement for a continuous audit log printer is expected to reduce costs for local governments, and potentially open opportunities for more vendors to submit their central accumulators for voting system certification in Texas. Mr. Ingram has determined that for the first five-year period the public benefit anticipated as a result of the amendments will be to eliminate outdated requirements and references, and improve certification procedures. There will be no effect on small businesses or micro-businesses. There will be no anticipated economic cost to the state or local governments.

Interested persons may submit written comments on the proposed amendments to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

Comments may also be sent via e-mail to: elections@sos.texas.gov. For comments submitted electronically, please include "Proposed Amendments of Rules §§81.60 - 81.62" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed amendments in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed amendments. Questions concerning the proposed amendments may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The amendments are proposed pursuant to §31.003 of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. The amendments are also proposed pursuant to §122.001 and §122.032 of the Texas Election Code, which provides the Office of the Secretary of State the authority to prescribe additional procedures related to certification and operation of voting systems.

No other code or statute is affected by the amendments.

§81.60. Voting System Certification Procedures.

In addition to the procedures prescribed by the Texas Election Code, Chapter 122, compliance with the following procedures is required for certification of a voting system.

(1) Application for Certification.

(2) The entity applying for certification must deliver seven copies of their completed application forms (Form 100, Form 101, and if applicable, Form 100 Schedule A), user operating and maintenance manuals, training material, nationally accredited voting system test laboratory reports, and a change log detailing changes from any previously certified system or component, and the technical data package, to the Secretary of State no later than 45 days prior to examination. All seven copies must be submitted in an electronic format approved by the Secretary of State. [At least, six of the seven copies must be in electronic form.]

[Figure 1: 1 TAC §81.60(2)]

[Figure 2: 1 TAC §81.60(2)]

[Figure 3: 1 TAC §81.60(2)]

(3) The application forms shall be prescribed by the Secretary of State and made available on the Secretary of State's website.

(4) [(3)] The applicant must have the nationally accredited voting system test laboratory (VSTL) deliver a copy of all nationally qualified software/firmware and source codes for the system and/or system components requested for Texas certification, directly to the Secretary of State no later than 45 days prior to examination.

(5) [(4)] The applicant must authorize the nationally accredited voting system test laboratory to deliver all the applicable executable and installation files to the Election Assistance Commission (EAC) repository [National Software Reference Library (NSRL)] within 30 days after receiving federal certification.

(6) [(5)] The certification fee for a new election management system, tabulation device, electronic ballot marker, and other complex component of a system is \$3,000 each and must be received by the Secretary of State 45 days prior to examination. The certification fee for a modification of a voting system shall be determined by the Secretary of State according to the complexity of the modification, and must be received by the Secretary of State 45 days prior to the examination.

(7) [(6)] Each application shall include authorizations for release of information along with the application for certification in the form of the following set of letters:

(A) a blanket letter addressed to the Secretary of State authorizing the release of information about the system being tested from any local, state or federal official or from any VSTL that has tested their system, upon request;

(B) a copy of a specific letter sent to the VSTL and to the federal Elections Assistance Commission (EAC) or equivalent federal commission or agency which authorizes the organizations to release information about the system being tested to the Texas Secretary of State upon the Secretary of State's request.[: and]

[(C) a list, by state, of users of their voting systems, especially those similar or identical to the system being submitted and copies of letters sent to each user which authorizes them to release any information requested to the Secretary of State.]

(8) [(7)] Examination Dates and Location.

(A) Certification examinations will be scheduled by the Secretary of State three times a year during the months of January, June, and September, unless extenuating circumstances provide otherwise.

(B) The time and date of each examination will not be scheduled until after the entity applying for certification has delivered all required documentation and fees to the Secretary of State.

(C) All physical examinations of voting systems will take place at the Office of the Secretary of State, Elections Division, in Austin, unless extenuating circumstances provide otherwise.

(9) [(8)] Procedures.

(A) The applicant must demonstrate that the voting system meets the applicable standards outlined in the Texas Election Code and the Texas Administrative Code.

(B) The applicant must demonstrate an installation and configuration of the software/firmware on each system and system component using the Secretary of State's copy of the software/firmware received from the nationally accredited voting system test laboratory.

(C) The applicant shall furnish a sufficient number of sample ballots, designed from the templates provided by the Secretary of State, at least two weeks prior to the examination for use during the certification process.

(D) At the completion of the in-person examination period, if the Secretary of State determines that additional information is needed for the examiners to complete their examination report, the Secretary of State may:

(i) Request additional written information from the applicant; or

(ii) Request additional demonstrations of the voting system or voting system equipment submitted for examination.

(10) [(9)] Voting System Examiners.

(A) Examiners must submit a written report to the Secretary of State stating his or her findings for each voting system no later than the 30th day after examination, unless written notice provided by the Secretary of State in accordance with subparagraph (C) of this paragraph provides an extended deadline.

(B) Examiner reports shall be posted on the Secretary of State's website before the public hearing held in accordance with paragraph (11) [(40)] of this section.

(C) If the Secretary of State determines that due to extenuating circumstances, the examiners need more than 30 days to complete their examiner reports, the Secretary of State will provide written notice of the extended deadline to the examiners and the vendor.

(D) The Secretary of State must also post notice of the extended deadline on the Secretary of State's website from the date the extension is issued until the examiner reports are posted on the Secretary of State's website.

(E) An examiner appointed by the Secretary of State will be compensated after he or she files his or her written report.

(11) [(40)] Public Hearing.

(A) A public hearing shall be held no later than 60 days from the date the examiners submit a written report to the Secretary of State.

(B) The notice for the public hearing shall be posted in accordance with Chapter 551, Government Code.

(C) Those wishing to participate in the public hearing will be required to sign in with a representative of the Secretary of State.

(D) Each person desiring to speak will be allotted 5 minutes to make their public comments.

(E) Each person desiring to provide comments in writing shall provide those written comments to the Secretary of State's representative.

(12) [(44)] Written Comment Period.

(A) The Secretary of State shall accept written public comments on the voting system for a period of 10 days after the date of the public hearing.

(B) Comments shall be accepted by email at elections@sos.texas.gov, or by regular mail at: Elections Division, Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

(13) [(42)] The Secretary of State must approve or disapprove the voting system(s) within 30 days of the required public hearing, unless there are extenuating circumstances. If the Secretary of State determines that due to extenuating circumstances, the Secretary of State needs more than 30 days, the Secretary of State will provide written notice of the extended deadline to the examiners and the vendor.

§81.61. Condition for Approval of Electronic Voting Systems.

For any voting machine, voting device, voting tabulation device and any software used for each, including the programs and procedures for vote tabulation and testing, or any modification to any of the above, to be certified for use in Texas elections, the system shall have been certified, if applicable, by means of qualification testing by an Election Assistance Commission accredited voting system test laboratory (VSTL) [a Nationally Recognized Test Laboratory (NRTL)] and shall meet or exceed the minimum requirements set forth in the 2005 Voluntary Voting Systems Guidelines 1.0, [Performance and Test Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems,] or in any successor voluntary standard document developed and adopted [promulgated] by the Election Assistance Commission. [Federal Election Commission.] This section applies only to systems and modifications to previously certified systems submitted after the effective date of this rule.

§81.62. [Continuous Feed Printer Dedicated to the Central Accumulator] Audit Logs for an Election Management System's Central Accumulator [Log].

(a) For any Election Management System's central accumulator to be certified for use in Texas elections, the central accumulator shall include a ~~[continuous feed printer dedicated to a]~~ real-time audit log. All significant election events and their date and time stamps shall be maintained in [printed to] the audit log.

(b) The definition of "significant election events" in subsection (a) of this rule includes but is not limited to:

- (1) error and/or warning messages and operator response to those messages;
- (2) number of ballots read for a given precinct;
- (3) completion of reading ballots for a given precinct;
- (4) identity of the input ports used for modem transfers from precincts;
- (5) users logging in and out from election system;
- (6) precincts being zeroed;
- (7) reports being generated; and
- (8) diagnostics of any type being run. ~~;~~ and
- ~~[(9) change to printer status.]~~

(c) The ~~[continuous-feed printed]~~ audit logs for an election shall be retained by the custodian of election records for the appropriate preservation period.

(d) The "Election Management System" in subsection (a) of this rule is defined as a system that consists of any or all of the following elements: functions and databases within a voting system that define, develop and maintain election databases, perform election definition and setup functions, format ballots, count votes, consolidate and report results, and maintain audit trails.

(e) The definition of "central accumulator" in subsection (a) of this rule is the part of an Election Management System that tabulates and/or consolidates the vote totals for multiple precincts/devices.

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

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Lindsey Wolf

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM

SUBCHAPTER B. PRESCRIBED PEDIATRIC EXTENDED CARE CENTER SERVICES

1 TAC §§363.201, 363.203, 363.205, 363.207, 363.209, 363.211, 363.213, 363.215

The Texas Health and Human Services Commission (HHSC) proposes new Subchapter B, concerning Prescribed Pediatric Extended Care Center Services. Within the new subchapter, HHSC proposes new §363.201, concerning Purpose; §363.203, concerning Definitions; §363.205, Provider Participation Requirements; §363.207, concerning Client Eligibility Criteria; §363.209, concerning Benefits and Limitations; §363.211, concerning Service Authorization; §363.213, concerning Ordering Physician Responsibilities; and §363.215, concerning Termination, Reduction, or Denial of Authorization for Prescribed Pediatric Extended Care Center Services.

BACKGROUND AND JUSTIFICATION

HHSC proposes the new subchapter and rules to include Prescribed Pediatric Extended Care Centers (PPECCs) as Medicaid providers. A PPECC provides non-residential, facility-based care as an alternative to private-duty nursing (PDN) for individuals under the age of 21 with complex medical needs. PPECC services will be made available in traditional fee-for-service Medicaid and managed care.

In 2013, the Texas Legislature adopted Senate Bill 492, which, among other things, enacts Texas Health and Safety Code Chapter 248A to establish PPECCs in Texas and provide for their licensure; enacts Texas Human Resources Code §32.024(jj) to require HHSC to establish PPECCs as a separate Medicaid provider type; and, in an uncodified portion, limits the HHSC-established reimbursement rate to no more than 70 percent of the average hourly PDN rate. See Act of May 22, 2013, 83d Leg., R.S., ch. 1168, §§1, 6, 8(c), 2013 Tex. Gen. Laws 2898.

PPECC services may be provided only to individuals under the age of 21 who are medically dependent or technologically dependent. The term "medically dependent or technologically dependent minor" is defined as an individual who, because of an acute, chronic, or intermittent medically complex or fragile condition or disability, either requires ongoing, technology-based skilled nursing care prescribed by the individual's physician to avert death or further disability or requires the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not, however, include minor or occasional medical conditions that do not require continuous nursing care. Skilled nursing services received in a PPECC must be prescribed by the individual's physician.

Receiving services in a PPECC setting does not supplant an individual's right to PDN services when they are determined medically necessary, but the PDN and PPECC services cannot be provided at exactly the same time (concurrently). Rather, PDN services may be rendered before and after PPECC services. Under the terms of its license, a PPECC may provide services to minors for no more than 12 hours in a 24-hour period.

The corresponding reimbursement rule, §355.9080 of this title (relating to Reimbursement Methodology for Prescribed Pediatric Extended Care Centers), was adopted to be effective January 1, 2016.

SECTION-BY-SECTION SUMMARY

New proposed §363.201, Purpose, introduces the new subchapter and the concept of PPECCs.

New proposed §363.203, Definitions, clarifies words and terms used throughout the new subchapter related to PPECCs.

New proposed §363.205, Provider Participation Requirements, outlines the requirements for a facility to participate in Medicaid as a PPECC.

New proposed §363.207, Client Eligibility Criteria, describes who is eligible to be served in a PPECC.

New proposed §363.209, Benefits and Limitations, outlines the services that may be offered in a PPECC and the limits on those services

New proposed §363.211, Service Authorization, describes how authorization for services is obtained.

New proposed §363.213, Ordering Physician Responsibilities, specifies the ordering physician requirements related to PPECC services for a client.

New proposed §363.215, Termination, Reduction, or Denial of Authorization for Prescribed Pediatric Extended Care Center Services, delineates the HHSC process for approving, reducing, or denying services, including notifications and appeals.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rules are in effect, there will be a savings to state government of (\$172,759) General Revenue (GR) ((\$394,247) All funds (AF)) in State Fiscal Year (SFY) 2017; (\$469,614) GR((\$1,071,688 AF)) in SFY 2018; (\$790,071) GR ((\$1,802,991) AF)) in SFY 2019; (\$1,140,171) GR ((\$2,601,943) AF)) in SFY 2020; and (\$1,359,179) GR ((\$3,101,733) AF)) in SFY 2021.

There is no anticipated impact to costs and revenues of local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of adoption of the proposed rules. The PPECC is a new provider type with adoption of this rule. Therefore, there are no small businesses or micro-businesses of this provider type already existing that will be adversely impacted by adoption of the rules as proposed.

PUBLIC BENEFIT AND COST

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed rules will be the creation of a new PPECC provider type that will offer an alternative to private duty nursing services for medically or technologically dependent children.

Ms. Rymal has also determined that there are no probable economic costs to persons required to comply with the proposed rules.

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

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the

specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Teresa Snyder, Policy Analyst, 4900 North Lamar Blvd., Austin, Texas 78751; or by e-mail to Teresa.Snyder@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. The rules specifically implement Texas Human Resources Code §32.024(jj), which directs HHSC to establish Prescribed Pediatric Extended Care Centers as a separate provider type.

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

§363.201. Purpose.

(a) This subchapter defines the Prescribed Pediatric Extended Care Center services benefit available through the Early and Periodic Screening, Diagnosis, and Treatment Comprehensive Care Program, which in Texas is known as the Texas Health Steps Comprehensive Care Program.

(b) This subchapter applies to Medicaid fee-for-service and Medicaid managed care organizations that contract with the Texas Health and Human Services Commission to provide Medicaid services.

§363.203. Definitions.

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

(1) Activities of daily living (ADLs)--Activities that include eating, toileting, personal hygiene, dressing, bathing, transferring, positioning, and locomotion or mobility.

(2) Basic services--Basic services include:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent client;

(ii) is developed in conjunction with the client's responsible adult; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the client; and

(B) the caregiver training needs of a medically dependent or technologically dependent client's parent or responsible adult.

(3) Client--An individual who is eligible to receive PPECC services under Texas Health Steps Comprehensive Care Program (THSteps-CCP) from a provider enrolled in the Texas Medicaid program.

(4) Correct or ameliorate--To improve, maintain, or slow the deterioration of the client's health status.

(5) Fair hearing--The process HHSC has adopted and implemented in Chapter 357, Subchapter A, of this title (relating to Uniform Fair Hearing Rules) in compliance with federal and state regulations governing Medicaid Fair Hearings.

(6) HHSC--The Texas Health and Human Services Commission or its designee, including a contractor or MCO. HHSC is the single state agency charged with administration and oversight of the Texas Medicaid program. HHSC's authority is established in Texas Government Code Chapter 531.

(7) Licensed Vocational Nurse (LVN)--A person licensed by the Texas Board of Nursing to practice vocational nursing in Texas at the time and place the service is provided, in accordance with Texas Occupations Code Chapter 301.

(8) Medicaid Managed Care Organization (MCO)--Any entity with which HHSC contracts to provide Medicaid services and that complies with Chapter 353 of this title (relating to Medicaid Managed Care).

(9) Medically or technologically dependent client--

(A) An individual 20 years of age or younger:

(i) who has an acute, chronic, or intermittent medically complex or fragile condition or disability; and

(ii) whose condition or disability, as stated in clause (i) of this subparagraph, requires:

(I) ongoing skilled nursing care beyond the level of skilled nursing visits normally authorized under Texas Medicaid home health skilled nursing and health aide services, prescribed by a physician to avert death or further disability; or

(II) the routine use of a medical device to compensate for a deficit in a life-sustaining bodily function.

(B) The term does not include a client with a controlled or occasional medical condition that does not require ongoing nursing care.

(10) Notice (or notification)--A letter provided by HHSC or an MCO to a client informing the client of any reduction, denial, or termination of a requested service, as described in the Code of Federal Regulations, Title 42, §§431.206 and 431.210.

(11) Ordering physician--A doctor of medicine or doctor of osteopathy (M.D. or D.O.), legally authorized to practice medicine or osteopathy at the time and place the service is provided, who provides ongoing medical care for the client and continuing medical supervision of the client's plan of care.

(12) Plan of care--A comprehensive, interdisciplinary protocol of care that includes the physician's order for needed services, nursing care plan, and protocols establishing delegated tasks, plans to address functional developmental needs, plans to address psychosocial needs, personal care services for assistance with activities of daily living, and therapeutic service needs required by a client and family served.

(13) Prescribed Pediatric Extended Care Center (PPECC)--A center operated on a for-profit or nonprofit basis that provides non-residential basic services to four or more medically dependent or technologically dependent clients who require the services of the center and who are not related by blood, marriage, or adoption to the owner or operator of the center.

(14) Private Duty Nursing (PDN)--Nursing, as described by Texas Occupations Code Chapter 301, and its implementing regulations at 22 TAC Part 11 (relating to the Texas Board of Nursing), that provides a client with more individual and ongoing care than is available from a visiting nurse or than is routinely provided by the nursing staff of a hospital or skilled nursing facility. PDN services include observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings for a client who has a disability or chronic health condition or who is experiencing a change in normal health processes.

(15) Registered Nurse (RN)--A person who is licensed by the Texas Board of Nursing to practice professional nursing in Texas at the time and place the service is provided, in accordance Texas Occupations Code Chapter 301.

(16) Respite--Services provided to relieve a client's primary care giver.

(17) Responsible adult--An adult, as defined by Texas Family Code §101.003, who has agreed to accept the responsibility for providing food, shelter, clothing, education, nurturing, and supervision for a client. Responsible adults include biological parents, adoptive parents, foster parents, guardians, court-appointed managing conservators, and other family members by birth or marriage. If the client is 18 years of age or older, the responsible adult must be the client's managing conservator or legal guardian.

(18) Skilled nursing--Services provided by a registered nurse or by a licensed vocational nurse, as authorized by Texas Occupations Code Chapter 301 and 22 TAC §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct).

(19) Stable--Status determined by the client's ordering physician that the client's health condition does not prohibit utilizing transportation to access outpatient medical services and does not present significant risk to other clients or personnel at the center, as defined at 40 TAC §15.601 (relating to Admission Criteria). The client must be able to use transportation services offered by the PPECC with the assistance of a PPECC nurse to and from the PPECC, whether or not the client uses the PPECC's transportation service.

(20) Texas Health Steps Comprehensive Care Program (THSteps-CCP)--A federal program, required by Medicaid and known as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), for children under 21 years of age who meet certain criteria for eligibility. Services are defined in the United States Code, Title 42, §1396d(r), and the Code of Federal Regulations, Title 42, §440.40(b).

§363.205. Provider Participation Requirements.

(a) A PPECC service provider must be independently enrolled in the Texas Medicaid program to be eligible to receive Medicaid reimbursement for providing PPECC services through THSteps-CCP.

(b) To participate in THSteps-CCP, a PPECC service provider must:

(1) be currently licensed under and comply with 40 TAC Chapter 15 (relating to Licensing Standards for Prescribed Pediatric Extended Care Centers);

(2) be enrolled and approved for participation in the Texas Medicaid program;

(3) agree to provide services in compliance with all applicable federal, state, and local laws and regulations, including Texas Occupations Code Chapter 301;

(4) comply with the terms of the Texas Medicaid Provider Agreement;

(5) comply with all state and federal regulations and rules relating to the Texas Medicaid program;

(6) comply with the requirements of the Texas Medicaid Provider Procedures Manual, including all published updates and revisions and all handbooks, standards, and guidelines published by HHSC or an MCO with which they contract;

(7) comply with accepted professional standards and principles of nursing practice;

(8) comply with Texas Family Code Chapter 261, and Texas Health and Safety Code Chapter 260A, concerning mandatory reporting of suspected abuse or neglect of children and adults with disabilities; and

(9) maintain written policies and procedures for obtaining consent for medical treatment for clients in the absence of the responsible adult that meet the standards of Texas Family Code §32.001.

§363.207. Client Eligibility Criteria.

(a) All requests for PPECC services must be based on the current medical needs of a client who meets the following admission criteria for a PPECC:

(1) is eligible for THSteps-CCP;

(2) is age 20 or younger;

(3) requires ongoing skilled nursing care and supervision and skilled observations, judgments, and therapeutic interventions all or part of the day to correct or ameliorate his or her health status, such that delayed skilled intervention is expected to result in:

(A) deterioration of a chronic condition;

(B) loss of function;

(C) imminent risk to health status due to medical fragility; or

(D) risk of death;

(4) is considered to be a medically dependent or technologically dependent client;

(5) is stable and eligible for outpatient medical services in accordance with 40 TAC §15.601 (relating to Admission Criteria);

(6) has a prescription for each authorization period for PPECC services signed and dated by the ordering physician who has personally examined the client within 30 days prior to admission and reviewed all appropriate medical records;

(7) resides with the responsible adult outside of a 24-hour inpatient facility, including a:

(A) general acute hospital;

(B) skilled nursing facility;

(C) intermediate care facility; or

(D) special care facility, including sub-acute units or facilities for the treatment of acquired immune deficiency syndrome; and

(8) has a consent to the client's admission to the PPECC signed and dated by the client or by the client's responsible adult.

(b) THSteps-CCP clients are eligible for all medically necessary PPECC services that are required to meet the client's documented needs.

(c) Admission must be voluntary, based on the client's, or the client's responsible adult's choice for PPECC services.

(d) An authorized admission for PPECC services is not intended to supplant the right to a Medicaid PDN benefit, when medically necessary.

§363.209. Benefits and Limitations.

(a) Comprehensive plan of care; permissible PPECC services.

(1) The PPECC must develop, implement, and monitor a comprehensive plan of care that:

(A) is provided to a medically dependent or technologically dependent client;

(B) is developed in collaboration with the client's ordering physician, responsible adult, and interdisciplinary team, as well as the client's existing service providers as needed to coordinate care;

(C) specifies the following prescribed services needed to address the medical, nursing, psychosocial, therapeutic, dietary, functional, and developmental needs of the client and the training needs of the client's responsible adult:

(i) skilled nursing;

(ii) personal care services to assist with activities of daily living while in the PPECC;

(iii) functional developmental programs;

(iv) nutritional and dietary services including nutritional counseling;

(v) occupational, physical and speech therapy;

(vi) respiratory care;

(vii) psychosocial services; and

(viii) training for the client's responsible adult associated with caring for a medically or technologically dependent client;

(D) specifies if transportation is needed;

(E) is reviewed and revised for each authorization of services per subsection (d) of this section or more frequently as the ordering physician deems necessary;

(F) is signed and dated by the client's ordering physician;

(G) is signed and dated by the client or the client's responsible adult;

(H) meets additional requirements prescribed in 40 TAC §15.607 (relating to Initial and Updated Plan of Care); and

(I) meets requirements contained in the Texas Medicaid Provider Procedures Manual.

(2) Transportation Services.

(A) The PPECC must provide transportation between the client's residence and the PPECC when a stated need or prescription for such transportation.

(B) When a PPECC provides transportation to a PPECC client, an RN or LVN employed by the PPECC must be on board the transport vehicle.

(C) The PPECC must:

(i) sign, date, and indicate the time the client is put on the transport vehicle to deliver the client to the PPECC;

(ii) sign, date, and indicate the arrival time of the client at the PPECC;

(iii) sign, date, and indicate the time the client is put on the transport vehicle to return the client to their place of residence; and

(iv) sign, date, and indicate the arrival time at the client's residence.

(D) A responsible adult is not required to accompany a client when the client receives transportation services to and from the PPECC.

(E) A client or client's responsible adult may decline a PPECC's transportation and choose to be transported by other means.

(F) A non-emergency ambulance may not be used for transport to and from a PPECC.

(3) PPECC services, including training provided to the client's responsible adult associated with caring for a medically or technologically dependent client, must be provided by the PPECC with the following intended outcomes:

(A) optimizing the client's health status and outcomes; and

(B) promoting and supporting family-centered, community-based care as a component of an array of service options by:

(i) preventing prolonged or frequent hospitalizations or institutionalization;

(ii) providing cost-effective, quality care in the most appropriate environment; and

(iii) providing training and education of caregivers.

(4) The PPECC must provide written documentation about the client's care each day to the client's responsible adult, including documentation of medication given, services provided, and other relevant health-related information. The documentation must be provided each day following service delivery when the responsible adult picks up the client or when the PPECC transports the client to his or her residence.

(b) Amount and duration.

(1) HHSC evaluates the amount and duration of PPECC services requested upon review of:

(A) a physician order;

(B) a PPECC plan of care;

(C) a completed request for authorization, including all required documentation, as indicated in the Texas Medicaid Provider Procedures Manual; and

(D) the full array of Medicaid services the client is receiving at the time the plan of care is developed.

(2) HHSC re-evaluates the amount of PPECC services when:

(A) there is a change in the frequency of skilled nursing interventions, other PPECC medical services, or the complexity and intensity of the client's care;

(B) the client or the client's responsible adult chooses alternate resources for comparable care; or

(C) the responsible adult becomes available and is willing to provide appropriate care for the client.

(c) PPECC service limitations.

(1) The Medicaid rate for PPECC services does not include the following PPECC services:

(A) services intended to provide mainly respite care or child care, or services not directly related to the client's medical needs or disability;

(B) services that are the legal responsibility of a local school district, including transportation;

(C) services covered separately by Texas Medicaid, such as:

(i) speech therapy, occupational therapy, physical therapy, respiratory care practitioner services, and early childhood intervention services;

(ii) durable medical equipment (DME), medical supplies, and nutritional products provided to the client by Medicaid's DME and medical supply service providers; and

(iii) private duty nursing, skilled nursing, and aide services provided in the home setting when medically needed in addition to the PPECC services authorized;

(D) baby food or formula;

(E) services to clients related to the PPECC owner by blood, marriage, or adoption;

(F) services rendered to a client who does not meet the definition of a medically or technologically dependent client; and

(G) individualized comprehensive case management beyond the service coordination required by the Texas Occupations Code Chapter 301.

(2) PPECC services are limited to 12 hours per day. Services begin when the PPECC assumes responsibility for the care of the client (the point the client is boarded onto PPECC transportation or when the client is brought to the PPECC) and ends when the care is relinquished to the client's responsible adult.

(3) A client who is eligible may receive both PDN and PPECC services on the same day. However, PPECC services are intended to be a one-to-one replacement of PDN hours unless additional hours are medically necessary. The following medically necessary services may be billed on the same day as PPECC services, but they may not be billed simultaneously with PPECC services. These services may be billed before or after PPECC services:

(A) private duty nursing;

(B) home health skilled nursing; and

(C) home health aide services.

(d) Parental accompaniment is not required for PPECC services, including therapy services rendered in a PPECC setting.

§363.211. Service Authorization.

(a) Authorization is required for payment of services. The provider must submit a complete request for prior authorization in or-

der to be considered by HHSC for reimbursement. Prior authorization is a condition for reimbursement but not a guarantee of payment.

(b) Only those services that HHSC determines to be medically necessary and appropriate are authorized.

(c) PPECC services are prior authorized with reasonable promptness. Prior authorization determinations are completed by HHSC within three business days of receipt of a complete request.

(d) Initial authorization may not exceed 90 days from the start of care. Following the initial authorization, no authorization for payment of PPECC services may be issued for a single service period exceeding 180 days. In addition, specific authorizations may be limited to a time period less than the established maximum based on factors such as the stability and predictability of the client's medical condition.

(e) HHSC may deny or reduce the PPECC services when:

(1) the client does not meet the medical necessity criteria for admission;

(2) the client does not have an ordering physician;

(3) the client is not 20 years of age or younger;

(4) the services requested are not covered under this subchapter;

(5) the client's needs are not beyond the scope of services available through Medicaid Title XIX Home Health Skilled Nursing or Home Health Aide Services, because the needs can be met on a part-time or intermittent basis through a visiting nurse as described by Chapter 354, Subchapter A, Division 3 of this title (relating to Medicaid Home Health Services);

(6) there is a duplication of services (for example, the client receives services such as PDN or home health skilled nursing during the same period of time as PPECC services);

(7) the services are primarily respite care or child care;

(8) the services are provided for the purpose of responsible adult training;

(9) the request is incomplete;

(10) the information in the request is inconsistent; or

(11) the requested services are not nursing services as defined by the Texas Occupations Code Chapter 301 and its implementing regulations.

(f) All authorization requests, including initial authorization and authorization of extensions or revisions to an existing authorization, must be submitted in writing.

(g) Initial authorization requests for PPECC services must include the following documentation, which adheres to requirements in the Texas Medicaid Provider Procedures Manual:

(1) physician order for services;

(2) a plan of care developed by the PPECC in compliance with §363.209(a)(1) of this subchapter (relating to Benefits and Limitations);

(3) all required prior authorization forms listed in the Texas Medicaid Provider Procedures Manual, or MCO forms if they contain comparable content;

(4) an RN assessment of the client either in the client's home environment or at the PPECC, which may include a determination of the client's condition; and

(5) signed consent of the client or client's responsible adult documenting the choice of PPECC services. The signed consent must include an acknowledgement by the client or the client's responsible adult that he or she has been informed that other services such as private duty nursing might be reduced as a result of accepting PPECC services. Consent to share the client's personal health information with the client's other providers, as needed to ensure coordination of care, must also be obtained.

(h) Required documentation for recertification of PPECC service authorization after the initial authorization or after an authorization period ends includes:

(1) current HHSC authorization form or MCO authorization form;

(2) all required HHSC forms, signed and dated by the client's ordering physician;

(3) the most recent plan of care developed by the PPECC in compliance with §363.209(a)(1) of this subchapter;

(4) an RN assessment of the client either in the client's home environment or at the PPECC, which may include a determination of and any corresponding changes to the client's condition; and

(5) signed consent from the client or the client's responsible adult.

(i) Revisions during an existing authorization period may be requested at any time, if medically necessary. Revision requests must:

(1) meet the documentation requirements specified in the Texas Provider Procedures Manual; and

(2) include an RN assessment of the client either in the client's home environment or at the PPECC, which may include a determination of and any corresponding changes to the client's condition.

(j) If inadequate or incomplete information is provided, HHSC requests additional documentation from the provider to enable HHSC to make a decision on the request.

(k) During the authorization process, providers are required to deliver the requested services from the start of care date.

(l) Providers are responsible for a safe transition of services when the authorization decision is a denial or reduction in the PPECC services being delivered.'

§363.213. Ordering Physician Responsibilities.

(a) An ordering physician in an employment or contractual relationship with a PPECC cannot provide the required physician's order unless the physician has a therapeutic relationship with and ongoing clinical knowledge of the client.

(b) The ordering physician's responsibilities include:

(1) providing an examination or treatment to the client within 30 days before the start of PPECC services;

(2) providing a signed prescription or written, dated physician's order for PPECC services within 30 calendar days before the client's start of services, which is valid through the initial authorization period and complies with requirements contained in the Texas Medicaid Provider Procedures Manual;

(3) providing a signed prescription or written, dated physician's order for each PPECC authorization period, once the initial prescription or order is no longer valid;

(4) performing a face-to-face evaluation of the client each year;

(5) reviewing, approving, signing, and dating a plan of care, and any other documentation required for service prior authorization, including any updates or changes;

(6) providing a statement that PPECC services are medically necessary for the client;

(7) providing a statement that the client's medical condition is sufficiently stable to permit safe delivery of PPECC services as described in the plan of care; and

(8) providing continuing care to and medical supervision of the client.

§363.215. Termination, Reduction, or Denial of Authorization for Prescribed Pediatric Extended Care Center Services.

(a) HHSC terminates authorization for PPECC services when:

(1) the client is no longer eligible for THSteps-CCP;

(2) the client no longer meets the medical necessity criteria for PPECC services;

(3) the PPECC cannot ensure the health and safety of the client;

(4) the client or the client's responsible adult refuses to comply with the plan of care, and compliance is necessary to assure the health and safety of the client;

(5) the client changes PPECC providers, and the change of notification is submitted to HHSC in writing with a prior authorization request from the new PPECC provider; or

(6) after receiving PPECC services, the client declines PPECC services and receives services at home. The home health agency or independent provider offering these services must submit and update all required authorization documentation.

(b) Notice to approve, reduce, or deny requested PPECC services.

(1) HHSC notifies the client and the responsible adult in writing of the approval, reduction, or denial of PPECC services.

(2) HHSC notifies the provider in writing of the approval, reduction, or denial of PPECC services.

(3) The effective date of the service reduction or denial is 30 days after the date on the individual's notification letter.

(4) HHSC notifies the individual in writing of the process to appeal the reduction or denial of services.

(c) All clients of Medicaid-funded services have the right to appeal actions or determinations made by HHSC as described in Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules).

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

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

TRD-201603771

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 11, 2016

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



CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

The Texas Health and Human Services Commission (HHSC) proposes amendments to §371.1, concerning Definitions; and Subchapter E, §371.1005, concerning Disclosure Requirements; §371.1009, concerning Verifications Required for Each Screening Level; §371.1011, concerning Recommendation Criteria; and §371.1015, concerning Types of Provider Enrollment Recommendations.

BACKGROUND AND JUSTIFICATION

HHSC proposes these amendments to align enrollment regulations with statute, to clarify the enrollment regulations, and to delete obsolete provisions.

Senate Bill 207 (S.B. 207), 84th Legislature, Regular Session, 2015, amended various provisions in Texas Government Code Chapter 531 related to the Office of Inspector General's (OIG's) authority and duties. Texas Government Code §531.1032, as adopted by S.B. 207, requires the adoption of rules that outline the criminal history record information, by provider type, that could result in exclusion of a person from Medicaid as a provider. The statute also prohibits the OIG from conducting a criminal history record check on healthcare providers whose licensing authority already requires the submission of fingerprints for criminal background checks unless the check is required or appropriate for other reasons, such as a fraud, waste, or abuse investigation. The proposed amendments to §371.1011 implement these requirements.

HHSC proposes to amend the definitions to clarify that the enrollment procedures apply to reenrollment. Obsolete definitions are repealed.

The proposed amendments also clarify that providers, applicants, and persons are subject to disclosure screenings.

In addition, the proposed amendments implement guidance issued by the Centers for Medicare & Medicaid Services (CMS) that states may rely upon on-site inspection visits performed by CMS. The proposed amendments also reassign the on-site inspection function to the HHSC Medicaid/CHIP Division.

Finally, the proposed amendments lengthen the amount of time that the applicant has to request an informal desk review by the OIG, based on concern expressed by previous applicants.

HHSC intends that any obligations or requirements that accrued under Chapter 371 before the effective date of these rules will be governed by the prior rules in Chapter 371, and that those rules continue in effect for this purpose. HHSC does not intend for the amendments to the rules in Chapter 371 to affect the prior operation of the rules; any prior actions taken under the rules; any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the rules; any violation of the rules or any penalty, forfeiture, or punishment incurred under the rules before their amendment; or any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment. HHSC additionally intends that any investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the rules had not been amended.

HHSC intends that should any sentence, paragraph, subdivision, clause, phrase, or section of the amended or new rules in Chap-

ter 371 be determined, adjudged, or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of the subchapter as a whole, or any part or provision hereof other than the part so declared to be unconstitutional, illegal, or invalid, and shall not affect the validity of the subchapter as a whole.

SECTION-BY-SECTION SUMMARY

Proposed §371.1 is amended to include a definition for "enrollment" and to delete the definitions for "probationary contract" and "provisional contract." The OIG will no longer enroll providers on a probationary or provisional basis.

Proposed §371.1005 is amended to clarify that both providers and provider's employees are subject to disclosure requirements and review.

Proposed §371.1009 is amended to reflect that the OIG no longer conducts site visits. This function is instead handled by HHSC's Medicaid/CHIP division.

Proposed §371.1011 proposes new language to comply with Texas Government Code §531.1032, which requires the Executive Commissioner to adopt guidelines for evaluating criminal history record information.

Proposed §371.1015 changes a reference from 20 calendar days to 20 business days to allow providers more time to file for reviews of denied applications.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed and amended rules are in effect, there will be no effect on costs and revenues of state government and local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed and amended rules, as no business will be required to alter current business practices as a result of the proposed and amended rules.

PUBLIC BENEFIT

Stuart Bowen, Inspector General, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be that the rules will ensure the integrity of Medicaid and other HHS programs by discovering, preventing, and correcting fraud, waste, and abuse.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed and amended rules. The proposed and amended rules will not affect a local economy or negatively affect local employment.

REGULATORY ANALYSIS

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

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Maria Rose, Texas Health and Human Services Commission-OIG, Broadmoor 902 (MC 1350), 11501 Burnet Road, Austin, Texas 78758; by fax to (512) 833-6484; or by e-mail to Maria.rose@hhsc.state.tx.us within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. OFFICE OF INSPECTOR

GENERAL

1 TAC §371.1

LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the OIG; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

The amendment implements Texas Government Code §531.1032. No other statutes, articles, or codes are affected by the proposal.

§371.1. Definitions.

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

(1) Abuse--A practice by a provider that is inconsistent with sound fiscal, business, or medical practices and that results in an unnecessary cost to the Medicaid program; the reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care; or a practice by a recipient that results in an unnecessary cost to the Medicaid program.

(2) Address of record--

(A) an HHS provider's current mailing or physical address, including a working fax number, as provided to the appropriate HHS program's claims administrator or as required by contract, statute, or regulation; or

(B) a non-HHS provider's last known address as reflected by the records of the United States Postal Service or the Texas Secretary of State's records for business organizations, if applicable.

(3) Affiliate; affiliate relationship--A person who:

(A) has a direct or indirect ownership interest (or any combination thereof) of five percent or more in the person;

(B) is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in

part) by the entity whose interest is equal to or exceeds five percent of the value of the property or assets of the person;

(C) is an officer or director of the person, if the person is a corporation;

(D) is a partner of the person, if the person is organized as a partnership;

(E) is an agent or consultant of the person;

(F) is a consultant of the person and can control or be controlled by the person or a third party can control both the person and the consultant;

(G) is a managing employee of the person, that is, a person (including a general manager, business manager, administrator or director) who exercises operational or managerial control over a person or part thereof, or directly or indirectly conducts the day-to-day operations of the person or part thereof;

(H) has financial, managerial, or administrative influence over the operational decisions of a person;

(I) shares any identifying information with another person, including tax identification numbers, social security numbers, bank accounts, telephone numbers, business addresses, national provider numbers, Texas provider numbers, and corporate or franchise names; or

(J) has a former relationship with another person as described in subparagraphs (A) - (I) of this definition, but is no longer described, because of a transfer of ownership or control interest to an immediate family member or a member of the person's household of this section within the previous five years if the transfer occurred after the affiliate received notice of an audit, review, investigation, or potential adverse action, sanction, board order, or other civil, criminal, or administrative liability.

(4) Agent--Any person, company, firm, corporation, employee, independent contractor, or other entity or association legally acting for or in the place of another person or entity.

(5) Allegation of fraud--Allegation of Medicaid fraud received by HHSC from any source that has not been verified by the state, including an allegation based on:

(A) a fraud hotline complaint;

(B) claims data mining;

(C) data analysis processes; or

(D) a pattern identified through provider audits, civil false claims cases, or law enforcement investigations.

(6) Applicant--An individual or an entity that has filed an enrollment application to become a provider, re-enroll as a provider, or enroll a new practice location in a Medicaid program or the Children's Health Insurance Program as described in subsection (23) of this section.

(7) At the time of the request--Immediately upon request and without delay.

(8) Audit--A financial audit, attestation engagement, performance audit, compliance audit, economy and efficiency audit, effectiveness audit, special audit, agreed-upon procedure, nonaudit service, or review conducted by or on behalf of the state or federal government. An audit may or may not include site visits to the provider's place of business.

(9) Auditor--The qualified person, persons, or entity performing the audit on behalf of the state or federal government.

(10) Business day--A day that is not a Saturday, Sunday, or state legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or state legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or state legal holiday.

(11) C.F.R.--The Code of Federal Regulations.

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

(13) Claim--

(A) A written or electronic application, request, or demand for payment by the Medicaid or other HHS program for health care services or items; or

(B) A submitted request, demand, or representation that states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under the Medicaid or other HHS program.

(14) Claims administrator--The entity an operating agency has designated to process and pay Medicaid or HHS program provider claims.

(15) Closed-end contract--A contract or provider agreement for a specific period of time. It may include any specific requirements or provisions deemed necessary by the OIG to ensure the protection of the program. It must be renewed for the provider to continue to participate in the Medicaid or other HHS program.

(16) CMS--The Centers for Medicare & Medicaid Services or its successor. CMS is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and CHIP.

(17) Complete Application--A provider enrollment application that contains all the required information, including:

(A) all questions answered completely, including correct dates of birth, social security numbers, license numbers, and all requirements per provider type defined in the Texas Medicaid Provider Procedures Manual;

(B) IRS Form W-9, if required;

(C) signed and certified provider agreements;

(D) Provider Information Form (PIF-1);

(E) Principal Information Forms (PIF-2) on all persons required to be disclosed, if required;

(F) full disclosure of all criminal history, including copies of complete dispositions on all criminal history;

(G) full disclosure of all board or licensing orders, including documentation of compliance with current board orders;

(H) full disclosure of all corporate compliance agreements, settlement agreements, state or federal debt, and sanctions;

(I) documentation of an active license that is not subject to expiration within 30 days of submission of the enrollment application, if required;

(J) completion of a pre-enrollment site visit by HHSC, if required, and all required current documentation (e.g., liability insurance);

(K) documentation of fingerprints of a provider or any person with a five percent or more direct or indirect ownership in the provider, if required; and

(L) any additional documentation related to the addition of a practice location, if required or requested by HHSC.

(18) Conviction or convicted--Means that:

(A) a judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether:

(i) there is a post-trial motion or an appeal pending; or

(ii) the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;

(B) a federal, state, or local court has made a finding of guilt against an individual or entity;

(C) a federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity; or

(D) an individual or entity has entered into participation in a first offender, deferred adjudication, pre-trial diversion, or other program or arrangement where judgment of conviction has been withheld.

(19) Credible allegation of fraud--An allegation of fraud that has been verified by the state. An allegation is considered to be credible when HHSC has carefully reviewed all allegations, facts, and evidence and has verified that the allegation has indicia of reliability. HHSC acts judiciously on a case-by-case basis.

(20) DADS--The Texas Department of Aging and Disability Services, [ø] its successor, or designee; the state agency responsible for administering long-term services and support for people who are aging and people with intellectual and physical disabilities.

(21) Day--A calendar day.

(22) Delivery of a health care item or service--Providing any item or service to an individual to meet his or her physical, mental or emotional needs or well-being, whether or not reimbursed under Medicare, Medicaid, or any federal health care program.

(23) Enrollment--The HHSC process that a provider or applicant follows to enroll or re-enroll as a provider or enroll a new practice location.

(24) [(23)] Enrollment application--Documentation required by HHSC that an applicant submits to HHSC to enroll or re-enroll as a provider or to add a practice location. An enrollment application includes any supplemental forms used to add practice locations for Medicare-enrolled or limited-risk providers, as determined by HHSC.

(25) [(24)] Exclusion--The suspension of a provider or any person from being authorized under the Medicaid program to request reimbursement of items or services furnished by that specific provider.

(26) [(25)] Executive Commissioner--The HHSC Executive Commissioner.

(27) [(26)] False statement or misrepresentation--Any statement or representation that is inaccurate, incomplete, or untrue.

(28) [(27)] Federal health care program--Any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States government (other than the federal employee health insurance program under Chapter 89 of Title 5, U.S.C.).

(29) [(28)] Fraud--Any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. The term does not include unintentional technical, clerical, or administrative errors.

(30) [(29)] Full investigation--Review and development of evidence to support an allegation or complaint to resolution through dismissal, settlement, or formal hearing.

(31) [(30)] Furnished--Items or services provided or supplied, directly or indirectly, by any person. This includes items and services manufactured, distributed, or otherwise provided by persons that do not directly submit claims to Medicare, Medicaid, or any federal health care program, but that supply items or services to providers, practitioners, or suppliers who submit claims to these programs for such items or services. This term does not include persons that submit claims directly to these programs for items and services ordered or prescribed by another person.

(A) Directly--The provision of items and services by individuals or entities (including items and services provided by them, but manufactured, ordered, or prescribed by another individual or entity) who submit claims to Medicare, Medicaid, or any federal health care program.

(B) Indirectly--The provision of items and services manufactured, distributed, or otherwise supplied by individuals or entities who do not directly submit claims to Medicare, Medicaid, or other federal health care programs, but that provide items and services to providers, practitioners, or suppliers who submit claims to these programs for such items and services.

(32) [(31)] Health information--Any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and that relates to:

(A) the past, present, or future physical or mental health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the past, present, or future payment for the provision of health care to an individual.

(33) [(32)] HHS--Health and human services. Means:

(A) a health and human services agency under the umbrella of HHSC, including HHSC;

(B) a program or service provided under the authority of HHSC, including Medicaid and CHIP; or

(C) a health and human services agency, including those agencies delineated in Texas Government Code §531.001.

(34) [(33)] HHSC--The Texas Health and Human Services Commission, or its successor, or designee.

(35) [(34)] HIPAA-- Collectively, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1320d et seq., and regulations adopted under that act, as modified by the Health Information Technology for Economic and Clinical Health Act

(HITECH) (P.L. 111-105), and regulations adopted under that act at 45 C.F.R. Parts 160 and 164.

(36) [(35)] Immediate family member--An individual's spouse (husband or wife); natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

(37) [(36)] Indirect ownership interest--Any ownership interest in an entity that has an ownership interest in another entity. The term includes an ownership interest in any entity that has an indirect ownership interest in the entity at issue.

(38) [(37)] Inducement--An attempt to entice or lure an action on the part of another in exchange for, without limitation, cash in any amount, entertainment, any item of value, a promise, specific performance, or other consideration.

(39) [(38)] Inspector General--The individual appointed to be the director of the OIG by the Texas Governor in accordance with Texas Government Code §531.102(a-1).

(40) [(39)] "Item" or "service" means--

(A) Any item, device, medical supply or service provided to a patient:

(i) that is listed in an itemized claim for program payment or a request for payment; or

(ii) for which payment is included in other federal or state health care reimbursement methods, such as a prospective payment system; and

(B) In the case of a claim based on costs, any entry or omission in a cost report, books of account, or other documents supporting the claim.

(41) [(40)] Jurisdiction--An issue or matter that the OIG has authority to investigate and act upon.

(42) [(41)] Knew or should have known--A person, with respect to information, knew or should have known when the person had or should have had actual knowledge of information, acted in deliberate ignorance of the truth or falsity of the information, or acted in reckless disregard of the truth or falsity of the information. Proof of a person's specific intent to commit a program violation is not required in an administrative proceeding to show that a person acted knowingly.

(43) [(42)] Managed care plan--A plan under which a person undertakes to provide, arrange for, pay for, or reimburse, in whole or in part, the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include an insurance plan that indemnifies an individual for the cost of health care services.

(44) [(43)] Managing employee--An individual, regardless of the person's title, including a general manager, business manager, administrator, officer, or director, who exercises operational or managerial control over the employing entity, or who directly or indirectly conducts the day-to-day operations of the entity.

(45) [(44)] MCO--Managed care organization. Has the meaning described in §353.2 of this title (relating to Definitions) and for purposes of this chapter includes an MCO's special investigative unit under Texas Government Code §531.113(a)(1), and any entity with which the MCO contracts for investigative services under Texas Government Code §531.113(a)(2).

(46) [(45)] MCO provider--An association, group, or individual health care provider furnishing services to MCO members under contract with an MCO.

(47) [(46)] Medicaid or Medicaid program--The Texas medical assistance program established under Texas Human Resources Code Chapter 32 and regulated in part under Title 42 C.F.R. Part 400 or its successor.

(48) [(47)] Medicaid-related funds--Any funds that:

(A) a provider obtains or has access to by virtue of participation in Medicaid; or

(B) a person obtains through embezzlement, misuse, misapplication, improper withholding, conversion, or misappropriation of funds that had been obtained by virtue of participation in Medicaid.

(49) [(48)] Medical assistance--Includes all of the health care and related services and benefits authorized or provided under state or federal law for eligible individuals of this state.

(50) [(49)] Member of household--An individual who is sharing a common abode as part of a single-family unit, including domestic employees, partners, and others who live together as a family unit.

(51) [(50)] OAG--Office of the Attorney General of Texas or its successor.

(52) [(51)] OIG--HHSC Office of the Inspector General, [ø] its successor, or designee.

(53) [(52)] OIG's method of finance--The sources and amounts authorized for financing certain expenditures or appropriations made in the General Appropriations Act.

(54) [(53)] Operating agency--A state agency that operates any part of the Medicaid or other HHS program.

(55) [(54)] Overpayment--The amount paid by Medicaid or other HHS program or the amount collected or received by a person by virtue of the provider's participation in Medicaid or other HHS program that exceeds the amount to which the provider or person is entitled under §1902 of the Social Security Act or other state or federal statutes for a service or item furnished within the Medicaid or other HHS programs. This includes:

(A) any funds collected or received in excess of the amount to which the provider is entitled, whether obtained through error, misunderstanding, abuse, misapplication, misuse, embezzlement, improper retention, or fraud;

(B) recipient trust funds and funds collected by a person from recipients if collection was not allowed by Medicaid or other HHS program policy; or

(C) questioned costs identified in a final audit report that found that claims or cost reports submitted in error resulted in money paid in excess of what the provider is entitled to under an HHS program, contract, or grant.

(56) [(55)] Ownership interest--A direct or indirect ownership interest (or any combination thereof) of five percent or more in the equity in the capital, stock, profits, or other assets of a person or any mortgage, deed, trust, note, or other obligation secured in whole or in part by the person's property or assets.

(57) [(56)] Payment hold (suspension of payments)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation

and legal proceedings, between the provider and HHSC or an operating agency are resolved. This is a temporary denial of reimbursement under Medicaid for items or services furnished by a specified provider.

(58) [(57)] Person--Any legally cognizable entity, including an individual, firm, association, partnership, limited partnership, corporation, agency, institution, MCO, Special Investigative Unit, CHIP participant, trust, non-profit organization, special-purpose corporation, limited liability company, professional entity, professional association, professional corporation, accountable care organization, or other organization or legal entity.

(59) [(58)] Person with a disability--An individual with a mental, physical, or developmental disability that substantially impairs the individual's ability to provide adequately for the person's care or his or her own protection, and:

(A) who is 18 years of age or older; or

(B) who is under 18 years of age and who has had the disabilities of minority removed.

(60) [(59)] Physician--An individual licensed to practice medicine in this state, a professional association composed solely of physicians, a partnership composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, or a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Texas Occupations Code.

(61) [(60)] Practitioner--An individual licensed or certified under state law to practice the individual's profession.

(62) [(61)] Preliminary investigation--A review by the OIG undertaken to verify the merits of a complaint/allegation of fraud, waste, or abuse from any source. The preliminary investigation determines whether there is sufficient basis to warrant a full investigation.

(63) [(62)] Prima facie--Sufficient to establish a fact or raise a presumption unless disproved.

[(63)] Probationary contract--A contract or provider agreement for any period of time that must be renewed by the OIG for the provider to continue to participate in the program. It may include any special requirements or provisions deemed necessary by the OIG to ensure the protection of the program. It may also be referred to as a provisional contract, depending upon the terminology used by the provider's agency and program area.]

(64) Professionally recognized standards of health care--Statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within the state of Texas.

(65) Program violation--A failure to comply with a Medicaid or other HHS provider contract or agreement, the Texas Medicaid Provider Procedures Manual or other official program publications, or any state or federal statute, rule, or regulation applicable to the Medicaid or other HHS program, including any action that constitutes grounds for enforcement as delineated in this subchapter.

(66) Provider--Any person, including an MCO and its subcontractors, that:

(A) is furnishing Medicaid or other HHS services under a provider agreement or contract with a Medicaid or other HHS operating agency;

(B) has a provider or contract number issued by HHSC or by any HHS agency or program or its designee to provide medical assistance, Medicaid, or any other HHS service in any HHS program,

including CHIP, under contract or provider agreement with HHSC or an HHS agency; or

(C) provides third-party billing services under a contract or provider agreement with HHSC.

(67) Provider agreement--A contract, including any and all amendments and updates, with Medicaid or other HHS program to sub-contract services, or with an MCO to provide services.

(68) Provider screening process--The process in which a person participates to become eligible to participate and enroll as a provider in Medicaid or other HHS program. This process includes enrollment under this chapter or Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment), 42 C.F.R Part 1001, or other processes delineated by statute, rule, or regulation.

~~(69) Provisional contract--A contract or provider agreement for any period of time that must be renewed by the OIG for the provider to continue to participate in the program. It may include any special requirements or provisions deemed necessary by the OIG to ensure the protection of the program. It may also be referred to as a probationary contract, depending upon the terminology used by the provider's agency and program area.]~~

(69) [(70)] Reasonable request--Request for access, records, documentation, or other items deemed necessary or appropriate by the OIG or a requesting agency to perform an official function, and made by a properly identified agent of the OIG or a requesting agency during hours that a person, business, or premises is open for business.

(70) [(71)] Recipient--A person eligible for and covered by the Medicaid or any other HHS program.

(71) [(72)] Records and documentation--Records and documents in any form, including electronic form, which include:

(A) medical records, charting, other records pertaining to a patient, radiographs, laboratory and test results, molds, models, photographs, hospital and surgical records, prescriptions, patient or client assessment forms, and other documents related to diagnosis, treatment, or service of patients;

(B) billing and claims records, supporting documentation such as Title XIX forms, delivery receipts, and any other records of services provided to recipients and payments made for those services;

(C) cost reports and documentation supporting cost reports;

(D) managed care encounter data and financial data necessary to demonstrate solvency of risk-bearing providers;

(E) ownership disclosure statements, articles of incorporation, bylaws, corporate minutes, and other documentation demonstrating ownership of corporate entities;

(F) business and accounting records and support documentation;

(G) statistical documentation, computer records, and data;

(H) clinical practice records, including patient sign-in sheets, employee sign-in sheets, office calendars, daily or other periodic logs, employment records, and payroll documentation related to items or services rendered under an HHS program; and

(I) records affidavits, business records affidavits, evidence receipts, and schedules.

(72) [(73)] Recoupment of overpayment--A sanction imposed to recover funds paid to a provider or person to which the provider or person was not entitled.

(73) [(74)] Requesting agency--The OIG; the OAG's Medicaid Fraud Control Unit or Civil Medicaid Fraud Division; any other state or federal agency authorized to conduct compliance, regulatory, or program integrity functions on a provider, a person, or the services rendered by the provider or person.

(74) [(75)] Risk analysis--The process of defining and analyzing the dangers to individuals, businesses, and governmental entities posed by potential natural and human-caused adverse events. A risk analysis can be either quantitative, which involves numerical probabilities, or qualitative, which involves observations that are not numerical in nature.

(75) [(76)] Sanction--Any administrative enforcement measure imposed by the OIG pursuant to this subchapter other than administrative actions defined in §371.1701 of this subchapter (relating to Administrative Actions).

(76) [(77)] Sanctioned entity--An entity that has been convicted of any offense described in 42 C.F.R §§1001.101 - 1001.401 or has been terminated or excluded from participation in Medicare, Medicaid in Texas, or any other state or federal health care program.

(77) [(78)] Services--The types of medical assistance specified in §1905(a) of the Social Security Act (42 U.S.C. §1396d(a)) and other HHS program services authorized under federal and state statutes that are administered by HHSC and other HHS agencies.

(78) [(79)] SIU--A Special Investigative Unit of an MCO as defined under Texas Government Code §531.113(a)(1).

(79) [(80)] Social Security Act--Legislation passed by Congress in 1965 that established the Medicaid program under Title XIX of the Act and created the Medicare program under Title XVIII of the Act.

(80) [(81)] Solicitation--Offering to pay or agreeing to accept, directly or indirectly, overtly or covertly, any remuneration in cash or in kind to or from another for securing a patient or patronage for or from a person licensed, certified, or registered or enrolled as a provider or otherwise by a state health care regulatory or HHS agency.

(81) [(82)] State health care program--A State plan approved under Title XIX, any program receiving funds under Title V or from an allotment to a State under such Title, any program receiving funds under Subtitle I of Title XX or from an allotment to a State under Subtitle I of Title XX, or any State child health plan approved under Title XXI.

(82) [(83)] Substantial contractual relationship--A relationship in which a person has direct or indirect business transactions with an entity that, in any fiscal year, amounts to more than \$25,000 or five percent of the entity's total operating expenses, whichever is less.

(83) [(84)] Suspension of payments (payment hold)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation and legal proceedings, between the provider and HHSC or an operating agency or its agent(s) are resolved. This is a temporary denial of reimbursement under the Medicaid or other HHS program for items or services furnished by a specified provider.

(84) [(85)] System recoupment--Any action to recover funds paid to a provider or other person to which they were not entitled, by means other than the imposition of a sanction under these rules. It may include any routine payment correction by an agency

or an agency's fiscal agent to correct an overpayment that resulted without any alleged wrongdoing.

(85) [(86)] TEFRA--The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, a federal law that allows states to make medical assistance available to certain children with disabilities without counting their parent's income.

(86) [(87)] Terminated--Means:

(A) with respect to a Medicaid or CHIP provider, the revocation of the billing provider's Medicaid or CHIP billing privileges after the provider has exhausted all applicable appeal rights or the timeline for appeal has expired; and

(B) with respect to a Medicare provider, supplier, or eligible professional, the revocation of the provider's, supplier's, or eligible professional's Medicare billing privileges after the provider, supplier, or eligible professional has exhausted all applicable appeal rights or the timeline for appeal has expired.

(87) [(88)] Terminated for cause--Termination based on allegations related to fraud, program violations, integrity, or improper quality of care.

(88) [(89)] Title V--Title V (Maternal and Child Health Services Block Grant) of the Social Security Act, codified at 42 U.S.C. §§701 et seq.

(89) [(90)] Title XVIII--Title XVIII (Medicare) of the Social Security Act, codified at 42 U.S.C. §§1395 et seq.

(90) [(91)] Title XIX--Title XIX (Medicaid) of the Social Security Act, codified at 42 U.S.C. §§1396-1 et seq.

(91) [(92)] Title XX--Title XX (Social Services Block Grant) of the Social Security Act, codified at 42 U.S.C. §§1397 et seq.

(92) [(93)] Title XXI--Title XXI (State Children's Health Insurance Program (CHIP)) of the Social Security Act, codified at 42 U.S.C. §§1397aa et seq.

(93) [(94)] TMRP--The Texas Medical Review Program, which is the inpatient hospital utilization review process HHSC uses for hospitals reimbursed under HHSC's prospective payment system.

(94) [(95)] U.S.C.--United States Code.

(95) [(96)] Vendor hold--Any legally authorized hold or lien by any state or federal governmental unit against future payments to a person. Vendor holds may include tax liens, state or federal program holds, liens established by the OAG Collections Division, and State Comptroller voucher holds.

(96) [(97)] Waste--Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.

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

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

TRD-201603819

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 11, 2016

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



SUBCHAPTER E. PROVIDER DISCLOSURE AND SCREENING

1 TAC §§371.1005, 371.1009, 371.1011, 371.1015

LEGAL AUTHORITY

The amendments are proposed under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the OIG; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

The amendments implement Texas Government Code §531.1032. No other statutes, articles, or codes are affected by the proposal.

§371.1005. *Disclosure Requirements.*

(a) An applicant must disclose in its enrollment application the identity of any person or entity as requested by HHSC.

(b) The applicant's disclosures must identify every person whose identity must be disclosed pursuant to the Affordable Care Act, Title 42 of the Code of Federal Regulations, or state statute or administrative rule, as amended. Such disclosures include owners, certain subcontractors, creditors, managers, and agents.

(c) An applicant must disclose in its enrollment application every person that previously had an ownership or control interest in the applicant but whose interest was transferred to another person, if the person's former interest was transferred to an immediate family member or to a member of the person's household and the person's former interest was transferred within one year before or at any time after receiving notice of any potential adverse actions by a governmental entity against the person or against a provider for which the person has or had an ownership or control interest.

(d) An applicant must disclose in the enrollment application all information required by state or federal law or regulation, and all additional information requested by HHSC or the OIG, in its discretion, during the provider screening and enrollment process.

(e) If any information required to be disclosed under this section changes during the processing of an enrollment application, the applicant, ~~or~~ provider, or person must disclose that information pursuant to §352.21 of this title (relating to Duty to Report Changes).

(f) A failure by an applicant, provider, or person to meet any of the disclosure requirements specified in this section constitutes a material non-disclosure of relevant information.

(g) The OIG may use information submitted by another HHS agency that relates to information required to be disclosed in lieu of requiring another submission of the same information by the applicant, provider, or person.

§371.1009. *Verifications Required for Each Screening Level.*

(a) For an applicant or provider assigned a screening level of "Limited," the OIG verifies the accuracy and completeness of the information in or related to the enrollment application and 42 C.F.R. §455.450(a)(1), information about the applicant contained in state or federal records, including criminal history records, and any additional information requested of the applicant by the OIG.

(b) For an applicant assigned a screening level of "Moderate," the OIG:

- (1) verifies all items described in subsection (a) of this section; and
- (2) reviews the results of a pre-enrollment site visit ~~[performs at least one unscheduled and unannounced pre- and post-enrollment site visit, as described in subsection (d) of this section and] in accordance with §352.9 of this title (relating to Screening Levels), if applicable [; as described in subsection (d) of this section].~~

(c) For an applicant or provider assigned a screening level of "High," HHSC or the OIG performs (notwithstanding subsection (f) of this section):

- (1) all the verifications described in subsections (a) and (b) of this section; and
- (2) a fingerprint-based criminal history check, in the form and manner prescribed by state or federal law, of each person that is an individual and has an ownership or control interest as defined in §371.1005 of this subchapter (relating to Disclosure Requirements) in the applicant.

~~[(d) An unscheduled and unannounced pre- or post-enrollment site visit conducted in accordance with subsections (b) and (e) of this section verifies compliance with state and federal law, rule, and policy governing the Medicaid and CHIP programs. Documents compiled, subpoenaed, or maintained by the OIG in connection with a site visit are confidential pursuant to Texas Government Code §531.1021(g) and (h).]~~

~~(d) [(e)]~~ The OIG, in its sole discretion, may accept previously submitted fingerprints if an individual has been subjected to a fingerprint-based criminal history check by a licensing or regulatory authority or by another state's Medicaid, CHIP, or medical assistance program and the results are made available to HHSC.

~~(e) [(f)]~~ As provided in 42 C.F.R. §455.452, the OIG may establish provider screening methods in addition to or more stringent than those required by applicable federal regulations. The OIG may require a fingerprint-based criminal history check when required to do so under State law or because of the level of screening based on risk of fraud, waste, or abuse as determined for that category of provider.

~~(f) [(g)]~~ For the requirements outlined above, the OIG may rely on validated screenings as provided by 42 C.F.R. §455.410.

§371.1011. Recommendation Criteria.

(a) A felony or misdemeanor conviction, as defined in 42 C.F.R. §1001.2, under Texas law, the laws of another state, or federal law, may affect a provider's and/or person's ability to participate.

(b) The OIG may recommend denial of an enrollment application of the applicant or a person required to be disclosed in accordance with §371.1005 of this subchapter (relating to Disclosure Requirements) on the basis of information revealed through a background check on the applicant, provider, or a person required to be disclosed. A background check may include:

- (1) information concerning the licensing status of the health care professional;
- (2) information contained in the criminal history record information check performed in accordance with Texas Government Code §531.1032;
- (3) a review of federal databases;
- (4) the pendency of an open investigation by the OIG; and

(5) any other reason that the OIG determines appropriate.

(c) On a case-by-case basis, the OIG may recommend approval of an enrollment application despite the existence of a criminal history.

(1) When evaluating criminal history record information, the OIG takes into consideration:

(A) the extent to which the conduct relates to the services provided or to be provided under Medicaid;

(B) the degree to which the provider, applicant, or person required to be disclosed does or will interact with Medicaid recipients as a provider; and

(C) any previous evidence that the provider, applicant, or person required to be disclosed engaged in fraud, waste, or abuse under Medicaid.

(2) The OIG also considers [ease-by-case recommendation for approval is made by considering] the following circumstances:

(A) [(+) the number of criminal convictions as defined in 42 C.F.R. §1001.2;

(B) [(2) the nature and seriousness of the crime;

(C) [(3) whether the individual or entity has completed the sentence, punishment, or other requirements that were imposed for the crime and, if so, the length of time since completion;

(D) [(4) in the case of an individual, the age of the individual at the time the crime was committed;

(E) [(5) whether the crime was committed in connection with the individual's or entity's participation in Medicaid or other HHS programs;

(F) [(6) the extent of the individual's or entity's rehabilitation efforts and outcome;

(G) [(7) the conduct of the individual or entity, and the work history of the individual, both before and after the crime;

(H) [(8) the relationship of the crime to the individual or entity's fitness or capacity to remain a provider or become a provider;

(I) [(9) whether approving the individual or entity would offer the individual or entity the opportunity to engage in further criminal activity;

(J) [(10) the extent to which the individual or entity provides relevant information or otherwise demonstrates that approval should be granted; and

(K) [(11) any other circumstances that HHSC determines are relevant to the individual or entity's eligibility.

(3) The provider is responsible for providing to HHSC or to the OIG, within three business days of an IG request, information related to the degree to which a person could interact with Medicaid recipients as a provider.

(4) In all instances, the OIG takes into consideration evidence of multiple or repeated instances of the same or similar conduct.

(d) In addition to the considerations outlined in subsection (c) of this section, the OIG specifically takes into consideration the following conduct that may be contained in criminal history record information of providers, applicants, or persons required to be disclosed:

(1) for provider types that have or may have direct access to recipients in their capacity as a provider:

- (A) conduct involving healthcare fraud;
 - (B) conduct involving abuse of patients, minors, the elderly, or the disabled;
 - (C) conduct involving prohibited sexual conduct or involving children as victims;
 - (D) conduct against the person such as homicide, kidnapping, or assault;
 - (E) conduct involving perjury or crimes of other falsification, such as tampering with physical evidence or governmental record;
 - (F) conduct involving insurance fraud;
 - (G) conduct involving illegal manufacture, use, possession or distribution of controlled substances; and
 - (H) conduct involving theft, including theft by check;
- (2) for provider types that may transport recipients and guardians in their capacity as a provider:
- (A) conduct involving healthcare fraud;
 - (B) conduct involving abuse of patients, minors, the elderly, or the disabled;
 - (C) conduct involving prohibited sexual conduct or involving children as victims;
 - (D) conduct against the person such as homicide, kidnapping, or assault;
 - (E) conduct involving perjury or tampering with a governmental record;
 - (F) conduct involving intoxication and operating a motor vehicle, including driving while intoxicated, intoxication assault, and intoxication manslaughter;
 - (G) conduct involving illegal manufacture, use, possession, or distribution of controlled substances;
 - (H) conduct involving criminal trespass;
 - (I) conduct involving extortion; and
 - (J) conduct involving promotion of prostitution or human trafficking;
- (3) for provider types that may have interaction with or access to recipients' homes, or recipients' property in their capacity as a provider:
- (A) conduct involving healthcare fraud;
 - (B) conduct involving abuse of patients, minors, the elderly, or the disabled;
 - (C) conduct involving prohibited sexual conduct or involving children as victims;
 - (D) conduct against the person such as homicide, kidnapping, or assault;
 - (E) conduct against property such as theft, burglary, property damage, or criminal trespass;
 - (F) conduct involving breach of fiduciary duty;
 - (G) conduct involving illegal manufacture, use, possession, or distribution of controlled substances; and
- (4) for provider types that have no recipient interaction or access:

- (A) conduct involving healthcare fraud;
 - (B) conduct involving breach of fiduciary duty or a deceptive business practice; and
 - (C) conduct involving theft, including theft by check.
- (e) ~~[(d)]~~ The OIG may recommend permanent denial of an enrollment application if:
- (1) the applicant, provider, or a person required to be disclosed has been convicted, as defined in 42 C.F.R. §1001.2, of an offense arising from a fraudulent act under Medicaid or other HHS programs; and
 - (2) that fraudulent act resulted in injury to an elderly person, a person with a disability, or a person younger than 18 years of age.
- (f) ~~[(e)]~~ The OIG may recommend denial of any ~~[an]~~ enrollment application, regardless of provider type, if it determines in its discretion that the applicant may pose an increased risk for committing fraud, waste, or abuse or may demonstrate unfitness to provide or bill for medical assistance items or services. In addition to the applicant's criminal, regulatory, and administrative sanction history, the OIG considers all applicable circumstances, including the following, if applicable:
- (1) the applicant, a person required to be disclosed, or a person with an ownership or control interest in the provider did not submit complete, timely, and accurate information, failed to cooperate with any provider screening methods, or refused to permit access for a site visit;
 - (2) the applicant or a person required to be disclosed has failed to repay overpayments to Medicaid, CHIP, or other HHS programs;
 - (3) the applicant, provider, or a person required to be disclosed pursuant to §371.1005 of this subchapter, has been suspended or prohibited from participating, excluded, terminated, or debarred from participating in any state Medicaid, CHIP or other HHS agency program;
 - (4) the applicant, provider, or a person required to be disclosed has participated in Medicaid or CHIP program and failed to bill for medical assistance or refer clients for medical assistance within the 12-month period prior to submission of the enrollment application;
 - (5) the applicant, provider, or a person required to be disclosed has falsified any information on the enrollment application; and
 - (6) The OIG is unable to verify the identity of the applicant, provider, or a person required to be disclosed.
- (g) Healthcare professionals who are licensed and in good standing with a Texas licensing authority that requires the submission of fingerprints for the purpose of conducting a criminal history record information check are not subject to an additional criminal history record information check by the OIG for the purposes of determining eligibility to enroll, unless performing a criminal history record information check is required or appropriate for other reasons, including for conducting an investigation of fraud, waste, or abuse or where required by 42 C.F.R. §455.450.
- §371.1015. Types of Provider Enrollment Recommendations.*
- (a) The OIG may make the following types of recommendations regarding an enrollment application:
- (1) Approval. If an enrollment application is recommended for approval, the recommendation is for a time-limited period of participation as specified in the provider agreement or notification

of the enrollment decision. The prospective provider must complete and submit the provider agreement before enrollment is granted.

(2) Conditional approval. An enrollment application may be recommended for conditional approval with conditions as specified in the notification of the enrollment recommendation. The conditions may consist of the imposition of any one or more administrative actions or sanctions as specified in Subchapter G of this chapter (relating to Administrative Actions and Sanctions) or in other Medicaid or CHIP policy or rule.

(3) Denial. If an enrollment application is denied, HHSC sends a written notice of the decision by certified mail to the address of record on the enrollment application. The reason or reasons for denial are as specified in the written notice. If the denial is based upon a pending investigation, charge, or other legal proceeding, the applicant or provider is ineligible to reapply until such investigation or proceeding is finally resolved.

(b) If an enrollment application is denied based upon the OIG's recommendation, an applicant may request an informal desk review by the OIG of the recommendation within 20 business [calendar] days from the date of the notice of denial as follows.

(1) The request for an informal desk review must be made in writing and must be submitted in accordance with the instructions in the notice.

(2) The request should state the basis for disagreement with the enrollment recommendation, include any documentary evidence, and describe any mitigating circumstances that would support a reconsideration of the initial enrollment recommendation.

(3) Upon conclusion of the resulting informal desk review, the OIG notifies HHSC of its final recommendation. HHSC sends a written notice of the final enrollment decision to the address of record on the enrollment application.

(4) The final enrollment recommendation is not subject to administrative review or reconsideration.

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

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

TRD-201603823

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 11, 2016

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



TITLE 4. AGRICULTURE

PART 12. TEXAS A&M FOREST SERVICE

CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

4 TAC §§216.2, 216.3, 216.6

Texas A&M Forest Service (the agency) proposes amendments to Texas Administrative Code, Title 4, Part 12, §§216.2, 216.3, and 216.6, concerning the Rural Volunteer Fire Department As-

sistance Program. These amendments comply with the requirements of Texas Government Code, §614.106. This statute requires that the agency director adopt rules for the administration of the Rural Volunteer Fire Department Assistance Program and that the rules ensure public participation, transparency, and accountability in the administration of the program.

Robby DeWitt, Associate Director for Finance and Administration, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules.

Mr. DeWitt also has determined that there will be no adverse economic effect on small businesses or micro-businesses as result of amending these rules, as well as, there are no anticipated economic costs to individuals who comply with the amended rules. There is no anticipated negative impact on local employment.

Comments on the proposal may be submitted to Jason Keiningham, Office of the Associate Director, Forest Resource Protection Division, Texas A&M Forest Service, 200 Technology Way, Suite 1162, College Station, Texas 77845-3424, (979) 458-7341. Comments must be received no later than thirty days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Government Code, §614.102, which authorizes the agency director to adopt rules considered necessary for the administration of the program and Texas Government Code, §614.106, which mandates that the agency adopt rules to administer the program.

Texas Government Code, §§614.101, 614.102, 614.103, 614.104, 614.105 and 614.106 are affected by this proposal.

§216.2. Definitions.

The following terms, when used in this chapter, shall have the following meanings unless the context or specific language of a section clearly indicates otherwise.

(1) Agency--The Texas A&M Forest Service, a member of The Texas A&M University System and an agency of the State of Texas.

(2) Recognized [Chartered] Fire Department--A fire department chartered by the Texas Secretary of State as a not-for-profit entity or a fire department operating under [the charter of] a local government entity.

(3) Part-Paid Fire Department--Defined in §614.101(5) of the Texas Government Code.

(4) Program--The Rural Volunteer Fire Department Assistance Program, Texas Government Code, Chapter 614, Subchapter G.

(5) TIFMAS Grants--Grants for firefighter training and equipment for fire departments participating in the Texas Intrastate Fire Mutual Assistance System (TIFMAS).

(6) VFD Assistance Grants--Grants for firefighter training and equipment for volunteer fire departments (VFDs).

(7) Volunteer Fire Department--Defined in §614.101(6) of the Texas Government Code.

(8) Operating--A recognized fire department providing fire protection to a designated primary protection area as assigned by the county.

§216.3. Fire Department Eligibility.

The following eligibility criteria must be met for a fire department to receive a grant under the program.

(1) TIFMAS Grants.

(A) The fire department must be in one of the eligible categories listed in §614.105(c) of the Texas Government Code.

~~(B) The fire department must be a participating member of TIFMAS.~~

~~(B)~~ [(C)] The fire department must be located in and operate in Texas.

~~(C)~~ [(D)] The fire department must be in good standing with the State of Texas and the agency.

~~(D)~~ [(E)] The fire department must not be eligible to receive VFD Assistance Grants.

(2) VFD Assistance Grants.

(A) The fire department must be a part-paid fire department or a volunteer fire department, as defined in §614.101 of the Texas Government Code.

(B) The fire department must be a recognized ~~chartered~~ fire department located in and operating in Texas.

(C) The fire department must be in good standing with the State of Texas and the agency.

§216.6. *Award Process.*

The following procedures are used by the agency to award available grant funds.

(1) TIFMAS Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Truck grants are handled as follows.

(i) Applications are assigned a numeric rating and sorted by region.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are made to the top applications as sorted by region ~~application in each region~~ based upon the numeric ratings, subject to funding limitations. ~~After each region receives an award, the process is repeated with the next highest rated application in each region until funding is exhausted.~~

(iv) Fire departments that have outstanding issues with the State of Texas or the agency will not be considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(D) Other equipment grants are handled as follows.

(i) Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, the amounts requested, the date each application was received, the number and type of unfunded applications on file and the amount of funds available.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

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(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(2) VFD Assistance Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Equipment grants are handled as follows.

(i) Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, the amounts requested, the dates the applications were received, the number and type of unfunded applications on file and the amount of funds available.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

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

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TRD-201603714

Robby DeWitt

Associate Director of Finance and Administration

Texas A&M Forest Service

Earliest possible date of adoption: September 11, 2016

For further information, please call: (979) 458-7341



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER B. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE FAIR HOUSING ACT

10 TAC §1.204

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 1, Administration, Subchapter B, §1.204 Reasonable Accommodations.

The purpose of the amendment to 10 TAC §1.204 is to clarify the timeframe within which a response by an entity to a person requesting a reasonable accommodation must be made. This

rule amendment ensures people with disabilities have access to Department programs, housing, and services.

The proposed amendment also clarifies that things identified by the U.S. Department of Justice with a de minimis cost to the Recipient are a reasonable accommodation under the Fair Housing Act that the tenant/participant does not have to pay for.

The proposed amendment also corrects an omission of an exception in the prior rule, for multifamily awards prior to 2001 wherein the owner is obligated by law or agreement to comply with Section 504 of the Rehabilitation Act of 1973.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be clarification of program requirements. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held August 12, 2016, to September 12, 2016, to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Suzanne Hemphill, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: Suzanne.Hemphill@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time, September 12, 2016.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. The proposed amendments affect no other code, article, or statute.

§1.204. Reasonable Accommodations.

(a) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.

(b) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 15 calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request.

(1) EXAMPLE: A resident requests to move their rent due date to coincide with their social security disability check. It would not be considered reasonable to wait 15 calendar days to respond to this request.

(2) EXAMPLE: A resident requests a designated accessible parking space. An individual's Disability status and the connection to the Reasonable Accommodation request are not clear. Documentation must be requested within 15 calendar days to clarify the resident's request, engaging in an interactive process to determine the nature of the request and the needs of the resident.

(3) EXAMPLE: An applicant with a Disability requires a service animal to alert of impending seizures. The shelter has a no pets

policy. It would not be reasonable to wait 15 calendar days to respond to this request.

(4) EXAMPLE: A person with a Disability requests modifying door knobs to levers. The property must respond to the request within 15 calendar days, although it is reasonable that it may take additional time to install the modified door knobs.

(5) EXAMPLE: A housing provider requires that tenants sign 12 month leases. A household signs the lease, but after a few months has to move out in order to live in a nursing home. The household requests a reasonable accommodation to be let out of his lease early without a fee. The property may request additional information if the Disability and relationship between the request is not clear, but must ask for this information within 15 calendar days.

(6) EXAMPLE: An applicant requests a reasonable accommodation to have assistance in filling out a program application for the Housing Trust Fund Program. It would not be reasonable to wait 15 calendar days to respond to this request.

(c) [(b)] When a resident or applicant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a LI-HTC or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001 must allow, but need not pay for the Reasonable Accommodation, (unless otherwise required to comply with Section 504 of the Rehabilitation Act of 1973 through language in the Land Use Restriction Agreement), except if [unless] the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice with a de minimis cost (e.g. assigned parking spot, no deposits for service/assistance animals, etc.

(d) [(e)] A Recipient may not charge a fee or place conditions on a resident or applicant in exchange for making the accommodation. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for a service/assistance animal.

(e) [(d)] A Reasonable Accommodation request of an individual with a Disability that amounts to an alteration should be made to meet the needs of the individual with a Disability, rather than any particular accessible code specification.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making [~~federally assisted~~] housing programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient shall give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the reasonable accommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's

Disability-related needs. *(For more examples of undue financial and administrative burden, see HUD Handbook 4350.3, Exhibit 2-6.)*

(B) In considering whether an expense would constitute an undue burden:

(i) Payment for alterations from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) The approved amount must normally be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) A projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing alterations under this subchapter is some evidence that the Alteration would be an undue financial and administrative burden. *(Source: HUD Handbook 4350.3, §2-43(C), and §2-43(D, Example A))*

(C) If providing accessibility would result in an undue financial and administrative burden, the recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant still wants that particular change to be made, the tenant must be allowed to make and pay for the accommodation. *(Source: HUD Handbook 4350.3, §2-46 [§2-45])*

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible. *(Source: HUD Handbook 4350.3, §2-37(E))*

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities. *(Source: HUD Handbook 4350.3, §2-37(D))*

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. *(Source: 24 CFR §8.32(c). HUD Handbook 4350.3, §2-37(B))*

(f) [(e)] If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(1) EXAMPLE: A resident requires an accessible parking space that will accommodate her wheel-chair equipped van. A Reasonable Accommodation includes relocating and enlarging an existing parking space that will serve the van.

(2) EXAMPLE: A Colonia Self-Help Center provides a construction skills training class for eligible Colonia residents to learn how to repair their home. A participant with a hearing impairment needs a sign language interpreter during the class to fully participate. Providing a sign language interpreter is a reasonable accommodation because it allows the prospective participant who is hearing impaired to fully participate in the Colonia Self-Help Center program. Unless it imposes an undue financial and administrative burden or fundamental alteration in the nature of its program, the Colonia Self-Help Center must pay for this service. [A colonia self-help center operates a tool lending program. The tools are located on the second floor of a building with no elevator. As an alternative to installing a lift or elevator,

center staff may retrieve tools for residents who use wheelchairs. The aides must be available during the operating hours of the center.]

(3) EXAMPLE: A family has a young child with asthma. A certain sealant used by a weatherization provider has been known to trigger asthma attacks. The weatherization provider should see if a comparable sealant could be used that would not trigger asthma.

(4) EXAMPLE: A Development has five parking spaces located outside the main entrance to the building and another parking lot with 20 spaces a half block away. All five of the parking spaces near the entrance to the building have been assigned to residents with Disabilities who need a parking space near their door because of their Disabilities. A sixth tenant with difficulty in walking long distances moves into the Development and requests a parking space near his door. The Recipient has explored the options and concluded that the only way to provide more parking spaces near the door would be to widen the parking area by purchasing valuable real estate next door. It would be an undue financial and administrative burden for the Recipient to provide the sixth tenant with a parking space near the entrance. An alternative accommodation could be to provide the sixth tenant with an assigned parking space in the lot half block away until such time as one of the five spaces near the door becomes available.

(5) EXAMPLE: A resident needs grab bars at the toilet in her bathroom. She does not require other accessible features. The Recipient must install grab bars consistent with the resident's needs in the bathroom.

(6) EXAMPLE: A resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair. She does not wish to move to an accessible unit. The Recipient must provide an accessible entrance at the resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(7) EXAMPLE: A resident uses a scooter type wheelchair which is 38 inches in width. She requests a ramp to enter her ground floor unit. The ramp which she requests must be at least 40 inches wide, it must have a slope of no more than 3%, and the landing at the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided, even though they may exceed the usual specifications for such alterations.

(8) EXAMPLE: A resident with quadriplegia requests replacement of a bathtub in his unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that installation of a roll-in shower in that unit is impossible. The on-site manager should meet with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

(g) [(#)]Recipients must follow federal regulations regarding service/assistance animals.

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

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

TRD-201603735

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2016

For further information, please call: (512) 475-4595

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

13 TAC §17.2

The Texas Historical Commission (Commission) proposes amendments to §17.2, concerning Review of Work on County Courthouses. The commission's Review of Work on County Courthouses is the agency's responsibility under Texas Government Code (TGC) §442.008.

The adoption of this amendment by the commission is needed to correct an inadvertent revision to the text of §17.2 that created a grammatical error during a previous amendment adopted in 38 TexReg 5711. The text will be updated so that it forms a complete sentence and replicates the statute TGC §442.008 as intended by the July 2013 amendment. In addition, the text of the procedure section of the rule will be rearranged to form a more logical sequence.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

Mr. Wolfe has also determined that for each year of the first five-year period the amendment of the rules are in effect the public benefit anticipated as a result of administering the rule will be the preservation of additional historic county courthouses.

Mr. Wolfe has also determined that there will be no impact on small or micro-businesses as a result of implementing these rules.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules to reasonably affect the purposes of those chapters.

No other statutes, articles, or codes are affected by these amendments.

§17.2. *Review of Work on County Courthouses.*

Texas Government Code, Chapter 442, §442.008, requires that the Texas Historical Commission review changes made to courthouse structures.

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

(A) Demolish--To remove, in whole or part. Demolition of historical or architectural integrity includes removal of historic architectural materials such as, but not limited to, materials in the following categories: site work, concrete, masonry, metals, carpentry, thermal and moisture protection, doors and windows, finishes, special-

ties, equipment, furnishings, special construction, conveying systems, mechanical and electrical.

(B) Sell--To give up (property) to another for money or other valuable consideration; this includes giving the property to avoid maintenance, repair, etc.

(C) Lease--To let a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent.

(D) Damage--To alter, in whole or part. Damage to historical or architectural integrity includes alterations of structural elements, decorative details, fixtures, and other material.

(E) Integrity--Refers to the physical condition and therefore the capacity of the resource to convey a sense of time and place or historic identity. Integrity is a quality that applies to location, design, setting, materials, and workmanship. It refers to the clarity of the historic identity possessed by a resource. In terms of architectural design, to have integrity means that a building still possesses much of its mass, scale, decoration, and so on, of either the period in which it was conceived and built, or the period in which it was adapted to a later style which has validity in its own rights as an expression of historical character or development. The question of whether or not a building possesses integrity is a question of the building's retention of sufficient fabric to be identifiable as a historic resource. For a building to possess integrity, its principal features must be sufficiently intact for its historic identity to be apparent. A building that is significant because of its historic association(s) must retain sufficient physical integrity to convey such association(s).

(F) Courthouse--The principal building(s) which houses county government offices and courts and its (their) surrounding site(s) (typically the courthouse square).

(G) Ordinary maintenance and repairs--Work performed to architectural or site materials which does not cause removal or alteration or concealment of that material.

(2) Procedure.

(A) Notice of alterations to county courthouse.

(i) A county may not demolish, sell, lease, or damage the historical or architectural integrity of any building that serves or has served as a county courthouse without notifying the commission of the intended action at least six months before the date on which it acts. Any alteration to the historical or architectural integrity of the exterior or interior requires notice to the commission.

(ii) If the commission determines that a courthouse has historical significance worthy of preservation, the commission shall notify the commissioners court of the county of that fact not later than the 30th day after the date on which the commission received notice from the county. A county may not demolish, sell, lease, or damage the historical or architectural integrity of a courthouse before the 180th day after the date on which it received notice from the commission. The commission shall cooperate with any interested person during the 180-day period to preserve the historical integrity of the courthouse.

(iii) A county proceeding with alterations to its courthouse in violation of Texas Government Code, §442.008 and this section may be subject to civil penalties under Texas Government Code, §442.011.

(B) [(A)] Notice from the county to the commission. At least six months prior to the proposed work on a county courthouse, a letter from the county judge briefly describing the project should be submitted to the commission, along with construction docu-

ments, sketches or drawings which adequately describe the full scope of project work and photographs of the areas affected by the proposed changes.

(C) [(B)] The commission will consider the opinions of interested parties with regard to the preservation of the courthouse per Texas Government Code, §442.008(b).

(D) [(C)] Notice from the commission to the commissioner's court of the county. Written notice of the commission's determination regarding the historical significance of a courthouse for which work is proposed shall include comments pursuant to a review of the proposed work by the commission. Comments shall be made based on the Secretary of the Interior's Standards for the Treatment of Historic Properties 1992 or latest edition, which are summarized in clauses (i) - (iii) of this subparagraph:

(i) Definitions for historic preservation project treatment.

(I) Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

(II) Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

(III) Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

(IV) Reconstruction is defined as the act or process of depicting, by means of new construction, the form features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

(ii) General standards for historic preservation projects.

(I) A property shall be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property shall be protected and, if necessary, stabilized until additional work may be undertaken.

(II) The historic character of a property shall be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

(III) Each property shall be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

(IV) Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

(V) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(VI) The existing condition of historic features shall be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material shall match the old in composition, design, color, and texture.

(VII) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(VIII) Archeological resources shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(iii) Specific standards for historic preservation projects. In conjunction with the eight general standards listed in clause (ii)(I) - (VIII) of this subparagraph, specific standards are to be used for each treatment type.

(I) Standards for rehabilitation.

(-a-) A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

(-b-) The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

(-c-) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.

(-d-) Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

(-e-) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(-f-) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and where possible, materials, replacement of missing features shall be substantiated by documentary and physical evidence.

(-g-) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(-h-) Archeological resources shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(-i-) New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(-j-) New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(II) Standards for restoration.

(-a-) A property shall be used as it was historically or be given a new use which reflects the property's restoration period.

(-b-) Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken.

(-c-) Each property shall be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features, from the restoration shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

(-d-) Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal.

(-e-) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved.

(-f-) Deteriorated features from the restoration period shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials.

(-g-) Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

(-h-) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(-i-) Archeological resources affected by a project shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(-j-) Designs that were never executed historically shall not be constructed.

(III) Standards for reconstruction.

(-a-) Reconstruction shall be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

(-b-) Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures shall be undertaken.

(-c-) Reconstruction shall include measures to preserve any remaining historic materials, features, and spatial relationships.

(-d-) Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property shall re-create the appearance of the non-surviving historic property in materials, design, color, and texture.

(-e-) A reconstruction shall be clearly identified as a contemporary re-creation.

(-f-) Designs that were never executed historically shall not be constructed.

{(D) Notice of alterations to county courthouse.}

~~[(i) A county that intends to demolish, sell, lease, or damage the historical or architectural integrity of any building that serves or has served as a county courthouse without notifying the commission of the intended action at least six months before the date on which it acts. Any alteration to the historical or architectural integrity of the exterior or interior requires notice to the commission.]~~

~~[(ii) If the commission determines that a courthouse has historical significance worthy of preservation, the commission shall notify the commissioners court of the county of that fact not later than the 30th day after the date on which the commission received notice from the county. A county may not demolish, sell, lease, or damage the historical or architectural integrity of a courthouse before the 180th day after the date on which it received notice from the commission. The commission shall cooperate with any interested person during the 180-day period to preserve the historical integrity of the courthouse.]~~

~~[(iii) A county proceeding with alterations to its courthouse in violation of Texas Government Code, §442.008 and this section may be subject to civil penalties under Texas Government Code, §442.011.]~~

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

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

TRD-201603691

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 11, 2016

For further information, please call: (512) 463-6100



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.9

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

Section 33.9 sets the fees that the commission charges for online transactions. The rule was amended effective April 17, 2016, to reflect the fees required at that time to process online transactions utilizing the Texas.Gov portal. Since that time, the commission has been informed that the fees for utilizing Texas.Gov portal are being changed by the Texas Department of Information Resources.

The commission wants to encourage the use of online resources for filings. The commission also recognizes that the fees associated with the use of these resources are subject to change. Therefore, the commission proposes to amend the section to delete the specific amount of the charges and instead to simply reflect that the amount of the fees for using the Texas.Gov portal are authorized by the Texas Department of Information Resources.

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

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

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

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§33.9. Fees for Online [On-Line] Transaction.

(a) This rule relates to §5.55 of the Alcoholic Beverage Code.

(b) The commission will charge fees for online transactions in the amount authorized by the Texas Department of Information Resources for processing online transactions utilizing the Texas.Gov portal. [A service fee of \$0.25 shall be assessed for each on-line transaction paid by credit card.]

~~[(e) An additional fee of 2.75% of the total transaction amount shall be assessed for transactions paid by credit card.]~~

~~[(d) A service fee of one dollar (\$1.00) shall be assessed for transactions paid by ACH or electronic check.]~~

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

Filed with the Office of the Secretary of State on July 27, 2016.

TRD-201603701

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS
BY LICENSEES AND PERMITTEES

16 TAC §41.32

The Texas Alcoholic Beverage Commission proposes amendments to §41.32, relating to Monthly Report of Distilled Spirits and Wines.

Section 41.32 addresses the requirement that holders of distiller's, rectifier's, wholesaler's, general and local Class B wholesaler's, Class A and B winery, or wine bottler's permits must make a monthly report (monthly report of distilled spirits and wines received and disposed of) to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that some changes to the rule are appropriate.

In separate rulemaking proceedings ongoing simultaneously with the proposed amendment of this section, the commission is proposing to repeal other rules addressing reporting requirements for other types of license and permit holders. The commission proposes to amend subsection (a) of §41.32 to include those license and permit holders under this rule.

Subsection (a) specifies that the required reports must be on forms prescribed by the commission. The commission proposes to amend this subsection to authorize the executive director (or the executive director's designee) to approve the use of other forms to make the required reports.

Subsection (b) specifies the information to be provided in the monthly report of distilled spirits and wines received and disposed of. The commission proposes to amend subsection (b) to delete the specific information requirements. This would allow the commission to make necessary changes to the forms without having to amend the rule each time a change is required. The forms are developed and changed after consultation with affected industry members and other commission stakeholders.

Removing the specific list of information required to be on the forms also allows the consolidation of reporting requirements in §41.32, in conjunction with the proposed repeal of §§41.33, 41.34, and 41.36 that the commission is currently pursuing in other rulemaking proceedings.

Proposed new subsection (c) describes invoice requirements and would clarify that the commission may require invoices be submitted to support entries in the monthly reports.

Proposed new subsection (d) would clarify that the required monthly reports must be filed each month even if no sales or shipments have been made.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because reporting requirements will be consolidated and easier for the public to access.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.32. Monthly Report of Distilled Spirits, [and] Wines, Ale and Malt Liqueur, and Beer.

(a) Each holder of a distiller's~~[-]~~ and rectifier's permit, any class of wholesaler's permit, a [general and local Class B wholesaler's, Class A and B] winery permit, a [or] wine bottler's permit, a brewer's permit, a manufacturer's license, or any class of distributor's license shall make a monthly report [(monthly report of distilled spirits and wines received and disposed of)] to the commission on forms prescribed or approved by the executive director or the executive director's designee [administrator].

(b) The report shall be electronically submitted or postmarked [made and filed] by the license or permit holder [permittee] with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made, [and shall show the following:]

[(1) month for which the report is made; permit number; class of permit; trade name and address of permittee.]

[(2) wine gallons of distilled spirits; wine not over 14% alcohol by volume; wine 14-24% alcohol by volume; and wine sparkling along with the invoice dates, names and addresses of the consignees; invoice numbers and total cases for sales to Texas wholesalers; exports out-of-state; and sales to ships for ship's supplies.]

[(3) wine gallons of distilled spirits; wine not over 14% alcohol by volume; wine 14-24% alcohol by volume; and wine sparkling along with the receiving dates; shippers' names and addresses; invoice numbers and total cases when distilled spirits and wines are destroyed by railroads and common carrier truck lines and when an exemption for the tax is claimed.]

[(4) wine gallons of wine not over 14% alcohol by volume; wine 14-24% alcohol by volume; and wine sparkling along with the invoice dates; consignees' names and addresses; invoice numbers and total cases for exemptions for the tax for sales of wines to religious organizations for sacramental purposes.]

[(5) The total wine gallons of distilled spirits; wine not over 14% alcohol by volume; wine 14-24% alcohol by volume and wine sparkling that are during the month:]

[(A) owed in this state by; in the possession in this state of; the permittee on the first and last day:]

~~{(B) received;}~~
~~{(C) disposed of in a transaction exempt from tax;}~~
~~{(D) returned under authorization of the administrator;}~~
and
~~{(E) subject to tax.}~~

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show:

- (1) invoice number and invoice date;
- (2) trade name and address of permitted/licensed manufacturer and/or brewer for malt beverages;
- (3) trade name and address of permitted non-resident seller, distiller or winery for wine and distilled spirits;
- (4) trade name and shipping address of customer;
- (5) brand name, type, number and size of containers, total cases, unit or line-item extension price, and total selling price;
- (6) origin of shipment and shipping date; and
- (7) total gallons by taxable class of alcohol invoiced.

(d) The monthly report required by this section must be filed each month even if no sales or shipments have been made.

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

Filed with the Office of the Secretary of State on July 27, 2016.

TRD-201603705

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



16 TAC §41.33

The Texas Alcoholic Beverage Commission proposes the repeal of §41.33, relating to Receiving Record of Distilled Spirits and Wines.

Section 41.33 addresses the requirement that holders of rectifier's, wholesaler's, general and local Class B wholesaler's, Class A and B winery, and wine bottler's permits must make a monthly report (receiving record of distilled spirits and wines) to the commission. The rule sets forth the information required in the report and requires that entries must be made on the report within 24 hours after the day any such distilled spirits and wines are received or become the property of the permittee at any point within the State of Texas.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission is proposing to repeal the text of this section and to address the reporting requirement in its proposed amendments to §41.32, relating to Monthly Report of Distilled Spirits and Wines. The commission is proposing to amend §41.32 in a separate but simultaneous rulemaking.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because reporting requirements will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.33. Receiving Record of Distilled Spirits and Wines.

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

Filed with the Office of the Secretary of State on July 27, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



16 TAC §41.34

The Texas Alcoholic Beverage Commission proposes the repeal of §41.34, relating to Distilled Spirits Reports of Miniatures.

Section 41.34 addresses the requirement that holders of distiller's, rectifier's or wholesaler's permits must make a monthly report (distilled spirits report of miniatures) to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission is proposing to repeal the text of this section and to address the reporting requirement in its proposed amendments to §41.32, relating to Monthly Report of Distilled Spirits and Wines. The commission is proposing to amend §41.32 in a separate but simultaneous rulemaking.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because reporting requirements will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.34. Distilled Spirits Report of Miniatures.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



16 TAC §41.35

The Texas Alcoholic Beverage Commission proposes amendments to §41.35, relating to Daily Bottling Report.

Section 41.35 addresses the requirement that holders of rectifier's Class A and Class B winery or wine bottler's permits, or any person engaged in the bottling of wine, must make a monthly report (daily bottling report) to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing the information in this report continues to exist but that some changes to the rule are appropriate.

The commission proposes to amend subsection (a) of §41.35 to include holders of distiller's and rectifier's permits, winery permits, wine bottler's permits, brewer's permits, manufacturing licenses, or brewpub licenses under this rule.

The commission proposes to further amend subsection (a) to eliminate the requirement that the required information be submitted in a monthly report and to instead require that the information be maintained as a record to be made available to the commission upon request.

Subsection (b) would be amended to specify the information to be recorded and to change the units to be recorded to reflect that other producers in addition to wineries would now be subject to the recordkeeping requirements.

The commission proposes to delete the physical inventory requirements in current subsections (c) and (e).

Current subsection (d) requires entries to be made on the report within 48 hours after the day wine is received or bottled. In proposed subsection (c), the commission would allow entries to be made on the record up to three days after beer or liquor is received or bottled. This would allow more flexibility but still would require entries to be made close to the time recordable events occur in the interest of accuracy and so that they will not be lost to memory.

The commission proposes to continue the requirements regarding wine manufactured and labelled for individuals that are in current subsection. The commission's proposal would place these requirements in new subsection (d).

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because a regulatory burden is reduced as a reporting requirement is eliminated. At the same time, necessary information will be retained in records that can be accessed by the commission as the need arises to verify that taxes have been appropriately paid.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.35. [Daily] Bottling Record [Report].

(a) Each holder of a distiller's and rectifier's permit, [Class A and Class B] winery permit, [or] wine bottler's permit, brewer's permit,

manufacturing license, or brewpub license [or any person engaged in the bottling of wine, in addition to all other reports required,] shall make a record to be retained by the license or permit holder and made available to a representative of the commission upon request [monthly report (daily bottling report) to the commission on forms prescribed by the administrator].

(b) The record [report] shall [be made and filed by the permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall] show:

(1) a full and complete report of all liquor or beer manufactured, [wines] received and bottled [during the month for which the report is made];

(2) the date of each day's operation;

(3) for each day's operation, the opening inventory in bulk [wine] gallons;

(4) receipts in bulk [wine] gallons;

(5) bulk [wine] gallons used in bottling;

(6) closing inventory in bulk [wine] gallons;

(7) total cases bottled, stating number and size of units[; that is, tenths, pints, etc.];

(8) total [wine] gallons bottled; and

(9) total taxable gallons bottled of beer or class of liquor. [; and]

[(10) the same information reported separately on wines in each tax classification]

[(e) On the closing day of the month for which the report is made, an actual physical inventory shall be made of all bulk wine and the results posted on the designated form below the figure shown on the closing day of the month.]

(c) [(d)] Entries shall be made on this record no later than three days after beer or liquor is [report within 48 hours after the date that any such wines are] received or bottled.

[(e) Every person holding a wine bottler's permit must submit a sworn inventory of all empty glass on hand at the end of the month and also an affidavit showing the quantity and sizes of all empty glasses received during that month. These must accompany other reports required to be sent to the commission not later than the 15th of the month following.]

(d) [(f)] Each winery shall maintain a record of the wine manufactured and labeled for individuals. This record shall include date of manufacture, adult's name, sample label, and total gallons manufactured for each adult. Each record shall be made available to a representative of the commission upon request.

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

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TRD-201603712

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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

◆ ◆ ◆
16 TAC §41.36

The Texas Alcoholic Beverage Commission proposes the repeal of §41.36, relating to Monthly Report of Ale and Malt Liquor.

Section 41.36 addresses the requirement that holders of brewer's, wholesaler's, general Class B wholesaler's or local Class B wholesaler's permits must make a monthly report (monthly report of ale and malt liquor manufactured, imported, purchased, and disposed of) to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission is proposing to repeal the text of this section and to address the reporting requirement in its proposed amendments to §41.32, relating to Monthly Report of Distilled Spirits and Wines. The commission is proposing to amend §41.32 in a separate but simultaneous rulemaking.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because reporting requirements will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.36. *Monthly Report of Ale and Malt Liquor.*

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

Filed with the Office of the Secretary of State on July 27, 2016.

TRD-201603710

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 11, 2016
For further information, please call: (512) 206-3489



16 TAC §41.41

The Texas Alcoholic Beverage Commission proposes amendments to §41.41, relating to Nonresident Seller's Report.

Section 41.41 addresses the requirement that holders of nonresident seller's permits must make a monthly report to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that some changes to the rule are appropriate.

The commission proposes to amend subsection (a) to authorize the executive director (or the executive director's designee) to approve the use of other forms to make the required reports, as alternatives to the prescribed form.

Subsection (b) specifies the information to be provided in the monthly report. The commission proposes to amend subsection (b) to delete the specific information requirements. This would allow the commission to make necessary changes to the forms without having to amend the rule each time a change is required. The forms are developed and changed after consultation with affected industry members and other commission stakeholders.

Proposed new subsection (c) describes invoice requirements and would clarify that the commission may require invoices be submitted to support entries in the monthly reports.

Current subsection (c), which requires that the required monthly reports must be filed each month even if no sales or shipments have been made, would become new subsection (d) under the proposal.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because reporting requirements will be clarified.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.41. *Nonresident Seller's Report.*

(a) Each holder of a nonresident seller's permit shall make a monthly report [~~(nonresident seller's report)~~] to the commission on forms prescribed or approved by the executive director or the executive director's designee [~~administrator~~].

(b) The report shall be electronically submitted or postmarked [~~made and forwarded~~] by the permit holder [permittee] to the commission at its offices in Austin, Texas on or before[, postmarked not later than] the 15th day of the month following the calendar month for which the report is made [submitted]. [~~The report shall show:~~]

- ~~{(1) the month of the report;}~~
- ~~{(2) invoice date and shipping date;}~~
- ~~{(3) invoice number;}~~
- ~~{(4) the person and address to whom sold and shipped;}~~
- ~~{(5) the brand, type, number of containers and size of containers in each case shipped;}~~
- ~~{(6) total cases;}~~
- ~~{(7) selling price of each item and total selling price;}~~
- ~~{(8) origin of shipment; and}~~
- ~~{(9) total wine gallons of each class of liquors shipped on each invoice.}~~

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show:

- (1) invoice number and invoice date;
- (2) trade name and address of seller;
- (3) trade name and shipping address of customer;
- (4) brand name, type, number and size of containers, total cases, unit or line item extension price and total selling price;
- (5) origin of shipment and shipping date; and
- (6) total by taxable class gallons of each class of liquor.

(d) [~~(e)~~] As long as a nonresident seller's permit remains active, the monthly report required by this section [~~herein~~] must be filed each month even if [~~though~~] no sales or shipments have been made.

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

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

TRD-201603726

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



16 TAC §41.45

The Texas Alcoholic Beverage Commission proposes amendments to §41.45, relating to Violation.

Section 41.45 provides that it is a violation of the commission's rules to: fail to make any required report or record; fail to make an entry in a required report or record at the required time or in the required place or manner; or make a false entry in a required report or record.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that some changes to the rule are appropriate.

The commission recently adopted changes to §41.25(e) of its rules that provide that making a false entry in a required report or record is a violation. Therefore, the commission proposes to amend §41.45 to omit the reference to making false entries and to clarify the reports and records to which this section applies. The title would be changed to be more descriptive of the rule text.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because unnecessary duplication of overlapping rules will be eliminated.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.45. Failure to make Reports and Records [Violation].
Failing to make any record or report required by this subchapter, or failing to make any entry or entries on any record or report required by this subchapter at the time or in the place or manner required, is a violation of this section. [It shall be a violation of this section to fail or refuse to make any record or report herein required, or for any person to make or cause to be made any false or incorrect entry or entries on any record or report herein provided for. It shall further be in violation of this section to fail to make any entry or entries on any record provided by this section at the time or in the place or manner herein required.]

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

Filed with the Office of the Secretary of State on July 27, 2016.

TRD-201603717

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



16 TAC §41.46

The Texas Alcoholic Beverage Commission proposes the repeal of §41.46, relating to Beer--In General.

Section 41.46 addresses payments of tax on beer by manufacturers, distributors and importers; distributor's monthly reports; manufacturer's monthly reports; nonresident manufacturer's monthly reports; carrier's monthly reports; and tax refund claims.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a separate rule addressing reporting requirements for nonresident manufacturers continues to exist. The bulk of the rule concerns matters that are or will be addressed elsewhere. The commission is proposing to amend §41.32 in a separate but simultaneous rulemaking, and to consolidate most of the reporting requirements for resident license and permit holders there.

The commission believes it is appropriate, given the extent of required revisions, to repeal the text of this section. The reporting requirements for nonresident manufacturers will be addressed in a new §41.46, relating to Nonresident Manufacturer's Report, that is being proposed by the commission in a separate and simultaneous rulemaking proceeding.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because reporting requirements will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.46. *Beer--In General.*

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

Filed with the Office of the Secretary of State on July 27, 2016.

TRD-201603713

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



16 TAC §41.46

The Texas Alcoholic Beverage Commission proposes new rule §41.46, relating to Nonresident Manufacturer's Report.

Proposed new §41.46, relating to Nonresident Manufacturer's Report, would continue but modify the requirement in current §41.46, relating to Beer--In General, that holders of nonresident manufacturer's permits must make a monthly report to the commission. In a separate and simultaneous rulemaking proceeding, the commission is proposing the repeal of current §41.46, relating to Beer--In General.

Proposed subsection (a) of the new rule requires a report to be filed by holders of nonresident manufacturer's licenses on forms prescribed or approved by the executive director or the executive director's designee.

Proposed subsection (b) requires the report to be electronically submitted or postmarked on or before the 15th day of the month following the calendar month for which the report is made. The report is to be filed with the commission at its Austin headquarters office.

Proposed subsection (c) describes invoice requirements and provides that the commission may require invoices be submitted to support entries in the monthly reports.

Proposed subsection (d) requires that the reports must be filed each month, even if no sales or shipments have been made.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because reporting requirements will be clarified.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic

Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

The proposed new rule affects Alcoholic Beverage Code §5.31.

§41.46. *Nonresident Manufacturer's Report.*

(a) Each holder of a nonresident manufacturer's license shall make a monthly report to the commission on forms prescribed or approved by the executive director or the executive director's designee.

(b) The report shall be electronically submitted or postmarked by the license holder with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made.

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show:

(1) invoice number and invoice date;

(2) trade name, and address of manufacturer;

(3) trade name and shipping address of customer;

(4) brand name, type, number and size of containers, total cases, unit or line-item extension price and total selling price;

(5) origin of shipment and shipping date; and

(6) total gallons of beer invoiced.

(d) As long as a nonresident manufacturer's license remains active, the monthly report required by this section must be filed each month even if no sales or shipments have been made.

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

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TRD-201603715

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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



16 TAC §41.53

The Texas Alcoholic Beverage Commission proposes amendments to §41.53, relating to Required Records for Brewpubs.

Section 41.53 addresses the requirement that holders of brewpub licenses must make a monthly report to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a

rule addressing this reporting requirement continues to exist but that some changes to the rule are appropriate.

The commission proposes to amend subsection (a) to authorize the executive director (or the executive director's designee) to approve the use of other forms to make the required reports, as alternatives to the prescribed form.

Subsection (b) specifies the information to be provided in the monthly report. The commission proposes to amend subsection (b) to delete the specific information requirements. This would allow the commission to make necessary changes to the forms without having to amend the rule each time a change is required. The forms are developed and changed after consultation with affected industry members and other commission stakeholders.

Current subsection (c) describes the payment of taxes by holders of brewpub licenses. These requirements are addressed in the Alcoholic Beverage Code and elsewhere in the commission's rules. The commission therefore proposes to delete current subsection (c). Proposed new subsection (c) would describe invoice requirements and clarify that the commission may require invoices be submitted to support entries in the monthly reports.

The commission proposes new subsection (d), which would require that the monthly reports must be filed each month even if no sales or shipments have been made.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because reporting requirements will be clarified.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.53. Required Records for Brewpubs.

(a) Each holder of a brewpub license shall make a monthly report [~~monthly report of beer, ale, and malt liquor manufactured, brewed, and disposed of~~] to the commission on forms prescribed or approved by the executive director or the executive director's designee [administrator].

(b) The report shall be electronically submitted or postmarked [made and filed] by the license holder [licensee] with the commission at its offices at Austin, on or before the 15th day of the month following the calendar month for which the report is made, [~~and shall show:~~]

~~[(1) the month for which the report is made, the license number and the name and address of the brewpub;]~~

~~[(2) a full and correct record of each type of malt beverage produced during the month for which the report is made;]~~

~~[(3) the date of each day's operation;]~~

~~[(4) for each day's operation, the opening inventory in bulk gallons for each type of malt beverage;]~~

~~[(5) for each day's operation, the closing inventory in bulk gallons for each type of malt beverage;]~~

~~[(6) for each day's operation, the total gallons produced for each type of malt beverage;]~~

~~[(7) for each day's operation, the total gallons of each type of malt beverage sold, offered without charge, or consumed; and]~~

~~[(8) end-of-month totals, by type of malt beverage, of:]~~

~~[(A) bulk gallons in closing inventory;]~~

~~[(B) gallons produced;]~~

~~[(C) produced gallons in closing inventory; and]~~

~~[(D) gallons sold, offered without charge, or consumed.]~~

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show:

(1) invoice number and invoice date;

(2) trade name, and address of brewpub;

(3) trade name and shipping address of customer;

(4) brand name, type, number and size of containers, total cases, unit and or line-item extension price, and total selling price;

(5) origin of shipment and shipping date; and

(6) total gallons by taxable class of malt beverage invoiced.

~~[(e) Holders of brewpub licenses must pay the tax on the total combined gallons of beer, ale, and malt liquor not later than the 15th day of the month following the month the malt beverages were sold, offered without charge, or consumed. A remittance, less 2.0% of the amount due when submitted within the required time, shall accompany the monthly report hereinbefore provided and shall be payable to the state treasurer of Texas.]~~

(d) As long as a brewpub license remains active, the monthly report required by this section must be filed each month even if no sales or shipments have been made.

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

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TRD-201603727

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 11, 2016
For further information, please call: (512) 206-3489



16 TAC §41.55

The Texas Alcoholic Beverage Commission proposes the repeal of §41.55, relating to Malt Beverages for Export.

Section 41.55 addresses malt beverages that are illegal for sale in this state because of alcohol content, container size, package or label. The rule requires that distributors and wholesalers who intend to receive, store, transport or deliver such beverages for export to another state must register with the commission prior to such activities taking place. The rule also requires separate invoicing, storage and reporting of such beverages.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a separate rule addressing malt beverages for export continues to exist. However, the commission prefers to eliminate the reporting requirements in the current rule.

The commission believes it is appropriate, given the extent of required revisions, to repeal the text of this section and replace it with new text, rather than indicate changes to the current version by strikethroughs and underlining. The subject will be addressed in a new §41.55, with the same title, that is being proposed by the commission in a separate and simultaneous rulemaking proceeding.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because an unnecessary reporting requirement will be eliminated.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

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

§41.55. *Malt Beverages for Export.*

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

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

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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489



16 TAC §41.55

The Texas Alcoholic Beverage Commission proposes new rule §41.55, relating to Malt Beverages for Export.

Proposed new §41.55 addresses the obligations of distributors and wholesalers who are dealing with malt beverages that are not legal for sale to a Texas retailer because of alcohol content, container size, package or label. Proposed subsection (b) provides that distributors and wholesalers who wish to receive, store, transport, or deliver such beverages for export to another state must store and invoice them separately, and maintain the invoices for four years.

In a separate and simultaneous rulemaking proceeding the commission is proposing the repeal of current §41.55, which also currently requires such distributors and wholesalers to register with the commission before engaging in the described activities.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because requirements will be clarified.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

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

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

The proposed new rule affects Alcoholic Beverage Code §5.31.

§41.55. *Malt Beverages for Export.*

(a) This rule relates to Alcoholic Beverage Code §§19.05, 20.03, 21.03, 64.09, 65.08 and 66.11.

(b) The holder of any class of distributor's license or wholesaler's permit with the intent to receive, store, transport, and deliver for export to another state malt beverages that are otherwise illegal to sell to a Texas retailer because of alcohol content, container size, package or label shall:

(1) store and segregate the products separately from products that are legal to sell to a Texas retailer;

(2) prepare a separate invoice for each transaction, which shall be different from the invoice used for malt beverages that are legal to sell to a Texas retailer; and

(3) maintain each invoice for four years and make them available upon request by an authorized representative of the commission.

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

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TRD-201603725

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2016

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



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 100. GENERAL PROVISIONS FOR HEALTH-RELATED PROGRAMS

16 TAC §§100.1, 100.10, 100.20, 100.30, 100.40

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 100, §§100.1, 100.10, 100.20, 100.30 and 100.40, regarding the General Provisions for Health-Related programs.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

In particular S.B. 202 added a new Section 51.2031, Occupations Code, which applies to the following six programs being transferred from DSHS: Midwives, Speech-Language Pathologists and Audiologists, Hearing Instrument Fitters and Dispensers, Athletic Trainers, Orthotists and Prosthetists, and

Dietitians. For these professions the Commission may not adopt a new rule relating to the scope of practice or a health-related standard of care unless the rule has been proposed by the advisory board for the profession, and the Commission must adopt rules prescribing the procedure by which an advisory board may propose such a rule. In addition, Section 51.2031 requires the Commission to adopt rules clearly specifying the manner in which the Department and Commission will solicit input from, and on request provide information to, an advisory board established for one of these professions regarding the general investigative, enforcement, or disciplinary procedures of the Department or Commission. The proposed new rules under 16 TAC Chapter 100 are necessary to implement these provisions of §51.2031.

Proposed new §100.1 establishes which health-related programs this chapter applies to.

Proposed new §100.10 creates the definitions to be used in this chapter.

Proposed new §100.20 details the manner in which information will be provided to the advisory boards for these programs.

Proposed new §100.30 prescribes the procedure by which the advisory boards for these programs may propose a new rule relating to the scope of practice or a health-related standard of care.

Proposed new §100.40 directs the Department to develop enforcement procedures for these programs and lists the methods by which the Department may obtain health-related expertise in the investigation and resolution of complaints.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public will benefit by ensuring that Department rules and enforcement processes will have the necessary input from subject matter experts.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

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

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51, 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 451 (Athletic Trainers); 605 (Orthotists and Prosthetists); and 701 (Dietitians), which authorize the Commission, the Department's governing body, to adopt rules as necessary

to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 451 (Athletic Trainers); 605 (Orthotists and Prosthetists); and 701 (Dietitians). No other statutes, articles, or codes are affected by the proposal.

§100.1. Applicability.

(a) This chapter applies to the regulation of the following professions by the department:

- (1) athletic trainers;
- (2) dietitians;
- (3) hearing instrument fitters and dispensers;
- (4) midwives;
- (5) orthotists and prosthetists; and
- (6) speech-language pathologists and audiologists.

(b) The provisions of this chapter are in addition to all other provisions of law or commission rules that apply to the professions in subsection (a).

§100.10. Definitions.

The following terms have the following meanings when used in this chapter:

(1) Advisory Board--A board, committee, council, or other body that is established by law to advise the commission or department on rules, policies, and/or technical matters.

(2) Commission--Texas Commission of Licensing and Regulation.

(3) Department--Texas Department of Licensing and Regulation.

(4) Executive Director--The head administrative official of the department.

(5) License--A license, certificate, registration, title, commission, or permit issued by the department.

(6) Penalty or Administrative Penalty--A monetary fine imposed by the commission or the executive director on a licensee or other person who has violated this chapter or a statute or rule governing a program regulated by the department.

(7) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the department or commission.

(8) Sanction--An action by the commission or executive director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, the placement of a license holder on probation, or refusal to renew.

§100.20. Providing Information to Advisory Boards for Certain Health-Related Programs.

(a) This section is promulgated under Section 51.2031(b), Occupations Code.

(b) The department will present the following documents, including any updates or revisions, to the advisory board for its input and recommendation:

(1) The penalty matrix for the profession to be included in the department's Enforcement Plan; and

(2) Criminal Conviction Guidelines (Guidelines for Applicants with Criminal Convictions) for the profession.

(c) The department will provide information regarding the general investigative, enforcement, or disciplinary procedures of the department or commission to the advisory board in the following manner:

(1) At advisory board meetings, the department will provide a report on recent enforcement activities, including:

(A) a brief description of final orders entered in enforcement cases; and

(B) statistics on complaints received, disposition of cases, and any sanctions or administrative penalties assessed;

(2) On request of the advisory board, the department will provide additional information:

(A) during the staff report portion of the advisory board meeting; or

(B) by placing a discussion item on the agenda for a future advisory board meeting; or

(3) The department may provide information directly to an individual member of the advisory board in response to a request from that member.

§100.30. Rules Regarding Certain Health-Related Programs.

(a) This section is promulgated under Section 51.2031(a-1) and (a-2), Occupations Code.

(b) The commission may not adopt a new rule relating to the scope of practice of or a health-related standard of care for a profession to which this section applies unless the rule has been proposed by the advisory board established for that profession.

(c) Under Section 51.2031(a-1) and (a-2), Occupations Code, the advisory board may propose a rule described by subsection (b) according to the following procedure:

(1) The advisory board, by a majority vote of the members present and voting at a meeting at which a quorum is present, shall either:

(A) recommend that the rule be published in the Texas Register for public comment; or

(B) if the rule has been published and after considering the public comments, make a recommendation to the commission concerning adoption of the rule;

(2) The rule must be within the commission's legal authority to adopt; and

(3) The department may make non-substantive, editorial changes to the rule as necessary.

(d) The commission shall either adopt the rule as proposed by the advisory board under subsection (c), with any non-substantive, editorial changes made by the department under subsection (c)(3), or return the rule to the advisory board for revision.

(e) This section expires September 1, 2019.

§100.40. Enforcement Procedures for Certain Health-Related Programs.

(a) The department will develop procedures to incorporate health-related expertise into the department's investigation and resolution of complaints.

(b) The department will seek input regarding the procedures developed under this section from each advisory board.

(c) The procedures developed under this section may include obtaining health-related expertise from one or more of the following sources:

(1) A current or former member of the advisory board for the profession;

(2) A department staff expert;

(3) An outside expert with relevant education, training, or experience;

(4) A former member of an enforcement, enforcement review, complaints, or complaint review committee for the profession at the Department of State Health Services; or

(5) A panel consisting of any combination of the individuals listed in paragraphs (1) - (4).

(d) Opinions or recommendations obtained under subsection (c) are not binding on the department or commission.

(e) The procedures developed under this section must include provisions to protect information that is confidential by law.

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

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

TRD-201603779

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 11, 2016

For further information, please call: (512) 463-8614



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, PLANNING NOTIFICATION, COURSE INVENTORIES

19 TAC §§5.21, 5.23 - 5.25

The Texas Higher Education Coordinating Board proposes amendments to Chapter 5, Rules Applying to Public Universities, Health-Related Institutions, and/or Selected Public

Colleges of Higher Education in Texas, Subchapter B, §§5.21 and 5.23 - 5.25, concerning role and mission statements for public institutions of higher education and submission of planning notifications. The intent of the amendments is to clarify and streamline rules regarding the submission of changes to the role and mission statements and submission of planning notifications from public institutions of higher education to the Texas Higher Education Coordinating Board.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending these rules.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarifying of rules regarding the submission of changes to the role and mission statements and submission of planning notifications from public institutions of higher education to the Texas Higher Education Coordinating Board. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.0512(a-5) and (b), which authorizes the Coordinating Board to evaluate the role and mission of public institutions of higher education and requires institutions of higher education to notify the Coordinating Board when planning for a new degree program.

The proposed amendments affect the implementation of Texas Education Code, §61.0512(a-5) and (b).

§5.21. Purpose.

The purpose of this subchapter is to implement rules regarding the role and mission for each public institution of higher education in Texas and for submission of the role and mission statements, submission of planning notification [and the table of programs], and periodic review of all degree and certificate programs offered by a public institution of higher education. Section 5.24(a) of this title (relating to Submission of Mission Statements and Planning Notification [Tables of Programs]) applies to selected Public Colleges.

§5.23. Definitions.

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

(1) Planning Notification Recognition [Preliminary Authority—Authorization] from the State of Texas for an institution to intend to engage in planning in order to propose a new degree program [programs] in a given disciplinary area at a given level of instruction. The Board may request an institution and/or its system office provide an overview of the degree program they intend to engage in planning at a regularly scheduled Board meeting, prior to the institution or system office submitting a proposal to offer a new degree program. [The Table of Programs, defined in paragraph (8) of this section, prescribes the academic areas and levels that are recognized by the Board as being appropriate for an institution's existing role and mission.]

(2) - (3) (No change.)

(4) Mission Statement--A narrative description of the general mission of each institution prepared by the institution and approved by its Board of Regents. The statement should address the fundamental purpose of the institution with respect to its teaching, research, and public service responsibilities. The institution's special concerns for quality and access, liberal arts, admissions, career-oriented programming, extension and articulation with community colleges and public schools, traditional and nontraditional education, and similar issues also may be described. The mission statement must be consistent with ~~the Table of Programs and~~ any statutory mission description.

(5) (No change.)

(6) Planning--An institution is considered by the Board to be planning for a new degree program if it intends to engage in any action that leads to the preparation of a proposal for a new program, including but not limited to hiring personnel, including consultants and planning deans, leasing and/or purchasing real estate, building facilities, and/or developing curriculum.

(7) ~~[(6)]~~ Program Inventory--The official list of all degree and certificate programs approved for a public community college, university or health-related institution.

(8) ~~[(7)]~~ Role and Mission or Role and Scope--Equivalent phrases used to refer to the overall purpose of an institution, including its role within the overall system of Texas higher education. The role and mission ~~documents~~ for a university or health-related institution are described in its Mission Statement [and Table of Programs].

~~[(8)]~~ Table of Programs--A list of the university and health-related institution degree and certificate programs currently authorized using the Texas Classification of Instructional Programs (CIP) system. For each category and degree program level, authorization shall be designated by a code. The codes shall indicate whether or not degree programs in a particular subject matter category have been authorized for the institution and whether or not they fall within its approved mission.]

(9) - (11) (No change.)

§5.24. Submission of Mission Statements and Planning Notification [Table of Programs].

(a) When submitting a notification of its intent to plan to add a degree program (baccalaureate, master's, and doctoral) to the institution's program inventory [Table of Programs], an institution of higher education shall first be available to address the Board at a regularly scheduled meeting and shall submit information to the Board including the title of the proposed program, level, [and] Classification of Instructional Program (CIP) Code, and provide a brief description of the proposed program including anticipated costs and revenues during the first five years, and identify the existing or new administrative unit in which the proposed program would be offered. Planning Notification must occur prior to an institution submitting a proposal for a new degree program that requires Board approval.

(b) Review Process.

(1) As provided by Texas Education Code, §61.051(a-5) and §61.052, the Board shall regularly review the role and mission statements, [the table of programs,] and all similar degree and certificate programs offered by each public senior university or health related institution. [The review shall include the participation of the institution's board of regents.]

(2) The Boards [Board] of Regents shall approve or re-approve institutional mission statements. Each ~~[The]~~ Board of Regents shall provide the Coordinating Board with ~~[a copy of]~~ its current institutional mission statements after any change has been approved ~~[by the Board of Regents]~~.

(3) Notification of planning, which may require an institution to address the Board prior to submitting a proposal for a new degree program, is [not] required if a degree program meets any [all] of the following conditions:

(A) The proposed program would cost more than \$2 million during its first five years of operation [has institutional and Board of Regents approval].

(B) The proposed program is a [non] doctoral program.

(C) The proposed program is an engineering [a non-engineering] program [(i.e., not classified under CIP code 14)].

(D) The program would be a baccalaureate program offered by a community college [university or health-related institution].

(E) The proposed program would be a program leading to the award of a "professional degree," as defined by Texas Education Code 61.306, including Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Veterinary Medicine (D.V.M.), Juris Doctor (J.D.), and Bachelor of Laws (LL.B.). Institutions of higher education that seek to offer such degrees must submit Planning Notification one year prior to submission of a proposal to offer the degree.

§5.25. Course Inventories [Approvals] at Public Universities.

(a) Each institution shall report its course offerings and changes to its course offerings following procedures established by the Commissioner. The report must specifically identify any course included in the common course numbering system approved by the Board that has been added to or removed from the institution's list of courses, beginning with course lists submitted for the 2014-2015 academic year.

(b) Institutions may not offer courses at levels or in programs not approved by the Board.

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

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

TRD-201603792

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



SUBCHAPTER D. OPERATION OF OFF-CAMPUS EDUCATIONAL UNITS OF PUBLIC SENIOR COLLEGES, UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS

19 TAC §§5.71 - 5.73, 5.76, 5.78

The Texas Higher Education Coordinating Board proposes amendments to §§5.71 - 5.73, 5.76, and 5.78 of Board rules relating to Operation of Off-Campus Educational Units of Public Senior Colleges, Universities and Health-Related Institutions concerning the approval and operation of off-campus educational units. The intent of the amendments is to clarify and streamline rules to reflect current statute, rule references,

policies, and practices regarding the approval processes and operation of off-campus educational units.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarifying of rules regarding the approval processes and operation of off-campus educational units in Texas. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter G, §61.0512(g), which authorized the Coordinating Board to approve off-campus courses offered by institutions of higher education within the state.

The proposed amendments affect the implementation of Texas Education Code, §61.0512(g).

§5.71. Purpose.

The provisions of this subchapter define off-campus educational units, establish criteria and procedures applicable to the classification, authorization, operation, and reclassification of these units [and establish the supply/demand pathway as a developmental approach to providing access which allows for the gradual increase of resources as demand grows]. The provisions of this subchapter are applicable to all units of public senior colleges, universities and health-related institutions which offer instruction for credit but are geographically separate from their institutions' main campuses.

§5.72. Authority.

The authority for this subchapter is Texas Education Code, §61.051 and §61.0512(g).

§5.73. Definitions.

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

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

~~(2) Branch campus--A major, secondary location of an institution offering multiple programs, usually with its own administrative structure and usually headed by a Dean. A branch campus must be established by the Legislature or approved by the Coordinating Board.]~~

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

~~(4) FICE--Identification number assigned to each institution by the Federal Interagency Committee on Education for reporting and other purposes.]~~

(5) FTSE--The full-time student equivalent is determined by dividing the number of semester credit hours (SCH) generated at each level by a full-time standard for the level. For example: undergraduate SCH are divided by 15 (fall or spring semester) or 30 (annual); master's or first-professional SCH are divided by 12 (fall or spring

semester) or 24 (annual); and doctoral SCH are divided by 9 (fall or spring semester) or 18 (annual).]

~~[(6) Higher education center--A Multi-Institutional Teaching Center, University System Center, or single institution center established by the Legislature or approved by the Coordinating Board for the specific purpose of offering academic credit courses and programs from the parent institution(s). Higher education centers are of a larger size and offer a broader array of courses and programs than higher education teaching sites. They have minimal administration and (usually) locally provided facilities.]~~

~~[(7) Higher education teaching site--An off-campus teaching location that promotes access in an area not served by other public universities. Teaching sites offer a very limited array of courses and/or programs and do not entail a permanent commitment for continued service. Teaching sites may not own facilities, nor are they eligible for state support to acquire or build facilities. Teaching sites do not require Board approval or recognition.]~~

~~(3) Memorandum of Understanding (MOU)--Formal Agreement between two or more public institutions of higher education that define their roles in the establishment and operation of a multi-institutional teaching center. One or more private institutions may be included in the memorandum of understanding.~~

~~(4) [(8)] Multi-Institution Teaching Center (MITC)--An off-campus educational unit [A higher education center] administered under a memorandum of understanding (MOU) [formal agreement] between two or more public higher education institutions. It may also involve one or more private institutions. It has minimal administration and locally provided facilities.~~

~~(5) [(9)] Off-campus educational unit--A subdivision under the management and control of a [an existing public university, university system, health-related institution or a combination of these units, hereinafter referred to as the] parent institution(s), in a separate geographic setting with varying degrees of dependence in academic, administrative and fiscal matters [separate from the parent institution(s)]. Off-campus education units include: [teaching sites, higher education centers, university system centers, Multi-Institutional Teaching Centers, regional academic health centers, branch campuses, and all other off-campus educational endeavors.]~~

~~(A) Branch campus--A major, secondary location of an institution offering multiple programs, usually with its own administrative structure and usually headed by a Dean. A branch campus must be established by the Legislature or approved by the Board.~~

~~(B) Higher education teaching site--An off-campus teaching location that promotes access to a very limited array of courses and/or programs. Teaching sites may not own facilities, nor are they eligible for state support to acquire or build facilities, and do not entail a permanent commitment for continued service. See §5.76(i). While higher education teaching sites do not require Board approval or recognition, institutions must notify the Board and institutions within a 50-mile radius of the teaching site and/or Higher Education Regional Council(s) prior to offering courses and/or programs. Issues and concerns must be resolved following Board policy related to approval of distance education off-campus courses and programs.~~

~~(C) Multi-Institution Teaching Center (MITC)--An off-campus educational unit administered under a memorandum of understanding (MOU) between two or more public higher education institutions. It may also involve one or more private institutions. It has minimal administration and locally provided facilities.~~

~~(D) Regional Academic Health Center (RAHC)--A special purpose campus of parent health-related institution(s) that~~

may be used to provide undergraduate clinical education, graduate education, including residency training programs, or other levels of medical education in specifically identified counties.

(E) Single institution center--An off-campus educational unit administered by a single parent institution. It has minimal administration and locally provided facilities.

(F) Special Purpose Campus--A major, secondary location of an institution offering programs related to specific and limited field(s) of study, usually with its own administrative structure and usually headed by a Dean. Regional Academic Health Centers are considered special-purpose campuses. Special Purpose Campuses must be established by the Legislature or approved by the Board.

(G) University System Center (USC)-- An off-campus educational unit administered by a single university system comprised of two or more of the system's parent institutions. A memorandum of understanding must be established between all parties that governs the operations of the USC. It has minimal administration and locally provided facilities.

(6) [(40)] Parent institution--General academic teaching institution, medical or dental unit, or university system as defined in TEC §61.003 [The general academic institution or health-related institution] that offers its courses, programs or training at an off-campus educational unit. Credit hours are reported by the parent institution and degrees are awarded in the name of the parent institution.

[(11) Pathway Education Center (PEC)--A higher education center that is on the Supply/Demand Pathway.]

[(12) Recognized higher education teaching site--A higher education teaching site that is recognized by the Coordinating Board and is included in the Coordinating Board's inventory of statewide teaching sites.]

[(13) Regional Academic Health Center (RAHC)--A special purpose campus of parent health-related institution(s) that may be used to provide undergraduate clinical education, graduate education, including residency training programs, or other levels of medical education in specifically identified counties.]

[(14) Special Purpose Campus--A major, secondary location of an institution offering programs related to specific and limited field(s) of study, usually with its own administrative structure and usually headed by a Dean. Regional Academic Health Centers are considered special-purpose campuses. Special Purpose Campuses must be established by the Legislature or approved by the Coordinating Board.]

[(15) Supply/Demand Pathway (SDP)--The Supply/Demand Pathway is a developmental approach to providing access which allows for the gradual increase of resources as demand grows, operating under the principle of avoiding over-commitment as well as under-commitment of state resources.]

[(16) Texas CIP Classification System--The Texas adaptation of the Classification of Instructional Programs taxonomy developed by the National Center for Education Statistics. The CIP system is used to classify instructional programs and report educational data.]

[(17) University System Center (USC)--A higher education center administered by a university system or individual institution in a system. It has minimal administration and locally provided facilities.]

§5.76. *General Principles for Off-Campus Educational Units.*

[(a) An off-campus educational unit is not a separate general academic institution and therefore is not independent as regards aca-

demie, administrative, and fiscal matters, but has varying degrees of dependence upon the parent institution in such matters.]

(a) [(b)] The general purpose of off-campus educational units of all sizes is to meet the education needs of the people of Texas with a level of service that is appropriate for the area and cost effective to offer. Their specific purpose is directly related to the teaching of courses for academic credit from the parent institution(s) and/or for health professions' medical training.

(b) The Commissioner shall establish policies concerning how a location receives designation as a specific type of off-campus educational unit and how to expand educational activities.

(c) The type and name of all off-campus educational units, with the exception of higher education teaching sites, must be approved by the Board. Approval of an off-campus educational unit may be withdrawn by the Board.

(d) An off-campus educational unit is financially dependent upon its parent institution(s) and is supported by the budget of the institution(s). It is not eligible to request separate legislative funding. Off-campus educational units should use locally provided facilities, where possible.

(1) Degree programs offered at off-campus educational units must be offered by and in the name of the parent institution(s).

(2) The parent institution must commit to providing a program long enough for a student to have a reasonable opportunity to graduate before the resource is withdrawn or to make other reasonable arrangements for students to complete programs that they have started.

(3) The Board must be notified of programs offered or discontinued at off-campus educational units. The Board shall maintain a list of these degree programs and make that list readily available to the public.

(4) Courses offered at off-campus educational units must be reported separately and accurately in required Board reports. Semester credit hours completed at the unit must be reported appropriately by the parent institution(s) and shall be funded as determined by the Legislature.

(5) The facilities of off-campus educational units shall comply with Chapter 17 of this title, relating to Resource Planning.

(e) [(e)] Off-campus educational units are not intended to duplicate the full array and types of offerings available at regular general academic campuses. Their specific purpose is to [The intent is to]:

(1) Focus on teaching and on delivery of high demand courses and programs for academic credit from the parent institution(s) and/or for health professions' medical training. Research conducted at off-campus educational units should be limited to that necessary for the courses and programs offered.

(2) Develop articulation agreements with community colleges in the area for provision of lower-division courses. In general, off-campus educational units are not intended to offer lower-division courses. Lower-division courses can only be offered in accordance with Chapter 4, subchapter Q [4.101 - 4.108] of this title, relating to Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions [Approval of Distance Education and Off-Campus Instruction for Public Colleges and Universities], and related Board procedures.

[(3) Make extensive use of technology to limit the number of faculty required for the location and take full advantage of technological advances that promise to improve quality of learning, access to

programs, and efficient use of existing resources. An off-campus educational unit shall meet the Board's technology standards.}]

{(4) Make extensive and effective use of technology in libraries, including full utilization of TexShare electronic resource sharing efforts.}]

{(f) [(d)] Degree programs offered at off-campus educational units must be offered by and in the name of the parent institution(s).}

{(1) No program may be offered at an off-campus educational unit that does not have prior approval to be offered at the parent institution, except under unusual and approved circumstances. }

{(2) The Board must be notified of programs offered or discontinued at off-campus educational units. The Board shall maintain a list of these degree programs and make that list readily available to the public. }

{(3) The parent institution must commit to providing a program long enough for a student to have a reasonable opportunity to graduate before the resource is withdrawn or to make other reasonable arrangements for students to complete programs that they have started.}]

{(g) [(e)] Off-campus educational units shall adhere to quality and approval criteria regarding courses, programs, student services and other academic matters contained in §§4.101 - 4.108 of this title (relating to Approval of Distance Education and Off-Campus Instruction for Public Colleges and Universities), and in the Approval of Distance Education, including Off-Campus Courses and Programs located in Board policies [(Notification and Approval Procedures for Distance Education and Off-Campus Programs and Courses and Guidelines for Institutional Plans for Distance Education and Off-Campus Instruction located in Board policies)].

{(h) [(f)] [Off-campus educational units shall use locally provided facilities, where possible. Except where specifically authorized by the Legislature or the Board, nothing in these sections is to be interpreted as permitting the acquisition by gift or purchase of real property for the purpose of establishing or operating an off-campus educational unit.] The facilities of off-campus educational units shall comply with Chapter 17 of this title, relating to Resource Planning.

{(g) The following faculty-related provisions apply to all off-campus educational units:}]

{(1) The majority of faculty members at an off-campus educational unit must, by some means, have significant involvement with the parent institution.}]

{(2) Faculty must comply with the provision of §4.277 of this title and related Board policies.}]

{(3) Faculty must be hired and evaluated by the same processes and with the same criteria as faculty performing similar duties at the parent institution.}]

{(4) The parent institution should not make a permanent commitment to faculty exclusively working at a teaching site or center, unless the faculty will be transferred to the parent institution should their program be eliminated or consolidated.}]

{(5) Programs offered by an off-campus educational unit's own faculty should have enrollments sufficient to support efficient operations.}]

{(h) An off-campus educational unit is financially dependent upon its parent institution(s) and supported within the budget of the institution(s). It is not eligible to request separate legislative funding. Institutions should not overcommit resources to a geographic area before a sufficient and sustained level of demand is achieved. Formula

generated funds earned at an off-campus educational unit are expected to be applied to financing its operation.}]

{(i) The Commissioner shall establish policies concerning how a location receives designation as a specific type of off-campus educational unit and how to expand educational activities.}]

{(i) [(j)] Courses offered at off-campus educational units must be reported separately and accurately in required Board reports. Semester credit hours completed at the unit must be reported appropriately by the parent institution(s) and shall be funded as determined by the Legislature.

{(k) An off-campus educational unit shall be headed by an appropriate administrator whose title does not suggest that the unit is an independent institution. The number of local administrators and faculty shall be less than that at a free standing general academic institution of comparable size. Additional administrative and academic program support shall be provided by the parent institution(s) and the system(s).}]

{(j) [(4)]Approval [A higher education center's name must be approved by the Board, and may not be changed without prior Board approval. Recognition] of a higher education center may be withdrawn by the Board.

§5.78. Supply/Demand Pathway.

(a) The Board has developed the Supply/Demand Pathway (SDP) as a particular way to address anticipated large-scale enrollment demand in a specified region. The SDP [Supply/Demand Pathway] shall be used as the model to address higher education needs in areas without ready geographic access to existing public higher education institutions. The general principles set forth in §5.76 of this title (relating to General Principals for Off-Campus Educational Units) are even more significant in regard to the larger scale efforts designated as SDP [Supply/Demand Pathway] initiatives.

(b) An off-campus educational unit is on the "Pathway" when it is awarded that designation by the Board.

(c) The SDP [supply/demand pathway] consists of three categories:

(1) Category A. Institutions temporarily test the market both in terms of demand and staying power by providing off-campus courses and/or programs by one or more institutions. Should demand decrease or not materialize, courses and programs can be discontinued and resources moved to areas of greater demand.

(2) Category B. As demand increases, offerings may be organized through a multi-institution teaching center or as a university system center as a Pathway Education Center (PEC). A group of institutions may request that the Board authorize the establishment of a MITC. Alternatively, a university system may request that the Board authorize the establishment of a university system center. In either case, a lead institution shall be designated to provide leadership for the center and facilitate the provision of programs and resources from other institutions.

(3) Category C. After an entity in Category B has attained a full-time equivalent upper-level and graduate enrollment of 3,500 for one fall semester, the parent institution(s) and Board(s) of Regents may request that the Board review the status of the center and recommend that the Legislature reclassify the unit as an upper-level general academic institution--a university. The 3,500 FTSE standard approximates the headcount enrollment included in the current university funding formula as the minimum size needed to achieve economies of scale.

(d) Counting. The following general criteria and standards will be used to determine enrollments applicable to the SDP [Supply/Demand Pathway] thresholds.

(1) Upper-division and graduate semester credit hours generated in academic courses delivered by the parent universities or by other institutions to on-site students at a PEC [Pathway Education Center (PEC)] shall be counted towards the relevant SDP [Supply/Demand Pathway (SDP)] threshold.

(2) Upper-division and graduate semester credit hours generated in academic courses delivered electronically to students on-site at a PEC [Pathway Education Center] shall be counted towards the SDP threshold. For interactive video courses that originate at a PEC, only students taking the course at the PEC shall be counted.

(3) (No change.)

(4) Lower-division semester credit hours generated in academic courses offered at PECs shall not be counted towards the thresholds except when:

(A) - (C) (No change.)

(D) the [Coordinating] Board has granted permission to teach the courses at the PEC.

(5) - (6) (No change.)

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

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

TRD-201603793

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.3 - 7.8, 7.10, 7.11, 7.14

The Texas Higher Education Coordinating Board proposes amendments to Chapter 7, Degree Granting Colleges and Universities Other Than Texas Public Institutions, Subchapter A, General Provisions, §§7.3 - 7.8, 7.10, 7.11, and 7.14 rules to strengthen oversight of new postsecondary educational institutions. Changes are made to add specific periodic reviews of accrediting agencies for continued recognition. The one year Alternative Certificate of Authority for institutions with no operational history is eliminated. However, institutions with less than two years operational history will continue to be eligible to apply to operate in Texas, but will have additional application and reporting requirements to ensure the school under a Certificate of Authority, is prepared to and will continue to adequately serve students. Changes are made to allow recommendations for and Board approval of additional restrictions and conditions on all Certificates of Authority. Changes are made to strengthen oversight of institutions under a Certificate of Authorization with financial instability or negative actions by its accrediting agency or the US Department of Education. Additional requirements are added for institutions accredited by an accrediting agency which loses recognition by the Board or the US Department

of Education. A requirement is added that institutions offering distance education must comply with the Council of Regional Accrediting Commissions (C-RAC) distance education provisions. Other revisions are made to organize similar definitions, delete unnecessary definitions and add new definitions. Certain rules had additional language added to clarify applicability. The intent of these amendments is to provide clearer guidance to degree granting colleges and universities other than Texas public institutions and accrediting agencies and ensure continuing protection of students.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the strengthening of postsecondary educational institutions operating in Texas. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter G, §61.311, which authorized the Coordinating Board to promulgate standards, rules, and regulations governing the administration of the subchapter.

The proposed amendments affect the implementation of Texas Education Code, §§61.301 - 61.321.

§7.3. Definitions.

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

~~[(1) Academic Associate Degree Program--A grouping of courses designed to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts and the associate of science degrees.]~~

(1) [(2)] Accreditation--The status of public recognition that an accrediting agency grants to an educational institution.

(2) [(3)] Accrediting Agency--A legal entity recognized by the Secretary of Education of the United States Department of Education as an accrediting agency that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions, including ensuring academic, financial, and operational quality. A Board-recognized Accrediting Agency is any accrediting agency authorized by the Secretary of Education of the United States Department of Education to accredit educational institutions that offer the associate degree or higher, the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from certain provisions of this chapter.

(3) [(4)] Agent--A person employed by or representing a postsecondary educational institution that does not have a Certificate of Authorization or Certificate of Authority, within or without Texas who:

(A) solicits any Texas student for enrollment in the institution (excluding the occasional participation in a college/career fair

involving multiple institutions or other event similarly limited in scope in the state of Texas);

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

~~[(5) Alternative Certificate of Authority--A type of Certificate of Authority for approval of postsecondary institutions, with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.]~~

~~[(6) Applied Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts and the associate of applied science degrees.]~~

(4) ~~[(7)] Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career[;] or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts (AA), the associate of science (AS), the associate of applied arts (AAA), [and] the associate of applied science (AAS), and the associate of occupational studies (AOS) degrees.~~

(A) Academic Associate Degree Program--A grouping of courses designed to transfer to an upper-level baccalaureate program and that includes sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. An academic associate degree must include at least twenty (20) semester credit hours or thirty (30) quarter credit hours of general education courses. This specifically refers to the associate of arts (AA) and the associate of science degrees (AS).

(B) Applied Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. An applied associate degree must include at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts (AAA) and the associate of applied science (AAS) degrees. Associate of Occupational Studies (AOS) degrees are only allowed under §7.5(u) of this chapter.

(5) ~~[(8)] Board--The Texas Higher Education Coordinating Board.~~

(6) ~~[(9)] Board Staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.~~

(7) ~~[(40)] Career School or College--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the state [State] of Texas or solicits business within the state [State] of Texas, and that is not specifically exempted by Texas Education Code, §132.002 or §7.4 of this chapter (relating to Standards for Operations of Institutions), and:~~

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

~~(8) [(41)] Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.~~

(9) [(42)] Certificate of Authority--The Board's approval of postsecondary institutions (other than exempt institutions), with operations in the state [State] of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees, while seeking Board-recognized accreditation. Additional conditions, restrictions, or requirements will be placed on a Certificate of Authority, including, but not limited to, application and review requirements for the initial application and supplementary reporting requirements during the first two years of operation, if an institution does not meet one of the three previous operational history conditions described by §7.8(1)(A)(ii)(I)-(III) of this chapter. Additional conditions, restrictions, or requirements may be placed on any Certificate of Authority if recommended to and approved by the Board.

(10) [(43)] Certificate of Authorization--The Board's acknowledgment that an institution is qualified for an exemption from certain identified regulations in this subchapter.

(A) A Certificate of Authorization for an institution offering degrees or courses leading to degrees at a physical location in Texas will be issued for the period of time in the institution's current grant of accreditation by its Board-recognized accreditor.

(B) A Certificate of Authorization may be issued as provisional for a 15-month temporary exemption from certain identified regulations in this subchapter based on its main campus' accreditation while seeking final approval for the new Texas-based campus from its Board-recognized accreditor and the Texas Workforce Commission.

(C) An out-of-state institution may be issued a renewable one-year Certificate of Authorization in order to allow students to complete experiential learning experiences in Texas.

(11) [(44)] Certificate of Registration--The Board's approval of an agent to solicit students on behalf of a private postsecondary educational institution in the state [State] of Texas.

(12) [(45)] Certification Advisory Council--The Council as established by Board rules Chapter 1, Subchapter H, §§1.135 - 1.141 of this title (relating to Certification Advisory Council).

(13) [(46)] Change of Ownership or Control--Any change in ownership or control of a career school or college, or a postsecondary educational institution, or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college or postsecondary educational institution is considered to have changed:

(i) in the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) in the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) (No change.)

(14) [(17)] Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(15) [(18)] Classification of Instructional Programs (CIP) Code--The four (4) or six (6)-digit code assigned to an approved degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

[(19) Clinical Internship--This learning method, also known as "clinical," encompasses all site-specific health professions experiential learning. Clinicals include site experiences for medical, nursing, allied health, and other health professions degree programs.]

(16) [(20)] Commissioner--The Commissioner of Higher Education.

[(21) Concurrent Instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.]

(17) [(22)] Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate," "bachelor's," "master's," "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(18) [(23)] Educational or Training Establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(19) [(24)] Exempt Institution--A postsecondary educational [An] institution that is accredited by an agency recognized by the Board under §7.6 of this chapter (relating to Recognition of Accrediting Agencies), is defined as a "private or independent institution of higher education" under Texas Education Code, §61.003(15), [or] a career school or college that applies for and is declared exempt under this chapter, an institution that has received approval by a state agency authorizing the institution's graduates to take a professional or vocational state licensing examination administered by that agency [by the Texas Workforce Commission] as described in Texas Education Code, §61.303(a), or an institution exempted by the Texas Workforce Commission under Texas Education Code, §132.002 [Chapter 132, respectively]. Exempt institutions must comply with certain Board rules.

(20) [(25)] Experiential Learning--Process through which students develop knowledge, skills, and values from direct experiences outside an institution's classrooms. Experiential learning encompasses a variety of activities including, but not limited to, internships, externships, practicums, clinicals, field experience, or other professional work experiences. References to clinicals within this chapter encompasses all site-specific health professions' experiential learning. Clinicals include site experiences for medical, nursing, allied health, and other health professions degree programs.

(21) [(26)] Fictitious Degree--A counterfeit or forged degree or a degree that has been revoked.

(22) [(27)] Fraudulent or Substandard Degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a Certificate of Authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.12 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a Certificate of Authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.12 of this chapter, determines is not the equivalent of an accredited or authorized degree.

[(28) Internship--This learning method encompasses all non-clinical site experiential learning.]

[(29) Occasional Courses--Courses offered not more than twice at any given location in the state.]

(23) [(30)] Out-of-State Public Postsecondary Institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the state [State] of Texas. For purposes of this chapter, out-of-state public institutions of higher education are considered postsecondary educational institutions.

(24) [(31)] Person--Any individual, firm, partnership, association, corporation, enterprise, postsecondary educational institution, [or] other private entity, or any combination thereof.

(25) [(32)] Physical Presence--

(A) While in Texas, a representative of the school or a person being paid by the school, who conducts an activity related to postsecondary education, including for the purposes of recruiting students (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas), teaching or proctoring courses including internships, clinicals, externships, practicums, and other similarly constructed educational activities (excluding those individuals that are involved in teaching courses in which there is no physical contact with Texas students or in which visiting students are enrolled), or grants certificates or degrees; and/or

(B) The institution has any location within the state [State] of Texas which would include any address, physical site, telephone number, or facsimile number within or originating from within the boundaries of the state [State] of Texas. Advertising to Texas students, whether through print, billboard, internet, radio, television, or other medium alone does not constitute a physical presence.

(26) [(33)] Postsecondary Educational Institution--An educational institution which:

(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

~~(27)~~ ~~[(34)]~~ Private Postsecondary Educational Institution--An institution which:

(A) is not an institution of higher education as defined by Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has an agent or representative presence in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

~~(28)~~ ~~[(35)]~~ Professional Degree--A degree that is awarded for a Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Veterinary Medicine (D.V.M.), Juris Doctor (J.D.), and Bachelor of Laws (LL.B.) and their equivalents and foreign cognates.

~~(29)~~ ~~[(36)]~~ Program or Program of Study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

~~(30)~~ ~~[(37)]~~ Protected Term--The terms "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

~~[(38)~~ Provisional Certificate of Authorization--A mechanism to provide 15 months of authority to operate in Texas under existing Board-recognized accreditor authority for another existing campus (either in-state or out-of-state) while working to have final approval of the new Texas campus by the Board-recognized accreditor. Failure to obtain Board-recognized accreditor approval within the 15-month time frame for the new Texas campus will result in termination of the Provisional Certificate of Authorization for the new campus which must then terminate operations until such time as the institution obtains a Certificate of Authority or a Certificate of Authorization through approval of a Board-recognized accreditor for the new campus. The Provisional Certificate of Authorization is valid for a period of 15 months from the date of issuance. The provisions under which the certificate was issued will be outlined in the Provisional Certificate of Authorization letter that accompanies the certificate. Additional Provisional Certificates of Authorization will not be issued.]

~~(31)~~ ~~[(39)]~~ Reciprocal State Exemption Agreement--An agreement entered into by the Board with an out-of-state state higher education agency or higher education system for the purpose of creating a reciprocal arrangement whereby that entity's institutions are exempted from the Board oversight for the purposes of distance education. In exchange, participating Texas public or private institutions of higher education as defined in Texas Education Code, §61.003 would be exempted from that state's oversight for the purposes of distance education.

~~[(40)~~ Recognized Accrediting Agency--Any accrediting agency the standards of accreditation or membership for which have

been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.]

~~(32)~~ ~~[(41)]~~ Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

~~(33)~~ ~~[(42)]~~ Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

~~(34)~~ ~~[(43)]~~ Single Point of Contact--An individual who is designated by an institution as the person responsible for receiving and conveying information between an institution and the Board or Board staff. The Board will direct all communications regarding an institution to the Single Point of Contact. Institutions must inform the Board of changes in the designated Single Point of Contact within 30 days of change.

~~(35)~~ ~~[(44)]~~ Substantive Change--Any change in principal location, ownership, or governance of an institution, change in accrediting agency or final action by an accrediting agency changing such institution's status with such accrediting agency, including negative actions taken by the accrediting agency against an institution, change in degree- or credential-level for an approved program, [or] addition of new programs, degrees or credentials offered, or change in United States Department of Education requirements for receipt of federal financial aid based on financial or accreditation status.

~~(36)~~ ~~[(45)]~~ Visiting Student--A student pursuing a degree at an out-of-state institution (i.e., home institution) with no physical presence in Texas who has permission from the home institution and a Texas institution, which is either exempt from Board rules or currently in compliance with Board rules, to take specific courses at the Texas institution. The two institutions have an agreement that courses taken at the Texas institution will transfer back to the home institution.

§7.4. Standards for Operation of Institutions.

(a) All institutions that operate within the state [State] of Texas are required [expected] to meet the following standards. These standards will be enforced through the Certificate of Authority process [or the Alternative Certificate of Authority process]. Standards addressing the same principles will be enforced by Board-recognized accrediting agencies under the Certificate of Authorization process. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a Certificate of Authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by institutional and specialized accrediting bodies and the academic and professional organizations.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. Postsecondary educational institutions [Career Schools and Colleges also] shall demonstrate compliance with Texas Education Code, Chapter 132 by supplying either a copy of a Certificate of Approval to operate a career school or college or a Letter of Exemption from the Texas Workforce Commission.

(2) - (7) (No change.)

(8) Program Evaluation.

(A) (No change.)

(B) For all [applied] associate degree programs, the evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, and success of its students.

(C) (No change.)

(9) - (10) (No change.)

(11) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) - (B) (No change.)

(C) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching general education courses in an applied associate degree program shall have at least a master's [baccalaureate] degree from an institution accredited by a recognized accrediting agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) - (E) (No change.)

(12) - (14) (No change.)

(15) General Education.

(A) - (B) (No change.)

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) - (ii) (No change.)

(iii) the providing institution shall be accredited by a Board-recognized accrediting agency or hold a Certificate of Authority.

(16) - (21) (No change.)

(22) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters; outline the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board using the student complaint procedures established by Board rules Chapter 1, Subchapter H, §§1.110 - 1.120 of this title (relating to Student Complaint Procedure) and/or the Texas Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(23) (No change.)

(24) Learning Outcomes. An institution must have an objective system of assessing learning outcomes in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved.

(b) An institution may deviate, for a compelling academic reason, from [Standard (11) relating to Faculty Qualifications;] Standard (12) relating to Faculty Size and[.] Standard (16) relating to Credit for Work Completed Outside a Collegiate Setting, as long as academic objectives are fully met [and Standard (17) relating to Learning Resources; if there is an objective system of assessing learning outcomes

in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved].

§7.5. *Administrative Penalties and Injunctions.*

(a) A person or institution may not:

(1) Granting of Degrees--Grant, award, or offer to award a degree on behalf of a nonexempt institution unless the institution has been issued a Certificate of Authority[; ~~including an Alternative Certificate of Authority;~~] to grant the degree by the Board;

(2) (No change.)

(3) Honorary Degrees--Award or offer to award an honorary degree on behalf of a private postsecondary institution subject to the provisions of this subchapter, unless the institution has been awarded a Certificate of Authority or Certificate of Authorization to award such a degree, or solicits another person to seek or accept an honorary degree and, further, unless the degree shall plainly state on its face that it is honorary;

(4) - (6) (No change.)

(b) Institutions Located on Federal Land in Texas--An institution that is operating on land in Texas over which the federal government has exclusive jurisdiction:

(1) shall limit to the confines of the federal land and to the military or civilian employees and their dependents who work or live on that land:

(A) the recruitment of students; [and]

(B) advertising of the postsecondary educational institution or its programs or courses; and

(C) providing degree programs or courses leading to degrees [to the confines of the federal land and to the military or civilian employees and their dependents who work or live on that land].

(2) shall be subject to compliance with all rules under this chapter when recruiting students, advertising the postsecondary institution or its programs or courses, or providing degree programs or courses leading to degrees on land over which the federal government does not have exclusive jurisdiction. [The institution shall not enlist any agent, representative, or institution to recruit or to advertise by any medium, the institution or its programs or courses except on the federal land.]

(c) Offenses--A violation of this subsection may constitute a violation of the Texas Penal Code, §32.52, or Texas Education Code [Codes] §§61.312, 61.313. An offense under subsection (a)(1) - (5) of this section may be a Class A misdemeanor and an offense under subsection (a)(6) of this section may be a Class B misdemeanor.

(d) - (j) (No change.)

(k) Specific Administrative Penalty--Any person or institution that is neither exempt nor the holder of a Certificate of Authority[; ~~including an Alternative Certificate of Authority;~~] to grant degrees, shall be assessed an administrative penalty of not less than \$1,000 or more than \$5,000 for, either individually or through an agent or representative:

(1) - (4) (No change.)

(l) - (t) (No change.)

(u) Associate of Occupational Studies (AOS) Degree--Texas has two [three] career schools or colleges awarding the AOS degree: Universal Technical Institute, [Southwest Institute of Technology;] and Western Technical College. The AOS degree shall be awarded in only

the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of the three Institutions may continue to award the AOS degree for those fields listed in this subsection and shall be restricted to those fields. The Board shall not consider new AOS degree programs from any other career schools or colleges. A career school or college authorized to grant the AOS degree shall not represent such degree by using the terms "associate" or "associate's" without including the words "occupational studies." An institution authorized to grant the AOS degree shall not represent such degree as being the equivalent of the AAS or AAA degrees.

§7.6. *Recognition of Accrediting Agencies.*

(a) Eligibility Criteria--The Board may recognize accrediting agencies with a commitment to academic quality and student achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an accrediting agency authorized to accredit educational institutions that offer the associate degree or higher. Demonstration of authorization shall include clear description of the scope of recognized accreditation.

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education:

(i) (No change.)

(ii) Accrediting agencies shall, for each field of study in which an accredited institution may offer degree programs, specify the levels of degrees that may be awarded. Levels must be differentiated at least to the following, as defined in §7.3 of this chapter (relating to Definitions): applied associate degree, academic associate degree, baccalaureate degree, master's degree, first professional degree and doctoral degree. Associate of occupational studies (AOS) degrees are only allowed under §7.5(u) of this chapter.

(iii) (No change.)

(C) Accredits institutions that have legal authority to confer postsecondary degrees as its primary activity:

(i) Accrediting agencies must identify [show by listing] all institutions accredited by the agency that either the majority of the accredited institutions have the legal authority to award postsecondary degrees or that it accredits at least fifty (50) institutions that have the legal authority to award postsecondary degrees.

(ii) - (iii) (No change.)

(D) Requires an on-site review by a visiting team as part of initial and continuing accreditation of educational institutions:

(i) Each accrediting agency shall demonstrate, through its documented practices and/or its official policies, that it requires no fewer than three (3) members on a team when conducting initial and continuing accreditation visits, that none have a monetary or personal interest in the findings of the on-site review, ~~and~~ that all have professional experience and knowledge that qualifies them to review the institution's compliance with the standards of the agency, and that the combined team experience and knowledge are sufficient to review all applicable standards of the agency.

(ii) - (iii) (No change.)

(E) - (F) (No change.)

(2) Recognition--To receive and maintain recognition from the Board, the accrediting agency must, in addition to the items listed in paragraph (1) of this subsection:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews:

(i) Accrediting agencies must have publicly disclosed standards that address at a minimum the following issues: student achievement in relation to the institution's mission; curricula; faculty; facilities, equipment and supplies; fiscal and administrative capacity; student support services; recruiting and admissions practices; academic calendars; catalogs; grading; etc.; measures of program length; ~~and~~ objectives of the degrees or credentials offered; record of student complaints received by or available to the agency; management and financial control.

(ii) In the application process, the accrediting agency must indicate how its standards address each of the quality assessment categories outlined in clause (i) of this subparagraph which represent the underlying principles described in the institutional standards of §7.4 of this chapter (relating to Standards for Operations of Institutions). Comparison of its standards ~~[with those of previously recognized accrediting agencies and]~~ with the standards in §7.4 of this chapter is required [encouraged] as a means of indicating how its standards meet those principles.

(iii) Each accrediting agency shall provide its policy for periodic reviews of institutions under its accreditation. At a minimum, the accrediting agency must conduct on-site reviews at least every ten (10) years.

(iv) - (ix) (No change.)

(B) - (F) (No change.)

(G) Each time the accrediting agency applies for continued recognition by the Secretary of Education of the United States Department of Education, the accrediting agency must apply for continued recognition by the Coordinating Board. Applications forms will be provided by Board staff. Application for continued recognition must, at a minimum, contain all information required for initial eligibility and recognition by the Coordinating Board under this rule.

(b) Other Information, Denial or Withdrawal of Recognition and Appeals.

(1) Once recognized, an accrediting agency retains that recognition unless and until the Board withdraws the recognition. Failure to comply with any of the requirements in this chapter, including failure to comply with information requests during periodic reviews, will be grounds for the Board to consider withdrawing recognition.

(2) Each accrediting agency shall provide its policy for periodic reviews. Periodic review shall be conducted at the time an accrediting agency applies for continued recognition by the Secretary of the United States Department of Education. The Coordinating Board reserves the right to request and review current policies at other times for good cause, including, but not limited to, student complaints, accredited institution complaints, or concerns raised by the United States Department of Education or other state or federal agencies.

(3) ~~(2)~~ The Board may use information provided by parties other than the accrediting agency to assess the accrediting agency's commitment to academic quality and student achievement. The Board will consider any such information in an open, public meeting during which the accrediting agency may challenge the information.

(4) [(3)] The Board will make any decision to deny recognition of an accrediting agency or to withdraw recognition from an accrediting agency in a public meeting.

(5) [(4)] An institution operating in Texas as an exempt institution pursuant to §7.7 of this chapter when its recognized accrediting agency loses or voluntarily relinquishes its recognition will have a provisional time period set by the Board, or Board staff as delegated, within which the institution may continue to operate pursuant to the requirements in §7.7(2) and (3) [ninety (90) days to apply for a Certificate of Authority or to reach agreement with the Board on a schedule for ceasing its operations in Texas].

(6) [(5)] An accrediting agency or institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.7. *Institutions Accredited by Board-Recognized Accreditors.*

An institution which does not meet the definition of institution of higher education contained in Texas Education Code §61.003, is accredited by a Board-recognized accreditor, and is interested in offering degrees or courses leading to degrees in the state [State] of Texas must follow the requirements in paragraphs (1) - (4) [(5)] of this section.

(1) Authorization to Offer Degrees or Courses Leading to Degrees in Texas.

(A) Each institution and/or campus location must submit an application for a Certificate of Authorization to offer degree(s) or courses leading to degrees in Texas. The application form for the Certificate of Authorization may be found on the Board's website. The application must contain the following information:

(i) - (vi) (No change.)

(vii) Dates of accreditation granted by the Board-recognized accreditor.[-]

(I) If the institution is currently subject to a negative or adverse action by its Board-recognized accreditor, the institution must provide documentation explaining its current status and actions taken to reverse the negative or adverse action.

(II) If the institution applies based on accreditation of its main campus while seeking final approval for the new Texas-based campus from its Board-recognized accreditor and the Texas Workforce Commission, the institution must provide documentation from its accreditor acknowledging that a decision on campus accreditation can be made within fifteen (15) months of the issuance of a provisional Certificate of Authorization.

(viii) Acknowledgement of student complaint procedure, compliance with the institutional accrediting agency's standards for operation of institutions, annual review reporting requirements, substantive change notification, and student data reporting requirements contained in this section, §§1.110 - 1.120 of this title (relating to Student Complaint Procedure), §7.4 of this chapter (relating to Standards for Operation of Institutions), §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes), and §7.13 of this chapter (relating to Student Data Reporting), respectively;

(ix) Texas Workforce Commission Certificate of Approval or a Texas Workforce Commission exemption or exclusion from Texas Education Code, Chapter 132[-]

(x) Disclosure of most recent United States Department of Education financial responsibility composite score, including applicable academic year for score. If the institution has a score un-

der 1.5, the institution must provide documentation of all actions taken since date of calculation to raise the score.

(B) Board staff will verify information and accreditation status. Upon determination that an institution is in good standing with its Board recognized accreditor, has sufficient financial resources, and, if applicable, has provided sufficient documentation of correcting accreditation or financial issues, Board staff [and upon confirmation,] will provide a Certificate of Authorization to offer in Texas those degrees or courses leading to degrees for which it is accredited. If an institution is[-, or in the ease of] only providing clinicals or internships in the state of Texas, a Certificate of Authorization will be issued for the [an] institution to offer in the state of Texas identified clinicals or internships in connection with those degrees or courses leading to degrees for which the institution is accredited. The Certificate of Authorization will be issued to the institution by name, city and state.

(C) (No change.)

(D) Certificates of Authorization for institutions offering degrees or courses leading to degrees at a physical location in Texas, upon Board staff recommendation after annual review, expire at the end of the grant of accreditation by the Board-recognized accreditor.

(i) - (ii) (No change.)

(E) (No change.)

(F) Certificates of Authorization for Texas-based campuses which are provisionally-granted based on their main campus' accreditation expire at the end of fifteen (15) months.

(i) If accreditation has not been achieved by the expiration date, the provisionally-granted Certificate of Authorization will be withdrawn, the institution's authorization to offer degrees will be terminated, and the institution will be required to comply with the provisions of §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor).

(ii) Subsequent provisionally-granted Certificates of Authorization will not be issued.

(iii) At least ninety (90) days prior to expiration of the certificate, institutions operating under a provisionally-granted Certificate of Authorization must submit either an application for a Certificate of Authorization under this section or an application for a Certificate of Authority under §7.8 of this chapter.

[(2)] An institution that has requested a Certificate of Authorization but has not received authorization from its accrediting agency to be included in its main campus' accreditation either on an interim or final basis may be granted a Provisional Certificate of Authorization. The Provisional Certificate of Authorization is an acknowledgment that the institution has qualified for a temporary exemption from Board rules based on the main campus' accreditation and is authorized to offer degrees and courses that lead to a degree. The Provisional Certificate of Authorization will be authorized until such time as the institution is granted accreditation or for a period of 15 months, whichever occurs first. The conditions will be outlined in the Provisional Certificate of Authorization letter that will accompany the Provisional Certificate of Authorization. If accreditation has not been achieved by the expiration date, the Provisional Certificate of Authorization will be withdrawn, the institution's authorization to offer degrees will be terminated, and the institution will be required to comply with the provisions of §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor). Subsequent Provisional Certificates of Authorization will not be issued. At least ninety (90) days prior to expiration of the certificate, institutions operating under a Provisional Certificate of Authorization

must submit either an application for a Certificate of Authorization under this section or an application for a Certificate of Authority under §7.8 of this chapter.]

(2) [(3)] Grounds for Revocation of any Certificate of Authorization.

(A) [The] Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission.

(B) Institution loses accreditation from Board-recognized accreditor.

(C) Institution's Accreditor is removed from the U.S. Department of Education or the Board's list of approved accreditors. If the institution's Certificate of Authorization is revoked due to its accrediting agency's removal from the U.S. Department of Education and/or the Board's list of approved accreditors, the Board, or Board staff as delegated, shall set a provisional time period within which institutions may continue to operate, not to exceed any provisional time period set by the United States Department of Education.

(D) - (E) (No change.)

(F) Institution offers degrees for which it does not have accreditor approval.

(3) [(4)] Process for Removal of Authorization.

(A) Commissioner notifies institution of grounds for revocation as outlined in paragraph (2) [(3)] of this section.

(B) Upon receipt of the notice of revocation, the institution shall not enroll new students and may only grant or award degrees or offer courses leading to degrees [must cease granting or awarding degrees or offering courses leading to degrees] in Texas to students enrolled on the date of notice of revocation until it has either been granted a Certificate of Authority [or Alternative Certificate of Authority] to grant degrees, or has received a determination that it did not lose its qualification for a Certificate of Authorization.

(C) Within ten (10) days of its receipt of the Commissioner's notice, the institution must provide, as directed by Board staff, one or more of the following: ~~[respond and offer]~~

(i) proof of its continued qualification for the exemption; or

(ii) submit data as required by §7.13 of this chapter; or

(iii) a plan to correct any non-compliance or deficiencies which lead to revocation; or

(iv) a plan to seek new Board-recognized accreditation; or

(v) written intention to apply for a Certificate of Authority within 60 days of the notice of revocation; or

(vi) a written teach-out plan, which must be approved by Board staff before implementation; or

(vii) if the institution's Certificate of Authorization is revoked due to its accrediting agency's removal from the U.S. Department of Education or the Board's list of approved accreditors, a request to extend its Certificate of Authorization for the provisional time period set under paragraph (2) of this section.

(D) - (E) (No change.)

(F) If a determination allows the institution to continue operating, a new Certificate of Authorization will be provisionally-

granted. Provisions for continued operation under the new Certificate of Authorization may include, but are not limited to:

(i) requirements to provide updates to Board staff on a monthly basis;

(ii) continued progress toward full compliance with all Board rules and requirements;

(iii) continued progress toward new Board-recognized accreditation, if applicable, or toward approval for a Certificate of Authority; and

(iv) other requirements imposed by the Board.

(G) Certificates of Authorization which are provisionally-granted after a notice of revocation continue only as long as the institution complies with all such provisions.

(4) [(5)] Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003. The agreement shall be in writing, shall be subject to Board approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authorization for an institution is automatically withdrawn when the institution closes. The Commissioner may grant to an institution that has a degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(E) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(F) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board.

(G) The institution shall transfer all academic records pursuant to §7.5(d) of this chapter (relating to Administrative Penalties and Injunctions).

§7.8. Institutions Not Accredited by a Board-Recognized Accreditor. An institution which is not accredited by a Board-recognized accreditor and which does not meet the definition of institution of higher education contained in Texas Education Code, §61.003, must follow [either] the Certificate of Authority process [or Alternative Certificate of Authority process] in paragraphs (1) - (9) [(14)] of this section in order to offer degrees or courses leading to degrees in the state of Texas. Institutions are encouraged to contact the Board staff before filing a formal application.

(1) Certificate of Authority Eligibility.

(A) [Eligibility--] The Board will accept applications for a Certificate of Authority only from those applicants [institutions]:

(i) proposing to offer a degree or credit courses leading [alleged to be applicable] to a degree; and

(ii) which meet one of the following conditions:

(I) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as either a non-degree-granting institution or an exempt institution only offering degrees in religious disciplines for a minimum of two (2) years;

(II) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a degree-granting institution and seeks [wishes] to open a new campus;

(III) has been legally operating as a degree-granting institution in another state for a minimum of four (4) years and can verify compliance with all applicable laws and rules in that state; or

(IV) does not meet one of the three previous operational history conditions, but meets additional application and review requirements for its initial application, and agrees to meet additional conditions, restrictions, or reporting requirements during its first two years of operation under a Certificate of Authority. The Certificate of Authority will be issued with written, specific conditions, restrictions, or reporting requirements placed upon the institution [held an Alternative Certificate of Authority for one year].

(V) The Board may not issue a Certificate of Authority for a private postsecondary institution to grant a professional degree, as defined in §7.3[(35)] of this title (relating to Definitions) or to represent that credits earned in this state are applicable toward a degree if the institution is chartered in a foreign country or has its principal office or primary educational program in a foreign country.

(B) To be considered by the Board as operating, means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a Certificate of Authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety instrument, including but not limited to, a surety bond, an assignment of a savings or escrow account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions, which is:

(i) In a form and amount acceptable to the Board; [and]

(I) The amount of the surety instrument submitted to the Board with an application shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms;

(II) The applicant shall include a letter signed by an authorized representative of the institution showing in detail the cal-

culations made pursuant to this section and explaining the method used for computing the amount of the surety instrument;

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the guaranteeing entity will assume; and[-]

(iii) Held in Travis County, Texas, and conditioned to allow only the Board to withdraw funds for the benefit of persons identified in clause (ii) of this subparagraph.

(2) Certificate of Authority Application Submission and Requirements [for Certificate of Authority].

(A) An applicant must submit an application to the Board to be considered for a Certificate of Authority to offer identified proposed degree(s), and courses which may be applicable toward a degree, in Texas.

(i) [(A)] Applications must be submitted as [with] an original and a copy [four (4) copies] in an electronic format as specified by Board staff, and accompanied by the application fee described in paragraph (3) [(9)] of this section.

(ii) A single desk review of the application will be conducted to determine completeness and readiness for a site team visit.

(iii) The desk review will be done by a reviewer who will act as the site review team leader if the application is deemed complete and ready for a site team visit.

(iv) The desk reviewer, in consultation with Board staff, will make three possible recommendations. Board staff will make a final determination on acceptability of the application based on one of the three recommendations:

(I) The application is determined to be foundationally incomplete in one or more Standards for Operation of Institutions as described in §7.4 of this chapter and not ready for submission. A foundationally incomplete application is one where the Standards for Operation of Institutions have not been met to such a degree that the institution is unlikely to be sustainable or operational.

(II) The application may be resubmitted after incorporating revisions or additions suggested by the reviewer. The revisions or additions must allow the application to meet all Standards for Operation of Institutions.

(III) The application is acceptable and ready for a site review visit.

(v) If the application is foundationally incomplete and not ready for submission, a portion of the application fee, if not expended during the desk review, may be returned and another application may not be submitted for one year from the date of rejection of the foundationally incomplete application.

(B) The application form for the Certificate of Authority may be found on the Board's website.

(C) The Certificate of Authority application must include:

(i) The name and address of the institution;

(ii) The purpose and mission of the institution;

(iii) [(C)] Documentary evidence of compliance with paragraph (1)(A)(i)-(iii)[(ii)] of this section; [must be filed with the application.]

(iv) Documentary evidence of either a Letter of Exemption or Certificate of Approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132;

(v) Documentary evidence of articles of incorporation or other Texas-authorized organizational documents, regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution;

(vi) Identification, by name and contact information,
of:

(I) The sponsors or owners of the institution;

(II) The designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions);

(III) The chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(IV) Identification of faculty who will, in fact, teach in each program of study, including identification of colleges attended and copies of transcripts for every degree held by each faculty member;

(vii) [(D)] Information regarding each degree or course leading to a degree which the applicant [institution] proposes to offer, including a full description of the proposed degree or degrees to be awarded and the course or courses of study prerequisite thereto;[-]

(viii) A description of the facilities and equipment utilized by the applicant, including, if applicable, all equipment, software, platforms and other resources used in the provision of education via online or other distance education;

(ix) Detailed information describing the manner in which the applicant complies with each of the Standards of Operations of Institutions contained in §7.4 of this chapter (relating to Standards for Operations of Institutions);

(x) If applicable, institutions accredited by entities which are not recognized by the Board must submit all accrediting agency reports and any findings and institutional responses to such reports and findings for ten years immediately preceding the application for a Certificate of Authority. Accreditation by entities which are not recognized by the Board does not allow an institution to offer a degree or courses leading to a degree without a Certificate of Authority to offer such degree or courses;

(xi) A written accreditation plan, identifying:

(I) The Board-recognized accrediting agency with which the applicant intends to apply for institutional accreditation;

(II) The planned timeline for application with and approval by the Board-recognized accrediting agency;

(III) Any contacts already made with the Board-recognized accrediting agency, including supporting documents.

(xii) Any additional information which the board may request.

(D) An applicant that does not meet the previous operational history conditions described by §7.8(1)(A)(ii)(I)-(III) of this chapter must be able to demonstrate it is able to meet all Standards for Operation of Institutions found in §7.4 of this chapter through docu-

mentation and/or possession of adequate resources. Such demonstration includes, but is not limited to:

(i) Executed agreements with all administration and faculty identified in the application;

(ii) Complete curriculum, assessment, and learning tools for each proposed degree;

(iii) Possession of all listed facilities and resources.

(E) An applicant that does not meet the previous operational history conditions described by §7.8(1)(A)(ii)(I)-(III) of this chapter may not apply for a graduate degree or for more than one area of study as part of its initial application for a Certificate of Authority. [Name and contact information of the designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions).]

(3) Fees Related to Certificates of Authority.

(A) Each biennium the Board shall set the fees for applications for Certificates of Authority, which shall not exceed the average cost, in the preceding two fiscal years, of staff time, review and consultation with applicants, and evaluation of the applications by necessary consultants, including the cost of such consultants.

(B) Each biennium, the Board shall also set the fees for amendments to add additional degree programs to Certificates of Authority.

(C) The Commissioner shall request changes in the fees at a Board quarterly meeting.

(4) [(3)] Authorization Process.

[(A) An institution must submit an application to the Board to be considered for a Certificate of Authority to offer specific degree(s), and courses which may be applicable toward a degree, in Texas.]

[(B) Each institution must have either a Letter of Exemption or Certificate of Approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132.]

[(C) An institution must submit detailed information describing the manner in which the institution complies with each of the Standards of Operations of Institutions contained in §7.4 of this chapter (relating to Standards for Operations of Institutions).]

[(D) Institutions accredited by entities which are not recognized by the Board must submit all accrediting agency reports and any findings and institutional responses to such reports and findings.]

[(E) Each institution must provide the required fee set by the Commissioner on a biennial basis which is necessary to cover the costs of the application review; site review team; and travel, meals, lodging and consulting fees for the review.]

(A) [(F)] Based upon the information contained in the application, the Commissioner or his/her designee shall determine whether a site review team is necessary. A site review team is always required for applications for an initial Certificate of Authority.

(B) [(G)] [If a site review team is required, the Commissioner or his/her designee shall identify] A [a] site review team shall be composed of no fewer [less] than three (3) members [individuals], all of whom have experience and knowledge in postsecondary education. The combined team experience and knowledge shall be sufficient to review all applicable standards of the agency.

(C) [(H)] An institution must demonstrate it is prepared to be fully operational as of the date of the on-site evaluation; i.e., it

must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions.

(D) The conditions found at the institution as of the date of the on-site evaluation review team's visit will provide the basis for the [visiting] team's evaluation and report, the Certification Advisory Council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a Certificate of Authority.

(E) [(H)] The site review team shall conduct an on-site review of the institution and prepare a report regarding the institution's ability to meet the Standards of Operation.

(F) [(J)] The applicant [institution] shall have thirty (30) days in which to respond in writing to the report.

(G) [(K)] The Certification Advisory Council shall review the site review team's report and the applicant's [institution's] response and make a recommendation regarding disposition to the Board and Commissioner.

(i) If the applicant has no previous operational history as described by §7.8(1)(A)(ii)(I)-(III) of this chapter, the Council shall make recommendations for additional conditions, restrictions, or reporting requirements during the first two years of operation under a Certificate of Authority.

(ii) If the applicant has previous operational history as described by §7.8(1)(A)(ii)(I)-(III) of this chapter, the Council may make recommendations for additional conditions, restrictions, or reporting requirements during the first two years of operation under a Certificate of Authority.

(H) [(L)] The [Upon receipt of the Council's recommendation, the] Commissioner shall make his/her recommendation regarding the application to the Board [if it differs from the Council's recommendation]. The Commissioner's recommendation shall be made independent of the Certification Advisory Council's recommendation. The Commissioner may make recommendations for additional conditions, restrictions, or reporting requirements for the time the institution is operating under a Certificate of Authority.

(I) [(M)] After review of the Commissioner's and Council's recommendations, if the Board approves the application, the Commissioner shall immediately have prepared a Certificate of Authority containing the issue date, a list of the approved degree(s) or courses leading to degrees, and the period for which the Certificate is valid. If applicable, the Certificate of Authority will be issued with any written, specific conditions, restrictions, or reporting requirements placed upon the institution and approved by the Board.

(J) [(N)] After review of the Commissioner's and Council's recommendations, if the Board does not approve the application, the Commissioner shall immediately notify the applicant of the denial and the reasons for the denial.

(K) [(O)] Upon denial, an applicant [the institution] that has met the previous operational history conditions described by §7.8(1)(A)(ii)(I)-(III) of this chapter may not reapply for a period of one hundred eighty (180) days from date of denial.

(L) Upon denial, an applicant that has not met the previous operational history conditions described by §7.8(1)(A)(ii)(I)-(III) of this chapter may not reapply for a period of one year from date of denial.

(5) [(4)] Terms and Limitations of a Certificate of Authority.

(A) The Certificate of Authority to grant degrees is valid for a period of two (2) years from the date of issuance.

(B) Certification by the state [State] of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in subparagraph (A) [(C)] of this paragraph. Therefore, the institution awarded a Certificate of Authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the state [State] of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the Certificate of Authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

[(C) An institution may be granted consecutive Certificates of Authority for a total grant of no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a Board-recognized accrediting agency.]

(C) [(S)] Institutions holding a Certificate of Authority will be required to:

(i) [(A)] furnish a list of their agents to the Board;

(ii) [(B)] maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board; and

(iii) [(C)] report any substantive change, including changes in administrative personnel, faculty, or facilities.

(D) Institutions that, upon application, did not meet one of the three previous operational history conditions described by §7.8(1)(A)(ii)(I)-(III) of this chapter, in addition to the requirements of subparagraph (C) of this paragraph, are required to provide, at the end of the first year of the initial Certificate of Authority:

(i) Documentary evidence of continued exemption or approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132;

(ii) Current audited financial statements, including a balance sheet, income statement, statement of changes in net worth, and statement of cash flow, updated since issuance of the initial Certificate of Authority;

(iii) Documentation of continued validity of any required financial surety instrument;

(iv) Current enrollment, retention, and graduation numbers for students in all approved degree programs; and

(v) An updated accreditation plan, including any progress made toward obtaining Board-recognized accreditation identified in the initial application or a change in plans to apply for accreditation with another Board-recognized accreditation agency.

(E) Authority to Represent Transferability of Course Credit. Any institution as defined in §7.3 of this chapter, whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(i) the other institution is named in such representation, and is accredited by a Board-recognized accrediting agency or has a Certificate of Authority;

(ii) the courses are identified and documented for which credit is claimed to be applicable to the degree programs at the other institution; and

(iii) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' governing boards in writing, and is filed with the Board.

(6) Amendments to a Certificate of Authority.

(A) An institution seeking to amend its Certificate of Authority to award a new or different degree during the period of time covered by its current Certificate of Authority may file an application for amendment, on forms provided by the Board upon request, subject to the following exceptions:

(i) An institution with no previous operational history described by §7.8(1)(A)(ii)(I)-(III) of this chapter which has been granted a Certificate of Authority may not apply for an amendment during the period of time covered by its initial Certificate of Authority.

(ii) An institution with operational history described by §7.8(1)(A)(ii)(I)-(III) of this chapter which has been granted a Certificate of Authority may not apply for an amendment within the first one hundred eighty (180) days after the grant of its initial Certificate of Authority.

(iii) An institution with operational history described by §7.8(1)(A)(ii)(I)-(III) of this chapter which has been granted a Certificate of Authority with restrictions may not apply for an amendment during the period of time covered by the restricted Certificate of Authority.

(iv) An institution seeking to discontinue a degree program, without closure of the institution, shall assure the continuity of students' education by entering into a teach-out agreement with:

(I) another institution authorized by the Board to hold a Certificate of Authority;

(II) an institution operating under a Certificate of Authorization; or

(III) a public or private institution of higher education as defined in Texas Education Code §61.003.

(v) The teach-out agreement shall be in writing, shall be subject to Board staff approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(B) Applications for amendments shall be accompanied by the fee described in paragraph (3) of this subsection for each amendment to an existing degree or for each application to award a new or different degree.

(C) Based upon the information contained in the application for amendment, the Commissioner or his/her designee may utilize an outside consultant, the Certification Advisory Council, or both, to review the application for amendment in order to make a recommendation to the Board.

(D) Upon Board approval that the new or revised degree program meets the required standards, the Board shall amend the institution's Certificate of Authority accordingly.

(E) A change of degree level or additional program would require an amended Certificate of Authority prior to beginning the program.

(7) Renewal of Certificate of Authority.

(A) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current Certificate of Authority, an institution seeking renewal shall make application to the Board on forms provided upon request. The renewal application must include any applications for or renewal of accreditation by national or regional accrediting agencies. The renewal application shall be accompanied by the fee described in paragraph (3) of this subsection.

(B) The application for renewal of the Certificate of Authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the renewal application must include the institution's record of improvement and progress toward accreditation. Evaluation of the renewal application will include review of compliance with any specific conditions, restrictions, or reporting requirements placed upon the institution during the period of the previous Certificate of Authority and whether continuation or addition of conditions, restrictions or reporting requirements is warranted.

(C) An institution may be granted consecutive Certificates of Authority for a total grant of no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency.

(D) Subject to the application and authorization restrictions of this section, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards and is making sufficient progress toward accreditation by a Board-recognized accrediting agency.

(8) [6] [Grounds for] Revocation of Certificate of Authority.

(A) Grounds for revocation include:

(i) [~~(A)~~] [~~The~~] Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission; or[-]

(ii) [~~(B)~~] Institution fails to comply with substantive change notification and data reporting requirements as outlined in §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Student Data Reporting), respectively; or[-]

(iii) [~~(C)~~] Institution offers degrees or courses leading to a degree for which it does not have Board approval; or[-]

(iv) [~~(D)~~] Institution fails to maintain the Standards of Operation as defined in §7.4 of this chapter; or[-]

(v) [~~(E)~~] Failure to comply with [paragraph (3)(D) of this section] the requirement to submit all accrediting agency correspondence, reports, or findings and institutional responses to such correspondence, reports, and findings if an institution is accredited by entities which are not recognized by the Board; or[-]

(vi) Failure to fully comply with any additional conditions, restrictions, or reporting requirements placed upon the institution as part of its current Certificate of Authority.

(B) [~~(7)~~]Process for revocation [~~Revocation~~] of Certificate of Authority to offer [~~Offer~~] degrees [~~Degrees~~] in Texas;[-]

(i) [~~(A)~~] Board notifies institution of grounds for revocation as outlined in this paragraph via registered or certified mail; [~~(6)~~ of this section;]

(ii) [~~(B)~~] Within ten (10) days of its receipt of the Commissioner's notice, the institution must either cease and desist operations or respond and offer proof of its continued qualification for the

authorization ~~[exemption]~~, and/or submit data as required by ~~[[§7.13 of] this chapter;]~~

~~(iii) [(C)]~~ After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing;]

~~(iv) [(D)]~~ If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

~~(C) [(E)]~~ Without a valid ~~[Until the]~~ Certificate of Authority, the institution must immediately cease and desist all operations, including granting ~~[is reinstated, the institution may not grant]~~ degrees, offering ~~[offer]~~ courses leading to degrees, receiving ~~[or receive]~~ payments from students for courses which may be applicable toward a degree, or enrolling new students.

~~(i)~~ If an institution must cease and desist operations, within forty-five (45) days of the adverse determination becoming final and binding, the institution must assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003.

~~(ii)~~ The teach-out agreement shall be in writing, shall be subject to Board staff approval prior to implementation, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

~~(D) [(8)]~~ Reapplication After Revocation of Certificate of Authority.

~~(i) [(A)]~~ The institution will not be eligible to reapply for a period of one hundred eighty (180) days.

~~(ii) [(B)]~~ The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

~~(iii) [(C)]~~ The period of time during which the institution does not hold a Certificate of Authority shall not be counted against the eight (8) year period within which the institution must achieve accreditation from a Board-recognized accrediting agency absent sufficient cause, as described in paragraph ~~(7)(C) [(4)(C)]~~ of this section; the time period begins to run again upon reinstatement.

~~(9) Fees Related to Certificates of Authority;]~~

~~(A)~~ Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for Certificates of Authority, which shall be equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members, if an on-site review is conducted;]

~~(B)~~ Each biennium, the Commissioner shall also set the fees for amendments to Certificates of Authority;]

~~(C)~~ The Commissioner shall report changes in the fees to the Board at a quarterly meeting;]

~~(10) Renewal of Certificate of Authority;]~~

~~(A)~~ At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current Certificate of Authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in paragraph (9) of this section;]

~~(B)~~ The application for renewal of the Certificate of Authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the evaluation will include the institution's record of improvement and progress toward accreditation;]

~~(C)~~ An institution may be granted consecutive Certificates of Authority for no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency;]

~~(D)~~ Subject to the restrictions of paragraph (3) of this section, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards;]

~~(11) Amendments to a Certificate of Authority;]~~

~~(A)~~ An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by its current certificate may file an application for amendment, on forms provided by the Board upon request. An institution may begin operating such a program upon filing the application, and the application shall be deemed to be granted if not rejected by the Board within one hundred twenty (120) days;]

~~(B)~~ Applications for amendments shall be accompanied by the fee described in paragraph (9) of this section;]

~~(C)~~ Unless the Board finds that the new program of study does not meet the required standards, the Board shall amend the institution's certificate accordingly;]

~~(D)~~ A change of degree level would require an amended Certificate of Authority prior to beginning the program;]

~~(12) Authority to Represent Transferability of Course Credit.~~ Any institution as defined in §7.3 of this chapter, whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:]

~~(A)~~ the other institution is named in such representation, and is accredited by a recognized accrediting agency or has a Certificate of Authority;]

~~(B)~~ the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and]

~~(C)~~ the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' governing boards in writing, and is filed with the Board;]

~~(9) [(13)] Closure of an Institution.~~

~~(A)~~ The governing board, owner, or chief executive officer of an institution that plans to cease operation in the state of Texas shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

~~(B) - (C) (No change.)~~

(D) The Certificate of Authority [Authorization] for an institution is automatically withdrawn as of the date [when] the institution closes. The Commissioner may grant to an institution that has existing [a] degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(i) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(ii) No new students shall be admitted to [allowed to enter] the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board, or Board staff, as delegated, or the transferred degree program already has such approval.

~~[(14) Alternative Certificate of Authority. In lieu of the standard Certificate of Authority requirements for institutions and their agents described in paragraphs (1) - (13) of this section, an institution may obtain an Alternative Certificate of Authority to issue degrees as provided by this subsection. Alternative Certificates of Authority shall be issued by the Commissioner and are temporary, being valid for twelve (12) months, after which a regular Certificate of Authority shall be required. A site visit shall be conducted by Board staff during the initial twelve (12) month period.]~~

~~[(A) Surety Instrument Requirement. At the time application is made for an Alternative Certificate of Authority, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Board a surety bond or surety alternative which meets the requirements set forth in these sections. Schools located in Texas each shall file one bond or surety alternative covering the school and its agents.]~~

~~[(i) The amount of the bond or other allowable surety instrument submitted to the Board with an application for an Alternative Certificate of Authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms.]~~

~~[(ii) A school, whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students, shall be noncompliant with these sections; and, if, after ten (10) working days from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its Alternative Certificate of Authority.]~~

~~[(iii) Following the initial filing of the surety bond with the Board, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than twenty-five thousand dollars (\$25,000).]~~

~~[(iv) The institution shall include a proposal in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the bond or surety alternative.]~~

~~[(v) In order to be approved by the Board, a surety bond must be:]~~

~~[(I) An original bond;]~~

~~[(II) Executed by the applicant and by a surety company authorized to do business in Texas;]~~

~~[(III) In a form acceptable to the Board; and]~~

~~[(IV) Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation.]~~

~~[(vi) In lieu of a surety bond, an applicant may file with the Board an assignment of savings account that:]~~

~~[(I) Is in a form acceptable to the Board;]~~

~~[(II) Is executed by the applicant; and]~~

~~[(III) Is executed by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation.]~~

~~[(vii) In lieu of a surety bond, an applicant may file with the Board a certificate of deposit that:]~~

~~[(I) Is issued by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation;]~~

~~[(II) Is either:]~~

~~[(a) Payable to the Board;]~~

~~[(b) In the case of a negotiable certificate of deposit, is properly assigned without restriction to the Board; or]~~

~~[(c) In the case of a non-negotiable certificate of deposit, is assigned to the Board by assignment in a form satisfactory to the Board.]~~

~~[(viii) In lieu of a surety bond, an applicant may file with the Board an irrevocable letter of credit that:]~~

~~[(I) Is in a form acceptable to the Board; and]~~

~~[(II) Is conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation.]~~

~~[(ix) In lieu of a surety bond, an applicant may file with the Board a properly executed participation contract with a private association, partnership, corporation or other entity whose membership is comprised of postsecondary institutions, which:]~~

~~[(I) Is in a form acceptable to the Board; and]~~

~~[(II) Is conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.]~~

~~[(x) Whenever these sections require a document to be executed by an applicant the following shall prevail:]~~

~~[(I) If the applicant is a corporation, the document must be executed by the president of the corporation or persons designated by the corporate board.]~~

{(II) If the applicant is a limited liability corporation the document must be executed by the members.}

{(III) If the applicant is a partnership, the document must be executed by all general partners.}

{(IV) If the applicant is an individual, the document must be signed by the individual.}

{(V) If the applicant is a state agency, the document must be signed by the Director of that Department.}

{(VI) If the applicant is a local government, the document must be signed by the mayor or board president.}

{(xi) Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution and resources equal to or exceeding the maximum bonds required of all single schools.}

{(xii) A school applying for an Alternative Certificate of Authority shall be exempt from the surety instrument requirement if it can demonstrate a United States Department of Education composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.1 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two (2) years.}

{(B) Application and Statement. Institutions seeking an Alternative Certificate of Authority are urged to obtain informal guidance from Board staff before filing a formal application. The Board will accept applications for an Alternative Certificate of Authority only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.}

{(C) An institution seeking an Alternative Certificate of Authority shall submit to the Board a completed application, which must demonstrate it meets, or has the ability to meet, depending on circumstances, the standards set out in §7.4 of this chapter; a signed and dated affirmation statement, acknowledging compliance with certification criteria set forth in this section; and a notarized attestation statement signed by the chief executive officer or equivalent. The application form shall contain:}

{(i) The name and address of the institution and its purpose;}

{(ii) The names of the sponsors or owners of the institution;}

{(iii) The regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution;

{(iv) The names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

{(v) The names of faculty who have been retained, their area(s) of teaching, and their degrees held;}

{(vi) The types of degrees to be awarded and a list of courses that may be included in each degree program; and}

{(vii) The location of any facilities maintained or being constructed and a list of potentially hazardous equipment which requires a federal or state government license to operate, if any has been acquired, that is to be used by students in the teaching process.}

{(D) Institutions shall certify that they maintain a list of their agents as defined in §7.3 of this chapter and have policies to ensure that their agents are of good character and provide accurate informa-

tion to prospective students and their families, but such agents are not required to register with the Board or submit a fee.}

{(E) Applications must be submitted with an original and four copies and accompanied by the required fee. Alternative Certificate of Authority fees shall be five hundred dollars (\$500) more than the fee for a regular Certificate of Authority, as established in paragraph (9) of this section.}

{(F) Board's Review of Applications.}

{(i) Within ninety (90) days of receipt of a complete application, Board staff will review said application and recommend to the Commissioner either approval or denial of the application.}

{(ii) Within one hundred twenty (120) days of receipt of a complete application, the Commissioner shall either award a one-year Alternative Certificate of Authority or deny the application.}

{(iii) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title.}

{(iv) Upon denial, or after the institution has exhausted all appeal options and has not prevailed, the institution may not reapply for a period of one hundred eighty (180) days.}

{(G) Terms and Limitations of an Alternative Certificate of Authority.}

{(i) The Alternative Certificate of Authority to grant degrees is valid for one (1) year from the date of issuance.}

{(ii) The institution shall notify the Board at least ten (10) working days prior to the start of the first class of its first year schedule. Board staff shall visit the institution and interview both staff and students at least once during the first year.}

{(iii) Certification by the State of Texas is not accreditation; but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in paragraph (10)(C) of this section. An institution awarded an Alternative Certificate of Authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the Alternative Certificate of Authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are usually mentioned, including the institution's catalog and the home page of the institution's Internet website.}

{(iv) Approval of the application grants the institution the authority to award degrees or to enroll students for courses that may be applicable toward a degree only for those programs approved by the Alternative Certificate of Authority. Separate program approval shall be required for each additional degree program in accordance with this chapter.}

{(v) The Commissioner may revoke an institution's Alternative Certificate of Authority to grant degrees at any time if the Commissioner finds that:}

{(t) Any statement contained in an application for the certificate is untrue;}

~~[(H)] The institution has failed to maintain the standards of the Board, as described herein, on the basis of which the certificate was granted;~~

~~[(III)] Advertising or representations made on behalf of the institution is deceptive or misleading;~~

~~[(IV)] The institution has offered degrees or courses leading to degrees for which they have not been approved in an Alternative Certificate of Authority; or]~~

~~[(I)] The institution has violated any provision of this subchapter.]~~

~~[(H) Continuing Operations after One Year.]~~

~~[(i) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current Alternative Certificate of Authority, an institution, if it desires to continue operations, shall make application to the Board for a Certificate of Authority following the process in paragraph (10) of this section. Only one Alternative Certificate of Authority will be granted.]~~

~~[(ii) The application will be evaluated in the same manner as that prescribed for evaluation of an initial application.]~~

~~§7.10. Registration of Agents~~

~~(a) Application for Registration--An agent as defined in §7.3 of this chapter (relating to Definitions) shall submit an application to the Board in the following manner:~~

~~(1) - (4) (No change.)~~

~~(5) At least sixty (60), but no more than one hundred twenty (120), days prior to the expiration of an agent's certificate, the agent may [shall] complete and file with the Board an application for renewal, accompanied by the registration fee described in [§7.8(9)] of this section [chapter].~~

~~(6) (No change.)~~

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

~~§7.11. Changes of Ownership and Other Substantive Changes.~~

~~(a) Change of Ownership or Control for Career Schools and Colleges. In the event of a change in ownership or control of a career school or college, the Certificate of Authority or Certificate of Authorization is automatically void [withdrawn] unless the institution meets the requirements of this section.~~

~~(b) The Commissioner may authorize the institution to retain the Certificate of Authority or Certificate of Authorization during and after a change of ownership or control, provided that the institution notifies Board staff of the impending transfer in time for staff to receive, review, and approve the documents listed in paragraphs (1) - (3) of this subsection and provided that the following conditions are met:~~

~~(1) (No change.)~~

~~(2) The institution must submit an acceptable written statement of assurance that the new owner understands and undertakes to fully comply with all applicable Board rules, regulations, and/or policies; [and]~~

~~(3) The institution must submit documentation that the new owner has been approved by the institution's Board-recognized accreditor to operate the institution or is able to meet the requirements of the existing Certificate of Authority; and~~

~~(4) [(3)] The institution must submit satisfactory evidence of financial ability to adequately support and conduct all approved programs. Documentation shall include but may not be limited to independently audited financial statements and auditor's reports and assurance~~

that the new owner does not currently own or operate any institutions under financial restrictions for, or is not permanently debarred from participating in, federal financial aid by the United States Department of Education.

(c) (No change)

(d) Any modification of an approved degree program that results from a change of ownership or control constitutes a program revision. Requests for approval of program revisions or other substantive changes as defined in §7.3 of this chapter (relating to Definitions) shall conform to the procedures and requirements contained in §7.7[(1)] and §7.8[(1)] of this chapter.

(e) - (f) (No change.)

§7.14. Distance Education Approval Processes for Degree Granting Colleges and Universities Other Than Texas Public Institutions.

An institution which does not meet the definition of institution of higher education contained in Texas Education Code §61.003 and wishes to offer distance education to students in Texas must follow the requirements in paragraph (1) or (2) of this section. For the purposes of this section distance education shall mean education or training delivered off campus via educational technologies where the student(s) and the instructor(s) are separated by physical distance and/or time.

(1) Exempt Institutions.

(A) An institution is exempt and does not need to receive permission from the Board to offer distance education programs and courses to Texas students if it fulfills the following:

(i) Accredited to offer degrees at a specific level either by an accrediting agency recognized by the Board or an accrediting agency recognized by the Secretary of Education of the U.S. Department of Education or approved by a Texas state agency which authorizes the school's graduates to take a professional or career and technical state licensing examination administered by that agency; [and]

(ii) No physical presence in the state as defined by §7.3 of this chapter (relating to Definitions); and[-]

(iii) Meets and agrees to comply with Council of Regional Accrediting Commissions (C-RAC) provisions as listed in this section.

(B) - (D) (No change.)

(2) Nonexempt Institutions.

(A) - (B) (No change)

(C) As part of its qualification or continued approval for a Certificate of Authorization or a Certificate of Authority, a nonexempt institution must meet and agree to comply with C-RAC provisions as listed in this section before offering distance education.

(3) Board staff shall utilize the best practices in postsecondary distance education as adopted by the C-RAC as standards for approval of distance education offered in Texas or to Texas residents. C-RAC provisions applicable to all institutions offering distance education under this section include:

(A) Online learning is appropriate to the institution's mission and purposes;

(B) The institution's plans for developing, sustaining, and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;

(C) Online learning is incorporated into the institution's systems of governance and academic oversight;

(D) Curricula for the institution's online learning offerings are coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats;

(E) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals;

(F) Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieving the online learning goals are appropriately qualified and effectively supported;

(G) The institution provides effective student and academic services to support students enrolled in online learning offerings;

(H) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings; and

(I) The institution assures the integrity of its online offerings.

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

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

TRD-201603794

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 11, 2016

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



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS

19 TAC §§21.21 - 21.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Chapter 21, Subchapter B, Determination of Resident Status, §§21.21 - 21.30.

Specifically, §21.21 is amended to specify Chapter 54 of the Texas Education Code as the chapter requiring the Board to adopt these rules.

Section 21.22 is amended to remove outdated language and terms that are not used in Subchapter B, Determination of Resident Status, and to clarify certain definitions.

Section 21.23 is amended to clarify that the rules adopted by the Board in October 2016 are effective beginning with residency decisions made after the census date of the 2017 fall semester.

Section 21.24 is amended to add a new subsection (b), Texas Residency, to list required documentation to support a physical presence in the state. This language was formerly in Chart II, which is proposed for repeal. The following subsections are renumbered accordingly. Renumbered §21.24(c) removes the term "residence." For those persons trying to establish domicile under §21.24(a)(2) and (3), domicile is the defining factor in establishing whether a person may pay in-state tuition. A residence in this state is merely lends support to the establishment and maintenance of domicile in Texas. Renumbered §21.24(d)(3)

is amended to clarify that certain nonresident classifications are eligible to maintain domicile. Renumbered new §21.24(d)(5) is amended to delete "special agricultural worker" as that category was repealed by Sec. 219(ee)(1) of the Immigration and Nationality Act of 1994 (Pub. L. 103-416, 108 Stat. 4319, Oct. 25, 1994). Current subsection (e) is being redesignated as subsection (f), which is amended to clarify how a person who qualifies as a resident under §21.24(a)(2) and (a)(3) may establish and maintain a Texas domicile for the requisite number of months. Current §21.24(e)(1) through (e)(4) are proposed for repeal. New §21.24(f)(1) and (f)(2) contain language from Chart II to provide more detailed information about how to establish and maintain domicile. Chart II is proposed for repeal.

Section 21.25(b) is amended to delete the Attached Graphic titled, "Chart II, Documentation to Support Establishing and Maintaining Domicile in Texas," and the chart's key elements are integrated into to §21.24(b) and (f) in order to better tie the bases for establishing and maintaining domicile to relevant documentation.

Section 21.26 is amended to more clearly state the instances when a student is entitled to remain classified as a resident of this state and when a student must provide updated information to prove he or she is entitled to resident tuition.

Section 21.27 is amended to remove the reference from Chart II, §21.25(b) to §21.24.

Section 21.28 is amended to more closely align with the language of Texas Education Code, §54.056. In accordance with this statutory provision, regardless of the reason, if an institution of higher education erroneously classifies a person as a nonresident of this state, the institution must refund to the person the amount of tuition the person paid in excess of resident tuition.

Section 21.29 is amended to clarify that an institution's Residence Determination Official is responsible for residency determinations for the institution.

Section 21.30 is amended to clarify that an institution must retain documentation proving that the person is a resident of this state for those individuals described in §21.25(a)(1)(B).

Corrections to rule structure and terminology were made throughout Subchapter B, as appropriate.

R. Jerel Booker, J.D., Assistant Commissioner, Division for College Readiness and Success, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

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

Comments on the proposal may be submitted to Jerel Booker, Assistant Commissioner, Division for College Readiness and Success, P.O. Box 12788, Austin, Texas 78711, in care of Jane Caldwell, who may be reached at jane.caldwell@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The amendments affect Texas Education Code, §§54.052 - 54.057.

§21.21. *Authority and Purpose.*

Texas Education Code, §54.075, requires the Board to adopt rules to carry out the purposes of Texas Education Code, Chapter 54, Subchapter B, concerning the determination of resident status for tuition purposes.

§21.22. *Definitions.*

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

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

(4) Core Residency Questions--The questions promulgated by the Board to be completed by a person and used by an institution as a significant aid in determining [to determine] if the person is a Texas resident. [For enrollments prior to the 2008-2009 academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the ApplyTexas Application, or the core questions set forth in current Board rules or posted on the Texas Higher Education Coordinating Board web site.] The core questions [to be used for enrollments on or after the 2008-2009 academic year] shall be those set forth [the core questions] in the ApplyTexas Application or [core questions] posted on the Board web site.

(5) - (8) (No change.)

~~(9) Erroneously classifies a person as a nonresident--An action done if an institution, in spite of information to the contrary that is provided by the student by the census date of a given semester, fails to classify an otherwise eligible student as a resident.]~~

(9) [(40)] Established domicile in Texas--Physically residing in Texas, with the intent to maintain domicile in Texas, for at least the 12 consecutive months immediately preceding the census date of the term of enrollment, allowing for documented temporary absences.

~~[(11) Financial need--An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.]~~

(10) [(42)] Gainful employment--Employment intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care) that is sufficient to provide at least one-half of the individual's tuition, fees and living expenses as determined in keeping with the institution's student financial aid budget or that represents an average of at least twenty hours of employment per week. A person who is self-employed or who is living off his/her earnings may be considered gainfully employed for purposes of establishing residency, as may a person whose primary support is public assistance. Employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment for purposes of residency determination.

(11) [(43)] General Academic Teaching Institution--As [the term is] defined in Texas Education Code §61.003(3)[, §61.003].

(12) [(44)] Independent institution--As defined in Texas Education Code[, §61.003(15)].

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

(14) [(46)] Legal guardian--A person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(15) [(47)] Maintain domicile--Physically residing [To physically reside] in Texas such that the person always intends to [always] return to the state after a temporary absence. The maintenance of domicile is not interrupted by a temporary absence from the state[, as provided in paragraph (30) of this section].

(16) [(48)] Managing conservator--A parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(17) [(49)] Nonresident tuition--The amount of tuition paid by a person who is not [does not qualify as] a Texas resident and who is not entitled or permitted to pay resident tuition under this subchapter [unless such person qualifies for a waiver program under Subchapter SS of this title (relating to Waiver Programs for Certain Nonresident Persons)].

(18) [(20)] Nontraditional secondary education--A course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(19) [(21)] Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would not otherwise include a step-parent.

(20) [(22)] Possessory conservator--A natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(21) [(23)] Private high school--A private or parochial school in Texas.

(22) [(24)] Public technical institute [or college]--As defined in Texas Education Code §61.003(7) [The Lamar Institute of Technology or any campus of the Texas State Technical College System].

(23) [(25)] Regular semester--A fall or spring semester, typically consisting of 16 weeks.

(24) [(26)] Residence--A person's home or other dwelling place; where a person resides.

(25) [(27)] Residence Determination Official--The primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(26) [(28)] Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(27) [(29)] Residential real property--Real property on which a dwelling fit for long-term human habitation is located.

(28) [(30)] Temporary absence--Absence from the State of Texas by a person who has established domicile in the state, with the intention to return, generally for a period of short duration (i.e., less than 30 days). However, in some situations, the absence can be significantly longer [less than five years]. For example, the temporary absence of a person or a dependent's parent from the state for the purpose of service in the U. S. Armed Forces, U. S. Public Health Service, U.

S. Department of Defense, U. S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that Texas is his or her domicile.

(29) [(34)] United States Citizenship and Immigration Services (USCIS)--The bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.23. *Effective Date of this Subchapter.*

[Each institution shall apply this subchapter beginning with enrollments for the Fall Semester, 2006.] Changes to this subchapter adopted in October 2016 [January 2011] are effective with residency decisions made after the census date of the Fall Semester, 2017 [2011].

§21.24. *Determination of Resident Status.*

(a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:

(1) a person who:

(A) graduated from a public or accredited private high school in this state or[; as an alternative to high school graduation,] received the equivalent of a high school diploma in this state, including the successful completion of a nontraditional secondary education, and

(B) (No change.)

(2) - (3) (No change.)

(b) Texas Residency: The following is a list of documents that may provide support to a claim of physical residence in Texas.

(1) Utility bills for the 12 consecutive months preceding the census date;

(2) Cancelled checks that reflect a Texas residence for the 12 consecutive months preceding the census date;

(3) A current credit report that documents the length and place of residence of the person or the dependent's parent to be in Texas and the length of residence to be at least 12 consecutive months preceding the census date;

(4) Texas voter registration card that was issued at least 12 months prior to the census date;

(5) Lease or rental of residential real property in the name of the person or the dependent's parent for the 12 consecutive months immediately preceding the census date;

(6) Texas high school transcript for full senior year immediately preceding the census date or a transcript from a Texas institution of higher education showing presence in the state for the 12 consecutive months preceding the census date.

(c) [(b)] The student has the burden of proof to show by clear and convincing evidence that [residence or] domicile[; as appropriate,] has been established and maintained as required by subsections (a)(2) and (a)(3) [in accordance with subsection (a)] of this section.

(d) [(e)] The following non-U. S. citizens are eligible to establish and maintain domicile in this state for the purposes of subsection (a)(2) or (3) of this section:

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

(3) a [an eligible] nonimmigrant who holds one of the types of visas identified as eligible to domicile [posted on the Coordinating Board's web site];

(4) (No change.)

(5) a person holding Temporary Protected Status, and Spouses and Children with approved petitions under the Violence Against Women Act (VAWA), an applicant with an approved USCIS I-360, [Special Agricultural Worker,] and a person granted deferred action status by USCIS;

(6) - (7) (No change.)

(e) [(d)] The domicile of a dependent's parent is presumed to be the domicile of the dependent unless the dependent establishes eligibility for resident tuition under subsection (a)(1) of this section.

(f) [(e)] Although not conclusive or exhaustive, the following factors occurring throughout a consecutive 12-month period prior to [at least 12 consecutive months immediately preceding] the census date of the semester in which a person seeks to enroll may lend support to a claim regarding his/her intent to establish [and maintain] domicile in Texas. Continued presence in the state from the end of that period until the census date of the semester in which a person seeks to enroll, except for temporary absences as defined in §21.22(28), may lend support to a claim of maintaining domicile in Texas:

(1) Establishment of Domicile:

(A) Significant Gainful Employment:

(i) An employer's statement of dates of employment in Texas (beginning and current or ending dates) that encompass at least 12 consecutive months prior to the census date of the term in which the person enrolls or pay stubs for 12 consecutive months prior to the census date, reflecting significant gainful employment in Texas. However, employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment for the purposes of this subchapter.

(ii) For a person who is unemployed and living on public assistance, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the person for the 12 consecutive months prior to the census date of the term in which the person enrolls.

(B) Residential Real Property. Sole or joint marital ownership of residential real property in Texas with documentation to verify 12 consecutive months of ownership prior to the census date of the term in which the person enrolls, such as a Warranty Deed, with the person or the dependent's parent having established and maintained domicile at that residence.

(C) Marriage to a Person who has Established and Maintained Domicile in Texas. Marriage Certificate or Declaration of Registration of Informal Marriage with documentation to support that spouse has established and maintained domicile in Texas for 12 consecutive months prior to the census date of the term in which the person enrolls.

(D) Ownership of a Business Entity. Documents that evidence the organization of the business in Texas that reflect the ownership interest of the person or dependent's parent, and the customary management of the business by the person or dependent's parent without the intention of liquidation for the foreseeable future.

(2) Maintenance of Domicile: A person who established domicile through one of the actions described in paragraph (1) of this subsection and continues to reside in the State of Texas, except for temporary absences as defined in §21.22(29) of this subchapter, is considered to have maintained domicile in Texas for that period of time unless he or she takes specific steps to change his or her domicile to a different location.

~~[(1) sole or joint marital ownership of residential real property in Texas by the person seeking to enroll or the dependent's parent, having established and maintained domicile at that residence;]~~

~~[(2) ownership and customary management of a business by the person seeking to enroll or the dependent's parent, in Texas which is regularly operated without the intention of liquidation for the foreseeable future;]~~

~~[(3) gainful employment in Texas by the person seeking to enroll or the dependent's parent;]~~

~~[(4) marriage, by the person seeking to enroll or the dependent's parent, to a person who has established and maintained domicile in Texas.]~~

~~(g) [(f)] An individual whose initial purpose for moving to Texas is to attend an institution of higher education as a full-time student will be presumed not to have the required intent to make Texas his or her domicile; however, the presumption may be overruled by clear and convincing evidence.~~

~~(h) [(g)] An individual shall not ordinarily be able to establish domicile by performing acts which are directly related to fulfilling educational objectives or which are required or routinely performed by temporary residents of the State.~~

~~(i) [(h)] A member of the United States Armed Services whose Home of Record with the military is Texas is presumed to be a Texas resident, as are his or her spouse and dependent children. A member whose Home of Record is not Texas but who provides the institution Leave and Earnings Statements that show the member has claimed Texas as his or her place of residence for the 12 consecutive months prior to enrollment is presumed to be a Texas resident, as are his or her spouse and dependent children.~~

§21.25. Information Required to Initially Establish Resident Status.

(a) To initially establish resident status under §21.24 of this title (relating to Determination of Resident Status),

(1) a person who qualifies for residency under §21.24(a)(1) shall provide the institution with:

(A) a completed set of Core Residency Questions; and

(B) if the person is not a Citizen of the United States or a Permanent Resident of the U.S., the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit (in the form provided in Chart I, which is incorporated into this subchapter for all purposes), stating that the person will apply to become a Permanent Resident of the U.S. as soon as the person becomes eligible to apply.

Figure: 19 TAC §21.25(a)(1)(B)

(2) (No change.)

(b) An institution may request that a person provide documentation to support or clarify the answers to the Core Residency Questions. Appropriate documents are not limited to those listed in §21.24 of this subchapter (related to Determination of Resident Status) [Chart H, which is incorporated into this subchapter for all purposes]. In addition, the institution may request documents that support the information the student may provide in the Core Residency Questions, Section H. [Figure: 19 TAC §21.25(b)]

(c) (No change.)

§21.26. Continuing Resident Status.

(a) Except as provided under subsection (b) [(e)] of this section, a person classified by an institution of higher education as a resident of this state under this subchapter is entitled, without submitting

the information required by §21.24 and §21.25 of this subchapter, to be classified as a resident by any institution in each subsequent academic term in which the person enrolls unless the person provides information to the institution that indicates a change in resident status is appropriate as indicated in §21.27 of this subchapter. [who was enrolled in an institution for any part of the previous state fiscal year and who was classified as a resident of this state under Chapter 54, Subchapter B, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the following fall semester. If an institution acquires documentation that a person is a continuing student who was classified as a resident at the previous institution, no additional documentation is required. The person is not required to complete a new set of Core Questions.]

(b) If a person is not enrolled in an institution of higher education for two or more consecutive regular semesters, then the person must reapply for resident status and shall submit the information required in §21.24 and §21.25 of this subchapter and satisfy all the applicable requirements to establish residency.

~~[(b) Except as provided by subsection (c) of this section, a person who has established resident status under this subchapter is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at any institution.]~~

~~[(c) A person who enrolls in an institution after two or more consecutive regular semesters during which the person is not enrolled in a public institution shall submit the information required in §21.25 of this title, (relating to Information Required to Initially Establish Resident Status), and satisfy all the applicable requirements to establish resident.]~~

§21.27. Reclassification Based on Additional or Changed Information.

(a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reclassification by providing the institution with supporting documentation such as described in §21.24 and §21.25 [Chart H, which is incorporated into §21.25(b)] of this subchapter [title (relating to Information Required to Initially Establish Resident Status)].

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

§21.28. Errors in Classification.

(a) If an institution erroneously classifies [permits] a person as a [to pay] resident [tuition and the person is not entitled or permitted to pay resident tuition under this subchapter], the institution shall charge nonresident tuition to the person beginning with the semester following the date that the institution discovers the error.

(1) [(b)] Not earlier [later] than the first day of the following semester, the institution may notify the person that he or she must pay the difference between resident and nonresident tuition for each previous semester in which the student should not have paid resident tuition, if:

(A) [(1)] the person failed to provide to the institution, in a timely manner after the information becomes available or on request by the institution, any information that the person reasonably should know would be relevant to an accurate classification by the institution under this subchapter information; or

(B) [(2)] the person provided false information to the institution that the person reasonably should know could lead to an erroneous classification by the institution under this subchapter.

(2) [(e)] If the institution provides notice under paragraph (1) of this subsection [(b) of this section], the person shall pay the applicable amount to the institution not later than the 30th day after the date the person is notified of the person's liability for the amount owed. After receiving the notice and until the amount is paid in full, the person is not entitled to receive from the institution a certificate or diploma, if not yet awarded on the date of the notice, or official transcript that is based at least partially on or includes credit for courses taken while the person was erroneously classified as a resident of this state.

(b) If an institution erroneously classified a person as a non-resident of this state under this subchapter and the person is entitled or permitted to pay resident tuition, the institution shall charge resident tuition to the person beginning with the semester in which the institution discovered the error. Regardless of the reason for the error, the institution shall immediately refund to the person the amount of tuition the person paid in excess of resident tuition.

[(d) If an institution erroneously classified a person as a resident of this state under this subchapter and the person is entitled or permitted to pay resident tuition under this subchapter, that person is not liable for the difference between resident and nonresident tuition under this section.]

[(e) If an institution erroneously classifies a person as a nonresident and the person is a resident under this subchapter, the institution shall refund the difference in resident and nonresident tuition for each semester in which the student was erroneously classified and paid the nonresident tuition rate.]

§21.29. Residence Determination Official.

Each institution shall designate an individual who is employed by the institution as a Residence Determination Official who shall be knowledgeable of the requirements set out in this subchapter and the applicable statutes and is responsible for residency determinations for the institution.

§21.30. Special Procedures for Documenting Compliance.

(a) For persons who must provide documentation in accordance with §21.25(a)(1)(B), [Signed affidavits, acquired by] public or independent institutions of higher education must retain such documentation [in keeping with §21.25(a)(1)(B) of this chapter, (relating to Information Required to Initially Establish Resident Status), must be retained] in [a] paper or electronic format either permanently [by the institution] or until the students (current and former) provide proof that they have applied for Permanent Resident status.

(b) A public or independent institution of higher education that classifies a nonimmigrant [person who is not a Citizen or Permanent Resident of the United States] as a resident under §21.24(a)(1) of this chapter (relating to Determination of Resident Status) shall:

(1) instruct such students upon admission, annually while the students are enrolled, and upon graduation of their obligation to apply for Permanent Resident status as soon as the person is eligible to do so, and

(2) (No change.)

[(e) The provisions of this section apply to all persons who are nonimmigrants not Citizens or Permanent Residents of the United States and who are enrolled and classified as residents under §21.24(a)(1) of this chapter by a public or independent institution of higher education during any part of the 2011-2012 academic year or later.]

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

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

TRD-201603796

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 11, 2016

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



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.3

The State Board of Education (SBOE) proposes an amendment to §74.3, concerning required curriculum. The section establishes the description of a required secondary curriculum. The proposed amendment would update the rule to add the newly adopted Personal Financial Literacy course to the list of courses a school district is required to offer at the high school level.

House Bill 2662, 83rd Texas Legislature, 2013, amended the Texas Education Code (TEC), §28.0021, to require school districts and open-enrollment charter schools offering a high school program to provide a one-half credit elective course in personal financial literacy. At the April 2014 meeting, the SBOE prioritized the new course to be developed and requested that Texas Education Agency staff move forward with the development of Texas Essential Knowledge and Skills for the one-half credit elective course in personal financial literacy.

A committee of secondary and postsecondary educators and business and industry representatives was convened in Austin in May 2015 for a face-to-face meeting to begin working on recommendations for the personal financial literacy elective course. The committee conducted three additional virtual meetings to finalize its first draft recommendations. The SBOE adopted new 19 TAC Chapter 113, Texas Essential Knowledge and Skills for Social Studies, Subchapter C, High School, §113.49, Personal Financial Literacy (One-Half Credit), Adopted 2016, in January 2016.

The proposed amendment would update §74.3(b)(2)(D) to add Personal Financial Literacy to the list of social studies courses a school district is required to offer at the high school level in accordance with the TEC, §28.0021.

The SBOE approved the proposed amendment for first reading and filing authorization at its July 22, 2016 meeting.

The proposed amendment would have no new procedural and reporting requirements. The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs to persons or entities required to comply with the proposed rule action.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local em-

ployment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will include an additional course option for students in high school and an additional opportunity for students to learn about personal finance. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

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

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

§74.3. Description of a Required Secondary Curriculum.

- (a) (No change.)
- (b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title. The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

- (A) English language arts--English I, II, III, and IV and at least one additional advanced English course;

- (B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

- (C) science--Integrated Physics and Chemistry, Biology, Chemistry, Physics, and at least two additional science courses selected from Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, Advanced Animal Science, Advanced Biotechnology, Advanced Plant and Soil Science, Anatomy and Physiology, Engineering Design and Problem Solving, Food Science, Forensic Science, Medical Microbiology, Pathophysiology, Scientific Research and Design, and Principles of Engineering. The requirement to offer two additional courses may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

- (D) social studies--United States History Studies Since 1877, World History Studies, United States Government, World Geography Studies, Personal Financial Literacy, and Economics with Emphasis on the Free Enterprise System and Its Benefits;

- (E) physical education--at least two courses selected from Foundations of Personal Fitness, Adventure/Outdoor Education, Aerobic Activities, or Team or Individual Sports;

- (F) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

- (G) career and technical education--coherent sequences of courses selected from at least three of the following sixteen career clusters:

- (i) Agriculture, Food, and Natural Resources;
- (ii) Architecture and Construction;
- (iii) Arts, Audio/Video Technology, and Communications;
- (iv) Business Management and Administration;
- (v) Education and Training;
- (vi) Finance;
- (vii) Government and Public Administration;
- (viii) Health Science;
- (ix) Hospitality and Tourism;
- (x) Human Services;
- (xi) Information Technology;
- (xii) Law, Public Safety, Corrections, and Security;
- (xiii) Manufacturing;
- (xiv) Marketing;
- (xv) Science, Technology, Engineering, and Mathematics; and
- (xvi) Transportation, Distribution, and Logistics;

- (H) languages other than English--Levels I, II, and III or higher of the same language;

- (I) technology applications--Computer Science I and Computer Science II or Advanced Placement (AP) Computer Science and at least two courses selected from Computer Science III, Digital Art and Animation, Digital Communications in the 21st Century, Digital Design and Media Production, Digital Forensics, Digital Video

and Audio Design, Discrete Mathematics for Computer Science, Fundamentals of Computer Science, Game Programming and Design, Independent Study in Evolving/Emerging Technologies, Independent Study in Technology Applications, Mobile Application Development, Robotics Programming and Design, 3-D Modeling and Animation, Web Communications, Web Design, and Web Game Development; and

(J) speech--Communication Applications.

(3) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. A school district must teach a course that is specifically required for high school graduation at least once in any two consecutive school years. For a subject that has an end-of-course assessment, the district must either teach the course every year or employ options described in Subchapter C of this chapter (relating to Other Provisions) to enable students to earn credit for the course and must maintain evidence that it is employing those options.

(5) For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.

(c) (No change.)

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 August 1, 2016.

TRD-201603820

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 11, 2016

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



CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

SUBCHAPTER D. OTHER SCIENCE COURSES

19 TAC §§112.61 - 112.68

The State Board of Education (SBOE) proposes amendments to §§112.61-112.66 and new §112.67 and §112.68, concerning Texas Essential Knowledge and Skills (TEKS) for science. Sections 112.61-112.66 establish implementation of the subchapter and identify the requirements for advanced placement (AP) courses. The proposed amendments and new sections would update course titles for AP courses, modify the amount of credit that could be earned for these courses, and add new AP Physics courses to align with courses recently revised by the College Board.

Rules in 19 TAC Chapter 112, Subchapter D, identify the requirements for high school AP, international baccalaureate, and career and technical education science courses.

Section 112.61 would be amended to remove an implementation date that has passed. The proposed amendments to §§112.62-112.66 would modify the amount of credit that could be earned for AP courses to eliminate the range of credits. The section titles would be updated to indicate the change in credit as well as align with AP course titles where necessary. In addition, §112.65 would be modified to update the recommended prerequisites and add a co-requisite.

Proposed new 19 TAC §112.67, Advanced Placement (AP) Physics C: Electricity and Magnetism (One Credit), and §112.68, Advanced Placement (AP) Physics C: Mechanics (One Credit), would add new College Board courses for science credit and reflect the level of the courses and the credit to be awarded.

The SBOE approved the proposed amendments and new sections for first reading and filing authorization at its July 22, 2016 meeting.

The proposed amendments and new sections would have no new procedural and reporting requirements. The proposed amendments and new sections would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments and new sections are in effect there will be no additional costs to persons or entities required to comply with the proposed rule actions.

There is no effect on local economy for the first five years that the proposed amendments and new sections are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit anticipated as a result of enforcing the amendments and new sections will include appropriate science credit options aligned with other subject areas for students who take AP courses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments and new sections are proposed under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements;

TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE by rule to identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§112.61. *Implementation of Texas Essential Knowledge and Skills for Science, Other Science Courses.*

The provisions of this subchapter shall be implemented by school districts [beginning September 1, 1998].

§112.62. *Advanced Placement (AP) Biology (One Credit [to One and One-Half Credits]).*

(a) General Requirements. Students can be awarded one credit [to one and one-half credits] for successful completion of this course. Recommended prerequisites: Biology, Chemistry.

(b) Content Requirements. Content requirements for Advanced Placement (AP) Biology are prescribed in the College Board Publication *Advanced Placement Course Description: Biology*, published by The College Board.

§112.63. *Advanced Placement (AP) Chemistry (One Credit [to One and One-Half Credits]).*

(a) General Requirements. Students can be awarded one credit [to one and one-half credits] for successful completion of this course. Recommended prerequisites: Chemistry, Algebra II.

(b) Content Requirements. Content requirements for Advanced Placement (AP) Chemistry are prescribed in the College Board Publication *Advanced Placement Course Description: Chemistry*, published by The College Board.

§112.64. *Advanced Placement (AP) Physics 1: Algebra Based [B] (One Credit [to One and One-Half Credits]).*

(a) General Requirements. Students can be awarded one credit [to one and one-half credits] for successful completion of this course. Recommended prerequisites: Physics, Algebra I, Algebra II, Geometry.

(b) Content Requirements. Content requirements for Advanced Placement (AP) Physics are prescribed in the College Board Publication *Advanced Placement Course Description: Physics*, published by The College Board.

§112.65. *Advanced Placement (AP) Physics 2: Algebra Based [C] (One Credit [to One and One-Half Credits]).*

(a) General Requirements. Students can be awarded one credit [to one and one-half credits] for successful completion of this course. Recommended prerequisites: Advanced Placement (AP) Physics 1 or a comparable physics introductory course [for Physics, Algebra I, Algebra II, Geometry, Calculus]. Recommended co-requisite: precalculus or an equivalent course.

(b) Content Requirements. Content requirements for [Advanced Placement (AP)] AP Physics are prescribed in the College

Board Publication *Advanced Placement Course Description: Physics*, published by The College Board.

§112.66. *Advanced Placement (AP) Environmental Science (One Credit [to One and One-Half Credits]).*

(a) General Requirements. Students can be awarded one credit [to one and one-half credits] for successful completion of this course. Recommended prerequisites: Algebra I, two years of high school laboratory science, including one year of life science and one year of physical science.

(b) Content Requirements. Content requirements for Advanced Placement (AP) Environmental Science are prescribed in the College Board Publication *Advanced Placement Course Description: Environmental Science*, published by The College Board.

§112.67. *Advanced Placement (AP) Physics C: Electricity and Magnetism (One Credit).*

(a) General Requirements. Students can be awarded one credit for successful completion of this course. Prerequisite: students should have taken or be concurrently taking calculus.

(b) Content Requirements. Content requirements for Advanced Placement (AP) Physics C: Electricity and Magnetism are prescribed in the College Board Publication *Advanced Placement Course Description: Physics C: Electricity and Magnetism*, published by The College Board.

§112.68. *Advanced Placement (AP) Physics C: Mechanics (One Credit).*

(a) General Requirements. Students can be awarded one credit for successful completion of this course. Prerequisite: students should have taken or be concurrently taking calculus.

(b) Content Requirements. Content requirements for Advanced Placement (AP) Physics C: Mechanics are prescribed in the College Board Publication *Advanced Placement Course Description: Physics C: Mechanics*, published by The College Board.

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

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

TRD-201603824

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 11, 2016

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



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.14

Introduction

The Texas Board of Nursing (Board) proposes an amendment to §217.14, concerning *Registered Nurses Performing Radiologic*

Procedures. The amendment is proposed under the authority of the Occupations Code §301.151 and Chapter 601, including §601.253(a).

Chapter 601, also known as the *Medical Radiologic Technologist Certification Act*, was amended during the 84th Legislative Session by Senate Bill (SB) 202. SB 202 transferred regulatory authority over medical radiologic technicians from the Department of State Health Services to the Texas Medical Board. Under SB 202, the Texas Medical Board, in conjunction with the Texas Board of Medical Radiologic Technology (an advisory board to the Texas Medical Board), retains authority to establish training requirements for medical radiologic technologists and other authorized individuals. As a result, the proposed amendment is necessary to reflect this change.

Section by Section Overview

Proposed amended §217.14 requires registered nurses performing radiologic procedures to comply with the training requirements and limitations established by the Medical Radiologic Technologist Certification Act and the rules of the Texas Medical Board. Additionally, the registered nurse must also comply with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas.

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

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of rules that are consistent with regulatory changes made by the Texas Legislature in the 84th Regular Session. Further, the proposed amendment provides necessary guidance to registered nurses whose practice may include the performance of radiologic procedures.

Potential Costs of Compliance. The proposal requires registered nurses performing radiologic procedures to comply with the training requirements and limitations of the Medical Radiologic Technologist Certification Act and the Texas Medical Board. Prior to the passage of SB 202, registered nurses performing radiologic procedures were required to comply with the requirements and limitations of the Medical Radiologic Technologist Certification Act and the Department of State Health Services. For registered nurses who were subject to these requirements, there may have been associated costs of compliance. The passage of SB 202, however, transferred the regulatory authority of medical radiologic technicians from the Department of State Health Services to the Texas Medical Board. As such, the prior regulations will have to be replaced with new requirements adopted by the Texas Medical Board. There may be associated costs of compliance with these new requirements. However, the Board does not anticipate that the new costs of compliance will be substantially different than the costs previously imposed upon individuals required to comply with the Board's rules, since the Board anticipates the training requirements proposed by the Texas Medical Board will be similar to those previously required by the Department of State Health Services. Such requirements, however, and their associated costs of compliance, will be dependent upon the rules proposed by the Texas Medical Board. The costs of compliance associated with this proposal are the direct result of the passage and implementation of SB 202.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendment will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or (2). The only entities subject to or affected by the proposal are individual licensees. These individuals do not qualify as a micro business or small business under the Government Code §2006.001(1) or (2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 11, 2016 to Kristin Benton, Director of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to kristin.benton@bon.texas.gov, or faxed to (512) 305-8101 and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the authority of the Occupations Code §301.151 and Chapter 601.253, including §601.253(a).

Section 301.151 addresses the Board's rulemaking authority. 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 601.253(a) provides that the Board shall adopt rules governing registered nurses performing radiologic procedures under §601.151 or §601.154, including rules: (1) establishing mandatory training guidelines; and (2) requiring registered nurses performing radiologic procedures under §601.151 to register with

the Texas Board of Nursing and to identify the practitioner ordering the procedures.

Cross Reference To Statute. The following statutes are affected by this proposal: Occupations Code §301.151 and Chapter 601, §601.253(a).

§217.14. *Registered Nurses Performing Radiologic Procedures.*

(a) - (c) (No change.)

(d) The registered nurse whose functions include radiologic procedures must act within the scope of the Texas Nursing Practice Act and the Board's rules and shall comply with the training requirements and limitations of the Medical Radiologic Technologist Certification Act and the rules of the Texas Medical Board [~~Texas Department of State Health Rules, 25 TAC §§140.517 - 140.522~~]. In addition, the registered nurse must be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas.

(e) (No change.)

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

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

TRD-201603741

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: September 11, 2016

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



CHAPTER 223. FEES

22 TAC §223.1

Introduction

The Texas Board of Nursing (Board) proposes amendments to §223.1, concerning Fees. The amendments are proposed under the authority of the Occupations Code §301.155. Section 301.155 authorizes the Board, by rule, to establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301.

The proposed amendments seek to eliminate several unnecessary and/or outdated fees from the current rule. Currently, Staff must process the collection of these fees, which results in unnecessary delay to the licensee. Because these fees are nominal to begin with, the cost associated with the delay outweighs the benefits the fees may produce. Further, as the Board moves toward a paperless workflow system, license and record verification and duplication of certificates will be available from an online source, making the associated fees unnecessary. Finally, elimination of the fees will only have a minimal effect on the Board's total revenue.

Section by Section Overview

The proposed amendments will eliminate the fees currently required for: (1) duplicate or substitute permanent certificates; (2) issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit; (3) verification of licensure; (4) verification of records; and (5) a request for retired status [e.g., Licensed

Vocational Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP)]. The remaining fees will be retained, and the section will be renumbered/reordered accordingly.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there may be an approximate \$50,500 total annual decrease in revenue to state government as a result of the enforcement or administration of the proposal. This estimate is based on the following factors. The proposed amendments seek to eliminate the fees associated with: (1) duplicate or substitute permanent certificates; (2) issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit; (3) verification of licensure; (4) verification of records; and (5) a request for retired status [e.g., Licensed Vocational Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP)]. The Board received \$50,500 for these services in fiscal year 2015. Thus, the Board anticipates a similar annual decrease (\$50,500) in revenue to state government as a result of the elimination of these fees.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the elimination of unnecessary and/or obsolete fees that currently cause delay for licensees. The elimination of these fees will reduce costs to licensees and support the Board's transition to a paperless workflow system.

There are no anticipated costs of compliance with the proposal, as the proposed amendments will eliminate costs from the Board's current rule.

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

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 12, 2016 to Mark Majek, Director of Operations, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to mark.majek@bon.texas.gov, or faxed to (512) 305-8101 and to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If

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

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.155.

Section 301.151 addresses the Board's rulemaking authority. 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 301.155(a) provides that the Board, by rule, shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301. Further, the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Cross Reference To Statute. The following statutes are affected by this proposal: Statute §301.151 and §301.155.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

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

~~(6) duplicate or substitute permanent certificate: \$25;~~

~~(7) issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an acclimation permit: \$25;~~

~~(6) [(8)] approval of new nursing education programs: \$2,500;~~

~~(9) verification of licensure: \$5;~~

~~(10) verification of records: \$25;~~

~~(7) [(11)] bad checks: \$30;~~

~~(8) [(12)] Advanced Practice Nurse initial credentials: \$100;~~

~~(9) [(13)] declaratory order of eligibility: \$150;~~

~~(10) [(14)] eligibility determination: \$150;~~

~~(15) Licensed Vocational Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP): \$10;~~

~~(11) [(16)] Advanced Practice Nurse renewal: \$50;~~

~~(12) [(17)] Initial Prescriptive Authority: \$50;~~

~~(13) [(18)] outpatient anesthesia registry renewal: \$35;~~

~~(14) [(19)] outpatient anesthesia inspection and advisory opinion: \$625;~~

~~(15) [(20)] fee for Federal Bureau of Investigations (FBI) and Department of Public Safety (DPS) criminal background check for licensees, initial licensure applicants and endorsement applicants as determined by fees imposed by the Criminal Justice Information Services (CJIS) Division and the Texas Department of Public Safety;~~

~~(16) [(21)] Disciplinary monitoring fees as stated in a Board order;~~

~~(17) [(22)] Nursing Jurisprudence Examination fee: not to exceed \$25;~~

~~(18) [(23)] approval of remedial education course: \$300 per course;~~

~~(19) [(24)] renewal of remedial education course: \$100 per course;~~

~~(20) [(25)] approval of a nursing education program outside Texas' jurisdiction to conduct clinical learning experiences in Texas: \$500; and~~

~~(21) [(26)] Prescriptive Authority Renewal Surcharge: Not to exceed \$15.~~

(b) (No change.)

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

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

TRD-201603742

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: September 11, 2016

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §140.111 and §140.161; the repeals of §§140.121, 140.170, 140.315, 140.378, 140.417, and 140.433; and new §§140.121, 140.170, 140.378, 140.433 and 140.434, concerning the licensing and regulation of sanitarians, code enforcement officers, massage therapists, and chemical dependency counselors.

BACKGROUND AND PURPOSE

The proposed new rules implement Senate Bill (SB) 807 and SB 1307, 84th Legislature, Regular Session, 2015, which amended Occupations Code, Chapter 55, relating to the occupational license application and examination fees and licensing relating to the military for sanitarians, code enforcement officers, massage therapists, and chemical dependency counselors. The affected licensing programs are within the Professional Licensing and Certification Unit of the department's Division for Regulatory Services.

The proposed amendments, repeals, and new rules revise existing rule language for sanitarians, code enforcement officers, massage therapists, and licensed chemical dependency counselors to implement the amendments made by SB 807, 84th Leg-

islature, Regular Session, 2015, and SB 1307, 84th Legislature, Regular Session, 2015, to Occupations Code, Chapter 55, relating to occupational license application and examination fees, and to licensing and renewal of, certain military service members, military veterans, and military spouses.

The proposed new §140.434 in Subchapter I concerning licensed chemical dependency counselors implements House Bill (HB) 1449, 84th Legislature, Regular Session, 2015, as it relates to child custody and adoption evaluations in certain suits affecting the parent-child relationship, by prohibiting a holder of a chemical dependency counselor license from conducting a child custody or adoption evaluation under amended Family Code, Chapter 107, unless the individual is otherwise qualified by law to conduct the evaluation, or is appointed by a court to conduct it under Family Code, §107.106 or §107.155, as applicable.

SECTION-BY-SECTION SUMMARY

The amendments to §140.111 and §140.161 will remove existing language relating to military licensing concerning sanitarians and code enforcement officers in order to address corresponding, new, and amended requirements in compliance with Occupations Code, Chapter 55, under proposed new rules.

The repeal of §§140.121, 140.170, 140.315, 140.378, 140.417 and 140.433 governing sanitarians, code enforcement officers, massage therapists, and licensed chemical dependency counselors will remove existing language which relates to certain licensing and renewal of military service members, military veterans, and/or military spouses, to be incorporated into, or modified or superseded by, the new rules.

New §§140.121, 140.170, 140.378, and 140.433 will implement Occupations Code, Chapter 55, including legislative changes to that chapter relating to the occupational license application and examination fees, and to licensing and renewal of certain Military Service Members, Military Veterans, and Military Spouses. However, the rules do not include implementing language concerning the examination fee waiver, which does not apply to the sanitarian, code enforcement officer, massage therapy, or licensed chemical dependency counselor licensure examination, since those examination fees are not paid to the state, but to the third party administrator of the examination.

New §140.434 will implement HB 1449 of the 84th Legislature, Regular Session, 2015, as it relates to licensed chemical dependency counselors and child custody and adoption evaluations. HB 1449 amended the Family Code, Chapter 107, relating to child custody and adoption evaluations conducted and provided in certain suits affecting the parent-child relationship. New §140.434 prohibits the licensed chemical dependency counselors from conducting those evaluations unless the individual is otherwise qualified by law to conduct the evaluation or is appointed by a court to conduct it under Family Code, §107.106 or §107.155, as applicable.

FISCAL NOTE

Timothy Speer, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five years that the proposed repeals, new sections, and amendments will be in effect, there will be no anticipated cost or saving, nor effect on revenue, to local government as a result of the proposed rule changes. There will be an anticipated fiscal cost to state government as a result of lost revenue from waiving certain initial application fees for military service members, military veterans, and

military spouses, and renewal late fees for certain additional military service members. Since examination fees for the affected professional licensing programs are not paid to the state, the statutory waiver provision for such fees does not affect revenue for those programs. Fees under current laws and rules for the affected licensing programs to which the waiver provisions would apply for qualified applicants and license holders are as follows:

For Sanitarians, as set forth in 25 TAC §140.103 - \$125 for initial application and registration fee for Sanitarians-in-Training; \$140 for initial application and registration fee for Registered Sanitarians; \$75 for late renewal fee; and \$90 for a registration upgrade fee for Sanitarians-in-Training to Registered Sanitarian status.

For Code Enforcement Officers, as set forth in 25 TAC §140.153 - \$50 for a one year registration fee for Code Enforcement Officers-in-Training; \$100 for a two year registration fee for Code Enforcement; \$20 for a registration upgrade fee from Code Enforcement Officers-in-Training to Code Enforcement Officer status; and \$50 for a reinstatement fee for late renewal.

For Massage Therapists, as set forth in 25 TAC §140.301 - \$106 for an initial application fee; \$150 late renewal fee within 90 days of expiration date; and \$200 late renewal fee for 91 days to up to not more than one year of expiration date, all for Massage Therapists. For Massage Therapy Instructors, \$200 application fee; \$300 late renewal fee within 90 days of expiration date; and \$400 late renewal fee for 91 days to up to not more than one year of expiration date.

For Licensed Chemical Dependency Counselors, as set forth in 25 TAC §140.403 - \$25 initial application fee for licensed chemical dependency counselors, paid at the time of Counselor Intern registration; \$75 initial licensing fee plus \$10 licensing surcharge for administration of peer assistance program; \$37.50 late renewal fee within 90 days of expiration date; \$75 late renewal fee for 91 days to up to not more than one year of expiration date; and \$20 for initial Certified Clinical Supervisor status.

In addition, a \$5 Office of Patient Protection (OPP) fee under Occupations Code, §101.307 applies to initial code enforcement officer and officer-in-training registration applications; initial sanitarian and sanitarian-in-training, registration applications and upgrades from sanitarians-in-training to registered sanitarian status; and massage therapist and massage instructor initial licensure applications. Texas.gov fees apply under Government Code, §2054.252 in the amounts of \$6 for initial code enforcement officer and \$2 for officer-in-training registration applications; of \$8 for initial sanitarian and sanitarian-in-training registration applications; and of \$6 to massage therapist and \$10 to massage instructor initial licensure applications.

With the exception of the massage therapy program, none of the affected professional licensing programs has received a fee waiver request from a license applicant since SB807 and SB 1307 became effective on September 1, 2015. Moreover, the department has not systematically tracked over time members of the military, veterans, and military spouses who have benefited to date from those licensing provisions already in effect for these groups prior to the 2015 amendments and cannot predict the proportions of those who may qualify for a waiver who will avail themselves of the alternative licensing path and accompanying fee waiver. It therefore does not have sufficient or reliable data to estimate the numbers of likely fee waivers in each licensing program based on the statutory amendments, but, for at least those programs which have had no applications for fee waivers since the statutory amendments took effect, expects a de min-

imis effect on revenue to the state for each year of the first five years the provisions are in effect. Furthermore, it expects no impact for any of the licensing programs' ability to meet the costs of administering the program through existing revenue under the current fee structure.

The massage therapy program has been receiving approximately 7 applications per month from initial massage therapy license applicants identifying themselves as eligible for an initial license fee waiver. Given that the late fee waiver previously existed in statute, with the legislative amendments only broadening to some extent the scope of those active military service members eligible for the waiver, the impact of the waiver provisions can be expected to occur primarily in relation to new applicants who may be eligible for the initial license application fee waiver. In addition, there are substantially more initial massage therapy license applicants than massage instructor license applicants, and applicants to date applying under the new statutory provisions for a fee waiver have been only massage therapy license applicants.

Thus, an estimated loss of revenue per eligible applicant from fee waivers can be expected to be weighted heavily toward the lower initial application amount for massage therapists of \$106, plus the OPP and Texas.gov surcharges, with only minimal impact from the new legislative amendments based upon waivers of the highest fee amounts for late fees for renewal more than 90 days late, and any late fees and massage instructor initial application fees between those amounts that are also eligible for waiver.

Based upon the current rate of potentially eligible massage therapy license applicants of 7 per month; assuming some increase in the number of applications after the rules take effect and as they become better known; and allowing for occasional applications for late fee waivers or waiver of initial license application fees for massage instructors, the department estimated rates of waiver applications at 8 per month for the first year, adding 1 per month to the estimate for each of the subsequent five years, to assume approximately 12 per month applying by the fifth year. It further used the massage therapy initial application fee of \$106, plus the applicable surcharges totaling a \$117 initial application rate as the base rate, and rounded up to \$125 as the multiplier to account for an occasional applicant eligible for a higher applicable waiver amount, other than those for which the department has received applications to date.

These figures would result in an estimated \$12,000 loss in revenue for year one; a \$13,500 loss in revenue for year two; a \$15,000 loss in revenue for year three; a \$16,500 loss in revenue for year four; and an \$18,000 loss in revenue for year five of the rules being in effect, for a total estimated loss of revenue for the massage therapy program of approximately \$75,000. However, the department does not anticipate an impact to the massage therapy program's ability to meet the costs of administering the program through existing revenue under the current fee structure, even with this loss of revenue due to the new fee waivers.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Mr. Speer has also determined that there will be no adverse economic effect on small business or micro-businesses. This determination was made because the proposed repeals, amendments, and new rules do not impose any new requirements on businesses.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated savings for those military service members, military veterans, and military spouses who are eligible applicants for a waiver of certain fees. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals, amendments, and new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute proposed government action that may result in a taking that is subject to Government Code, §2007.043.

PUBLIC BENEFIT

In addition, Mr. Speer has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of sanitarians, code enforcement officers, massage therapists, and chemical dependency counselors; to improve clarity concerning the prohibition, with narrow exceptions, against licensed chemical dependency counselors performing child custody and adoption evaluations; and to increase the potential availability of licensed health professionals by facilitating the occupational licensing of applicants with applicable military experience and of qualified military spouses.

PUBLIC COMMENT

Comments on the proposal may be submitted to Carol Miller, Manager of the Regulation and Standards Group, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6628, or by email to carol.miller@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER C. SANITARIANS

25 TAC §140.111, §140.121

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, Chapter 55, which includes state agency rulemaking

authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The amendment and new rules are also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.111. Sanitarian Registration Renewal.

(a) - (e) (No change.)

~~[(f) **Military duty.** If a registrant fails to timely renew a registration because the registrant is or was on active duty with the uniformed services of the United States of America serving outside the State of Texas, the registrant may renew the registration in accordance with this subsection.]~~

~~[(1) **Renewal of the registration may be requested by the registrant, the registrant's spouse, or an individual having power of attorney from the registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.**]~~

~~(2) **Renewal may be requested before or after the expiration of the registration.**~~

~~[(3) **A copy of the official orders or other official documentation showing that the registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.**]~~

~~[(4) **A copy of the power of attorney from the registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.**]~~

~~[(5) **A registrant renewing under this subsection shall only pay the applicable renewal fee. There will be no reinstatement fee charged.**]~~

~~[(6) **A registrant renewing under this subsection shall not be required to complete continuing education for the period of the active duty service.**]~~

§140.121. Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out initial registration and registration renewal procedures specific to military service members, military veterans, and military spouses, pursuant to Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Government Code, §437.001 or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(4) "Military service member" means a person who is on active duty.

(5) "Military spouse" means a person who is married to a military service member.

(6) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) An applicant shall provide documentation acceptable to the department of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under this section.

(c) Upon request, an applicant shall provide proof specified by, or otherwise acceptable to, the department of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof specified by, or otherwise acceptable to, the department, that the licensure requirements of that jurisdiction are substantially equivalent to the registration requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the provisions of this section.

(e) For an application for a registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any sanitarian or sanitarian-in-training registration requirements, except an examination requirement, for verified military service, training, or education that the department determines is relevant, as applicable, to the occupation or registration requirements, unless he or she holds a restricted registration issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.

(f) An applicant who is a military service member, military veteran, or military spouse holding a current, unrestricted, license issued by another jurisdiction that has substantially equivalent requirements to the requirements for registration in this state shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department will process and issue a registration to an applicant who holds such a license, satisfies the application and supplemental application requirements, and meets the requisite substantial equivalency requirements of the other state, if the applicant has no unresolved allegations or criminal background relevant to the registration, and there are no other facts or circumstances providing grounds for denial of the registration. The registration will have the same term as the applicable registration type otherwise issued under the Act and this subchapter. Renewal of the registration shall be in accordance with subsection (i) of this section.

(g) An applicant who is a military service member, military veteran, or military spouse who held a registration in this state within the five years preceding the application date, and without restriction,

shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department will process and issue a registration to an applicant who held such a registration and who satisfies the application and supplemental application requirements, if there are no unresolved allegations against the applicant or criminal background relevant to the registration, or other facts or circumstances providing grounds for denial of the registration. Renewal of the registration shall be in accordance with subsection (i) of this section.

(h) In accordance with Occupations Code, §55.004(b), the department's commissioner or the commissioner's designee may waive any prerequisite to obtaining a registration after reviewing the credentials of an applicant who is eligible to apply under subsection (f) or (g) of this section.

(i) If the department issues an initial registration pursuant to subsection (f) or (g) of this section to an applicant who is a military service member, military veteran, or military spouse, the department will assess whether the applicant has met all registration requirements of this state. The department will provide this assessment in writing, which may be by electronic means, to the applicant at the time the registration is issued. If the applicant has not met all registration requirements of this state, the applicant must provide proof of completion at the time of the first application for registration renewal. A registration will not be renewed, will be allowed to expire, and will become ineffective if the applicant does not provide proof of completion at the time of the first application for registration renewal.

(j) Notwithstanding any other law, the department will waive the registration application fees paid to the state for an applicant described in paragraph (1) or (2) of this subsection. An applicant shall provide any proof requested by the department that the applicant is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the registration; or

(2) a military service member, military veteran, or military spouse who holds a current registration issued by another jurisdiction that has registration requirements that are substantially equivalent to the requirements for the registration in this state.

(k) For registration renewal, the department will exempt an individual who holds a registration issued by the department from any increased fee or other penalty imposed for failing to renew the registration in a timely manner if the individual establishes to the satisfaction of the program director that the individual failed to renew the registration in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a registration is entitled to two years of additional time beyond the expiration date of the registration to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's registration.

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

Filed with the Office of the Secretary of State on August 1, 2016.
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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 11, 2016
For further information, please call: (512) 776-6972



25 TAC §140.121

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The repeal is also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.121. Registration of Military Service Members, Military Veterans, and Military Spouses.

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

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SUBCHAPTER D. CODE ENFORCEMENT OFFICERS

25 TAC §140.161, §140.170

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain

suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The amendment and new rules are also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.161. Code Enforcement Registration Renewal.

(a) - (e) (No change.)

[(f) **Active duty.** If a registrant fails to timely renew his or her registration because the registrant is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the registrant may renew the registration in accordance with this subsection.]

[(1) **Renewal of the registration may be requested by the registrant, the registrant's spouse, or an individual having power of attorney from the registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.**]

[(2) **Renewal may be requested before or after the expiration of the registration.**]

[(3) **A copy of the official orders or other official military documentation showing that the registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.**]

[(4) **A copy of the power of attorney from the registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.**]

[(5) **A registrant renewing under this subsection shall pay the applicable renewal fee, but not the reinstatement fee.**]

[(6) **A registrant renewing under this subsection shall not be required to complete continuing education for the period of the active duty service.**]

§140.170. Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out initial registration and registration renewal procedures specific to military service members, military veterans, and military spouses, pursuant to Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Government Code, §437.001 or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(4) "Military service member" means a person who is on active duty.

(5) "Military spouse" means a person who is married to a military service member.

(6) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) An applicant shall provide documentation acceptable to the department of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under this section.

(c) Upon request, an applicant shall provide proof specified by, or otherwise acceptable to, the department of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof specified by, or otherwise acceptable to, the department, that the licensure requirements of that jurisdiction are substantially equivalent to the registration requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the provisions of this section.

(e) For an application for a registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any code enforcement officer or officer-in-training registration requirements, except an examination requirement, for verified military service, training, or education that the department determines is relevant, as applicable, to the occupation or registration requirements, unless he or she holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history for which adverse licensure action is authorized by law.

(f) An applicant who is a military service member, military veteran, or military spouse holding a current, unrestricted license issued by another jurisdiction that has substantially equivalent requirements to the requirements for registration in this state shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department shall process and issue a registration to an applicant who holds such a license, satisfies the application and supplemental application requirements, and meets the requisite substantial equivalency requirements of the other state, if the applicant has no unresolved allegations or criminal background relevant to the registration, and there are no other facts or circumstances providing grounds for denial of the registration. The registration will have the same term as the applicable registration type otherwise issued under the Act and this subchapter. Renewal of the registration shall be in accordance with subsection (i) of this section.

(g) An applicant who is a military service member, military veteran, or military spouse who held a registration in this state within the five years preceding the application date, and without restriction, shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department will process and issue a registration to an applicant who held such a registration and who satisfies the application and supplemental application requirements, if the applicant has no unresolved allegations or criminal background relevant to the registration, and there are no other facts or circumstances providing grounds for denial of the registration. Renewal of the registration shall be in accordance with subsection (i) of this section.

(h) In accordance with Occupations Code, §55.004(b), the department's commissioner or the commissioner's designee may waive any prerequisite to obtaining a registration after reviewing the credentials of an applicant who is eligible to apply under subsection (f) or (g) of this section.

(i) If the department issues an initial registration pursuant to subsection (f) or (g) of this section to an applicant who is a military service member, military veteran, or military spouse, the department will assess whether the applicant has met all registration requirements of this state. The department will provide this assessment in writing, which may be by electronic means, to the applicant at the time the registration is issued. If the applicant has not met all registration requirements of this state, the applicant must provide proof of completion at the time of the first application for registration renewal. A registration will not be renewed, will be allowed to expire, and will become ineffective if the applicant does not provide proof of completion at the time of the first application for registration renewal.

(j) Notwithstanding any other law, the department will waive the registration application fees paid to the state for an applicant described in paragraph (1) or (2) of this subsection. An applicant shall provide any proof requested by the department that the applicant is:

(1) A military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the registration; or

(2) A military service member, military veteran, or military spouse who holds a current registration issued by another jurisdiction that has registration requirements that are substantially equivalent to the requirements for the registration in this state.

(k) For registration renewal, the department will exempt an individual who holds a registration issued by the department from any increased fee or other penalty imposed for failing to renew the registration in a timely manner if the individual establishes to the satisfaction of the program director that the individual failed to renew the registration in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a registration is entitled to two years of additional time beyond the expiration date of the registration to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's registration.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



25 TAC §140.170

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related

to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The repeal is also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.170. Registration of Military Service Members, Military Veterans, and Military Spouses.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



SUBCHAPTER H. MASSAGE THERAPISTS

DIVISION 3. MASSAGE THERAPISTS

25 TAC §140.315

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The repeal is also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.315. Active Military Duty.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



DIVISION 7. COMPLAINTS, VIOLATIONS AND SUBSEQUENT DISCIPLINARY ACTIONS

25 TAC §140.378

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The repeal is also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.378. Licensing of Military Service Members, Military Veterans, and Military Spouses.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



25 TAC §140.378

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of

rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The new rule is also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.378. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out initial licensing and license renewal procedures specific to military service members, military veterans, and military spouses, pursuant to Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Government Code, §437.001 or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(4) "Military service member" means a person who is on active duty.

(5) "Military spouse" means a person who is married to a military service member.

(6) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) An applicant shall provide documentation acceptable to the department of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under this section.

(c) Upon request, an applicant shall provide proof specified by, or otherwise acceptable to, the department of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the provisions of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing requirements, except an examination re-

quirement, for verified military service, training, or education that the department determines is relevant to the licensing requirements, unless he or she holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.

(f) An applicant who is a military service member, military veteran, or military spouse holding a current, unrestricted license issued by another jurisdiction that has substantially equivalent requirements to the requirements for licensure in this state shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department will process and issue a license to an applicant who holds such a license, satisfies the application and supplemental application requirements, and meets the requisite substantial equivalency requirements of the other state, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. The license will have the same term as the applicable license type issued under the Act and this subchapter. Renewal of the license shall be in accordance with subsection (i) of this section.

(g) An applicant who is a military service member, military veteran, or military spouse who held a license under the Act and this subchapter within the five years preceding the application date, and without restriction, shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department will process and issue a license under the Act and this subchapter to an applicant who held such a license and who satisfies the application and supplemental application requirements, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. Renewal of the license shall be in accordance with subsection (i) of this section.

(h) In accordance with Occupations Code, §55.004(b), the department's commissioner or the commissioner's designee may waive any prerequisite to obtaining a license after reviewing the credentials of an applicant who is eligible to apply under subsection (f) or (g) of this section.

(i) If the department issues an initial license to an applicant pursuant to subsection (f) or (g) of this section to an applicant who is a military service member, military veteran, or military spouse, the department will assess whether the applicant has met all licensing requirements of this state. The department will provide this assessment in writing, which may be by electronic means, to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license will not be renewed, will be allowed to expire, and will become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

(j) Notwithstanding any other law, the department will waive the registration application fees paid to the state for an applicant described in paragraph (1) or (2) of this subsection. An applicant shall provide any proof requested by the department that the applicant is:

(1) A military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the license; or

(2) A military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction

that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(k) For license renewal, the department will exempt an individual who holds a license issued by the department from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the program director that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a license is entitled to two years of additional time beyond the expiration date of the license to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

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

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SUBCHAPTER I. LICENSED CHEMICAL DEPENDENCY COUNSELORS

25 TAC §140.417, §140.433

STATUTORY AUTHORITY

The repeals are authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The repeals are also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals affect Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.417. Renewal of License by Active Military Members.

§140.433. Licensing, Certification, or Registration of Military Service Members, Military Veterans, and Military Spouses.

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

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25 TAC §140.433, §140.434

STATUTORY AUTHORITY

The new rules are authorized by Occupations Code, Chapter 55, which includes state agency rulemaking authorization related to its requirements and provisions, and §§455.051, 504.051, 1952.051, and 1953.051, which authorize the adoption of rules needed for the department to perform its licensing and regulatory duties under those chapters for massage therapists, chemical dependency counselors, code enforcement officers, and sanitarians, respectively. The new §140.434 for chemical dependency counselors, which relates to child custody and adoption evaluations conducted in certain suits affecting the parent-child relationship, is authorized by Family Code, Chapter 107 and HB 1449. The new rules are also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rules affect Occupations Code, Chapters 55, 455, 504, 1952, and 1953.

§140.433. Licensing, Certification, or Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out certain initial licensing and license renewal procedures specific to military service members, military veterans, and military spouses, pursuant to Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Government Code, §437.001 or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(4) "Military service member" means a person who is on active duty.

(5) "Military spouse" means a person who is married to a military service member.

(6) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) An applicant shall provide documentation acceptable to the department of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes,

but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status will not be processed under this section.

(c) Upon request, an applicant shall provide proof specified by, or otherwise acceptable to, the department of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof specified by, or otherwise acceptable to, the department, that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the provisions of this section.

(e) For an application for a license under this subchapter submitted by a verified military service member or military veteran, the applicant will receive credit towards any licensing or internship requirements, except an examination requirement, for verified military service, training, or education that the department determines is relevant, as applicable, to the occupation or licensing requirements, unless he or she holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.

(f) An applicant who is a military service member, military veteran, or military spouse holding a current, unrestricted, license issued by another jurisdiction that has substantially equivalent requirements to the requirements for licensure in this state shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department will process and issue a license under this subchapter to an applicant who holds such a license, satisfies the application and supplemental application requirements, and meets the requisite substantial equivalency requirements of the other state, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. The license will have the same term as a license for the same license type otherwise issued under the Act and this subchapter. Renewal of a license issued under this subsection shall be in accordance with subsection (i) of this section.

(g) An applicant who is a military service member, military veteran, or military spouse who held a license under the Act and this subchapter within the five years preceding the application date, and without restriction, shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the department will process and issue a license under this subchapter to an applicant who held such a license and who satisfies the application and supplemental application requirements, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. The license will have the same term as a license for the same license type otherwise issued under the Act or this subchapter. Renewal of a license issued under this subsection shall be in accordance with subsection (i) of this section.

(h) In accordance with Occupations Code, §55.004(b), the department's commissioner or the commissioner's designee may waive any prerequisite to obtaining a license under the Act or this subchapter after reviewing the credentials of an applicant who is eligible to apply under subsection (f) or (g) of this section.

(i) If the department issues an initial license under this subchapter pursuant to subsection (f) or (g) of this section to an applicant who is a military service member, military veteran, or military spouse, the department will assess whether the applicant has met all licensing requirements of this state. The department will provide this assessment in writing, which may be by electronic means, to the applicant at the time the license under this subchapter is issued. If the applicant has not met all licensing requirements under the Act and this subchapter, the applicant must provide proof of completion at the time of the first application for license renewal under this subchapter. A license under this subchapter will not be renewed, will be allowed to expire, and will become ineffective if the applicant does not provide proof of completion at the time of the first application for renewal of the license.

(j) Notwithstanding any other law, the department will waive the registration application fees paid to the state for an applicant described in paragraph (1) or (2) of this subsection. An applicant shall provide any proof requested by the department that the applicant is:

(1) A military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the license under this subchapter; or

(2) A military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license under this subchapter.

(k) For license renewal under this subchapter, the department will exempt an individual who holds a license under this subchapter from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the program director that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a license under this subchapter is entitled to two years of additional time beyond the expiration date of the license to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

§140.434. Prohibition related to Child Custody and Adoption Evaluations.

(a) An individual who holds a license as an LCDC does not have a license required under Family Code, §107.104(b)(1) (relating to Child Custody Evaluator: Minimum Qualifications) or under Family Code, §107.154(b)(1) (relating to Adoption Evaluator: Minimum Qualifications), to qualify the LCDC under those subsections, as a licensee, to conduct a child custody or adoption evaluation. An LCDC is prohibited from conducting a child custody evaluation under Family Code, Chapter 107, Subchapter D (relating to Child Custody Evaluation), and as defined therein, except as described in subsection (b) of this section, and from conducting an adoption evaluation under Family Code, Chapter 107, Subchapter E (relating to Adoption Evaluation), and as defined therein, except as described in subsection (b) of this section.

(b) An individual who holds a license as an LCDC may conduct a child custody evaluation under Family Code, Chapter 107, Subchapter D, or an adoption evaluation under Family Code, Chapter 107, Subchapter E, §§107.151-107.163, only if the individual is acting consistent with the applicable Subchapter and subsection (a) of this section, and is:

(1) otherwise qualified by law to conduct such an evaluation; or

(2) appointed by a court to conduct the evaluation under Family Code, §107.106 (relating to Exception to Qualifications Required to Conduct Child Custody Evaluation) or under Family Code, §107.155 (relating to Exception to Qualifications Required to Conduct Adoption Evaluation).

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

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Department of State Health Services

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CHAPTER 157. EMERGENCY MEDICAL CARE

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§157.2, 157.5, 157.11 - 157.14, 157.16, 157.32 - 157.34, 157.36, 157.38, 157.43, and 157.44, the repeal of §157.3 and new §157.3, concerning Emergency Medical Services (EMS) provider licensing.

BACKGROUND AND PURPOSE

The rules are necessary to comply with Health and Safety Code, Chapter 773, Subchapter C, which requires the department to issue EMS provider licenses in accordance with this chapter.

Senate Bill (SB) 8 and House Bill 3556, 83rd Legislation, Regular Session, 2013, added Health and Safety Code, §773.05712, which requires licensed EMS providers to declare an Administrator of Record.

SB 1899, 84th Legislation, Regular Session, 2014, added Health and Safety Code, §773.05715 and §773.05716 that requires emergency medical service providers have a permanent physical location as the provider's primary place of business, and to own or hold a long-term lease for its equipment and vehicles.

SB 219, 84th Legislation, Regular Session, 2014, requires changing the name of Emergency Medical Technician-Intermediate (EMT-I) to Advanced Emergency Medical Technician (AEMT). SB 219 also amended Health and Safety Code, Chapter 773 by replacing the outdated references to the "Board of Health" with the rulemaking authority of the "Executive Commissioner" and the "department" due to the 2004 department reorganization.

SB 1574, 84th Legislation, Regular Session, 2014, added Health and Safety Code, §81.012 that requires entities using emergency response employees or volunteers to have a designated infection control officer to deal with employees' exposure to reportable diseases through blood or other body fluids.

These and other rules amendments reflects years of input from Emergency Medical Services (EMS) stakeholders to the Gover-

nor's EMS and Trauma Advisory Council (GETAC) on ways to improve the Texas EMS system through rules amendments and provides clarification to current rules.

These proposed rules are the product of more than 15 public, statewide stakeholder meetings between members of the EMS Committee of GETAC and department staff. They represent a grass roots process of feedback and deliberation garnered during more than 100 hours of meetings between emergency medical personnel and state EMS officials. On December 11, 2015, the EMS Committee supported these proposed revisions and made a recommendation to GETAC to support the proposed rules.

The draft rules were reviewed by GETAC at meetings on January 27, 2016 and February 12, 2016, GETAC voted unanimously, recommending the draft rules be proposed to the State Health Services Council.

The purpose of the revisions to the rules is to comply with new legislation and update current rule language to reflect state and national trends. These rules will affect more than 63,000 EMS personnel, 800 EMS Providers and the 4 million patients that the EMS and Trauma system treat and transport annually.

The rules are also in compliance with Government Code, §2001.039, and requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 157.2, 157.3, 157.5, 157.11 - 157.14, 157.16, 157.32 -157.34, 157.36, 157.38, 157.43, and 157.44 have been reviewed, and the department has determined that reasons for adopting the section continues to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 157.2, Definitions, incorporates modifications to existing rules by adding several new definitions and updating language and terms to current standards.

Section 157.3, Processing EMS Providers Licenses and Applications for EMS Personnel Certification and Licensure, was repealed and rewritten as a new rule to incorporate modifications to existing rules and update language to current terms and practices. This section rewrite develops and clarifies the time periods by which the department reviews applications for completeness and processes applications to make eligibility determinations of applicants for various EMS certifications, licenses and approvals as required by Texas Government Code, Chapter 2001.

Section 157.5, Rule Exception Requests, incorporates modifications to existing rules to update language in alignment with current terms and practices. Replaces bureau chief with the department and removes EMT-Intermediate and adds Advanced Emergency Medical Technician.

Section 157.11, Requirements for Emergency Medical Services Provider Licensing, incorporates modifications to existing rules to existing language and terms to current standards and practices. Amendments to current rules were also added due to legislation from SB 1899 and SB 1574. The changes required by SB 1899 were based on the ongoing steps being taken to reduce and prevent fraud within the EMS industry in Texas.

Section 157.11(c)(7)(D) prevents entities from adopting a deceptively similar name to an established license EMS Provider, city, county or Regional Advisory Council.

Section 157.11(c)(7)(F) is added language due to legislation from SB 1899 requirements for EMS Providers. This additional requirement mandates an EMS provider declare the address of their main business location, normal business hours, and map of service area. It also stipulates only one EMS Provider per location, and requires the provider to retain at that location until the next licensing period, unless otherwise approved by the department.

Section 157.11(c)(7)(G) outlines the education requirements for the administrator of record (AOR), per SB 8, 83rd Legislature, Regular Session, 2013, requirement for additional education and continuing education for AORs.

Section 157.11(c)(7)(J) provides the department with a staffing plan that addresses coverage of a service area which includes a process to manage communication after normal business hours have concluded.

Section 157.11(c)(7)(O) states that an EMS provider must provide the department with a list of equipment with identifiable or legible serial numbers at the initial or renewal application for an EMS Provider license.

Section 157.11(c)(7)(Q) states that an EMS provider must attest that each authorized vehicle has its own set of required equipment.

Section 157.11(c)(7)(S) states that an EMS provider will attest or provide documentation that the applicant and/or its management staff participates in the local regional advisory council.

Section 157.11(e)(3) states that ambulance vehicles must meet minimum national ambulance vehicle body type, dimension and safety criteria standards.

Section 157.11(g)(3) states that the staffing plan requires proof that the personnel has completed a jurisprudence examination.

Section 157.11(j)(2) requires that all patient equipment shall be clean and fully operational and have a backup power source, if applicable.

Section 157.11(k)(1) - (3) explains what kind of patients and at what level of care is expected to be provided by each type of ambulance.

Section 157.11(k)(2)(F) requires waveform capnography be used when performing or monitoring endotracheal intubation patients as of January 1, 2018, which is the standard throughout the nation.

Section 157.11(k)(3)(C) requires an active 12-lead capability cardiac monitor/defibrillator by January 1, 2020, which is the standard throughout the nation.

Section 157.11(m)(1)(C) requires an EMS provider, who is not the primary provider in an area where it plans to sell subscriptions, to provide to subscription plan participants a written notice that it is not the primary provider in that area and additionally requires said provider to provide a copy of this notice to the primary provider in the area and to the department within 30 days before it begins its subscription enrollment period.

Section 157.11(n) requires an EMS provider have a plan in place for the ongoing monitoring of patient care quality provided by the EMS provider's personnel and the collection of patient care data as required by 25 Texas Administrator Code, Chapter 103, concerning the reporting requirements for EMS providers.

Section 157.11(n)(15) sets standards for the maintenance and location of medical records.

Section 157.11(n)(27)(F) as required by U.S. Code, Title 42, Chapter 6A, Subchapter XXIV, Part G, each EMS Provider must have an educated designated infection control officer to enhance communication between hospitals and the EMS Provider.

Section 157.11(n)(27)(J) requires a policy explaining the process to secure medications, fluids and controlled substances on ambulances which are in compliance with local, state, and federal laws and rules.

Section 157.11(p) states that a provisional license shall be effective for no more than "30 days" instead of "45 days" from the date of issuance.

Section 157.11(r) outlines the process that the department will use to conduct surveys, inspections and investigations.

Section 157.11(u) outlines the process that the department will use when conducting a complaint investigation.

Section 157.12, Rotor-wing Air Ambulance Operations, and 157.13, Fixed-wing Air Ambulance Operations, incorporate modifications into existing rules, bringing language and terms up to current standards to include ensuring the air unit meets air worthiness stats per federal regulations. Changes include documentation of the knowledge and experiences of the medical director when treating and transporting patients by air. Also, includes the removal of language stipulating bodily injury and property damage insurance coverage amounts for the aircraft provider as these amounts are already set by federal regulations. Adds language requiring permanently installed climate control equipment to provide an environment appropriate for the medical needs of patients.

Section 157.14 adds requirements for a First Responder Organization License (FRO) to include incorporation of U.S. Code, Title 42, Chapter 6A, Subchapter XXIV, Part G, §300ff-136 and SB 1574 requirements for the designation of an infection control officer. Additionally, it requires that FRO License applications include response, dispatch and treatment protocols including an equipment and supply list to treat adult, pediatric and neonatal patients.

Section 157.16, Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License, incorporates modifications into existing rules, adds language and terms to include allowing the department to take disciplinary action based on action taken by other states or federal agencies. Additional modification includes notifying the AOR and the EMS Provider license holder of pending disciplinary action by the department.

Section 157.32, Emergency Medical Services Education Program and Course Approval, incorporates modifications into existing rules to meet current national education standards by increasing the minimum required hours needed to complete an Emergency Care Attendant course, an EMT-Basic course, an Advanced EMT course and a EMT-Paramedic course. An additional amendment was included to change the name of the "Intermediate EMT-I" to "Advanced EMT" which was changed by SB 219 and reflects a national name change.

Language was added in §157.32(d)(2)(C) to ensure that the sponsor of an education program has the required equipment and resources to conduct the program.

Language was added as required by U.S. Code, Title 42, Chapter 6A, subchapter XXIV, Part G, stipulating each EMS Provider must have an educated designated infection control officer to enhance communication between program, hospitals and the student taking the program.

Section 157.32(i)(2)(A) provides detailed information on what the department expects to be provided when receiving a self-study submitted by the applicant. Throughout this rule language was added to ensure medical oversight must be involved in all aspects of the education program.

Section 157.32(p)(25) was added to ensure online or distance learning classes must meet the same standards as outlined in this rule.

Section 157.33, Certification, incorporates modifications to existing rule language and terms to reflect current standards and includes provisions requiring fingerprinting of EMS personnel as directed in Government Code, §411.087 and §411.110 and as required in §157.37 relating to Certification or Licensure of Persons with Criminal Backgrounds. The following responsibilities included for EMS personnel were also added:

- to complete an accurate patient care record;
- to report abuse or injury to a patient;
- to follow the medical director's protocols and policies;
- take precautions to prevent misappropriation of medication, maintain skills and knowledge of level of certification; and
- to notify the department within 30 days of a change of address.

Section 157.34, Recertification, incorporates modifications into existing rule language and terms to reflect current standards and includes the EMS jurisprudence exam as required by SB 1899. The Advanced EMT replaced the EMT-I in this rule.

Section 157.36, Criteria for Denial and Disciplinary Actions for EMS Personnel and Applicants and Voluntary Surrender of a Certificate or License, incorporates modifications into existing rules by clarifying current language and adding additional actions the department may take, including disciplinary actions against EMS personnel certification. Disciplinary action may be taken by the department against a person's certification or license for the following additional reasons:

- failing to report abuse or injury to a patient to employer or legal authority within 24 hours;
- turning over or delegating care to person whom has the lacks of education or skills to treat the patient at the appropriate level required;
- failing to take precautions to prevent misappropriation of medication;
- cheating on a test to gain or renew certification/license by department;
- using drugs or alcohol that could possibly endanger patient health and safety;
- failing to transport the patient to an appropriate medical facility;
- failing to contact medical control when required;
- falsifying an employment application that would affect the hiring process;
- falsifying clinical documentation as a student;

- falsifying required daily check sheets;
- engaging in act(s) of dishonesty which relates to the EMS profession,
- behavior exploiting the EMS personnel- patient relationship in a sexual way;
- falsifying information provided to the department;
- engaging in a pattern of behavior that demonstrates routine response to medical emergencies without being under the medical oversight or with an EMS Provider or FRO; and
- disciplinary action taken by another state, U.S. territory, National Registry of EMT or any other national recognized organization that provides or renews certification/license.

Section 157.38, Continuing Education, incorporates modifications into existing rule language and terms to reflect current standards. It requires a continuing education program to designate an infection control officer and to verify that it has physician medical oversight when its students are involved with patient care.

Section 157.43, Course Coordinator Certification, incorporates modifications into existing rule language by increasing the teaching experience requirement for a course coordinator to four years of experience in EMS. It also ensures physician medical oversight when education is conducted, especially when performing clinic time or advance level skills within an ambulance. Language was also added to require more detail be provided to students regarding what to expect from an EMS education program, and what is required to gain certification/license in Texas. It also requires education to be provided to all students regarding current Texas EMS laws, rules and policies, per SB 1899.

Section 157.43(h)(20) requires that a course coordinator notify the department when leaving as the course coordinator for an ongoing EMS education program.

Section 157.43(m)(3)(AA) explains what is considered unprofessional conduct by the department such as retaliation; discrimination; and verbal or physical abuse; or inappropriate physical or sexual conduct.

Section 157.44(f), Emergency Medical Service Instructor Certification, incorporates modifications to existing rules by requiring an EMS Instructor to document at least 8 hours every two years of providing or observing EMS care being given in an ambulance, hospital or clinic to enhance and reinforce the instructors' knowledge of the Texas EMS system.

Section 157.44(i)(2)(W) and (X) allows the department to take disciplinary action against an instructor for failing to notify the department if the instructor learns of a student applicant that was arrested, convicted, had deferred adjudication or deferred prosecution.

Section 157.44(i)(2)(Y), provides what is considered unprofessional conduct by the department such as retaliation; discrimination; verbal or physical abuse; or inappropriate physical or sexual conduct.

FISCAL NOTE

Mr. Joseph Schmider, Office of EMS/Trauma Systems Coordination, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state government but there will be minimal fiscal implications to local governments (such as cities or counties) as a result of enforcing and administering the sections as proposed. During

more than 15 statewide stakeholder meetings, the department conducted informal surveys and determined that a large majority of the current EMS Providers already carry this additional new equipment.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS

Mr. Schmider has also determined that there will be an adverse impact on small businesses or micro-businesses or persons who are required to comply with the rules as proposed. These rules will implement new requirements for applicants seeking to gain and maintain an EMS provider license or EMS providers renewing license or certification in Texas, these additional requirements are the following:

- ongoing cost for eight hours per year of continuing education for an EMS Provider's Administrator of Record;
- EMS personnel will have to complete a jurisprudence examination as required in SB 1899, and is expected to be around \$40 per person every four years;
- the purchase of a waveform capnography for each advance life support ambulance that performs endotracheal intubation by January 1, 2018, with the cost range between \$1500 to \$3000 per unit; and
- the purchase of an active 12-lead capability cardiac monitor/defibrillator for each advance life support ambulance by January 1, 2020, with the cost range between \$4000 to \$10,000 per device.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Schmider has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing and administering these sections will be better educated EMS personnel on Texas rules and laws and enhance medical oversight will significantly reduce the incidence of fraud, waste and abuse by licensed EMS providers. The additional requirements concerning the new equipment which includes the waveform capnography and active 12-lead capability cardiac monitor/defibrillator will enhance the patient care being provided throughout Texas and shall improve a more favorable outcome for the 4 million patients that the EMS system treats annually.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and,

therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Joseph Schmider, Office of EMS/Trauma Systems Coordination, Health Care and Quality Section, Division of Regulatory Services, Department of State Health Services, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6700, or by email to Joseph.Schmider@dshs.state.tx.us. Comments will be accepted for 30 days following the publication of the proposal to the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, 1100 West 49th Street, Austin, Texas. The meeting date will be posted on the home page of the EMS/Trauma Systems under "News/Features found at the following link: <http://www.dshs.state.tx.us/em-traumasystems/>. Please contact Joseph Schmider by phone at (512) 834-6737, or Joseph.Schmider@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. EMERGENCY MEDICAL SERVICES - PART A

25 TAC §§157.2, 157.3, 157.5

STATUTORY AUTHORITY

The amendments and new section are authorized by the Texas Health and Safety Code, Chapter 773 and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Texas Health and Safety Code. Review of the rules implements Government Code, §2001.039.

The amendments and new section affect Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

§157.2. Definitions.

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

(1) Abandonment - Leaving a patient without appropriate medical care once patient contact has been established, unless emergency medical services personnel are following medical director's protocols, a physician directive or the patient signs a release; turning the care of a patient over to an individual of lesser education [training] when advanced treatment modalities have been initiated [to include, but not limited to, IVs; intubation, and drug therapy].

(2) Accreditation - Formal recognition by a national association of a provider's service or an education program based on [voluntarily met] standards established by that association.

(3) Act - Emergency Medical Services Act, Health and Safety Code, Chapter 773.

(4) Administrator of Record (AOR) - The administrator for an EMS provider which meets the requirements of Health and Safety Code, §§773.05712 and §773.0415.

(5) Advanced Emergency Medical Technician (AEMT) - An individual who is certified by the department and is minimally proficient in performing skills required to provide emergency prehospital or interfacility care by initiating and maintaining under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation.

(6) [(4)] Advanced life support (ALS) - Emergency prehospital or interfacility care that uses invasive medical acts which would include ALS assessment. The provision of advanced life support shall be under the medical supervision and control of a licensed physician.

(7) [(5)] Advanced life support (ALS) vehicle - A vehicle that is designed for transporting the sick and injured and that meets the requirements of §157.11(j)(2) of this title (relating to Requirements for an EMS Provider License) as an advanced [a basic] life support vehicle and has sufficient equipment and supplies for providing advanced level of care based on national standards and the EMS provider's medical director approved treatment protocols [intravenous therapy and endotracheal or esophageal intubation or both].

(8) Advanced Life Support assessment - Assessment performed by an AEMT or paramedic that qualify as advanced life support based upon initial dispatch information, when it could reasonably be believed that the patient was suffering from an acute condition that may require advanced skills.

(9) [(6)] Air ambulance provider - A person who operates/leases a fixed-wing or rotor-wing air ambulance aircraft, equipped and staffed to provide a medical care environment on-board appropriate to the patient's needs. The term air ambulance provider is not synonymous with and does not refer to the Federal Aviation Administration (FAA) air carrier certificate holder unless they also maintain and control the medical aspects that are consistent with EMS provider licensure.

(10) Ambulance - A vehicle for transportation of sick or injured person to, from or between places of treatment for an illness or injury, and provide out of hospital medical care to the patient.

(11) Authorized ambulance vehicle - A vehicle authorized to be operated by the licensed provider and that meets all criteria for approval as listed in §157.11(e) of this title.

(12) [(7)] Basic life support (BLS) - Emergency prehospital or interfacility care that uses noninvasive medical acts. The provision of basic life support will have sufficient equipment and supplies for providing basic level care based on national standards and the EMS provider's medical director approved treatment protocols [shall be under the medical supervision and control of a licensed physician].

(13) [(8)] Basic life support (BLS) vehicle - A vehicle that is designed for transporting the sick or injured and that has sufficient equipment and supplies for providing basic life support based on national standards and the EMS provider's medical director approved treatment protocols.

(14) [(9)] Basic trauma facility - A hospital designated by the department as having met the criteria for a Level IV trauma facility as described in §157.125 of this title (relating to Requirements for Trauma Facility Designation). Basic trauma facilities provide resuscitation, stabilization, and arrange for appropriate transfer of major and severe trauma patients to a higher level trauma facility, provide ongoing

ing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.

~~(10) Board - The Texas Board of Health.~~

~~(11) Bureau - The Bureau of Emergency Management of the Texas Department of Health.~~

~~(12) Bureau chief - The chief of the Bureau of Emergency Management.~~

~~(15) [(13)] Bypass - Direction given to a prehospital emergency medical services unit, by direct/on-line medical control or pre-determined triage criteria, to pass the nearest hospital for the most appropriate hospital/trauma facility. Bypass protocols should have local physician input into their development and should be reviewed through the regional performance improvement process.~~

~~(16) [(14)] Candidate - An individual who is requesting emergency medical services personnel certification or licensure, recertification or relicensure from the Texas Department of State Health Services.~~

~~(17) [(15)] Certificant - Emergency medical services personnel with current certification from the Texas Department of State Health Services.~~

~~(18) [(16)] Comprehensive trauma facility - A hospital designated by the department as having met the criteria for a Level I trauma facility as described in §157.125 of this title. Comprehensive trauma facilities manage major and severe trauma patients, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, implement targeted injury prevention programs, and conduct trauma research.~~

~~(19) [(17)] Course medical director - A Texas licensed physician approved by the department with experience in and current knowledge of emergency care who shall provide direction over all instruction and clinical practice required in EMS training courses.~~

~~(20) [(18)] Credit hour - Continuing education credit unit awarded for successful completion of a unit of learning activity as defined in §157.32 of this title (relating to EMS Education Program and Course Approval).~~

~~(21) [(19)] Critically injured person - A person suffering major or severe trauma, with severe multi system injuries or major unisystem injury; the extent of the injury may be difficult to ascertain, but which has the potential of producing mortality or major disability.~~

~~(22) Current - Within active certification or licensure period of time.~~

~~(23) [(20)] Department - The Texas Department of State Health Services.~~

~~(24) Designated infection control officer - A designated officer who serves as a liaison between the employer's employees who have been or believe they have been exposed to a potentially life-threatening infectious disease, through a person who was treated and/or transported by the EMS provider.~~

~~(25) [(21)] Designation - A formal recognition by the department of a hospital's trauma care capabilities and commitment.~~

~~(26) Distance learning - A method of learning remotely without being in regular face-to-face contact with an instructor in the classroom.~~

~~(27) [(22)] Diversion - A procedure put into effect by a trauma facility to ensure ~~[insure]~~ appropriate patient care when that~~

facility is unable to provide the level of care demanded by a trauma patient's injuries or when the facility has temporarily exhausted its resources.

~~(28) [(23)] Emergency call - A new [a telephone] call or other similar communication from a member of the public, as part of a 9-1-1 system or other emergency access communication system, made to obtain emergency medical services.~~

~~(29) [(24)] Emergency care attendant (ECA) - An individual who is certified by the department as minimally proficient to provide emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.~~

~~(30) [(25)] Emergency medical services (EMS) - Services used to respond to an individual's perceived need for ~~[immediate]~~ medical care and to prevent death or aggravation of physiological or psychological illness or injury.~~

~~(31) [(26)] Emergency medical services (EMS) operator - A [a] person who, as an employee of a public agency, as that term is defined by Health and Safety Code, §771.001, receives emergency calls.~~

~~[(27) Emergency Medical Service Administrator - The principal executive manager of an emergency medical service organization who is responsible for the non- medical operations, staffing, policies and procedures, and overall management of the service.]~~

~~(32) [(28)] Emergency medical services and trauma care system - An arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.~~

~~(33) [(29)] Emergency medical services personnel -~~

~~(A) emergency care attendant (ECA);~~

~~(B) emergency medical technician (EMT);~~

~~(C) advanced emergency medical technician (AEMT); [emergency medical technician-intermediate (EMT-I); or]~~

~~(D) emergency medical technician-paramedic (EMT-P); or[-]~~

~~(E) licensed paramedic.~~

~~(34) [(30)] Emergency medical services (EMS) provider - A person who uses, operates or maintains EMS vehicles and EMS personnel to provide EMS. See §157.11 of this title ~~[(relating to Requirements for an EMS Provider License)]~~ regarding fee exemption.~~

~~(35) [(31)] Emergency medical services (EMS) volunteer provider - An EMS that ~~[which]~~ has at least 75% of the total personnel as volunteers and is a nonprofit organization. See §157.11 of this title regarding fee exemption.~~

~~(36) [(32)] Emergency medical services (EMS) volunteer - EMS personnel who provide emergency prehospital or interfacility care in affiliation with a licensed EMS provider or a registered First Responder organization without remuneration, except for reimbursement for expenses.~~

~~(37) [(33)] Emergency medical technician (EMT) - An individual who is certified by the department as minimally proficient to perform emergency prehospital care that is necessary for basic life support and that includes the control of hemorrhaging and cardiopulmonary resuscitation.~~

~~[(34) Emergency medical technician-intermediate (EMT-I) - An individual who is certified by the department as minimally proficient in performing skills required to provide emergency~~

prehospital or interfacility care by initiating and maintaining under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation or both.]

(38) [(35)] Emergency medical technician-paramedic (EMT-P) - An individual who is certified by the department as minimally proficient to provide emergency prehospital or interfacility care in health care facility's emergency or urgent care clinical setting, including a hospital emergency room and a freestanding emergency medical care facility by providing advanced life support that includes initiation and maintenance under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

(39) [(36)] Emergency medical services vehicle -

- (A) basic life support (BLS) vehicle;
- (B) advanced life support (ALS) vehicle;
- (C) mobile intensive care unit (MICU);
- (D) MICU rotor wing and MICU fixed wing air medical vehicles; or
- (E) specialized emergency medical service vehicle.

(40) Emergency Medical Task Force (EMTF) - A unit specially organized to provide coordinated emergency medical response operation systems during large scale EMS incidents.

(41) [(37)] Emergency prehospital care - Care provided to the sick and injured within a health care facility's emergency or urgent care clinical setting, including a hospital emergency room and a freestanding emergency medical care facility, before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(42) [(38)] Facility triage - The process of assigning patients to an appropriate trauma facility based on injury severity and facility availability.

(43) Fixed location - The address as it appears on the initial and/or renewal EMS provider license application in which the patient care records and administrative offices will be located.

(44) [(39)] General trauma facility - A hospital designated by the department as having met the criteria for a Level III and Level IV trauma facility as described in §157.125 of this title. General trauma facilities provide resuscitation, stabilization, and assessment of injury victims and either provide treatment or arrange for appropriate transfer to a higher level trauma facility, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.

(45) [(40)] Governmental entity - A county, a city or town, a school district, or a special district or authority created in accordance with the Texas Constitution, including a rural fire prevention district, an emergency services district, a water district, a municipal utility district, and a hospital district.

(46) [(41)] Health care entity - A first responder, EMS provider, physician, nurse, hospital, designated trauma facility, or a rehabilitation program.

(47) Inactive EMS provider status - The period when a licensed EMS provider is not able to respond or response ready to an emergency or non-emergency medical dispatch.

(48) [(42)] Industrial ambulance - Any vehicle owned and operated by an industrial facility as defined in the Texas Transportation

Code, §541.201 [Chapter 541, §201], and used for initial transport or transfer of company employees who become urgently ill or injured on company premises to an appropriate medical facility.

(49) [(43)] Interfacility care - Care provided while transporting a patient between medical facilities.

(50) [(44)] Lead trauma facility - A trauma facility [that has made an additional commitment to its trauma service area. This commitment,] which usually is offered by the highest level of trauma facility in a given trauma service area, includes receipt of major and severe trauma patients transferred from lower level trauma facilities. It also includes on-going support of the regional advisory council and the provision of regional outreach, prevention, and trauma educational activities to all trauma care providers in the trauma service area regardless of health care system affiliation.

(51) Legal entity name - The name of the lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual. Has legal capacity to

- (A) enter into agreements or contracts;
- (B) assume obligations;
- (C) incur and pay debts;
- (D) sue and be sued in its own right; and
- (E) to be accountable for illegal activities.

(52) [(45)] Licensee - An individual who holds a current paramedic license from the Texas Department of State Health Services (department) or an individual who uses, maintains or operates EMS vehicles and EMS personnel to provide EMS and who holds a paramedic [an EMS provider] license from the department.

(53) [(46)] Major trauma facility - A hospital designated by the department as having met the criteria for a Level II trauma facility as described in §157.125 of this title. Major trauma facilities provide similar services to the Level I trauma facility although research and some medical specialty areas are not required for Level II facilities, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.

(54) [(47)] Major trauma patient - A person with injuries, or potential injuries, severe enough to benefit from treatment at a trauma facility. These patients may or may not present with alterations in vital signs or level of consciousness or obvious significant injuries (see severe trauma patient), but have been involved in an incident which results in a high index of suspicion for significant injury and/or disability. Co-morbid factors such as age and/or the presence of significant medical problems should also be considered. These patients should initiate a system's or health care entity's trauma response, including prehospital triage to a designated trauma facility. For performance improvement purposes, these patients are also identified retrospectively by an injury severity score of 9 or above.

(55) [(48)] Medical control - The supervision of prehospital emergency medical service providers by a licensed physician. This encompasses on-line (direct voice contact) and off-line (written protocol and procedural review).

(56) [(49)] Medical Director - The licensed physician who provides medical supervision to the EMS personnel of a licensed EMS provider or a recognized First Responder Organization under the terms of the Medical Practices Act (Occupations Code, Chapters 151 - 165 [Chapter 6, Texas Civil Statutes 4495b]) and rules promulgated by the Texas Medical [State] Board [of Medical Examiners]. Also may be referred to as off-line medical control.

(57) [(50)] Medical oversight - The assistance and management given to health care providers and/or entities involved in regional EMS/trauma systems planning by a physician or group of physicians designated to provide technical assistance.

(58) [(54)] Medical supervision - Direction given to emergency medical services personnel by a licensed physician under the terms of the Medical Practice Act, (Occupations Code, Chapters 151 - 165 [Texas Civil Statutes, Chapter 6, Article 4495b]) and rules promulgated by the Texas Medical [State] Board [of Medical Examiners] pursuant to the terms of the Medical Practice Act.

(59) [(52)] Mobile intensive care unit (MICU) - A [a] vehicle that is designed for transporting the sick or injured and that meets the requirements of the advanced life support vehicle and has sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way communication with at least one paramedic on the vehicle when providing EMS.

(60) Off-line medical direction - The licensed physician who provides approved protocols and medical supervision to the EMS personnel of a licensed EMS provider under the terms of the Medical Practices Act (Occupations Code, Chapters 151 - 165) and a rule promulgated by the Texas Medical Board (22 Texas Administrative Code §197.3).

(61) Online course - A directed learning process, comprised of educational information (articles, videos, images, web links), communication (messaging, discussion forums) with a process and some way to measure students' knowledge.

(62) Operational name - Name under which the business or operation is conducted and presented to the world.

(63) [(53)] Operational policies - Policies and procedures which are the basis for the operation of EMS include, but are not limited to such areas as vehicle maintenance, proper maintenance and storage of supplies, equipment, medications, and patient care devices; complaint investigation, multicasualty incidents, hazardous materials; but do not include personnel or financial policies.

(64) Out of service vehicle - The period when a licensed EMS Provider vehicle is unable to respond or be response ready for an emergency or non-emergency response.

(65) [(54)] Person - An individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

(66) [(55)] Prehospital triage - The process of identifying medical/injury acuity or the potential for severe injury based upon physiological criteria, injury patterns, and/or high- energy mechanisms and transporting patients to a facility appropriate for their medical/injury needs. Prehospital triage for injury victims is guided by the prehospital triage protocol adopted by the regional advisory council (RAC) and approved by the department.

(67) Practical exam - Sometime referred to as psychomotor, is an exam that assesses the subject's ability to perceive instructions and perform motor responses.

(68) Primary EMS provider response area - The geographic area in which an EMS agency routinely provides emergency EMS as agreed upon by a local or county governmental entity or by contract.

(69) Public safety answering point (PSAP) - The call center responsible for answering calls to an emergency telephone number for ambulance services; sometimes called "public safety access point," or "dispatch center."

(70) [(56)] Quality management - Quality assurance, quality improvement, and/or performance improvement activities.

(71) Regional Advisory Council (RAC) - An organization serving as the Department of State Health Services recognized health care coalition responsible for the development, implementation and maintenance of the regional trauma and emergency health care system within the geographic jurisdiction of the Trauma Service Area. A Regional Advisory Council must maintain §501(c)(3) status.

(72) [(57)] Regional EMS/trauma system - A network of healthcare providers within a given trauma service area (TSA) collectively focusing on traumatic injury as a public health problem, based on the given resources within each TSA. [An EMS and trauma care system that has been developed by a RAC in a multi-county area and has been recognized by the department. The Texas Trauma system is a network of the regional EMS/trauma systems.]

(73) [(58)] Regional medical control - Physician supervision for prehospital emergency medical services (EMS) providers in a given trauma service area or other geographic area intended to provide standardized oversight, treatment, and transport guidelines, which should, at minimum, follow the regional advisory council's regional EMS/trauma system plan components related to these issues and 22 Texas Administrative Code §197.3 (relating to Off-line Medical Director).

(74) [(59)] Recertification - The procedure for renewal of emergency medical services certification.

(75) Receiving facility - A facility to which an ambulance may transport a patient who requires prompt continuous medical care.

(76) [(60)] Reciprocity - The recognition of certification or privileges granted to an individual from another state or recognized EMS system.

(77) [(61)] Relicensure - The procedure for renewal of a paramedic license as described in §157.40 of this title (relating to Paramedic Licensure); the procedure for renewal of an EMS provider license as described in §157.11 of this title.

(78) Response pending status - The status of an EMS vehicle that just delivered a patient to a final receiving facility, and the dispatch center has another EMS response waiting that EMS vehicle.

(79) [(62)] Response ready - When an EMS vehicle is equipped and staffed in accordance with §157.11 of this title (relating to Requirements for a Provider License) and is immediately available to respond to any emergency call 24 hours per day, seven days per week (24/7).

(80) Scope of practice - Describes the procedures, actions and processes that an EMS personnel is permitted to undertake in keeping with the terms of the professional license or certification and approved by the EMS provider medical director.

(81) [(63)] Severe trauma patient - A person with injuries or potential injuries that require treatment at a tertiary trauma facility. These patients may be identified by an alteration in vital signs and/or level of consciousness or by the presence of significant injuries and shall initiate a system's and/or health care entity's highest level of trauma response including prehospital triage to a designated trauma facility. For performance improvement purposes, these patients are also identified retrospectively by an injury severity score of 15 or above.

(82) [(64)] Shall - Mandatory requirements.

(83) [(65)] Site survey - An on-site review of a trauma facility applicant to determine if it meets the criteria for a particular level of designation.

(84) [(66)] Sole provider - The only licensed emergency medical service provider in a geographically contiguous service area and in which the next closest provider is greater than 20 miles from the limits of the area.

(85) [(67)] Specialized emergency medical services vehicle - A vehicle that is designed for responding to and transporting sick or injured persons by any means of transportation other than by standard automotive ground ambulance or rotor or fixed wing aircraft and that has sufficient staffing, equipment and supplies to provide for the specialized needs of the patient transported. This category includes, but is not limited to, water craft, off-road vehicles, and specially designed, configured or equipped vehicles used for transporting special care patients such as critical neonatal or burn patients.

(86) [(68)] Specialty centers - Entities that care for specific types of [trauma] patients such as trauma, pediatric, stroke, cardiac hospitals and burn units that have received certification, categorization, verification or other form of recognition by an appropriate agency regarding their capability to definitively treat these types of patients.

(87) [(69)] Staffing plan - A document which indicates the overall working schedule patterns of EMS personnel.

(88) [(70)] Standard of care - Care equivalent to what any reasonable, prudent person of like certification level would have given in a similar situation, based on locally, regionally and nationally [local or regionally] adopted standard emergency medical services curricula as adopted by reference in §157.32 of this title (relating to Emergency Medical Services Training and Course Approval).

(89) Substation - An EMS provider station location that is not the fixed station and which is likely to provide rapid access to a location to which the EMS vehicle may be dispatched.

(90) [(71)] Trauma - An injury or wound to a living body caused by the application of an external force or violence, including burn injuries. Poisonings, near-drownings and suffocations, other than those due to external forces are to be excluded from this definition.

(91) [(72)] Trauma facility - A hospital that has successfully completed the designation process, is capable of stabilization and/or definitive treatment of critically injured persons and actively participates in a regional EMS/trauma system.

(92) [(73)] Trauma nurse coordinator/trauma program manager - A registered nurse with demonstrated interest, education, and experience in trauma care and who, in partnership with the trauma medical director and hospital administration, is responsible for coordination of trauma care at a designated trauma facility. This coordination should include active participation in the trauma performance improvement program, the authority to positively impact trauma care of trauma patients in all areas of the hospital, and targeted prevention and education activities for the public and health care professionals.

(93) [(74)] Trauma patient - Any critically injured person who has been evaluated by a physician, a registered nurse, or emergency medical services personnel, and found to require medical care in a trauma facility based on local, regional or national medical control protocols.

(94) [(75)] Trauma registry - A statewide database which documents and integrates medical and system information related to the provision of trauma care by health care entities.

(95) Trauma Service Area - An organized geographical area of at least three counties administered by a regional advisory council for the purpose of providing prompt and efficient transportation and/or treatment of sick and injured patients.

(96) [(76)] When in service - The period of time when an EMS vehicle is at the scene or when en route to a facility with a patient.

§157.3. Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensure.

(a) Purpose. The purpose of this section is to set out the time periods by which the Texas Department of State Health Services (department) reviews applications for completeness and processes applications to make an eligibility determination of applicants for various Emergency Medical Services (EMS) certifications, licenses and approvals. This section does not apply to applications for trauma facility designation, but does apply to applications for the following:

- (1) EMS Provider License,
- (2) First Responder Organization (FRO) license;
- (3) EMS Personnel Certifications;
- (4) Paramedic Licenses;
- (5) EMS Personnel Certification or Paramedic License via Reciprocity;
- (6) EMS Personnel Certification or Paramedic License via Upgrade;
- (7) EMS Course Coordinator certification;
- (8) EMS Instructor Certification;
- (9) EMS Information Operator Certification;
- (10) Comprehensive Clinical Management Program (CCMP) Approval;
- (11) EMS Education Program Approval;
- (12) EMS Course Approval;
- (13) EMS Continuing Education Provider Approval;
- (14) EMS Information Operator Instructor Certification;
- (15) EMS Information Operator Training Program Approval; and
- (16) EMS Information Operator Instructor Training Program Approval.

(b) Period for Processing Initial or Renewal Application. This period begins on the date the department receives for review and processing a fully completed written initial or renewal application for any of those certifications, licenses or approvals listed in subsection (a)(1) - (16) of this section and ends on the date the department issues the certification or license, or sends a written notice proposing to deny granting the certification, license or approval. The certification, license or approval may be sent to the applicant in lieu of sending a notice of acceptance of an application.

- (1) This period will be no more than 60 calendar days.
- (2) This period will be no more than 120 calendar days for an EMS provider license initial applicant, seeking a variance from eligibility requirements.
- (3) This period may be no more than 180 days for an applicant of whom the department is conducting a criminal background investigation.
- (4) If the department receives information from any other person or source that would cause the department to begin a criminal background investigation of an applicant, this period may be no more than 180 days from the date the department sends written notice that it's conducting a criminal background investigation.

(5) This period may be longer than noted periods, if an application is deficient and becomes subject to a continuing review of the application.

(6) This period may be longer than noted periods, if the department proposes to deny the granting of a license, certification or approval and the applicant timely requests an administrative appeal hearing, thus causing a final determination to be made pursuant to timelines relative to Texas Government Code, Chapter 2001 and the department's appeal rules in this chapter.

(c) Period for Continuing Review of an Initial or Renewal Application.

(1) Incomplete Information. If an initial or renewal application is incomplete, the department will send written notice to the applicant that it is deficient and will specify what information is required to cure all deficiencies and make it complete and acceptable for filing. If the department is conducting a criminal background investigation of the applicant during its application review, it may send the applicant a request for information needed for its investigation to determine the applicant's continued eligibility. The department will send such notice, and/or request, by the 30th day of its receipt of a deficient application or receipt of information giving cause for a criminal background investigation. Once an application is subject to a continuing review of the application, the 60 day period for the department either to issue, or propose to deny, the license, certification or approval will be extended based upon the applicant's timeliness in providing the information and other factors related to the department's reviewing and processing the application.

(A) Application Deficiency. If an application deficiency is based upon an absence of information required to make the application complete for filing, the applicant shall provide the required information to the department by the 30th day from the date that the department sent a written request for required information to cure the application's deficiencies.

(B) Eligibility Deficiency. If an application deficiency is based upon the applicant's lack of fulfilling an eligibility requirement(s) that causes an absence of information required to make the application complete for filing, the applicant shall provide written notification to the department of such along with a time estimate as to when such eligibility requirement(s) will be fulfilled and shall do so by the 30th day from the date that the department sent a written request for required information to cure the application's deficiencies.

(C) Criminal Background Investigation. If the department is conducting a criminal background investigation of the applicant during its application review and sends the applicant a request for information needed for its criminal background investigation, the applicant shall provide such requested information by the 30th day from the date that the department sent a written request for the required information.

(2) Second Attempt to Cure Incomplete Information.

(A) Application Deficiency Information. If the applicant timely provides any written information that attempts to respond to a notice of application deficiencies, but which still does not cure said deficiencies, the department will send a second written notice specifying what information is required to cure the deficiencies. The department will send this second written notice by the 30th day from the day it receives the information that attempts to satisfy its earlier request. The applicant shall provide the requested information to the department by the 30th day from the date the department sent its second written request for required information to cure the application's deficiencies.

(B) Criminal Background Information. If the applicant timely provides any written information or documentation that does

not completely fulfill an earlier request for information needed for a criminal background investigation, the department will send a second written notice specifying what information is needed for its investigation. The department will send this second written notice by the 30th day from the day it receives the information that attempts to satisfy its earlier request. The applicant shall provide the requested information to the department by the 30th day from the date the department sent its second written request for information needed for its investigation.

(3) Complete Information. If the applicant timely provides information that cures application deficiencies and fully completes the application for filing or satisfactorily provides the requested information needed for a criminal background investigation to determine applicant's continuing eligibility, the department, by the 60th day from the date that the department receives such information, will either issue the certification, license or approval or send a written notice proposing to deny granting the certification, license or approval.

(4) Failure to Cure Initial Application Deficiencies or Provide Complete Information.

(A) If the department does not timely receive from the initial applicant any information in response to the department's first or second written notice of initial application deficiencies and request for curing information, the initial application is deemed to be withdrawn and/or void on the 30th day from the date the department sent its request, and the initial application fee is forfeited.

(B) If the department does not timely receive from the initial applicant the requested information needed for its criminal background investigation to determine the initial applicant's continued eligibility, the department may propose to deny granting the initial certification, license or approval.

(5) Failure to Cure Initial Application Deficiencies Related to Eligibility Requirements.

(A) If an initial application for EMS Personnel Certifications, Paramedic Licenses, EMS Personnel Certification or Paramedic License via Reciprocity, EMS Personnel Certification or Paramedic License via Upgrade, EMS Course Coordinator certification, EMS Instructor Certification, EMS Information Operator Certification, EMS Information Operator Instructor Certification, is deficient because the applicant has not yet fulfilled certain eligibility requirements, outlined in this chapter, and the applicant has timely notified the department of such, the department may withhold making its determination to either grant or propose denying the certification or license for not more than two years after the application's filing date. If the applicant fails to timely provide the department with written substantial proof noting fulfillment of certain eligibility requirements, thus making the application complete for filing, within two years after the application filing date, the application is deemed to be withdrawn and/or void and the application fee is forfeited.

(B) If an initial application for and EMS Provider License, FRO license, EMS Education Program Approval, EMS Course Approval, EMS Continuing Education Provider Approval, EMS Information Operator Training Program Approval, EMS Information Operator Instructor Training Program Approval, is deficient because the applicant has not yet fulfilled certain eligibility requirements, outlined in this chapter, and the applicant has timely notified the department of such, the department may withhold making its determination to either grant or propose denying the certification, license or approval for not more than six months after the application's filing date. If the applicant fails to timely provide the department with information or written substantial proof noting fulfillment of certain eligibility requirements, thus making the application complete for filing, within six months after

the application filing date, the application is deemed to be withdrawn and/or void and the application fee is forfeited.

(d) Timeliness Issues Regarding a Renewal Application.

(1) Continuance of License. If the department receives a sufficiently complete timely filed renewal application along with the full amount of the renewal fee prior to midnight of the expiration date of the certificate, license or approval to be renewed, the certificate, license or approval does not expire, but continues during the department's review of the application for completeness or, if applicable, its criminal background investigation of the applicant and continues during its processing of the application to make a determination either to grant, or propose to deny, the renewal of the certification, license or approval.

(2) Expiration of License. If the department does not timely receive a renewal application and the correct amount of renewal fee, or only receives the application but not the full amount of the renewal fee prior to midnight of the expiration date of the certificate, license or approval to be renewed, then the certificate, license or approval expires at midnight of the expiration date. Even if the applicant untimely files the application with the full amount of the fee, the department will review the application for completeness and if the application is complete or later becomes timely completed, it will then process the application to determine eligibility either to renew, or otherwise to propose to deny the renewal of, the certification, license or approval. During that review and processing period, the person or entity will not be certified, licensed, or approved. If renewal is granted, the renewed license, certification or approval will begin on the date the department grants it, which most likely will not be on the date immediately following the expiration date. An untimely filed EMS provider renewal application will require the applicant to file an initial application and to meet EMS provider license requirements in effect for an initial applicant at that time.

(3) Uncured Application Deficiencies. If the department does not timely receive from the applicant any information in response to the department's first or second written notice(s) of application deficiencies and request(s) for curing information, the department may propose to deny renewal of the license, certification or approval.

(4) Incomplete Requested Criminal Background Information. If the department does not timely receive from the applicant any requested information needed to complete its criminal background investigation to determine the applicant's continued eligibility, the department may propose to deny renewal of the certification.

(5) Proposed Denial of Renewal. If the department proposes to deny renewal for failure to timely provide requested information to cure application deficiencies or requested information to complete a criminal background information or for failure to meet eligibility requirements, and sends, via United States mail, written notice to the applicant proposing to deny renewal of the certification, license or approval and if the department timely receives from the applicant a written request for an administrative appeal hearing, the certificate, license or approval continues past its expiration date until a final determination is made pursuant to Texas Government Code, Chapter 2001 and the department's appeal rules in this chapter.

(e) Notice to Last Known Address. The department will send letters, noting application deficiencies or other correspondence requesting necessary information, via U.S. mail, to the applicant's last known address on file with the department, unless it later changes its manner or policy on its notification process. It is the applicant's responsibility to timely notify the department of any change in its mailing address within ten days of such address change.

(f) Prolonged Application Review Process by the Department. If the application review process is prolonged due to circumstances surrounding a general investigation or criminal background investigation of the applicant or due to any other administrative procedure within the department or other unsuspected event, the department may extend the final review period regarding its review of the application and its making a final determination of the applicant's eligibility for initial or renewal certification, license or approval.

(g) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in subsections (b) and (c) of this section, the applicant has the right to request of the director of the Office of EMS and Trauma Systems full reimbursement of all filing fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses, registrations, certifications, and permits as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(h) Appeal. If the request for full reimbursement authorized by subsection (g) of this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner that it requests full reimbursement of all filing fees paid because its application was not processed within the adopted time period. The director shall submit a written report to the commissioner, with a copy provided to the applicant, of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will review the report and any documentation submitted by the applicant, make the final decision on the matter, and provide written notification of his or her decision to the applicant and the director.

(i) Sufficiently Complete Timely Filed Renewal Application. A renewal application that the department timely has received before the expiration date of a certificate, license or approval that contains all of the following:

(1) correct, legible and fully filled out, dated, and signed by the applicant on department written application paper form or online internet form; and

(2) the appropriate amount of application fee that has cleared the applicant's financial institution.

§157.5. Rule Exemption Requests.

(a) EMS personnel and applicants for EMS certification or licensure may request an exemption to rules of this chapter [###] by:

(1) submitting an exemption request application form with a nonrefundable fee of \$30, if applicable, in addition to any other applicable applications and fees required by this chapter [###];

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

(b) In determining whether to grant the exemption, the department [bureau chief] shall take into consideration the best interests of the people in a rural area who are served by the licensed

EMS provider or registered first responder organization with whom the applicant is affiliated or will be affiliated, if approved. For the purposes of this section, a rural area is defined to be:

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

(c) If the request is approved, an exemption may be granted temporarily. The applicant will be notified by the department [bureau chief], in writing, and the notification shall include:

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

(d) This exemption process may be utilized to temporarily allow a person in a rural area, described in subsection (b)(1) and (2) of this section, to practice at a higher level prior to receiving the higher level of certification.

(1) To apply to receive this allowance for up to two months after course completion, the applicant must:

(A) (No change.)

(B) be currently certified by the department as an ECA, EMT, or AEMT [EMT-Intermediate]; and

(C) (No change.)

(2) If granted through written approval from the department [bureau chief], the candidate may practice at the higher level only if accompanied by an individual who is certified or licensed by the department at the same or a higher level of certification or licensure.

(3) (No change.)

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

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

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Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 11, 2016

For further information, please call: (512) 776-6972



25 TAC §157.3

STATUTORY AUTHORITY

The repeal is authorized by the Texas Health and Safety Code, Chapter 773 and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The repeal affects Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

§157.3. Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensure.

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

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

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Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 11, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §§157.11 - 157.14, 157.16

STATUTORY AUTHORITY

The amendments are authorized by the Texas Health and Safety Code, Chapter 773 and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

§157.11. Requirements for an EMS Provider License.

(a) (No change.)

(b) EMS in Texas is a delegated practice, as written in Occupations Code, §157.003.

(c) [(b)] Application requirements for an Emergency Medical Services (EMS) Provider License.

(1) An applicant for an initial EMS provider license shall submit a completed application to the department on the required official forms, following the department's written process.

(2) The [A] nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle to be operated under the license shall accompany the application.

(3) The department will process the EMS provider license application as per §157.3 of this title (relating to Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensure).

(4) [(3)] An EMS provider holding a valid license or authorization from another state; whose service area adjoins the State of Texas; who has in place a written mutual aid agreement, with a licensed Texas EMS provider, and who when requested to do so by a licensed Texas EMS provider, responds into Texas for emergency mutual aid assistance, may be exempt from holding a Texas EMS provider license, but will be obligated to perform to the same medical standards of care required of EMS providers licensed by their home state [in Texas].

(5) [(4)] A fixed-wing or rotor-wing air ambulance provider, appropriately licensed by the state governments of New Mexico, Oklahoma, Arkansas, Kansas, Colorado or Louisiana may apply for a reciprocal issuance of a provider license, and the application would not require staffing by Texas EMS certified or licensed personnel. A nonrefundable administrative fee of \$500 per provider in addition to a nonrefundable fee of \$180 for each EMS aircraft to be operated in Texas under the reciprocal license shall accompany the application.

(6) [(5)] An applicant for an EMS provider license that provides emergency prehospital care is exempt from payment of department licensing and authorization fees if the firm is staffed with at least 75% volunteer personnel, has no more than five full-time staff or equivalent, and [if] the firm is recognized as a §501(c)(3) nonprofit corporation by the Internal Revenue Service. An EMS provider who compensates a physician to provide medical supervision may be exempt from the payment of department licensing and authorization fees if all other requirements for fee exemption are met.

(7) [(6)] Required documents that shall accompany a license application.

(A) Document verifying volunteer status, if applicable.

(B) Map and description of service area, a list of counties and cities in which applicant proposes to provide primary emergency service and a list of all station locations with address and telephone and facsimile transmission numbers for each station.

(C) Declaration of organization type and profit status.

(D) Declaration of Provider Name.

(i) The legal name of the EMS provider cannot include the name of the city, county or regional advisory council within or in part, unless written approval is given by the individual city, county or regional advisory council respectively.

(ii) The EMS provider operational name cannot include the name of the city, county or regional advisory council within or in part, unless written approval is given by the individual city, county or regional advisory council respectively. A proposed provider name is deemed to be deceptively similar to an established licensed EMS provider if it meets the conditions listed in the Office of the Secretary of State rule, 1 Texas Administrative Code §79.39 (relating to Deceptively Similar Name).

(E) Declaration of Ownership.

(F) Declaration of the address for the main location of the business, normal business hours and provide proof of ownership or lease of such location.

(i) The normal business hours must be posted for public viewing.

(ii) A service area map must be provided.

(iii) Only one EMS provider license will be issued to each fixed address.

(iv) The applicant shall attest that no other license EMS provider is at the provided business location or address.

(v) The emergency medical services provider must remain in the same physical location for the period of licensure, unless the department approves a change in location.

(G) [(F)] Declaration of administrator [Administrator] of record and any subsequently filed declaration of a new administrator shall declare the following, if the EMS provider is required to have an administrator of record as per Health and Safety Code, §773.0571 or §773.05712.

(i) The administrator of record is not employed or otherwise compensated by another private for-profit EMS provider.

(ii) The administrator of record meets the qualifications required for an emergency medical technician certification or other health care professional license with a direct relationship to EMS and currently holds such certification or license issued by the State of Texas.

(iii) The administrator of record has submitted to a criminal history record check at the applicant's expense as directed in §157.37 of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds).

(iv) The administrator of record has completed an initial education course approved by the department on state and federal laws and rules that affect EMS in the following areas: [-]

(I) Health and Safety Code, Chapter 773 and 25 Texas Administrative Code, Chapter 157;

(II) EMS dispatch processes;

(III) EMS billing processes;

(IV) Medical control accountability; and

(V) Quality improvement processes for EMS operations.

(v) The applicant will assure that its administrator of record shall annually [with] complete [the requirement of] eight hours of [annual] continuing education related to the Texas [state] and federal laws and rules related to EMS.

(vi) An EMS provider that is directly operated by a governmental entity, is exempt from this subparagraph, except for declaration of administrator of record.

(vii) An EMS provider that held a license on September 1, 2013, and has an administrator of record who has at least eight years of experience providing EMS, the administrator of record is exempt from clauses (ii) and (iv) of this subparagraph.

(H) [(G)] Copies of Doing Business Under Assumed Name Certificates (DBA).

(I) [(H)] Completed EMS Personnel Form.

(J) [(I)] Staffing Plan that describes how the EMS provider provides [with provide] continuous coverage for the service area defined in documents submitted with the EMS provider application. The EMS provider shall have a staffing plan that addresses coverage of the service area or shall have a formal system to manage communication when not providing services after normal business hours.

(K) [(J)] Completed EMS Vehicle Form.

(L) [(K)] Declaration of an employed medical director and a copy of the signed contract or agreement with a physician who is currently licensed in the State of Texas, in good standing with the Texas Medical Board, in compliance with Texas Medical Board rules, [particularly regarding EMS as outlined in] 22 Texas Administrative Code, Part 9, Texas Medical Board, Chapter 197, and in compliance with [Title 3 of the] Texas Occupations Code, Title 3.

(M) [(L)] Completed Medical Director Information Form.

(N) [(M)] Treatment and Transport Protocols and policies addressing the care to be provided to adult, pediatric, and neonatal patients, must be approved and signed by the medical director.

(O) [(N)] A listing of equipment as required on the EMS Provider initial and renewal application, with identifiable or legible serial numbers, supplies and medications; approved and signed by the medical director.

(P) The applicant shall attest that all required equipment is permitted to be used by the EMS provider and provide proof of own-

ership or hold a long-term lease for all equipment necessary for the safe operation.

(Q) The applicant shall attest that each authorized vehicle will have its own set of equipment required for each authorized vehicle to operate at the level of the service for which the provider is authorized.

(R) [(⊖)] Description of how the provider will conduct Quality Assurance in coordination with the EMS provider medical director.

(S) The applicant shall provide an attestation or provide documentation that it and/or its management staff will or continues to participate in the local regional advisory council.

(T) [(⊕)] Plan for how the provider will respond to disaster incidents including mass casualty situations in coordination with local and regional plans.

(U) [(⊕)] Copies of written Mutual Aid and/or Inter-local Agreements with EMS providers.

(V) [(⊕)] Documentation as required for subscription or membership program, if applicable.

(W) [(⊕)] Certificate of Insurance, provided by the insurer, identifying the department as the certificate holder and indicating at least minimum motor vehicle liability coverage for each vehicle to be operated and professional liability coverage. If applicant is a government subdivision, submit evidence of financial responsibility by self-insuring to the limit imposed by the tort claims provisions of the Texas Civil Practice and Remedies Code.

(i) The applicant shall maintain motor vehicle liability insurance as required under the Texas Transportation Code.

(ii) The applicant shall maintain professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, or as necessary per state law, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient.

(X) [(⊕)] The applicant shall provide copies of vehicle titles, vehicle lease agreements, copies of exempt registrations if applicant is a government subdivision, or an affidavit identifying applicant as the owner, lessee, or authorized operator for each vehicle to be operated under the license.

(Y) [(⊕)] The applicant shall provide documentation of the following, showing that the applicant, including its management staff possesses sufficient professional experience and qualifications related to EMS:

(i) an attestation that its management staff have read the Texas Emergency Healthcare Act and the department's EMS rules in this chapter;

(ii) proof of one year experience or education provided by a nationally recognized organization on emergency medical dispatch processes;

(iii) proof of one year experience or education provided by a nationally recognized organization concerning EMS billing processes;

(iv) proof of one year experience or education provided by a nationally recognized organization on medical control accountability; and

(v) proof of one year experience or education provided by a nationally recognized organization on quality improvement processes for EMS operations.

(Z) [(⊕)] A copy of a letter of credit for the obtaining or renewing of an EMS Providers license, issued by a federally insured bank or savings institution:

(i) in the amount of \$100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(ii) in the amount of \$75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(iii) in the amount of \$50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued;

(iv) in the amount of \$25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(v) that shall include the names of all of the parties involved in the transaction;

(vi) that shall include the names of the persons or entity, who owns the EMS provider operation and to whom the bank is issuing the letter of credit;

(vii) that shall include the name of the person or entity, receiving the letter of credit; and

(viii) an EMS provider that is directly operated by a governmental entity is exempt from this subsection.

(AA) [(⊕)] A copy of the surety bond in the amount of \$50,000 issued to and provided to the Health and Human Services Commission by the applicant, participating in the medical assistance program operated under Human Resources Code, Chapter 32, the Medicaid managed care program operated under Government Code, Chapter 533, or the child health plan program operated under Health and Safety Code, Chapter 62. An EMS provider that is directly operated by a governmental entity is exempt from this subparagraph.

(BB) [(⊕)] Documentation evidencing applicant or management team has not been excluded from participation in the state Medicaid program.

(CC) [(⊕)] A copy of a governmental entity letter of approval that shall:

(i) be from the governing body of the municipality in which the applicant is located and is applying to provide EMS;

(ii) be from the commissioner's court of the county in which the applicant is located and is applying to provide EMS, if the applicant is not located in a municipality;

(iii) include the attestation that the addition of another licensed EMS provider will not interfere with or adversely affect the provision of EMS by the licensed EMS providers operating in the municipality or county;

(iv) include the attestation that the addition of another licensed EMS provider will remedy an existing provider shortage that cannot be resolved through the use of the licensed EMS providers operating in the municipality or county; and

(v) include the attestation that the addition of another licensed EMS provider will not cause an oversupply of licensed EMS providers in the municipality or county.

(8) [(7)] Paragraph (7)(CC) [(6)(⊕)] of this subsection does not apply to renewal of an EMS provider license or a municipal-

ity, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(9) [(8)] An EMS provider is prohibited from expanding operations to or stationing any EMS vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this subsection until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(A) a contract awarded by another municipality or county for the provision of EMS;

(B) an emergency response made in connection with an existing mutual aid agreement; or

(C) an activation of a statewide emergency or disaster response by the department.

(10) [(9)] Paragraph (9) [(8)] of this subsection does not apply to renewal of an EMS provider license or a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(11) [(10)] Paragraph (9) [(8)] of this subsection does not apply to fixed or rotor wing EMS providers.

(d) [(e)] EMS Provider License.

(1) License.

(A) Applicants who have submitted all required documents and who have met all the criteria for licensure will be issued a provider license to be effective for a period of two years from the date of issuance.

(B) Licenses shall be issued in the name of the applicant.

(C) License expiration dates may be adjusted by the department to create licensing periods less than two years for administrative purposes.

(D) An application for an initial license or for the renewal of a license may be denied to a person or legal entity who owns or who has owned any portion of an EMS provider service or who operates/manages or who/which has operated/managed any portion of an EMS provider service which has been sanctioned by or which has a proposed disciplinary action/sanction pending against it by the department or any other local, state or federal agency.

(E) The license will be issued in the form of a certificate which shall be prominently displayed in a public area of the provider's primary place of business.

(F) An EMS Provider License issued by the department shall not be transferable to another person or entity.

(2) Vehicle Authorization [Authorizations].

(A) The department will issue an authorization [authorizations] for each vehicle to be operated by the applicant which meets all criteria for approval as defined in subsection (d) of this section.

(B) A vehicle authorization [Vehicle Authorizations] shall be issued for the following levels of service, and a provider may operate at a higher level of service based on appropriate staffing, equipment and medical direction for that level. A vehicle authorization [Vehicle authorizations] will include a level of care designation at one of the following levels:

- (i) Basic Life Support (BLS);
- (ii) BLS with Advanced Life Support (ALS) capability;
- (iii) BLS with Mobile Intensive Care Unit (MICU) capability;
- (iv) Advanced Life Support (ALS);
- (v) ALS with MICU capability;
- (vi) Mobile Intensive Care Unit (MICU);
- (vii) Air Medical:
 - (I) Rotor wing; or
 - (II) Fixed wing; and
 - (viii) Specialized.

(C) Change of Vehicle Authorization. To change an authorization to a different level the provider shall submit a request with appropriate documentation to the department verifying the provider's ability to perform at the requested level. A fee of \$30 shall be required for each new authorization requested. The provider shall allow sufficient time for the department to verify the documentation and conduct necessary inspections before implementing service at the requested authorization level.

(D) Vehicle Authorizations are not required to be specific to particular vehicles and may be interchangeably placed in other vehicles as necessary. The original Vehicle Authorization for the appropriate level of service shall be prominently displayed in the patient compartment of each vehicle:

(E) Vehicle Authorizations are not transferable between providers.

(F) A replacement of a lost or damaged license or authorization may be issued if requested with a nonrefundable fee of \$10.

(3) Declaration of Business Operational Name [Names] and Administration.

(A) The applicant shall submit a list of all business operational names under which the service is operated. If the applicant intends to operate the service under a name or names different from the name for which the license is issued, the applicant shall submit certified copies of assumed name certificates. [The Department shall not issue licenses with an identical name.]

(B) A change in the operational name which the service is operated will require a new application and a prorated fee as determined by the department. A new provider number will be issued.

(C) Name of Administrator of Record must be declared. The applicant shall submit a notarized document declaring the full name of the chief administrator, his/her mailing address and telephone number to whom the department shall address all official communications in regard to the license.

(e) [(d)] Vehicles.

(1) All EMS vehicles must be adequately constructed, equipped, maintained and operated to render patient care, comfort and transportation of adult, pediatric, and neonatal patients safely and efficiently. A pediatric and neonatal equipment list should be based on endorsed pediatric equipment national standards within the approved equipment list required by the medical director.

(2) EMS vehicles must allow the proper and safe storage and use of all required equipment, supplies and medications and must

allow all required procedures to be carried out in a safe and effective manner.

(3) As [Unless otherwise] approved by the department, EMS vehicles must meet a practical efficient [the] minimum national ambulance vehicle body type, dimension and safety criteria standards [as specified in the "Federal Specification for ambulances," KKK-A-1822, published by the U.S. General Services Administration].

(4) All vehicles shall have an environmental system capable of heating or cooling the patient(s) and staff, in accordance with the manufacturer specifications, within the patient compartment at all times when in service and which allows for protection of medication, according to manufacturer specifications, from extreme temperatures if it becomes environmentally necessary. The provider shall provide evidence of an operational policy which shall list the parenteral pharmaceuticals authorized by the medical director and which shall define the storage and/or FDA recommendations. Compliance with the policy shall be incorporated into the provider's Quality Assurance process and shall be documented on unit readiness reports.

(5) [When response-ready or in-service,] EMS vehicles shall have operational two-way communication capable of contacting appropriate medical resources and as outlined in the current Texas interoperability plan unless the vehicle is designated out of service with the form provided by the department.

(6) [When response-ready or in-service,] EMS vehicles shall be in compliance with all applicable federal, state and local requirements unless the vehicle is designated out of service with the form provided by the department.

(7) All EMS vehicles shall have the name of the provider and a current department issued EMS provider license number prominently displayed on both sides of the vehicle in at least 2 inch lettering and in contrasting color. The license number shall shall have the letters TX prior to the license number. This requirement does not apply to fixed wing aircraft.

(f) ~~[(e)]~~ Substitution, replacement and additional vehicles.

(1) The provider shall notify the department within five business days if the provider substitutes or replaces a vehicle. No fee is required for a vehicle substitution or replacement.

(2) The provider shall notify the department if the provider adds a vehicle to the provider's operational fleet prior to making the vehicle response-ready. A vehicle authorization request shall be submitted with a nonrefundable vehicle fee prior to the vehicle being placed into service.

(g) ~~[(f)]~~ Staffing Plan Required.

(1) The applicant shall submit a completed EMS Personnel Form listing each response person assigned to staff EMS vehicles by name, certification level, and department issued certification/license identification number.

(2) An EMS provider responsible for an emergency response area that is unable to provide continuous coverage within the declared service areas shall publish public notices in local media of its inability to provide continuous response capability and shall include the days and hours of its operation. The EMS provider shall notify all the public safety-answering points and all dispatch centers of the days and hours when unable to provide coverage. The EMS provider shall submit evidence that reasonable attempts to secure coverage from other EMS providers have been made.

(3) The applicant must provide proof at initial and renewal of license that all licensed or certified personnel have completed a jurisprudence examination approved by the department on state and federal laws and rules that affect EMS.

(h) ~~[(g)]~~ Minimum Staffing Required.

(1) BLS--When response-ready or in-service, authorized EMS vehicles operating at the BLS level shall be staffed at a minimum with two emergency care attendants (ECAs).

(2) BLS with ALS capability--When response-ready or in-service below ALS two ECAs. Full ALS status becomes active when staffed by at least an emergency medical technician (EMT)-Intermediate and at least an EMT.

(3) BLS with MICU capability--When response-ready or in-service below MICU two ECAs. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(4) ALS--When response-ready or in-service, authorized EMS vehicles operating at the ALS level shall be staffed at a minimum with one EMT Basic and one ~~AEMT [EMT-Intermediate]~~.

(5) ALS with MICU capability--When response-ready or in-service below MICU shall require one EMT-Intermediate and one EMT. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(6) MICU--When response-ready or in-service, authorized EMS vehicles operating at the MICU level shall be staffed at a minimum with one EMT Basic and one certified or licensed EMT-Paramedic.

(7) Specialized--When response-ready or in-service, EMS vehicles authorized to operate for a specialized purpose shall be staffed with a minimum of two personnel appropriately licensed and/or certified as determined by the type and application of the specialized purpose and as approved by the medical director and the department.

(8) For air ambulance staffing requirements refer to §157.12(f) of this title (relating to Rotor-wing Air Ambulance Operations) or §157.13(g) of this title (relating to Fixed-wing Air Ambulance Operations).

(9) When response-ready or in-service, authorized EMS vehicles may operate at a lower level than licensed by the department. When operating at the BLS level with an ALS/MICU ambulance, the EMS provider must have an approved security plan for the ALS/MICU medication as approved by the EMS provider medical director's protocol and/or policy.

(10) ~~[(9)]~~ As justified by patient needs, providers may utilize appropriately certified and/or licensed medical personnel in addition to those which are required by their designation levels. In addition to the care rendered by the required staff, the provider shall be accountable for care rendered by any additional personnel.

(i) ~~[(h)]~~ Treatment and Transport Protocols Required.

(1) The applicant shall submit written delegated standing orders for patient treatment and transport protocols and policies related to patient care ~~[(protocols)]~~ which have been approved and signed by the provider's medical director.

(2) The protocols shall have an effective date [and an expiration date which correspond to the inclusive dates of the provider's EMS license].

(3) The protocols shall address the use of non-EMS certified or licensed medical personnel who, in addition to the EMS

staff, may provide patient care on behalf of the provider and/or in the provider's EMS vehicles.

(4) The protocols shall address the use of all required, additional, and/or specialized medical equipment, supplies, and pharmaceuticals carried on each EMS vehicle in the provider's fleet.

(5) The protocols shall identify delegated procedures for each EMS Certification or license level utilized by the provider.

(6) The protocols shall indicate specific applications, including geographical area and duty status of personnel.

(j) ~~[(+)]~~ EMS Equipment, supplies, medical devices, parenteral solutions and pharmaceuticals.

(1) The EMS provider shall submit a list, approved and signed by the medical director and fully supportive of and consistent with the protocols, of all medical equipment, supplies, medical devices, parenteral solutions and pharmaceuticals to be carried. The list shall specify the quantities of each item to be carried and shall specify the sizes and types of each item necessary to provide appropriate care for all age ranges appropriate to the needs of their patients. The quantities listed shall be appropriate to the provider's call volume, transport times and restocking capabilities.

(2) All patient care equipment, and medical devices must be operational, appropriately secured in the vehicle at the time of providing patient care and response ready, and supplies shall be clean and fully operational. All patient care powered equipment shall have manual mechanical, spare batteries or an alternative power source, if applicable.

~~[(2) All critical patient care equipment, medical devices, and supplies shall be clean and fully operational. All critical patient care battery powered equipment shall have spare batteries or an alternative power source, if applicable.]~~

(3) All solutions and pharmaceuticals shall be up to ~~in~~ date and shall be stored and maintained in accordance with the manufacturers and/or U.S. Federal Drug Administration (FDA) recommendations.

(4) The requirements for air ambulance equipment and supplies are listed in §157.12(h) of this title or §157.13(h) of this title.

(k) ~~[(+)]~~ The following equipment [items] shall be present on each EMS in-service vehicle and on, or immediately available for, each response-ready vehicle ~~[in quantities, sizes and types]~~ as specified in the equipment list as required by the medical director's approved equipment list to include all state required equipment. The equipment list shall include equipment required for treatment and transport of adult, pediatric, and neonatal patients ~~[in subsection (i) of this section].~~

(1) Basic Life Support (BLS):

(A) Equipment required to administer the BLS scope of practice and incorporates the knowledge, competencies and basic skills of an EMT/ECA and additional skills as authorized by the EMS provider medical director. All BLS ambulances shall be able to perform treatment and transport patients receiving the following skills:

- (i) airway/ventilation/oxygenation;
- (ii) cardiovascular circulation;
- (iii) immobilization;
- (iv) medication administration - routes; and
- (v) single and multi-system trauma patients.

(B) ~~[(A)]~~ oropharyngeal airways;

~~(C) [(B)]~~ portable and vehicle mounted suction;

~~(D) [(C)]~~ bag valve mask units, oxygen capable;

~~(E) [(D)]~~ portable and vehicle mounted oxygen;

~~(F) [(E)]~~ oxygen delivery devices;

~~(G) [(F)]~~ dressing and bandaging materials;

~~(H) [(G)]~~ commercial tourniquet;

~~(I) [(H)]~~ rigid cervical immobilization devices;

~~(J) [(I)]~~ spinal immobilization devices;

~~(K) [(J)]~~ extremity splints;

~~(L) [(K)]~~ equipment to meet special patient needs;

~~(M) [(L)]~~ equipment for determining and monitoring patient vital signs, condition or response to treatment;

~~(N) [(M)]~~ pharmaceuticals, as required by medical director protocols;

~~(O) [(N)]~~ an external cardiac defibrillator ~~[An External Cardiac Defibrillator]~~ appropriate to the staffing level with two sets of adult and two sets of pediatric pads;

~~(P) [(O)]~~ a ~~[A]~~ patient-transport device capable of being secured to the vehicle, and the patient must be fully restrained per manufacturer recommendations; and

~~(Q) [(P)]~~ an ~~[A]~~ epinephrine auto injector or similar device capable of treating anaphylaxis.

(2) Advanced Life Support (ALS):

(A) equipment required to administer the ALS scope of practice and incorporates the knowledge, competencies and basic and advanced skills of an AEMT and additional skills as authorized by the EMS provider medical director. All ALS ambulances shall be able to perform treatment and transport patients receiving the following skills, including all required BLS equipment to perform treatment and transport patients receiving the following skills:

- (i) airway/ventilation/oxygenation;
- (ii) cardiovascular circulation;
- (iii) immobilization;
- (iv) medication administration - routes; and
- (v) intravenous (IV) initiation/maintenance fluids.

(B) ~~[(A)]~~ all required BLS equipment;

(C) ~~[(B)]~~ advanced airway equipment;

(D) ~~[(C)]~~ IV equipment and supplies; ~~[and]~~

~~(E) [(D)]~~ pharmaceuticals as required by medical director protocols; ~~and[-]~~

~~(F) wave form capnography or state approved carbon dioxide detection equipment must be used after January 1, 2018, when performing or monitoring endotracheal intubation.~~

(3) MICU:

(A) equipment required to administer the knowledge, competencies and advanced skills of a paramedic, and additional skills as authorized by the EMS provider medical director. All MICU ambulances shall be able to perform treatment and transport patients receiving the following skills:

- (i) airway/ventilation/oxygenation;

- (ii) cardiovascular circulation;
- (iii) immobilization;
- (iv) medication administration - routes; and
- (v) intravenous (IV) initiation/maintenance fluids.

(B) [~~A~~] all required BLS and ALS equipment;

(C) [~~B~~] with active 12-lead capability cardiac monitor/defibrillator by January 1, 2020; and

(D) [~~C~~] pharmaceuticals as required by medical director protocols.

(4) BLS with ALS Capability:

(A) all required BLS equipment, even when in service or response ready at the ALS level; and

(B) all required ALS equipment, when in service or response ready at the ALS level.

(5) BLS with MICU Capability:

(A) all required BLS equipment, even when in service or response ready at the MICU level; and

(B) all required MICU equipment, when in service or response ready at [~~the either~~] the MICU level.

(6) ALS with MICU Capability:

(A) all required ALS equipment, even when in service or response ready at the MICU level; and

(B) all MICU equipment, when in service or response ready at the MICU level.

(7) In addition to medical supplies and equipment:

(A) a complete and current copy of written or electronic protocols approved and signed by the medical director; with a current and complete equipment, supply, and medication list available to the crew;

(B) operable emergency warning devices;

(C) personal protective equipment for the crew to include at least:

- (i) protective, non-porous gloves;
- (ii) medical eye protection;
- (iii) medical respiratory protection must be available per crew member, National Institute for Occupational Safety and Health (NIOSH) approved N95 or greater;
- (iv) medical protective gowns or equivalent; and
- (v) personal cleansing supplies;

(D) sharps container;

(E) biohazard bags;

(F) portable, battery-powered flashlight (not a pen-light);

(G) a mounted, currently inspected, 5 pound ABC fire extinguisher (not applicable to air ambulances);

(H) "No Smoking" signs posted in the patient compartment and cab of vehicle; [~~and~~]

(I) a current emergency response guide book, or an electronic version that is available to the crew (for hazardous materials); and[-]

(J) each vehicle will carry 25 triage tags in coordination with the Regional Advisory Council (RAC).

(8) As justified by specific patient needs, and when qualified personnel are available, providers may appropriately utilize equipment in addition to that which is required by their designation levels. Equipment used must be consistent with protocols and/or patient-specific orders and must correspond to personnel qualifications.

(l) [~~k~~] National accreditation. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level requirements, the department may exempt the provider from portions of the license process. In addition to other licensing requirements, accredited providers shall submit:

(1) an accreditation self-study;

(2) a copy of formal accreditation certificate; and

(3) any correspondence or updates to or from the accrediting organization which impact the provider's status.

(m) [~~h~~] Subscription or Membership Services. An EMS provider that [who] operates or intends to operate a subscription or membership program for the provision of EMS within the provider service area shall meet all the requirements for an EMS provider license as established by the Health and Safety Code, Chapter 773, and the rules adopted thereunder, and shall obtain department approval prior to soliciting, advertising or collecting subscription or membership fees. In order to obtain department approval for a subscription or membership program, the EMS provider shall:

(1) Obtain written authorization from the highest elected official (County Judge or Mayor) of the political subdivision(s) where subscriptions will be sold. Written authorization must be obtained from each County Judge if subscriptions are to be sold in multiple counties.

(A) The County Judge must provide written authorizations if subscriptions sold across an entire county.

(B) The Mayor may provide written authorization if subscriptions are sold exclusively within the boundaries of an incorporated town or city.

(C) If an EMS provider is not the primary emergency provider in any area where they are going to sell a subscription plan, written notification must be provided to the participants receiving subscription plan stating that the EMS Provider is not the primary emergency provider in this area. A copy of this documentation should be provided to the primary emergency provider and the department within 30 days before the beginning of any enrollment period.

(2) Submit a copy of the contract used to enroll participants.

(3) The EMS provider shall maintain a current file of all advertising for the service. Submit a copy of all advertising used to promote the subscription service within 30 [~~ten~~] days before [after] the beginning of any enrollment period.

(4) Comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service.

(5) Provide evidence of financial responsibility by:

(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must

be on a department bond form and be issued by a company licensed by or eligible to do business in the State of Texas; or

(B) submitting satisfactory evidence of self-insurance an amount equal to the funds to be subscribed if the provider is a function of a governmental entity.

(6) Not deny emergency medical services to non-subscribers or subscribers of non-current status.

(7) Be reviewed at least every year; and the subscription program may be reviewed by the department at any time.

(8) Furnish a list after each enrollment period with the names, addresses, dates of enrollment of each subscriber, and subscription fee paid by each subscriber.

(9) Furnish the department beginning and ending dates of enrollment period(s). Subscription service period shall not exceed one year. Subscribers shall not be charged more than a prorated fee for the remaining subscription service period that they subscribe for.

(10) Furnish the department with the total amount of funds collected each year.

(11) Not offer membership nor accept members into the program who are Medicaid clients.

(n) ~~(m)~~ Responsibilities of the EMS provider. During the license period, the provider's responsibilities shall include:

(1) assuring that all response-ready and in-service vehicles are available 24 hours a day and seven days a week, maintained, operated, equipped and staffed in accordance with the requirements of the provider's license, to include staffing, equipment, supplies, required insurance and additional requirements per the current EMS provider's medical director approved protocols and policies;

(2) each EMS provider shall develop, implement, maintain, and evaluate an effective, ongoing, system-wide, data-driven, interdisciplinary quality assessment and performance improvement program. The program shall be individualized to the provider and shall, at a minimum, include:

(A) the standard of patient care as directed by the medical director's protocols and medical director input into the provider's policies and standard operating procedures;

(B) a complaint management system;

(C) monitoring the quality of patient care provided by the personnel and taking appropriate and immediate corrective action to insure that quality of care is maintained in accordance with the existing standards of care and the provider medical director's signed, approved protocols;

(D) the program shall include, but not be limited to, an ongoing program that achieves measurable improvement in patient care outcomes and reduction of medical errors;

(3) provide an attestation or provide documentation that its management staff will or continue to participate in the local regional advisory council;

(4) when an air ambulance is initiated through any other method than the local 911 system the air service providing the air ambulance is required to notify the local 911 center or the appropriate local response system for the location of the response at time of launch. This would not include interfacility transports or schedule transports;

(5) ensuring that all personnel are currently certified or licensed by the department;

(6) assuring that all personnel, when on an in-service vehicle or when on the scene of an emergency, are prominently identified by, at least, the last name and the first initial of the first name, the certification or license level and the provider name. A provider may utilize an alternative identification system in incident specific situations that pose a potential for danger if the individuals are identified by name;

(7) assuring the confidentiality of all patient information is in compliance with all federal and state laws;

(8) assuring that Informed Treatment/Transport Refusal forms are obtained from all patients refusing service, or documenting incidents when an Informed Treatment/Transport Refusal form cannot be obtained;

(9) assuring that patient care reports are completed accurately on all patients and meet standards as outlined in 25 Texas Administrative Code, Chapter 103;

(10) assuring that patient care reports are provided to facilities receiving the patients:

(A) whenever operationally feasible, the report shall be provided to the receiving facility at the time the patient is delivered or a full written or computer generated report shall be delivered to the facility within 24 hours of the delivery of the patient;

(B) if in a response-pending status, an abbreviated documented report shall be provided at the time the patient is delivered and a full written or computer generated report shall be delivered to the facility within 24 hours of the delivery of the patient;

(C) the abbreviated report shall document, at a minimum, the patient's name, condition upon arrival at the scene; the pre-hospital care provided; the patient's status during transport, including signs, symptoms, and responses during the transport; the call initiation time; dispatch time; scene arrival time; scene departure time; hospital arrival time; and, the identification of the EMS staff; and

(D) in lieu of subparagraph (C) of this paragraph, personnel may follow the Regional Advisory Council's process for providing abbreviated documentation to the receiving facility

(11) pharmaceutical storage policy as approved by the providers medical director;

(12) assuring that staff completes a readiness inspection as written by the providers policy;

(13) preventive maintenance plan for vehicles and equipment.

(14) staff has reviewed policies and procedures as approved by the EMS Provider and the EMS Provider Medical Director;

(15) Maintenance of medical reports.

(A) A licensed EMS provider shall maintain adequate medical reports of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the EMS provider.

(B) If a patient was younger than 18 years of age when last treated by the provider, the medical reports of the patient shall be maintained by the EMS provider until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(C) An EMS provider may destroy medical records that relate to any civil, criminal or administrative proceeding only if the provider knows the proceeding has been finally resolved.

(D) EMS providers shall retain medical records for a longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(E) EMS providers may transfer ownership of records to another licensed EMS provider only if the EMS provider, in writing, assumes ownership of the records maintains the records consistent with this chapter.

(F) Destruction of medical records shall be done in a manner that ensures continued confidentiality.

(G) At the time of initial licensing and at each renewal the EMS Provider and medical director must attestation or provide documentation to the department a plan for the going out of business, selling, transferring the business to ensure the maintenance of the medical record as outlined in subparagraph (E) of this paragraph.

(H) The emergency medical services provider must maintain all patient care records in the physical location that is the provider's primary place of business, unless the department approves an alternate location.

{(2) assuring the existence of and adherence to a quality assurance plan which shall, at a minimum, include:}

{(A) the standard of patient care and the medical director's protocols;}

{(B) pharmaceutical storage;}

{(C) readiness inspections;}

{(D) preventive maintenance;}

{(E) policies and procedures;}

{(F) complaint management; and}

{(G) patient care reporting and documentation.}

{(3) monitoring the quality of patient care provided by the service and personnel and taking appropriate and immediate corrective action to insure that quality of service is maintained in accordance with the existing standards of care;}

{(4) ensuring that all personnel are currently certified or licensed by the department;}

{(5) assuring that all personnel, when on an in-service vehicle or when on the scene of an emergency, are prominently identified by, at least, the last name and the first initial of the first name, the certification or license level and the provider name. A provider may utilize an alternative identification system in incident specific situations that pose a potential for danger if the individuals are identified by name;}

{(6) assuring the confidentiality of all patient information in compliance with all federal and state laws;}

{(7) assuring that Informed Treatment/Transport Refusal forms are obtained from all patients refusing service, or documenting incidents when an Informed Treatment/Transport Refusal form cannot be obtained;}

{(8) assuring that patient care reports are completed accurately on all patients;}

{(9) assuring that patient care reports are provided to emergency facilities receiving the patients;}

{(A) the report shall be accurate, complete, and clearly written or computer generated;}

{(B) the report shall document, at a minimum, the patient's name, condition upon arrival at the scene; the prehospital care provided; the patient's status during transport, including signs, symptoms, and responses during the transport; the call initiation time; dis-

patch time; scene arrival time; scene departure time; hospital arrival time; and, the identification of the EMS staff;}

{(C) whenever operationally feasible, the report shall be provided to the receiving facility at the time the patient is delivered; and/or}

{(D) if in a response-pending status, an abbreviated written report shall be provided at the time the patient is delivered and a full written or computer generated report shall be delivered to the facility within one business day of the delivery of the patient.}

{(16) [(+10)] assuring that all requested patient records are made promptly available to the medical director, hospital or department when requested;

{(17) [(+11)] assuring that current protocols, current equipment, supply and medication lists, and the correct original Vehicle Authorization at the appropriate level are maintained on each response-ready [and in-service] vehicle;

{(18) [(+12)] monitoring and enforcing compliance with all policies and protocols;

{(19) [(+13)] assuring provisions for the appropriate disposal of medical and/or biohazardous waste materials;

{(20) [(+14)] assuring ongoing compliance with the terms of first responder agreements;

{(21) [(+15)] assuring that all documents, reports or information provided to the department and hospital are current, accurate and complete;

{(22) [(+16)] assuring compliance with all federal and state laws and regulations and all local ordinances, policies and codes at all times;

{(23) [(+17)] assuring that all response data required by the department is submitted in accordance with §103.5 of this title (relating to Reporting Requirements for EMS Providers) [the department's requirements];}

{(24) [(+18)] assuring that, whenever there is a change in the name of the provider or the service's operational assumed name, the printed name on the vehicles are changed accordingly within 30 days of the change;

{(25) [(+19)] assuring that the department is notified in thirty [five] business days whenever:

(A) a vehicle is sold, substituted or replaced;

(B) there is a change in the level of service;

(C) there is a change in the declared service area as written on an initial or renewal application;

(D) there is a change in the official business mailing address;

(E) there is a change in the physical location of the business and/or substations;

(F) there is a change in the physical location of patient report file storage, to assure that the department has access to these records at all times; and

(G) there is a change of the administrator of record.

{(26) [(+20)] assuring that when a change of the medical director has occurred the department is [be] notified within one business day;

(27) [(21)] develop, implement and enforce written operating policies and procedures required under this chapter and/or adopted by the licensee. Assure that each employee (including volunteers) is provided a copy upon employment and whenever such policies and/or procedures are changed. A copy of the written operating policies and procedures shall be made available to the department on request. Policies at a minimum shall adequately address:

- (A) personal protective equipment;
- (B) immunizations available to staff;
- (C) infection control procedures;
- (D) management of possible exposure to communicable disease [exposure];

(E) emergency vehicle operation;

(F) contact information for the designated infection control officer for whom education based on U.S. Code, Title 42, Chapter 6A, Subchapter XXIV, Part G, §300ff-136 has been documented.

(G) [(F)] credentialing of new response personnel before being assigned primary care responsibilities. The credentialing process shall include as a minimum:

(i) a comprehensive orientation session of the services, policies and procedures, treatment and transport protocols, safety precautions, and quality management process; and

(ii) an internship period in which all new personnel practice under the supervision of, and are evaluated by, another more experienced person[; if operationally feasible].

(H) [(G)] appropriate documentation of patient care; and

(I) [(H)] vehicle checks, equipment, and readiness inspections;[-]

(J) the security of medications, fluids and controlled substances in compliance with local, state and federal laws or rules.

(28) [(22)] assuring that manufacturers' operating instructions for all critical patient care electronic and/or technical equipment utilized by the provider are available for all response personnel;

(29) [(23)] assuring that the department is notified within five business days of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever:

(A) the vehicle is rendered disabled and inoperable at the scene of the occurrence; or

(B) there is a patient on board.

(30) [(24)] assuring that the department is notified within one [1] business day of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever there is personal injury or death to any person;

(31) [(25)] maintaining motor vehicle liability insurance as required under the Texas Transportation Code;

(32) [(26)] maintaining professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, with a company licensed or deem eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient;

(33) [(27)] insuring continuous coverage for the service area defined in documents submitted with the EMS provider application;

(34) [(28)] responding to requests for assistance from the highest elected official of a political subdivision or from the department during a declared emergency or mass casualty situation according to national, state, regional and/or local plans, when authorized;

(35) provide written notice to the department, RAC and Emergency Medical Task Force, if the EMS provider will make staff and equipment available during a declared emergency or mass casualty situation, for a state or national mission, when authorized;

(36) [(29)] assuring all EMS personnel receive continuing education [training] on the provider's anaphylaxis treatment protocols. The provider shall maintain education and training records to include date, time, and location of such education or training for all its [it's] EMS personnel;

(37) [(30)] immediately notify the department in writing when operations cease in any service area;

(38) [(31)] assure that all patients transported by stretcher must be in a department authorized EMS vehicle; and

(39) [(32)] develop or adopt and then implement policies, procedures and protocols necessary for its operations as an EMS provider, and enforce all such policies, procedures and protocols.

(o) [(#)] License renewal process.

(1) It shall be the responsibility of the provider to request license renewal application information.

(2) Providers shall submit a completed application, all other required documentation and a nonrefundable license renewal fee, no later than 90 days prior to the expiration date of the current license.

(A) When [If] a complete application is received by the department 90 or more days prior to the expiration date of the current license that is to be renewed, the applicant shall submit a nonrefundable application fee of \$400 per provider plus \$180 for each EMS vehicle.

(B) When [If] a complete application is received by the department 60 or more days, but less than 90 days prior to the expiration date of the current license that is to be renewed, the applicant shall submit a nonrefundable application fee of \$450 per provider plus \$180 for each EMS vehicle.

(C) When [If] a complete application is received by the department less than 60 days prior to the expiration of the current license, the applicant shall submit a nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle.

(D) If the application for renewal is received by the department after the expiration date of the current license, it is deemed to be untimely filed and that license expires on its expiration date. The EMS provider will be required to file a new initial application and follow the initial application process. [a notice will be sent to the provider explaining they are not eligible to renew, but the license application will be processed and new provider license number issued after satisfying all requirements.]

(E) An EMS provider may not operate after the license has expired.

(p) [(#)] Provisional License.

[(+)] The department may issue a provisional license if an urgent need exists in a service area when [if] the department finds that the applicant is in substantial compliance with the provisions of this

section and if the public interest would be served. A provisional license shall be effective for no more than 30 [45] days from the date of issuance.

(1) [(A)] A provider may apply for a provisional license by submitting a written request and a nonrefundable fee of \$30.

(2) [(B)] A provisional license issued by the department may be revoked at any time by the department, with written notice to the provider, when [H] the department finds that the provider is failing to provide appropriate service in accordance with this section or that the provider is in violation of any of the requirements of this chapter [title].

[(2) An EMS provider may not operate after the license has expired.]

(q) [(p)] Advertisements.

(1) Any advertising by an EMS provider shall not be misleading, false, or deceptive. When [H] an EMS provider advertises in Texas and/or conducts business in Texas by regularly transporting patients [tø:] from, or within Texas, the provider shall be required to have a Texas EMS Provider License.

(2) An EMS provider shall not advertise levels of patient care which cannot be provided at all times. The provider shall not use a name, logo, art work, phrase or language that could mislead the public to believe a higher level of care is being provided.

(3) An EMS provider that has more than five paid staff, but is composed of at least 75% volunteer EMS personnel may advertise as a volunteer service.

(r) [(q)] Surveys/Inspections and Investigations.

(1) The department may conduct scheduled or unannounced on-site inspection or investigation of a provider's vehicles, office(s), headquarter(s) and/or station(s) (hereinafter operations), at any reasonable time, including while services are being provided, to ensure compliance with Health and Safety Code, Chapter 773 and this chapter.

(2) An applicant or licensee, by applying for or holding a license, consents to entry and inspection or investigation of any of its operations by the department, as provided for by the Health and Safety Code, Chapter 773 and this chapter.

(3) Department's inspections or investigations to evaluate an EMS provider's compliance with the requirements of the Health and Safety Code, Chapter 773 and this chapter, may include:

(A) initial, preclosure and change in status inspections for the issuance of a new license;

(B) routine inspection conducted at the departments' discretion or prior to renewal;

(C) follow-up on-site inspection, conducted to evaluate implementation of a plan of correction for deficiencies cited during a department investigation or inspection;

(D) a complaint investigation, conducted in response to a report or complaint, as described in subsection (u) of this section, relating to complaint investigations; and

(E) an inspection to determine if a person, company, or organization is offering or providing EMS service(s) without a license, or to determine if EMS vehicles are being staffed by persons who do not hold Texas EMS certification or license.

(4) The provider and medical director shall cooperate with any department investigation or inspection, and shall, consistent

with applicable law, permit the department to examine the provider's grounds, buildings, books, records and other documents and information maintained by or on behalf of the provider, that are necessary to evaluate compliance with applicable statutes, rules, plans of correction and orders with which the EMS provider is required to comply. The EMS provider shall permit the department, consistent with applicable law, to interview members of the governing authority, personnel and patients.

(5) The EMS provider shall, consistent with applicable law, permit the department to copy or reproduce, or shall provide photocopies to the department of any requested records or documents. If it is necessary for the department to remove records or other information (other than photocopies) from the provider's premises, the department will provide the EMS provider's governing authority or designee with a written statement of this fact, describing the information being removed and when it is expected to be returned. The department will make a reasonable effort, consistent with the circumstances, to return the records the same day.

(6) The department will hold an entrance conference with the EMS provider, governing authority or designee before beginning the inspection or investigation, to explain, consistent with applicable law, the nature, scope and estimated time schedule of the inspection or investigation.

(7) Except for a complaint investigation or a follow-up visit, an inspection will include an evaluation of compliance with the Health and Safety Code, Chapter 773 and this chapter. During the inspection, the department representative will, unless otherwise provided for by law, inform the EMS provider's governing authority or designee of the preliminary findings and give the provider a reasonable opportunity to submit additional facts or other information to the department representative in response to those findings.

(8) When the inspection is complete, the department will hold an exit conference with the provider, unless otherwise provided for by law, to inform the provider, to the extent permitted by law, of any preliminary findings of the inspection or investigation and to give the EMS provider the opportunity to provide additional information on the deficiencies cited. If no deficiencies are identified at the time of inspection, a statement indicating this fact may be left with the EMS provider's governing authority or designee. Such a statement does not constitute a department finding or certification that the facility is in compliance.

(9) If deficiencies are cited:

(A) the department will provide the EMS provider's administrator of record and medical director with a written deficiency report no more than 30 calendar days after the exit conference.

(B) The EMS provider's governing authority, designee, or person in charge at the time shall sign an acknowledgement of the inspection and receipt of the written deficiency report and return it to the department. The signature does not indicate the EMS provider's agreement with, or admission to the cited deficiencies unless the agreement or admission is explicitly stated.

(C) No later than 30 calendar days after the EMS provider's receipt of the deficiency report, the EMS provider shall return a written plan of correction to the department for each deficiency, including timeframes for implementation, together with any additional evidence of compliance the EMS provider may have, regarding any cited deficiency. The department will determine if the written plan of correction and proposed timeframes for implementation are acceptable. If the plan is not acceptable, the department will notify the provider in writing no later than 30 days after receipt and request a

modified plan. The EMS provider shall modify and resubmit the plan of correction no later than 30 calendar days after the EMS provider's receipt of the request. The EMS provider shall correct the identified deficiencies and submit documentation to the department verifying completion of the corrective action within the timeframes set forth in the plan of correction accepted by the department, or as otherwise specified by the department. The provider will be deemed to have received the deficiency report or other department correspondence mailed under this subparagraph three days after mailing.

(D) Regardless of the provider's compliance with this subsection, the department's acceptance of a provider's plan of correction, or the provider's utilization of an informal compliance group review under paragraph (10) of this subsection, the department may, at any time, propose to take action as appropriate under §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation, Denial of a Provider License or Administrative Penalties).

(10) The department inspector will inform the provider's chief executive officer, designee, or person in charge at the time of the inspection, of the provider's right to an informal compliance group review, when there is disagreement with deficiencies cited by the inspector or investigator, that the provider was unable to resolve through submission of information to the inspector or additional information bearing on the deficiencies cited.

(11) The department shall refer issues and complaints relating to the conduct or actions by licensed professionals to their appropriate licensing boards.

(12) All initial applicants and medical director shall be required to have an initial compliance survey by the department that evaluates all aspects of an applicant's proposed operations including clinical care components and an inspection of all vehicles prior to the issuance of a license.

(13) At renewal, randomly, or in response to a complaint, the department may conduct an unannounced compliance survey to include inspection of a provider's vehicles, operations and/or records to ensure compliance with this title at any time, including nights or weekends.

(14) If a re-survey/inspection to ensure correction of a deficiency is conducted, the provider shall pay a nonrefundable fee of \$30 per vehicle needing a re-inspection.

~~[(1) All initial applicants shall be required to have an initial compliance survey by the department that evaluates all aspects of an applicant's proposed operations including clinical care components and an inspection of all vehicles prior to the issuance of a license.]~~

~~[(2) At renewal, or randomly, or in response to a complaint, or for other good reason the department may conduct an unannounced compliance survey to include inspection of a provider's vehicles, operations, and/or records to insure compliance with this title at any time, including nights or weekends.]~~

~~[(3) If a re-survey/inspection to insure correction of a deficiency is conducted, the provider shall pay a nonrefundable fee of \$30 per vehicle needing a re-inspection.]~~

~~(s) [(#) Specialty Care Transports. A Specialty Care Transport is defined as the interfacility transfer by a department licensed EMS provider of a critically ill or injured patient requiring specialized interventions, monitoring and/or staffing. To qualify to function as a Specialty Care Transport the following minimum criteria shall be met:~~

~~(1) Qualifying Interventions:~~

~~(A) patients with one or more of the following IV infusions: vasopressors; vasoactive compounds; antiarrhythmics; fibrinolytics; tocolytics; blood or blood products and/or any other parenteral pharmaceutical unique to the patient's special health care needs; and~~

~~(B) one or more of the following special monitors or procedures: [-] mechanical ventilation; multiple monitors; [-] cardiac balloon pump; external cardiac support (ventricular assist devices, etc); any other specialized device, vehicle or procedure unique to the patient's health care needs.~~

~~(2) Equipment. All specialized equipment and supplies appropriate to the required interventions shall be available at the time of the transport.~~

~~(3) Minimum Required Staffing. One currently certified EMT-Basic and one currently certified or licensed paramedic with the additional training as defined in paragraph (4) of this subsection; or, a currently certified EMT-Basic and a currently certified or licensed paramedic accompanied by at least one of the following: a Registered Nurse with special knowledge of the patient's care needs; a certified Respiratory Therapist; a licensed physician; or, any licensed health care professional designated by the transferring physician.~~

~~(4) Additional Required Education and Training for Certified/Licensed Paramedics: Evidence of successful completion of post-paramedic education, training and appropriate periodic skills verification in management of patients on ventilators, 12 lead EKG and/or other critical care monitoring devices, drug infusion pumps, and cardiac and/or other critical care medications, or any other specialized procedures or devices determined at the discretion of the provider's medical director.~~

~~(t) [(s)] For all applications and renewal applications, the department [(or the board)] is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with the application and renewal application processing through Texas Online.~~

~~(u) Complaint Investigations.~~

~~(1) Upon their request, all licensed EMS Providers shall make available from a patient or its legal guardian a written statement supplied by the department, identifying the department as the responsible agency for conducting EMS provider and EMS personnel complaint investigations. The statement shall inform persons that they may direct a complaint to the Department of State Health Services, EMS Compliance Group, by phone, or by email. The statement shall provide the most current contact information, including the appropriate department group, address, local and toll-free telephone number, and email address for filing a complaint.~~

~~(2) The department evaluates all complaints against EMS providers and EMS personnel. Any complaint submitted to the department shall be submitted by telephone, electronically, or in writing, using the department's current contact information for that purpose, as described in paragraph (1) of this subsection.~~

~~(3) The department will document, evaluate and prioritize complaints and information received, based on the seriousness of the alleged violation and the level of risk to patients, personnel and/or the public.~~

~~(A) Allegations determined to be within the department's regulatory jurisdiction relating to emergency medical services are authorized for investigation under this chapter. Complaints received outside the department's jurisdiction may be referred to another appropriate agency for response.~~

(B) The investigation is conducted on-site, by telephone and/or through written correspondence.

(4) The department conducts a prompt and thorough investigation of all reports or complaint allegations that may pose a threat of harm to the health and safety of patients or participants. Reports or complaints received by the department concerning alleged abuse, neglect and exploitation will be addressed in accordance with Human Resources Code, Chapter 48 and Family Code, §261.101(d).

(5) The department evaluates complaint allegations that do not pose a significant risk of harm to patients. Based on the nature and severity of the alleged incident, the department determines whether to investigate the complaint directly or to require the provider to conduct an internal investigation and submit its findings and supporting evidence to the department.

(A) The findings of a provider's internal investigation is reviewed by the department and may result in an additional investigation by the department, a request for a plan of correction to be completed by the provider in accordance with subsection (q) of this section (relating to inspections and investigations) and/or a proposal to take action against the provider under §157.16 of this title.

(B) The provider under investigation shall provide department staff access to all documents, evidence and individuals related to the alleged violation, including all evidence and documentation relating to any internal investigations.

(6) Once an internal provider investigation and/or department investigation is complete, the department reviews the evidence from the investigation to evaluate whether the evidence substantiates the complaint.

§157.12. Rotor-wing Air Ambulance Operations.

(a) Rotary wing aircraft (helicopters) operated by a licensed emergency medical services (EMS) provider shall be at the mobile intensive care level. Persons or entities operating rotary wing air ambulances must direct and control the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, typically the organization in charge of the medical functions directs the combined efforts of the aviation and medical components during patient transport operations. Licensed rotary wing aircraft must also meet the requirements of §157.11 of this title (relating to Requirements for an EMS Provider License) as long as the Airline Deregulation Act of 1978, 49 U.S.C. §41713(b)(1) et seq. is not violated.

(b) When being used as an ambulance, the helicopter shall:

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

(6) have an internal medical configuration located so that air medical personnel can provide patient care consistent with the scope of care of the air medical service, to include:

(A) - (C) (No change.)

(D) provision for medication which allows for protection from extreme temperatures if it becomes environmentally necessary; ~~and~~

(E) secure positioning of cardiac monitors, defibrillators, and external pacers so that displays are visible to medical personnel; ~~and~~

(F) specialized medical equipment, such as but not limited to, intra-aortic balloon pump, extracorporeal membrane oxygenation, left ventricular assist device, temperature management system, is

secured throughout transport with adequately engineered, designated engineering representative approved mount.

(c) An air ambulance provider shall meet the responsibilities of EMS providers as in §157.11 [~~§157.11(b)~~] of this title (relating to Requirements for an EMS Provider License) and in addition shall:

(1) submit proof that the rotor-wing aircraft provider carries bodily injury and property damage insurance with a company licensed to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. ~~[Coverage amounts shall insure that:]~~

~~[(A) each aircraft shall be insured for the minimum amount of \$1 million for injuries to, or death of, any one person arising out of any one incident or accident;]~~

~~[(B) the minimum amount of \$3 million for injuries to, or death of, more than one person in any one accident; and]~~

~~[(C) the minimum amount of \$500,000 for damage to property arising from any one accident;]~~

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

(6) submit a copy of current Federal Aviation Administration (FAA) carrier, operational, and airworthiness certification, as per U.S. Code of Federal Regulations, Title 14, Subchapter G, Part 135.

(d) The air ambulance provider shall ~~designate or~~ employ a medical director who shall meet the following qualifications:

(1) be a physician approved by the department ~~[Texas Department of Health]~~ and in practice;

(2) - (3) (No change.)

(4) have access to consult with medical specialists for patient(s) whose illness and care needs are outside the medical director's area of practice; ~~and~~

(5) shall comply with the requirements in the Medical Practice Act, Occupations Code, Chapters 151 - 168, and 22 Texas Administrative Code, Chapter 197; and [Chapter 6, Medicine, Article 4495B, Medical Practice Act, §197.3(a)(2-7) and (b)-]

(6) have knowledge on Texas EMS laws and regulations affecting local, regional and state operations.

(e) The physician shall fulfill the following responsibilities:

(1) (No change.)

(2) be involved in the selection, hiring, educating, training and continuing education of all medical personnel;

(3) - (5) (No change.)

(6) ensure that there is an adequate method for on-line medical control, and that there is a ~~well~~ defined plan or procedure and resources in place to allow off-line medical control; ~~and~~

(7) oversee the review, revision and validation of written medical policies and protocols annually for the treatment and transportation of adult, pediatric, and neonatal patients; and ~~[-]~~

(8) attest to the following capabilities:

(A) experience consistent with the transport of patients by air;

(B) knowledge of aeromedical physiology, stresses of flight, aircraft safety, resources limitations of the aircraft;

(C) knowledge on Texas EMS laws and regulations affecting local, regional and state operations; and

(D) awareness that the EMS provider has provided safety education for ground emergency services personnel.

(f) There shall be two Texas licensed/certified personnel on board the helicopter when in service. A waiver to the Texas license/certification may be granted for personnel employed by providers in New Mexico, Oklahoma, Arkansas, Kansas, Colorado and Louisiana who respond in Texas and are licensed in their respective state. Staffing of vehicles shall be as follows:

(1) - (4) (No change.)

(g) Documentation of successful completion of education [~~training~~] specific to the helicopter transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew - National EMS Education Standards [~~Standard Curriculum~~] or equivalent program and each attendant's qualifications shall be documented.

(h) Medical supplies and equipment shall be consistent with the service's scope of care as defined in the protocols/standing orders for adult, pediatric, and neonatal patients. Medical equipment shall be functional without interfering with the avionics nor should avionics interfere with the function of the medical equipment. Additionally, the following equipment, clean and in working order, must be on the aircraft or immediately available for all providers:

(1) one or more stretchers capable of being secured in the aircraft which meet the following criteria:

(A) (No change.)

(B) shall have the head of the primary stretcher, with recommended manufacturer's or FAA approved restraint system in place, capable of being elevated up to 30 degrees. The elevating section shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) - (D) (No change.)

(E) shall have a supply of linen for each patient;

(2) adequate amounts of oxygen and masks (for anticipated liter flow and length of flight with an emergency reserve) available for every mission;

(3) (No change.)

(4) a back-up source of oxygen (of sufficient quantity to get safely to a facility for replacements). A back-up [~~Back-up~~] source may be the required portable tank if the tank is accessible in the patient care area during flight;

(5) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including for adult, pediatric, [child] and neonatal patients [~~infant~~]; and

(B) (No change.)

(6) at least one suction unit which is portable (bulb syringes or foot pump is not acceptable);

(7) (No change.)

(8) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the for adult, pediatric, and neonatal patients [~~infant patient(s)~~] during flight;

(B) - (G) (No change.)

(9) bandages and dressings as follows:

(A) sterile dressings such as 4x4s, abdominal [~~ABD~~] pads;

(B) - (C) (No change.)

(10) (No change.)

(11) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, and each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) - (C) (No change.)

(D) protective face masks, National Institute for Occupational Safety and Health (NIOSH) approved N95 or greater;

(E) - (F) (No change.)

(12) - (13) (No change.)

(14) 12-lead cardiac monitor defibrillator - DC battery powered portable monitor/defibrillator with paper printout, accessories and supplies, with sufficient power supply to meet demands of the mission; [and]

(15) quantity and type of drugs and specialized equipment as specified on the medical director's list;[-]

(16) permanently installed climate control equipment to provide an environment appropriate for the medical needs of patients; and

(17) survival kit which shall include, but not be limited to, the following items which are appropriate to the terrain and environments the provider operates over:

(A) instruction manual;

(B) water;

(C) shelter-space blanket;

(D) knife;

(E) signaling devices;

(F) compass; and

(G) fire starting items.

§157.13. *Fixed-wing Air Ambulance Operations.*

(a) Fixed wing aircraft operated by a licensed EMS provider shall be at the mobile intensive care level. Persons or entities operating fixed wing air ambulances must direct and control the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, one organization, typically the one in charge of the medical functions, directs the combined efforts of the aviation and medical components during patient transport operations. Licensed fixed wing aircraft must also meet the requirements of §157.11 of this title (relating to Requirements for an EMS Provider License), as long as the rule does not violate the Federal Aviation Act of 1958, 49 U.S.C. et seq. and Airline Deregulation Act of 1978, 49 U.S.C. §41713(b)(1).

(b) When being used as an ambulance, a fixed wing aircraft shall:

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

(4) have a door large enough to allow a patient on a stretcher with the manufacturer's recommended or FAA approved restraint system in place to be enplaned without excessive maneuvering or tipping of the patient which compromises the function of monitoring devices, intravenous (IV) lines or ventilation equipment;

(5) be designed or modified to accommodate at least one stretcher patient with the manufacturer's recommended or FAA approved restraint system in place;

(6) (No change.)

(7) have a permanently installed climate control equipment to provide an environment appropriate for the medical needs of the patient(s) [have an environmental system (heating and cooling) capable of maintaining a comfortable temperature at all times];

(8) - (10) (No change.)

(11) shall assure that specialized medical equipment, such as but not limited to, intra-aortic balloon pump, extracorporeal membrane oxygenation, left ventricular assist device, temperature management system, is secured throughout transport with adequately engineered, designated engineering representative approved mount;

(12) ~~[(11)]~~ have sufficient space in the cabin area where the patient stretcher is installed so that equipment can be stored and secured with FAA-approved devices in such a manner that it is accessible to the air medical personnel; and

(13) ~~[(12)]~~ have two FAA approved fire extinguishers approved for aircraft use. Each shall be fully charged with valid inspection certification and capable of extinguishing type A, B, or C fires. One extinguisher shall be accessible to the cockpit crew and one shall be in the cabin area accessible to the medical crew member.

(c) (No change.)

(d) The fixed-wing air ambulance provider shall meet the responsibilities of EMS providers as in §157.11 ~~[\$157.11(4)]~~ of this title (relating to Requirements for an EMS Provider License) and shall also:

(1) submit proof that the fixed-wing aircraft provider carries bodily injury and property damage insurance with a company licensed to do business in Texas, in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. ~~[Coverage amounts shall insure that:]~~

~~[(A) each aircraft shall be insured for the minimum amount of \$1 million for injuries to, or death of, any one person arising out of any one incident or accident;]~~

~~[(B) the minimum amount of \$3 million for injuries to, or death of, more than one person in any one accident; and]~~

~~[(C) for the minimum amount of \$500,000 for damage to property arising from any one accident;]~~

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

(e) The air ambulance provider shall ~~[designate or]~~ employ a medical director who shall meet the following qualifications:

(1) - (4) (No change.)

(5) shall comply with the requirements in the Medical Practice Act, Occupations Code, Chapters 151 - 168, and 22 Texas Admin-

istrative Code, Chapter 197 [Chapter 6, Medicine, Article 4495b, Medical Practice Act, §197.3 subparagraphs (a)(2)-(7) and (b)].

(f) The physician shall fulfill the following responsibilities:

(1) (No change.)

(2) be involved in the selection, hiring, educating, training and continuing education of all medical personnel;

(3) - (5) (No change.)

(6) ensure that there is an adequate method for on-line medical control, and that there is a ~~[well]~~ defined plan or procedure and resources in place to allow off-line medical control; ~~[and]~~

(7) oversee the review, revision and validation of written policies and protocols annually for the treatment and transportation of adult, pediatric, and neonatal patients to include a policy defining the specific instances in which a patient could be accompanied by only one attendant; and ~~[-]~~

(8) attest to the following capabilities:

(A) experience consistent with the transport of patients by air;

(B) knowledge of aeromedical physiology, stresses of flight, aircraft safety, resources limitations of the aircraft;

(C) knowledge on Texas EMS laws and regulations affecting local, regional and state operations;

(D) awareness that the EMS provider has provided safety education for ground emergency services personnel.

(g) There shall be at least one licensed or certified paramedic, registered nurse, or physician on board an air ambulance to perform patient care duties on that air ambulance. The qualifications and numbers of air medical personnel shall be appropriate to patient care needs. Personnel employed by providers who are based in another state, do not need Texas certification/licensure but shall be certified/licensed in their respective state.

(1) Documentation of successful completion of education [training] specific to the fixed-wing transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew - National EMS Education Standards ~~[Standard Curriculum]~~, or equivalent program.

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

(h) Medical supplies and equipment shall be consistent with the service's scope of care as defined in the protocols/standing orders for adult, pediatric, and neonatal patients. Medical equipment shall be functional without interfering with the avionics nor should avionics interfere with the function of the medical equipment. Additionally, the following equipment, clean and in working order, must be on the aircraft or immediately available for all providers:

(1) one or more stretchers installed in the aircraft cabin which meet the following criteria:

(A) can accommodate an adult, 6 feet tall, weighing 212 pounds except for a neonatal stretcher, with recommended manufacturer's or FAA approved restraint system in place, which has been fitted with an isolette. There shall be restraining devices or additional appliances available to provide adequate restraint of all patients including those under 60 pounds or 36 inches in height;

(B) the head of each stretcher, with recommended manufacturer's or FAA approved restraint system in place, shall be capable

of being elevated up to 45 degrees. The elevating section must hinge at or near the patient's hips and shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) each stretcher, with recommended manufacturer's or FAA approved restraint system in place, shall be positioned in the cabin to allow the air medical personnel clear view of the patient and shall ensure that medical personnel always have access to the patient's head and upper body for airway control procedures as well as sufficient space over the area where the patient's [patients] chest is to adequately perform closed chest compression or abdominal thrusts on the patient;

(D) - (F) (No change.)

(2) an adequate and manually-controlled supply of gaseous or liquid medical oxygen, attachments for humidification, and a variable flow regulator for each patient;

(A) (No change.)

(B) the licensee shall have and demonstrate the method used to calculate the volume of oxygen required to provide sufficient oxygen for the patient's [patients] needs for the duration of the transport;

(C) - (D) (No change.)

(E) the oxygen system shall be securely fastened to the airframe using FAA-approved restraining devices;

(i) (No change.)

(ii) one adult, one child, one pediatric, one neonatal size non-rebreathing mask, one adult size nasal cannula and necessary connective tubings and appliances.

(3) (No change.)

(4) hand operated bag-valve-mask ventilators of adult, pediatric and infant sizes with clear masks in adult, pediatric, and neonatal patients [and infant sizes]. It shall be capable of use with a supplemental oxygen supply and have an oxygen reservoir;

(5) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including adult, pediatric, and neonatal patients [child and infant]; and

(B) (No change.)

(6) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the adult, pediatric, and neonatal patients [pediatric and infant patient(s)] during flight;

(B) - (E) (No change.)

(7) - (9) (No change.)

(10) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) - (C) (No change.)

(D) protective face masks, National Institute for Occupational Safety and Health (NIOSH) approved N95 or greater;

(E) - (F) (No change.)

(11) - (14) (No change.)

(i) (No change.)

(j) The air ambulance provider shall own the following equipment or shall have a written lease agreement explaining the availability of the equipment for use when the patient's condition indicates the need:

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

(3) a mechanical ventilator that can deliver up to 100% [400 %] oxygen concentration at pressures, rates and volumes appropriate for the size of the patient.

§157.14. Requirements for a First Responder Organization License.

(a) - (b) (No change.)

(c) Application requirements for an FRO affiliated with a licensed EMS Provider.

(1) A Basic Life Support (BLS) or Advanced Life Support (ALS) First Responder Organization affiliated with a Texas licensed EMS Provider must apply for an FRO license by submitting a completed application to the department. A complete application consists of the following:

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

(E) written affiliation agreement with the primary licensed EMS provider in the service area. The primary licensed EMS provider must provide a letter attesting that the following items have been reviewed and approved by the director and medical director of the EMS provider:

(i) (No change.)

(ii) response, dispatch and treatment protocols including an equipment and supply list approved by the medical director of the licensed EMS provider to treat adult, pediatric and neonatal patients;

(iii) - (x) (No change.)

(F) (No change.)

(2) - (6) (No change.)

(d) (No change.)

(e) Responsibilities of the FRO. During the license period the FRO's responsibilities shall include:

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

(6) assuring the confidentiality of all patient information is in compliance with all federal and state laws;

(7) - (19) (No change.)

(20) assuring the FRO has written operating policies, procedures and medical protocols and provides all medical personnel a copy initially and whenever such policies, procedures and/or medical protocols are changed. A copy of the written operating policies, procedures and medical protocols shall be made available to the department upon request. At a minimum, policies shall adequately address:

(A) - (B) (No change.)

(C) infection control procedures, including contact information for the designated infection control officer;

(D) designated of an infection control officer with documentation showing education based on U.S. Code, Title 42, Chapter 6A, Subchapter XXIV, Part G, §300ff-136;

(E) [~~Ⓔ~~] management of possible exposure to communicable disease;

(F) [(E)] credentialing of new response personnel before being assigned to respond to emergencies. The credentialing process shall include, at minimum:

(i) a comprehensive orientation session of the FRO's policies and procedures, safety precautions, and quality management process; and

(ii) an internship period in which all new personnel practice under the supervision of, and are evaluated by, another more experienced person, if operationally feasible; and

(G) [(F)] appropriate documentation of patient care;

(21) - (22) (No change.)

(23) maintaining motor vehicle and professional liability insurance as required by the Texas Transportation Code under Subchapter D, §601.071 and §601.072, for all vehicles owned or operated by the FRO;

(24) - (25) (No change.)

(f) - (h) (No change.)

(i) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority to recover costs associated with the application and renewal application processing through Texas Online.

§157.16. *Emergency Suspension, Suspension, Probation, Revocation, [or] Denial of a Provider License or Administrative Penalties.*

(a) Emergency Suspension. The Texas Department of State Health Services (department) [bureau chief, Bureau of Emergency Management (bureau)], may issue an emergency suspension order to any licensed emergency medical services (EMS) provider if the department [bureau chief] has reasonable cause to believe that the conduct of any licensed provider creates an imminent danger to public health or safety.

(1) An emergency suspension issued by the department [bureau chief] is effective immediately without a hearing or notice to the license holder. Notice to the license holder shall be presumed established on the date that a copy of the signed emergency suspension order is sent to the individual listed as the administrator of the service at the address shown in the current records of the department.

(2) A copy of the emergency suspension order shall be sent to the provider's listed medical director, to the EMS provider, and to [any and] all government entities, institutions or facilities with which the license holder is known to be associated to the addresses shown in the current records of the department.

(3) If a written request for a hearing is received from the suspended license holder [within 15 days of the date of notice], the department shall conduct a hearing not earlier than the 10th day nor later than the thirtieth day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified or rescinded. The hearing and appeal from any disciplinary action related to the hearing shall be governed by the Administrative Procedure Act, Government Code, Chapter 2001.

(b) Administrative penalty. An administrative penalty may be assessed when an EMS provider is in violation of the Health and Safety Code, Chapter 773, 25 Texas Administrative Code, [TAC] Chapter 157, or the reasons outlined in subsections (c) and (d) of this section.

(c) Accountability. A provider retains ultimate responsibility for the operation of the service. A licensed EMS provider may not claim a defense when one or more staff members, acting with or with-

out the consent and knowledge of the license holder, commit(s) multiple violations in this section, or perform(s) contrary to EMS standards while on EMS business for the provider. The department shall consider the EMS provider's current policies and procedures when staff violate rules or EMS standards.

(d) Nonemergency suspension or revocation. An EMS provider license may be suspended or revoked for, but not limited to, the following reasons:

(1) - (8) (No change.)

(9) discriminating in the provision of services based on national origin, race, color, creed, religion, gender, sexual orientation, age, physical or mental disability[, or economic status];

(10) - (11) (No change.)

(12) failing to give the department true and complete information when asked, regarding any alleged or actual violation of the Health and Safety Code, Chapter 773[, or the rules adopted thereunder or failing to report such a violation];

(13) - (19) (No change.)

(e) Denial of a license. A license may be denied for, but not limited to, the following reasons:

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

(4) EMS provider has had disciplinary action in another state or by a federal agency;

(5) - (6) (No change.)

(f) Notification. If the department proposes to deny, suspend, revoke, or probate a license, the EMS provider license holder and the administrator of record shall be notified at the address shown in the current records of the department. The notice shall state the alleged facts or conduct to warrant the proposed action and state that the license holder may request a hearing.

(g) Hearing Request.

(1) A request for a hearing shall be in writing and submitted to the department [bureau chief] and postmarked no later than 30 [within 15] days after the date of the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(2) If the candidate, applicant or licensee does not request a hearing in writing within 30 [15] days after proper notice, the individual is deemed to have waived the opportunity for a hearing as outlined in the notice.

(h) (No change.)

(i) Re-application.

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

(4) The department may deny any petitioner if, in the judgement of the department [bureau chief], the reason for the original action continues to exist or if the petitioner has failed to offer sufficient proof that there is no longer a threat to public health, safety, and/or confidence.

(5) (No change.)

(j) - (l) (No change.)

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

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For further information, please call: (512) 776-6972



SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §§157.32 - 157.34, 157.36, 157.38

STATUTORY AUTHORITY

The amendments are authorized by the Texas Health and Safety Code, Chapter 773 and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

§157.32. *Emergency Medical Services Education Program and Course Approval.*

(a) Emergency medical services (EMS) Education Program Standards. An EMS Education Program shall meet national education training standards [The Texas Department of State Health Services (department) shall develop and publish an EMS Education and Training Manual (manual) outlining standards for EMS education] that address at least the following areas:

(1) - (11) (No change.)

(b) Consideration of training standards. The department shall base the education and training standards on applicable national standards and guidelines for evaluation and approval of EMS education programs adopted by national accrediting organizations.

~~[(1) The department shall base the manual on applicable standards and guidelines for evaluation and approval of EMS education programs adopted by national accrediting organizations.]~~

~~[(2) Before implementation or revision of the manual, the department shall ensure adequate time for public review and comment.]~~

~~[(3) Before implementation or revision of the manual, the department shall present the manual to the advisory council for review.]~~

(c) Curriculum.

(1) Emergency Care Attendant (ECA).

(A) - (B) (No change.)

(C) The course shall include a minimum of 60 [40] clock hours of classroom and laboratory instruction in the approved curriculum.

(2) Emergency Medical Technician (EMT).

(A) (No change.)

(B) The course shall include a minimum of 150 [140] clock hours of classroom, laboratory, clinical, and field instruction which shall include supervised experiences in the emergency department, with a licensed EMS provider and in other settings as needed to develop the competencies defined in the minimum curriculum.

(3) Advanced Emergency Medical Technician (AEMT) [~~Intermediate (EMT- I)~~].

(A) The minimum curriculum shall include all content required by the current national Advanced Emergency Medical Technician (AEMT) standards and competencies as defined in the National EMS Education Standards by DOT. The following areas must be addressed as outlined in the AEMT national educational standards and the Health and Safety Code, §773.048:

(i) - (xiii) (No change.)

(B) The course shall include a minimum of 250 [160] clock hours of classroom, laboratory, clinical, and field instruction which shall include supervised experiences in the emergency department with a licensed EMS provider and in other settings as needed to develop the competencies defined in the AEMT national educational standards.

(C) A student shall have a current EMT certification from the department or National Registry prior to beginning and throughout field and clinical rotations in an AEMT [~~EMT-I~~] course.

(4) Emergency Medical Technician-Paramedic (EMT-P).

(A) (No change.)

(B) The course shall include a minimum of 1000 [624] clock hours of classroom, laboratory, clinical and field instruction which shall include supervised experiences in the emergency department with a licensed EMS provider and in other settings as needed to develop the competencies defined in the minimum curriculum.

(C) A student shall have a current EMT or AEMT [~~EMT-I~~] certification from the department or current EMT, EMT-I or AEMT certification from the National Registry prior to beginning and throughout field and clinical rotations in an EMT-P course.

(d) Sponsorship.

(1) (No change.)

(2) Program sponsors shall provide appropriate oversight and supervision to ensure that programs [are]:

(A) are educationally and fiscally sound; [~~and~~]

(B) meet the responsibilities listed in subsection (o) of this section; [~~and~~].

(C) has the required equipment and resources to conduct the program.

(e) Levels of program approval.

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

(3) AEMT [~~EMT-I~~] and EMT-P training shall be conducted by an advanced program.

(4) (No change.)

(5) The Education programs must have the authority or ownership to provide the program.

(6) Approval of a program by the department is not transferable.

(f) Currently approved programs. Programs that have obtained approval as of the effective date of this rule shall be considered to have met the requirements of subsections (g) or (h) of this section appropriate to their current level of approval. Paramedic programs must ~~[become accredited by December 31, 2012, and]~~ provide proof of accreditation by the Commission on Accreditation of Allied Health Education Programs (CAAHEP)/Committee on Accreditation of Education Programs for the Emergency Medical Services Professions (CoAEMSP), or a national accrediting organization recognized by the department. Alternatively, the program may provide a letter of review from CAAHEP/CoAEMSP or a national accrediting organization recognized by the department stating the education program has submitted the appropriate documentation that indicates it being in pursuit of accreditation as defined by that organization.

(g) Basic approval requirements. To approve a basic program, an applicant shall:

(1) - (4) (No change.)

(5) have a medical director ~~[if appropriate]~~ to the level or content of training. The medical director shall be a licensed physician approved by the department with experience in and current knowledge of emergency care. The medical director shall be knowledgeable about educational programs for EMS personnel. In addition to other duties assigned by the program, the medical director shall:

(A) - (C) (No change.)

(6) (No change.)

(7) submit a completed application to the appropriate regional office; ~~[and]~~

(8) demonstrate substantial compliance with the EMS education standards by successfully completing the self-study/on site review process; and ~~[self study/on-site review process outlined in the manual.]~~

(9) provide a name and contact information for the designated infection control officer and document education for the designated infection control officer based on Subpart B of the 1990 Ryan White Comprehensive AIDS Resources Emergency Act, Public Law 101-381.

(h) Advanced approval requirements. To approve an advanced program, an applicant shall:

(1) - (4) (No change.)

(5) have a program director who contributes an adequate amount of time to assure the success of the program. In addition to other responsibilities, the program director shall be responsible for the development, organization, administration, periodic review and effectiveness of the program; and shall:

(A) routinely review student performance to assure adequate progress toward completion of the program; ~~[and]~~

(B) - (C) (No change.)

(6) - (7) (No change.)

(8) submit a completed application to the appropriate regional office; ~~[and]~~

(9) demonstrate substantial compliance with the EMS education standards by successfully completing the self-study/on-site review process outlined in the national education and training standards; and [manual.]

(10) provide a name and contact information for the designated infection control officer and document education for the des-

ignated infection control officer based on Subpart B of the 1990 Ryan White Comprehensive AIDS Resources Emergency Act, Public Law 101-381.

(i) Self-study requirements.

(1) A self-study is a self-evaluation and compilation of documents that describes the proposed or existing program's overall process. It will explain and/or document the program's organizational structure, resources, facilities, record keeping, personnel and qualifications, policies and procedures, text books, course delivery methods used, clinical and field affiliations, student to patient contact matrix, psychomotor competency evaluation, a copy of all advertisements, documents provided to students and describe what is necessary for students to complete the program.

(2) All proposed and/or existing programs must provide a self-study at the basic (ECA and EMT) and/or advanced (AEMT and Paramedic) level. Programs that offer paramedic education may submit a copy of a self-study submitted to national accrediting organizations to meet this requirement. However, they must submit supplemental documentation to demonstrate substantial compliance with the EMS education standards of this section.

(A) Each applicant for an EMS Program must submit a self-study that contains the following items:

(i) an organizational chart;

(ii) a description of the ownership and sponsorship of the proposed or existing program;

(iii) a description of financial resources;

(iv) a description of the record keeping process for maintaining program, course, and student records;

(v) a description of the facilities;

(vi) a description of learning resources;

(vii) a description of equipment and supplies;

(viii) a description of personnel (faculty and staff) and qualifications;

(ix) a description of the instructor /faculty credentialing, evaluation and continuing education process.

(x) a description of the clinical and field internship affiliations;

(xi) a description of the student to patient contact ratio and how it will be tracked and monitored. If an existing program at renewal, include a student patient contact ratio report;

(xii) a description of the text books and curriculum;

(xiii) a description of the psychomotor competency evaluation process;

(xiv) a copy of any policies and procedures used for faculty, staff and students, that address the following:

(I) attendance, tardiness, and participation;

(II) program medical director change;

(III) cheating;

(IV) clinical and field internship;

(V) complaint resolution;

(VI) conduct, safety and health;

(VII) counseling and coaching of students;

(VIII) dress and hygiene requirements;

(IX) grading;

(X) grievance and appeals;

(XI) immunizations;

(XII) policies for the prevention of sexual harassment;

(XIII) policies for the prevention of discrimination based on race, sex, creed, national origin, sexual preference, age, handicap or medical problems;

(XIV) psychomotor competency evaluation;

(XV) record keeping and access to records;

(XVI) student faculty relationships;

(XVII) student screening and enrollment;

(XVIII) test review and makeup; and

(XIX) tuition and/or fee reimbursement.

(XX) Provide a name and contact information for the designated infection control officer, and document education for the designated infection control officer based on U.S. Code, Title 42, Chapter 6A, Subchapter XXIV, Part G, §300ff-136.

(xv) a sample of all advertisements and any documents given to potential students, students and exiting students; and

(xvi) a description of any and all requirements for a student to complete a course.

(j) [(†)] Provisional approval. If following the department's review of the self-study, the applicant is found to be in substantial compliance with established national EMS education standards [outlined in the manual], the department shall issue a provisional approval.

(k) [(‡)] Lack of substantial compliance. If following the department's review of the self-study, the applicant is not found in substantial compliance with EMS education standards [outlined in the manual], the program director and sponsor shall receive a written report detailing:

(1) any deficiencies; and

(2) specific recommendations for improvement that will be necessary before provisional approval may be granted.

(l) [(§)] On-site review. After the completion of a provisionally-approved program's first course, an on-site review shall be conducted. The on-site review process is the department inspector's review of a proposed and/or existing program's records plan, self-study, equipment, facilities and clinical and field internship facilities, and student-to-patient contact ratios. [as outlined in the manual.]

(1) If the program is found to be in substantial compliance with established EMS education standards and all fees and expenses associated with the self-study and on-site review have been paid, the department shall approve the program for a period of four years [as set forth in the manual] and issue an approval number. The program director and sponsor shall receive a written report of the site-review team's findings, including areas of exceptional strength, areas of weakness and recommendations for improvement.

(2) If the program is not in substantial compliance with established EMS education standards, the program director and sponsor shall receive a written report detailing deficiencies and specific requirements for improvement. Depending on the nature and severity of the identified deficiencies within the program, the program may or may not

be allowed to continue training activities. In all cases, the department in consultation with program officials shall devise a remedial plan for the deficiencies.

(3) Upon completion of a remedial plan a program shall be approved for a period of four years [as outlined by the manual].

(m) [(‡)] Exception to sponsorship requirements for advanced programs.

(1) If an urgent need for an advanced program or an EMS operator instructor program exists in an area and cannot be met by an entity that meets the sponsorship requirements defined in subsection (d) [(h)(2)] of this section, a licensed EMS provider may request the department to grant an exception to allow the EMS provider to sponsor an advanced program.

(2) Such request must be submitted in writing and must include the following:

(A) documentation of the need for an advanced program and of the urgency of the situation;

(B) documentation that the EMS provider has successfully operated a basic program;

(C) documentation of attempts by the EMS provider to affiliate with an entity that meets the requirements of subsection (h)(2) of this section;

(D) a letter from the EMS provider agreeing to assume all responsibilities of advanced program sponsorship;

(E) letters of intent from qualified providers of clinical and field internship experience appropriate to the level of training to be offered; and

(F) a letter of intent from a medical director who will agree to perform the responsibilities listed in subsection (h)(6) of this section.

(3) In determining whether the request for an exception is to be approved or denied, the department shall consider, but not be limited to, the following issues:

(A) the quality of the basic program previously operated by the EMS provider;

(B) evidence that the EMS provider possesses the resources and dedication necessary to operate an advanced program that complies with the EMS education standards;

(C) the efforts of the EMS provider to affiliate with an entity that meets the requirements of subsection (h)(2) of this section;

(D) the availability of an approved advanced program within a reasonable distance of the affected area;

(E) the availability of an approved advanced program that will provide training to the affected area by outreach or distance learning technology;

(F) the probable impact on existing approved advanced programs if the exception is approved; [and]

(G) the probable adverse consequences to the public health or safety if the exception is not approved; and[-]

(H) the written support by the program medical director.

(4) After evaluation by the department, the EMS provider shall be notified in writing of the approval or denial of the request.

(5) An exception to the requirements of subsection (h)(2) of this section shall meet all other requirements of subsection (h) of this

section, including completion of the self-study and the on-site review process, and shall demonstrate substantial compliance with the EMS education standards [as outlined in the manual] before being granted approval by the department.

(n) [(m)] National accreditation for paramedic education/training programs.

(1) In addition to the requirements listed in subsection (h) of this section, all EMS education/training programs currently conducting paramedic education and training must meet the following requirements to receive approval as a paramedic education and training program:

(A) [on or before December 31, 2012, become accredited and] provide proof of accreditation by the CAAHEP/CoAEMSP, or a national accrediting organization recognized by the department; or

(B) provide documentation from CAAHEP/CoAEMSP or a national accrediting organization recognized by the department stating the education program has submitted the appropriate documentation that indicates it being in pursuit of accreditation as defined by the CAAHEP/CoAEMSP or a national accrediting organization recognized by the department [on or before December 31, 2012]. The education/training program that is deemed as pursuing accreditation may be temporarily approved by the department. In order to receive program approval, the education/training program must be accredited and provide proof of their accreditation by the national accrediting organization to the department.

(2) If the education/training program is [does] not [become] accredited or has their accreditation revoked by the national accrediting organization the program will not be allowed to conduct a paramedic education or training course until the program becomes accredited or the program is recognized by the national accrediting organization as being in pursuit of accreditation.

(3) Initial or current education programs that are not accredited and would like to offer paramedic education and training on or after January 1, 2013 must:

(A) be approved by the department as an EMS basic education program, according to subsection (g) of this section;

(B) submit the appropriate application and fees to the department;

(C) meet the accreditation standards set by CAAHEP/CoAEMSP or another department approved national accrediting organization in order for the department to issue the applicant a temporary approval to conduct paramedic education or training courses; and

(D) provide proof of accreditation by CAAHEP/CoAEMSP or another national accrediting organization recognized by the department. If the training program does not become accredited the program will not be allowed to conduct another paramedic education or training course until the program becomes accredited or the department receives notification from the accrediting organization that the program is recognized as being in pursuit of accreditation as defined by the accrediting organization.

(4) If a program has been accredited by CAAHEP/CoAEMSP or a national accrediting organization recognized by the department, the department may exempt the program from the program approval or re-approval process.

(5) Programs accredited by CAAHEP/CoAEMSP or another national accrediting organization recognized by the department shall provide the department with copies of:

(A) the accreditation self study;

(B) the accreditation letter or certificate; and

(C) any correspondence or updates to or from the national accrediting organization that impact the program's status.

(6) On request of the department, programs shall permit the department's representatives to participate in site visits performed by national accrediting organizations.

(7) If the department takes disciplinary action against a nationally accredited program for violations that could indicate substantial noncompliance with a national accrediting organization's essentials or standards, the department shall advise the national accrediting organization of the action and the evidence on which the action was based.

(8) If a program's national accreditation lapses or is withdrawn, the program shall meet all requirements of this subsection or subsection [subsections] (g) or (h) of this section within a reasonable period of time as determined by the department.

(o) [(n)] Denial of program approval. A program may be denied approval, provisional approval, or re-approval for, but not limited to, the following reasons:

(1) failure to meet the requirements established in subsection (g), (h) or (m) of this section;

(2) failure, or previous failure, to meet program responsibilities as defined in subsection (p) [(o)] of the this section;

(3) conduct, or previous conduct, that is grounds for suspension or revocation of program approval as defined in subsection (u) [(t)] of this section;

(4) falsifying any information, record, or document required for program approval, provisional approval, or re-approval;

(5) misrepresenting any requirements for program approval, provisional approval, or re-approval;

(6) failing or refusing to submit a self-study or a required report of progress toward remediation of a documented program weakness or areas of non-compliance within a reasonable period of time as determined by the department;

(7) failing or refusing to accept an on-site program review by a reasonably scheduled date as determined by the department;

(8) issuing a check to the department which is returned unpaid;

(9) being charged with criminal activity while approved to provide EMS training;

(10) having disciplinary action imposed by the department on the provider license, personnel certification or licensure, or program for violation of any provision of Health and Safety Code, Chapter 773 or 25 Texas Administrative Code, Chapter 157; or

(11) failure of a paramedic program to become accredited or maintain their accreditation by CAAHEP/CoAEMSP or another national accrediting organization recognized by the department.

(p) [(o)] Responsibilities. A program shall be responsible to:

(1) plan for and evaluate the overall operation of the program;

(2) provide supervision and oversight of all courses for which the program is responsible;

(3) act as liaison between students, the sponsoring organization and the department;

(4) submit course notifications and approval applications, along with nonrefundable fees if applicable, to the department [as described in the manual];

(5) assure availability of classroom(s) and other facilities necessary to provide for instruction and convenience of the students enrolled in courses for which the program is responsible;

(6) screen student applications, verify prerequisite certification if applicable and select students;

(7) schedule classes and assign course coordinators and/or instructors;

(8) verify the certification, license, or other proper credentials of all personnel who instruct in the program's courses;

(9) maintain an adequate inventory of training equipment, supplies and audio-visual resources based on the National EMS Education Standards, and course medical director;

(10) assure that training equipment and supplies are available and operational for each laboratory session;

(11) secure and maintain affiliations with clinical, and field internship facilities necessary to meet the instructional objectives of all courses for which the program is responsible;

(12) develop field internship and clinical objectives for all courses for which the program is responsible;

(13) train and evaluate internship preceptors;

(14) obtain written acknowledgement from the field internship EMS provider medical director, if students will be conducting advanced-level skills as part of their field internship with that EMS provider;

(15) [(14)] maintain all course records for a minimum of 5 years;

(16) [(15)] along with the course coordinator develop and use valid and reliable written examinations, skills proficiency verifications, and other student evaluations;

(17) [(16)] along with the course coordinator and medical director, supervise and evaluate the effectiveness of personnel who instruct in the program's courses;

(18) [(17)] along with the course coordinator and medical director, supervise and evaluate the effectiveness of the clinical and EMS field internship training;

(19) [(18)] along with the course coordinator, attest to the successful course completion of all students who meet the programs requirements for completion;

(20) [(19)] provide the department with information and reports necessary for planning, administrative, regulatory, or investigative purposes;

(21) [(20)] provide the department with any information that will affect [effect] the program's interaction with the department, including but not limited to changes in:

- (A) program director;
- (B) course coordinators;
- (C) medical director;
- (D) classroom training facilities;
- (E) clinical or field internship facilities; and
- (F) program's physical and mailing address; [and]

(22) [(21)] provide proof of accreditation by CAA-HEP/CoAEMSP or another national accrediting organization recognized by the department;[-]

(23) submit a total student roster no later than 14 days after the first official start date;

(24) submit a final student roster no later than 14 days after the last official class date; and

(25) online and or distance learning classes, programs and courses must meet the same standards as outlined in this section.

(q) [(p)] Program Re-approval.

(1) Prior to the expiration of a program's approval period, the department shall send a notice of expiration to the program at the address shown in the current records of the department.

(2) If a program has not received notice of expiration from the department 45 days prior to the expiration, it is the program's duty to notify the department and request an application for re-approval. Failure to apply for re-approval shall result in expiration of approval.

(3) Programs that have obtained approval as of the effective date of this rule shall be considered to have met the requirements of subsection (g) or (h) of this section appropriate to their current level of approval.

(4) To be eligible for re-approval, the program shall meet all the requirements in subsections (g), (h) or (m) of this section as appropriate to the level of approval requested; and

(A) prepare an update to the program's self-study that addresses significant changes in the program's personnel, structure, curriculum, resources, policies, or procedures;

(B) document progress toward correction of any deficiencies identified by the program or the department through the self-study and on-site review process;

(C) host an on-site review if one is deemed necessary by the department or requested by the program; and

(D) a paramedic program must provide documentation of current accreditation from CoAEMSP or another national accrediting organization recognized by the department.

(r) [(q)] Fees.

(1) The following nonrefundable fees shall apply:

(A) \$30 for review of a basic self-study, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training;

(B) \$90 for conducting a basic site visit;

(C) \$60 for review of an advanced self-study, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training;

(D) \$250 for conducting an advanced site visit;

(E) \$30 for processing a basic course notification or approval application, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training; and

(F) \$60 for processing an advanced course notification or approval application, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training.

(2) Program approvals shall be issued only after all required nonrefundable fees have been paid.

(s) [(*)] Course Notification and Approval.

(1) Each course conducted by an approved program shall be approved by notice from the department and the issuance of an assigned course number. A program shall not start a course, advertise a course, or collect tuition and/or fees from prospective students until the course is approved by the department and the assigned course number issued.

(2) The program director of an approved program shall submit notice of intent to conduct a course and the appropriate fee, if required, to the department on a form provided by the department at least 30 days prior to the proposed start date of the course. The notification shall include the following information:

- (A) training level of course;
- (B) dates and times classes are to be conducted;
- (C) physical location of the classroom;
- (D) identification of clinical sites and internship providers, if required;
- (E) name of principle instructor;
- (F) enrollment status;
- (G) anticipated number of students;
- (H) number of contact hours;
- (I) amount of tuition to be charged;
- (J) proposed ending date of the course; and
- (K) signature of the program director.

(3) A nonrefundable course fee, unless program is not remunerated for the course in any way, shall be submitted as follows:

- (A) \$30 for a Basic Course (ECA or EMT);
- (B) \$60 for an Advanced Course (AEMT [~~EMT-Intermediate~~] or Paramedic);
- (C) \$30 for an EMS Instructor Course; and
- (D) \$60 for an Emergency Medical Information Operator Instructor Course.

(4) The department may require submission of a written course approval application, in accordance with the guidelines set forth in the education and training standards [~~manual~~], in lieu of the course notification from programs which:

- (A) have not successfully completed a site visit review;
- (B) have proposed courses which do not conform to the approved parameters of the current program standards;
- (C) have not conducted a course of the same level in the previous 12 months; or
- (D) the department has probable cause to suspect are in noncompliance with the provisions of this chapter.

(t) [(*)] Denial of a course notification or course approval. A course may be denied for, but not limited to the following:

- (1) submission of an incomplete application;
- (2) failure to meet all requirements as outlined in this section [~~the manual~~];
- (3) failure of the program to hold current approval to conduct the level of the course proposed;

(4) failure to follow the guidelines for submission of the course notification or course approval application and supporting documents;

(5) falsification or misrepresentation of any information required for course notification or course approval; and/or

(6) issuing a check which is returned unpaid.

(u) [(*)] Disciplinary actions.

(1) Emergency suspension. The department [~~bureau chief~~] may issue an emergency order to suspend a program's approval if the department [~~bureau chief~~] has reasonable cause to believe that the conduct of the program creates an immediate danger to the public health or safety.

(A) An emergency suspension shall be effective immediately without a hearing or written notice to the program. Notice to the program shall be presumed established on the date that a copy of the emergency suspension order is sent to the address shown in the current records of the department. Notice shall also be sent to the program's sponsoring entity.

(B) If a written request for a hearing is received from the program [~~within 15 days of the date of suspension~~], the department shall conduct a hearing not earlier than the 10th day nor later than the 30th day after the date on which the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and appeal from any disciplinary action related to the hearing shall be governed by the Administrative Procedure Act, Government Code, Chapter 2001.

(2) Non-emergency suspension or revocation. A program's approval may be suspended or revoked for, but not limited to, the following reasons:

(A) failing to comply with the responsibilities of a program as defined in subsection (o) of this section;

(B) failing to maintain sponsorship as identified in the program application and self-study;

(C) failing to maintain employment of at least one course coordinator whose current certifications are appropriate for the level of the program;

(D) falsifying a program approval application, a self-study, a course notification or course approval application, or any supporting documentation;

(E) falsifying a course completion certificate or any other document that verifies course activity and/or is a part of the course record;

(F) assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception, or misrepresentation;

(G) failing to complete and submit course notifications or course approval applications and student documents within established time frames;

(H) offering or attempting to offer courses above the program's level of approval;

(I) compromising or failing to maintain the integrity of a department-approved training course or program;

(J) failing to maintain professionalism in a department-approved training course or program;

(K) demonstrating a lack of supervision of course coordinators or personnel instructing in the program's courses;

(L) compromising an examination or examination process administered or approved by the department;

(M) accepting any benefit to which there is no entitlement or benefitting in any manner through fraud, deception, misrepresentation, theft, misappropriation, or coercion;

(N) failing to maintain appropriate policies, procedures, and safeguards to ensure the safety of students, instructors, or other course participants;

(O) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;

(P) maintaining a passing rate on the examinations for certification or licensure that is statistically and significantly lower than the state average;

(Q) failing to maintain the fiscal integrity of the program;

(R) issuing a check to the department which is returned unpaid;

(S) failing to maintain records for initial or continuing education courses;

(T) demonstrating unwillingness or inability to comply with the Health and Safety Code and/or rules adopted thereunder;

(U) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code or the rules adopted thereunder;

(V) committing a violation within 24 months of being placed on probation;

(W) offering or attempting to offer courses during a period when the program's approval is suspended; ~~and/or~~

(X) a paramedic program receiving revocation of their accreditation by CAAHEP/CoAEMSP or any other organization that provides nationally recognized EMS accreditation; and/or[-]

(Y) for starting a course, program or class before receiving official approval from the department.

(3) Notification. If the department proposes to suspend or revoke a program's approval, the program shall be notified at the address shown in the current records of the department. The notice shall state the alleged facts or conduct warranting the action and state that the program has an opportunity to request a hearing in accordance with Administrative Procedure Act, Government Code, Chapter 2001.

(A) The program may request a hearing. ~~The [within 15 days after the date of the notice. This]~~ request shall be in writing and submitted to the department [chief].

(B) If the program does not request a hearing within 30 [15] days after the date of the notice of opportunity, the program waives the opportunity for a hearing and the department shall implement its proposal.

(4) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued.

(5) Re-application.

(A) Two years after the revocation or denial of approval, the program may petition the department in writing for the opportunity to reapply.

(B) The department shall evaluate the petition and may allow or deny the opportunity to submit an application.

(C) In evaluating a petition for permission to reapply, the department shall consider, but is not limited to, the following issues:

(i) likelihood of a repeat of the violation that led to revocation;

(ii) the petitioner's overall record as a program;

(iii) letters of support or recommendation;

(iv) letters of protest or non-support of the petition; and

(v) the need for training in the area the program would serve.

(D) The petitioner shall be notified within 60 days at the address shown in the current records of the department of the decision to allow or deny the submission of an application for re-approval.

(6) A program whose approval expires during a suspension or revocation period may not petition to reapply until the end of the suspension or revocation period.

~~(v) [(tt)]~~ For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with the application and renewal application processing through Texas Online [texas.gov].

§157.33. *Certification.*

(a) Certification requirements. A candidate for emergency medical services (EMS) certification shall:

(1) (No change.)

(2) have a high school diploma or GED certificate:

(A) the high school diploma must be from a school accredited by the Texas Education Agency (TEA) or a corresponding agency from another state. Candidates who received a high school education in another country must have their transcript evaluated by a foreign credentials evaluation service that attests to its equivalency. A home school diploma is acceptable ~~[if it is accompanied by a letter of acceptance into a regionally accredited college];~~

(B) (No change.)

(3) (No change.)

(4) The candidate has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

~~(5) [(4)]~~ submit an application, meeting the requirements in §157.3 of this title (relating to Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensing), and the following nonrefundable fees as applicable:

(A) \$60 for emergency care attendant (ECA) or emergency medical technician (EMT);

(B) \$90 for AEMT ~~[EMT-intermediate (EMT-I)]~~ or EMT-paramedic (EMT-P); and

(C) EMS volunteer--no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the de-

partment based on the number of years remaining in the certification period when employment begins. The nonrefundable fee for ECA or EMT certification shall be \$15 per each year remaining in the certification. The nonrefundable fee for AEMT [EMT-I] or EMT-P shall be \$22.50 per each year remaining in the certification. Any portion of a year will count as a full year; ~~and~~

(6) ~~[(5)]~~ provide evidence of current active or inactive National Registry certification at the appropriate level. National Registry First Responder certification is considered the appropriate corresponding certification level for an ECA; ~~and~~[-]

(7) submit fingerprints through the state approved fingerprinting service to undergo an FBI fingerprint criminal history check.

(b) Length of certification. A candidate who meets the requirements of subsection (a) of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate. A candidate must verify current certification before staffing an EMS vehicle. Certification may be verified by the applicant's receipt of the official department identification card, by using the department's certification website[-]; ~~or by contacting the department directly.~~

(c) Scheduling authority for certification examinations.

~~[(4) The department has final authority for scheduling all certification examination sessions.]~~

(1) ~~[(2)]~~ Examinations shall be administered at regularly scheduled times in various locations across the state.

(2) ~~[(3)]~~ The candidate shall be responsible for making appropriate arrangements for the examination.

(3) ~~[(4)]~~ The department is not required to set special examination schedules for a single candidate or for a specific group of candidates.

(d) - (g) (No change.)

(h) Inactive certification. A certified EMT, AEMT [EMT-I], or EMT-P may make application to the department for inactive certification at any time during the certification period or within one year after the certificate expiration date.

(1) - (4) (No change.)

(i) Reciprocity.

(1) A person who is currently certified by the National Registry but did not complete a department-approved course may apply for the equal or lower level Texas certification by submitting a reciprocity application and a nonrefundable fee of \$120.

(A) Applicants holding National Registry AEMT [EMT-intermediate] certification may be required to ~~[must]~~ submit written verification of proficiency of AEMT [EMT-intermediate] skills from an approved education program.

(B) - (D) (No change.)

(E) The candidate has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(2) A person currently certified by another state may apply for equal or lower level Texas certification by submitting a reciprocity application and a nonrefundable fee of \$120.

(A) (No change.)

(B) Applicants holding AEMT [EMT-intermediate] out-of-state certification must submit written proof of proficiency on

all of the AEMT [EMT-intermediate] skills signed by a Texas certified EMS coordinator or instructor.

(C) All applicants shall submit fingerprints through the state approved fingerprinting service to undergo an FBI fingerprint criminal history check.

(D) The applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(E) ~~[(E)]~~ Reciprocity is not allowed for the ECA level.

(F) ~~[(D)]~~ A candidate will not be eligible for reciprocity if the out-of-state certification expires prior to the completion of all requirements for certification as listed in this section.

(G) ~~[(E)]~~ A candidate who meets the requirements of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate.

(3) (No change.)

(j) Equivalency.

(1) (No change.)

(2) A candidate applying for certification by equivalency shall:

(A) (No change.)

(B) obtain a course completion document that verifies that the program is satisfied that all curriculum requirements have been met. Evaluations of curricula conducted by post secondary educational institutions under this subsection shall be consistent with the institution's established policies and procedures for awarding credit by transfer or advanced placement; ~~and~~

(C) the candidate may then apply for initial certification with the department as described in subsection (a) of this section; ~~and~~[-]

(D) The applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(k) (No change.)

(l) Responsibilities of the EMS personnel. During the license period, the EMS Personnel responsibilities shall include:

(1) making accurate, complete and/or clearly written patient care reports documenting a patient's condition upon arrival at the scene and patient's status during transport, including signs, symptoms, and responses during duration of transport as per EMS provider's approved policy;

(2) reporting to the employer, appropriate legal authority or the department, of abuse or injury to a patient or the public within 24 hours or the next business day after the event;

(3) following the approved medical director's protocol and policies;

(4) taking precautions to prevent the misappropriation of medications, supplies, equipment, personal items, or money belonging to the patient, employer or any person or entity;

(5) maintaining skill and knowledge to perform the duties or meet the responsibilities required of current level of EMS certification; and

(6) notifying the department of a current and/or valid mailing address within 30 days of any changes.

§157.34. *Recertification.*

(a) Recertification requirements.

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

(4) The certificant shall submit the following non-refundable fees as applicable:

(A) (No change.)

(B) \$90 for Advanced EMT (AEMT) [~~EMT-Intermediate (EMT-I)~~] or EMT-Paramedic (EMT-P); and

(C) EMS volunteer--no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the certification period when employment begins. The non-refundable fee for ECA or EMT certification shall be \$15 per each year remaining in the certification. The non-refundable fee for AEMT [~~EMT-I~~] or EMT-P shall be \$22.50 per each year remaining in the certification. Any portion of a year will count as a full year.

(5) - (6) (No change.)

(7) Military personnel. A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the President [~~president~~] of the United States, or a declaration of war by the United States Congress is eligible for recertification under timely recertification requirements from the person's date of demobilization until one calendar year after the date of demobilization but will not be certified during that period.

(A) - (C) (No change.)

(b) Recertification options. Upon submission of a completed application for recertification, the applicant shall commit to, and recertify through one of the options described in paragraphs (1) - (5) of this subsection.

(1) Option 1--Written Examination Recertification Process.

(A) - (F) (No change.)

(G) The applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(2) Option 2--Continuing Education Recertification Process.

(A) The certificant shall attest to accrual of department approved EMS continuing education as specified in §157.38 of this title (relating to Continuing Education); and[-]

(B) the applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(3) Option 3--National Registry Recertification Process.

(A) The applicant shall attest to and hold current National Registry certification at the time of applying for recertification; and[-]

(B) the applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(4) Option 4--Formal Course Recertification Process. The applicant shall attest to successful completion of a department approved recertification course.

(A) The recertification course[; as prescribed by the ~~Education and Training Manual;~~] shall be a formal structured interactive training course as approved by the department and conducted within the four-year certification period.

(B) (No change.)

(C) The applicant has completed a state approved jurisprudence examination to determine the knowledge that the applicant has on state EMS laws, rules, and policies.

(5) Option 5--CCMP Recertification Process. An applicant affiliated with an EMS provider that has a department-approved Comprehensive Clinical Management Program (CCMP) may be recertified if:

(A) the applicant is currently credentialed in the provider's CCMP;

(B) the applicant has been enrolled in the provider's CCMP for at least six continuous months; ~~and~~

(C) the applicant submits to the department a signed written statement by the CCMP's medical director, attesting to the applicant's successful participation in and completion of the provider's CCMP; and[-]

(D) The applicant has completed a state approved jurisprudence examination to determine the knowledge that the applicant has on state EMS laws, rules, and policies.

(6) (No change.)

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

(f) Inactive to active certification.

(1) An inactive certificant prior to the expiration of the first four-year inactive certification period may obtain active certification by submitting an application and the non-refundable fee to the department, as described in subsection (a)(4) of this section and by completing one of the following options:

(A) Option 1--meet the normal 4 year continuing education requirement for certification renewal as listed in subsection (b)(2) of this section, submit verification of skills proficiency from an approved education program or recognized physician by the department, and pass the National Registry EMT cognitive [~~national registry~~] assessment exam.

(B) Option 2--complete a department approved recertification course, and pass the National Registry EMT psychomotor (practical) exam and cognitive [~~national registry~~] assessment exam.

(2) A certificant who has held inactive certification for more than four years may return to active certification only by completing requirements described in §157.33(a) or (j) of this title.

(g) (No change.)

§157.36. *Criteria for Denial and Disciplinary Actions for EMS Personnel and Applicants and Voluntary Surrender of a Certificate or License.*

(a) (No change.)

(b) Disciplinary Action. The department may suspend, revoke, or refuse to renew an EMS certification or paramedic license, or may reprimand a certificant or licensed paramedic for, but not limited to, the following reasons:

(1) violating any provision of the Health and Safety Code, Chapter 773, and/or [Title] 25 [~~of the~~] Texas Administrative Code

[(TAC)], as well as Federal, State, or local laws, rules or regulations affecting, but not limited to, the practice of EMS;

(2) (No change.)

(3) failing to make accurate, complete and/or clearly written patient care reports documenting a patient's condition upon arrival at the scene, the prehospital care provided, and patient's status during transport, including signs, symptoms, and responses during duration of transport as per EMS provider's approved policy;

(4) - (6) (No change.)

(7) failing to report to the employer, appropriate legal authority or the department, the event of abuse or injury to a patient or the public within 24 hours or the next business day after the event;

(8) [(7)] failure to follow the medical director's protocol, performing advanced level or invasive treatment without medical direction or supervision, or practicing beyond the scope of certification or licensure;

(9) [(8)] failing to respond to a call while on duty and/or leaving duty assignment without proper authority;

(10) [(9)] abandoning a patient[; ~~turning over the care of a patient or delegating EMS functions to a person who lacks the education, training, experience, knowledge to provide appropriate level of care for the patient~~];

(11) turning over the care of a patient or delegating EMS functions to a person who lacks the education, training, experience, or knowledge to provide appropriate level of care for the patient;

(12) [(10)] failing to comply with the terms of a department ordered probation or suspension;

(13) [(11)] issuing a check to the department which has been returned to the department or its agent unpaid;

(14) [(12)] discriminating in any way based on real or perceived conditions of national origin, race, color, creed, religion, sex, sexual orientation, age, physical disability, mental disability, or economic status;

(15) [(13)] misrepresenting level of any certification or licensure;

(16) [(14)] misappropriating medications, supplies, equipment, personal items, or money belonging to the patient, employer or any other person or entity [~~or failing to take reasonable precautions to prevent such misappropriations~~];

(17) failing to take precautions to prevent misappropriating medications, supplies, equipment, personal items, or money belonging to the patient, employer or any person or entity;

(18) [(15)] falsifying or altering, or assisting another in falsifying or altering, any department application, EMS certificate or license; or using or possessing any such altered certificate or license;

(19) [(16)] committing any offense during the period of a suspension/probation or repeating any offense for which a suspension/probation was imposed within the two-year period immediately following the end of the suspension or probation;

(20) [(17)] cheating and/or assisting another to cheat on any [department] examination, written or psychomotor, by [or the examination of] any provider licensed by the department or any institution or entity conducting EMS education and/or training or providing an EMS examination leading to obtaining certification or renewing certification or license;

(21) [(18)] obtaining or attempting to obtain and/or assisting another in obtaining or attempting to obtain, any advantage, benefit, favor or gain by fraud, forgery, deception, misrepresentation, untruth or subterfuge;

(22) [(19)] illegally possessing, dispensing, administering or distributing, or attempting to illegally dispense, administer, or distribute controlled substances as defined by the Health and Safety Code, Chapter 481 and/or Chapter 483;

(23) [(20)] having received disciplinary action relating to an EMS certificate or license or another health provider certificate or license issued in another state or in a U.S. Territory or in another nation, or having received disciplinary action relating to another health provider certificate or license issued in Texas;

(24) [(21)] failing or refusing to timely give the department full and complete information requested by the department;

(25) [(22)] failing to notify the department of a change in his or her criminal history within 30 business days of the issuance of a court order, which resulted in him or her being convicted or placed on a deferred adjudication community supervision or deferred disposition for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);

(26) [(23)] failing to notify the department within 5 [40] business days of his or her being arrested, charged or indicted for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title;

(27) [(24)] failing to notify the department of a change in his or her criminal history within 5 [2] business days of the issuance of a court order, which resulted in him or her being convicted or placed on deferred adjudication community supervision, or deferred disposition for any offense noted in §157.37(e)(5) of this title;

(28) [(25)] failing to notify the department within 5 [2] business days of his or her being arrested, charged or indicted for a criminal offense noted in §157.37(e)(5) of this title;

(29) [(26)] having been convicted or placed on deferred adjudication community supervision, or deferred disposition for a criminal offense that directly relates to the duties and responsibilities of EMS personnel, as determined by the provisions of §157.37 of this title, except that a person's EMS certification or paramedic license shall be revoked if the certificant or licensed paramedic is convicted, or placed on deferred adjudication community supervision or deferred disposition for a criminal offense, noted in §157.37(e)(5) of this title;[-]

(30) [(27)] failing to timely complete any portion of the criminal history evaluation process, including submission of fingerprints, or timely providing information requested by the department within 60 days of notification to do so, in accordance with provisions in §157.37 of this title;

(31) [(28)] engaging in any conduct that jeopardizes or has the potential to jeopardize the health or safety of any person;

(32) [(29)] using [abusing] alcohol or drugs to such an extent that in the opinion of the commissioner or his/her designee [bureau chief], the health or safety of any persons [is;] or may be[;] endangered;

(33) failure by the employee, of an employer drug screening test right before, after or during an assigned EMS work or volunteer shift;

(34) resigning employment or refusing by the employee, of an employer drug screening test right before, after or during an assigned EMS work or volunteer shift;

(35) [(30)] engaging in any activity that betrays the patient privacy perspective or public trust and confidence in EMS; [and]

(36) [(34)] failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately perform the duties or meet the responsibilities required of a certified emergency medical technician or licensed paramedic;[-]

(37) delegating medical functions to other EMS personnel without approval from the medical director per approved protocols;

(38) failing to transport a patient and/or transport a patient to the appropriate medical facility according to the criteria for selection of a patient's destination established by the medical director;

(39) failing to document no-transport and refusals of care and/or follow the criteria under which a patient might not be transported, as established by the medical director;

(40) failing to contact medical control and/or the medical director as required by the medical director's protocols and/or EMS provider's policy and procedure when caring for or transporting a patient;

(41) failing to protect and/or advocate for patients/clients and/or the public from unnecessary risk of harm from another EMS certified or licensed personnel;

(42) falsifying employment or volunteer medical profession applications and/or failing to answer specific questions that would have affected the decision to employ or otherwise utilize while certified or licensed as an EMS personnel;

(43) behaving in a disruptive manner toward other EMS personnel, law enforcement, firefighters, hospital personnel, other medical personnel, patients, family members or others, that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(44) failing to notify the department no later than 30 days of a current and/or valid mailing address;

(45) falsifying or altering clinical and/or internship documents for EMS students;

(46) falsifying or failing to complete daily readiness checks on EMS vehicles, medical supplies and/or equipment as required by EMS employers;

(47) engaging in acts of dishonesty which relate to the EMS profession and/or as determined by the department;

(48) behavior that exploits the EMS personnel-patient relationship in a sexual way. This behavior is non-diagnostic and/or non-therapeutic, may be verbal or physical, and may include expressions or gestures that have sexual connotation or that a reasonable person would construe as such;

(49) falsifying information provided to the department; and

(50) engaging in a pattern of behavior that demonstrates routine response to medical emergencies without being under the policies and procedures of an EMS provider and/or first responder organization, and/or providing patient care without medical direction when required.

(c) Criteria for Denial of EMS Certification, or Paramedic Licensure. An EMS certification or paramedic license may be denied for, but not limited to, the following reasons:

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

(4) receiving disciplinary action relating to a certificate or license issued to the applicant in Texas, in another state, or in a U.S. territory, or in another nation, or by the National Registry of Emergency Medical Technicians' (NREMT), or any other organization that provides national recognized for EMS certification;

(5) (No change.)

(6) issuing payment [a check for any reason] to the department which has been returned to the department or its agent [for any reason];

(7) - (9) (No change.)

(d) (No change.)

(e) Appeal Hearing Request.

(1) A request for an appeal hearing shall be in writing and submitted to the department and postmarked within 30 [45] days after the date of the notice. The appeal hearing and any appeal from that hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(2) If the applicant, certificant, licensed paramedic, or petitioner does not request a hearing in writing within 30 [45] days after notice, the individual is deemed to have waived the opportunity for an appeal hearing and the department may take the proposed action.

(f) - (i) (No change.)

§157.38. Continuing Education.

(a) - (c) (No change.)

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

(1) - (4) (No change.)

(5) Clinical learning experiences--Faculty-planned and guided learning experiences designed to assist students to meet course objectives in the noted content areas of subsection (c) of this section and to apply EMS knowledge and skills in the direct care of patients. These experiences can include settings in laboratories, acute medical care facilities, extended medical care facilities, and participation in other department approved health related activities. Practice [Practica] approved by the Texas Higher Education Coordinating Board may also be considered a form of clinical experience under these rules.

(6) - (12) (No change.)

(e) Types of Acceptable Continuing Education.

(1) In this section "approved educational activities" refers to workshops, seminars, conferences, short-term courses, credit courses or continuing education courses provided by accredited institutions of higher education, clinical learning experiences, individualized instruction, distributive learning courses, and other learning activities that are related to EMS approved protocols and skills or that enhance the professional EMS practice of the certified or licensed EMS personnel.

(2) Continuing education contact hours applied toward EMS recertification or relicensure may be earned by participating in approved educational activities that are offered or sponsored by:

(A) A continuing education provider, approved under subsection (g) [(f)] of this section.

(B) - (E) (No change.)

- (3) (No change.)
- (f) (No change.)
- (g) Approval of Continuing Education Provider.

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

(3) The applicant shall certify on the application that:

(A) all programs offered by the provider for EMS continuing education will comply with the appropriate criteria defined in subsection (h) of this section; ~~and~~

(B) the provider shall be responsible for verifying successful completion by a participant of each program and shall provide a certificate of completion to the participants; ~~and~~[-]

(C) the provider shall be responsible for verifying that continuing education program(s) has physician medical oversight when the education is involving patient care.

(4) The department may require applicants for approval as continuing education providers to: [-]

(A) ~~demonstrate~~ [~~Demonstrate~~] they possess the financial, administrative, and educational resources necessary to provide the type(s) of educational activities proposed; ~~and~~[-]

(B) provide [~~Provide~~] evidence that they are capable of designing and delivering educational activities that comply with the appropriate criteria defined in subsection (h) of this section.

(h) Criteria for Acceptable Continuing Education Activity.

(1) The following criteria have been established to guide EMS personnel in selecting appropriate programs and to guide providers of EMS continuing education in planning and presenting activities. The following criteria shall apply to all activities except those involving self-directed study concluding in a published writing or a presentation, as described in subsection (g)(3)(B) of this section.

(A) - (H) (No change.)

(I) Participants shall complete a written evaluation of the program and instruction. Regional, State and/or National conferences may be exempt from this requirement.

(J) - (K) (No change.)

(2) (No change.)

(3) Clinical Instruction. In addition to the criteria listed in paragraph (1) of this subsection, programs consisting of or including a component of clinical instruction shall meet the following criteria.

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

(E) Provide a name and contact information for the designated infection control officer and document education for the designated infection control officer based on U.S. Code, Title 42, Chapter 6A, Subchapter XXIV, Part G, §300ff-136.

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

(i) Additional Criteria for Specific Continuing Education Programs. In addition to those listed in subsection (h) of this section, the following guidelines shall apply to the selection and/or planning and implementation of specific CE programs.

(1) Semester or quarter credit hour courses.

(A) The course shall be within the framework of a curriculum that leads to a degree in emergency medical services or any credit hour course relevant to emergency health care.

(B) Certified or licensed EMS personnel, upon audit, shall be able to present an official transcript or official evidence indicating successful completion of the course with a passing grade.

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

(j) (No change.)

(k) Audit.

(1) - (6) (No change.)

(7) Falsification of CE documentation or official evidence of completion of CE shall be cause for reprimand, probation, suspension, or revocation of a certificate or license as described in §157.36 of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License).

(8) Falsification of CE documentation or official evidence of completion by a CE provider or failure to comply with the criteria established by subsections (h) and (i) of this section shall be cause for reprimand, probated suspension, suspension, or revocation of approval.

(l) For all applications and renewal applications, the department [~~or the board~~] is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

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

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Department of State Health Services

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For further information, please call: (512) 776-6972



SUBCHAPTER D. EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFICATION

25 TAC §157.43, §157.44

STATUTORY AUTHORITY

The amendments are authorized by the Texas Health and Safety Code, Chapter 773 and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

§157.43. Course Coordinator Certification.

(a) - (c) (No change.)

(d) Basic coordinator requirements. To be certified as a basic course coordinator, the candidate shall:

(1) submit an application for basic course coordinator certification along with the nonrefundable fee of \$60 to the Texas De-

partment of State Health Services (department) except a fee shall not be required if compensation is not received for coordinating training courses or programs;

(2) have been certified as an EMT or higher for at least 4 consecutive years;

(3) ~~[(2)]~~ have been a certified EMS instructor for at least two consecutive years;

(4) ~~[(3)]~~ have documented not less than 120 hours of instruction for initial EMS certificants; or have successfully conducted an EMT-Basic course;

(5) ~~[(4)]~~ submit documentation of positive evaluations as a certified instructor;[-]

(6) ~~[(5)]~~ be affiliated with and operate under the supervision of a licensed provider, an EMS medical director, a teaching hospital, a regionally accredited post-secondary educational institution and/or a health care institution accredited by an organization recognized by the department;

(7) ~~[(6)]~~ submit letters of intent from qualified providers of clinical and field internship experience;

(8) ~~[(7)]~~ have successfully completed a department-sponsored course coordinator training course; and

(9) ~~[(8)]~~ after completing all the above requirements, pass the EMS coordinator exam and retest, if necessary, no later than one year after course completion date. The nonrefundable retest fee is \$30, except a fee shall not be required if compensation is not received for coordinating training courses or programs. If requirements are not completed within one year after course completion date, the candidate must meet the requirements of subsection (d) of this section including the completion of another initial course to be certified.

(e) Advanced coordinator requirements. To be certified as an advanced course coordinator, the candidate shall:

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

(4) have been certified/licensed as an paramedic for at least 4 consecutive years;

(5) ~~[(4)]~~ have documented not less than 240 ~~[120]~~ hours of instruction for initial EMS certificants;

(6) ~~[(5)]~~ submit documentation of positive evaluations as a certified instructor or as a basic coordinator;

(7) ~~[(6)]~~ be affiliated with and operate under the supervision of a regionally accredited post-secondary educational institution, a health care institution accredited by an organization recognized by the department, or another entity approved by the department to sponsor an advanced training program in accordance with §157.32 of this title (relating to EMS Education Program and Course Approval);

(8) ~~[(7)]~~ submit a letter of intent from qualified providers of clinical and field internship experience;

(9) ~~[(8)]~~ have successfully completed a department-sponsored course coordinator training course;

(10) ~~[(9)]~~ after completing all the above requirements, pass the EMS coordinator exam and retest, if necessary, no later than one year after course completion date. The nonrefundable retest fee is \$30, except a fee shall not be required if compensation is not received for coordinating training courses or programs. If requirements are not completed within one year after course completion date, the candidate must meet the requirements of subsection (e) of this section including the completion of another initial course to be certified; and

(11) ~~[(10)]~~ candidates who hold current basic coordinator certification and are applying for advanced coordinator certification must complete all requirements of this subsection except paragraphs (e)(9) ~~[(e)(8)]~~ and (e)(10) ~~[(e)(9)]~~ of this subsection.

(f) Period of Certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of the applicable subsection (d) or (e) of this section shall be certified as a [an] course coordinator for two years commencing on the date of issuance of the certificate.

(g) (No change.)

(h) Responsibilities. Course coordinator shall have the following responsibilities:

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

(4) coordinate submission of course approval documents and fees, if applicable, for assigned courses to the department [as defined in the Education and Training Manual];

(5) - (10) (No change.)

(11) obtain written acknowledgement from the field internship EMS provider medical director, if students will be conducting advanced-level skills as part of their field internship with that EMS provider;

(12) ~~[(11)]~~ train and evaluate internship preceptors;

(13) ~~[(12)]~~ in cooperation with the training program, maintain all course records for a minimum of five years;

(14) ~~[(13)]~~ in cooperation with the training program coordinate course written examinations, skills proficiency verifications, and other student evaluations;

(15) ~~[(14)]~~ in cooperation with the training program evaluate the effectiveness of the personnel who instruct in assigned courses;

(16) ~~[(15)]~~ in cooperation with the training program supervise and evaluate the effectiveness of the clinical and field internship training for assigned courses; [and]

(17) ~~[(16)]~~ in cooperation with the training program attest to the successful course completion of all students who meet the program's requirements for completion;[-]

(18) provide students with written information on the Texas process to gain certification or licensure;

(19) educate students on current Texas EMS laws, policies and rules;

(20) provide written notification to the department within 24 hours or the next normal business day when leaving as the course coordinator for an ongoing EMS program; and

(21) provide to the program within 24 hours or the next normal business day all course material for an ongoing EMS program.

(i) Exception. A program may request the department to grant an exception to allow a person not currently certified as a course coordinator to temporarily perform the duties listed in subsection (h) of this section.

(1) (No change.)

(2) In determining whether the request for an exception is to be approved or denied, the department shall consider but not be limited to the following issues:

(A) - (B) (No change.)

(C) the probable adverse consequences to prehospital emergency care₂[-] if the exception is not approved.

(3) - (4) (No change.)

(j) Recertification.

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

(3) To be eligible for recertification, the course coordinator shall meet recertification requirements during the latest coordinator certification period and:

(A) (No change.)

(B) attend [regional] updates for course coordinator as required by the department;

(C) - (E) (No change.)

(F) submit documentation of observing or providing at least 8 hours of emergency medical care by a licensed EMS provider, first responder organization or clinical site.

(4) (No change.)

(k) - (l) (No change.)

(m) Disciplinary actions.

(1) (No change.)

(2) Emergency suspension. The department [bureau chief of the Bureau of Emergency Management (bureau)] may issue an emergency order to suspend a course coordinator's certification if the department [bureau chief] has reasonable cause to believe the conduct of the certified course coordinator creates an imminent danger [continued activity by the individual constitutes a threat] to the public health and safety.

(A) - (B) (No change.)

(3) Reprimand, suspension, [Suspension] or revocation. [The department may suspend or revoke a certificate it has issued to an EMS coordinator.] A course coordinator may be reprimanded or the course coordinator's certification may be suspended or revoked for, but not limited to the following:

(A) - (U) (No change.)

(V) functioning or attempting to function as a course coordinator during a period of suspension which may be cause for suspension of the coordinator certification; [and/or]

(W) committing any violation during a probationary period₂[-]

(X) failing to report a violation of the Health and Safety Code, Chapter 773, or the rules adopted thereunder;

(Y) failing to notify the department when any current EMS student or student applicant, or certified or licensed program employee is arrested for, or received a conviction, deferred adjudication or deferred prosecution for, any crime, upon the coordinator's discovery of such;

(Z) failing to notify the department of a conviction, deferred adjudication, or deferred prosecution for a crime which directly relates to the person's ability to carry out the duties and responsibilities of an EMS personnel or EMS course coordinator, per the guidelines and criteria outlined in §157.37 of this title; and

(AA) demonstrating unprofessional conduct such as, but not limited to the following:

(i) retaliation;

(ii) discrimination; shall not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.

(iii) verbal or physical abuse; or

(iv) inappropriate physical or sexual contact.

(4) Notification. If the department proposes to suspend or revoke a course coordinator's certificate, the course coordinator shall be notified at the address shown in the current records of the department. The notice must state the alleged facts or conduct warranting the action and state that the course coordinator has an opportunity to request a hearing in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(A) The course coordinator may request a hearing [within 15 days] after the date of the notice. This request shall be in writing and submitted to the department [bureau chief].

(B) If the course coordinator does not request a hearing within 30 [15] days after the date of the notice of opportunity, the course coordinator waives the opportunity for a hearing and the department shall implement its proposal.

(5) - (6) (No change.)

(n) For all applications and renewal applications, the department [(or the board)] is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

§157.44. *Emergency Medical Service Instructor Certification.*

(a) General.

(1) A certified emergency medical service (EMS) instructor is an individual who has received training approved by the Texas Department of State Health Services (department) to conduct the classroom or laboratory portion of an EMS training course.

(2) - (3) (No change.)

(b) - (e) (No change.)

(f) Recertification.

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

(3) To be eligible for recertification, the instructor shall meet recertification requirements during the latest instructor certification period:

(A) maintain active status EMS certification; [and]

(B) submit documentation of observing or providing at least 8 hours of emergency medical care by or with a licensed EMS provider, first responder organization or clinical site; and

(C) [(B)] submit the application for recertification and a nonrefundable fee of \$30.

(4) (No change.)

(g) (No change.)

(h) Recertification. To be eligible for recertification, the candidate shall meet the following:

(1) - (4) (No change.)

(5) A candidate whose certification is expired more than one year must meet the requirements of subsection (b) of this section [including the completion of another initial course to be certified].

(i) Disciplinary action.

(1) Emergency suspension. The department may issue an emergency order to suspend an instructor certification if the department has reasonable cause to believe the conduct of the certified instructor creates [continued activity of the individual constitutes] an imminent danger to the public health or safety.

(A) - (B) (No change.)

(2) The department may suspend, revoke, or refuse to renew an instructor certification, or may reprimand an instructor for, but not limited to, the following reasons [Certification suspension or revocation, or application denial. The department may suspend or revoke a certification or deny an application for certification for, but not limited to, the following reasons]:

(A) - (V) (No change.)

(W) failing [failure] to notify the department when any current EMS student, student applicant, or certified or licensed program employee is arrested for, or received a conviction, deferred adjudication or deferred prosecution, [econvicted] for any crime, upon the instructor's discovery of such;

(X) failing to notify the department of a conviction, deferred adjudication, or deferred prosecution for a crime which directly relates to the person's ability to carry out the duties and responsibilities of an EMS personnel or EMS instructor, per the guidelines and criteria outlined in §157.37 of this title;

(Y) displaying unprofessional conduct such as, but not limited to the following:

(i) retaliation;

(ii) discrimination on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations;

(iii) verbal or physical abuse; or

(iv) inappropriate physical or sexual contact.

~~(X) conviction of a crime which directly relates to the profession of EMS personnel or EMS educators as described in §157.37 of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);~~

~~(Y) received a deferred adjudication or deferred prosecution to resolve any criminal charge against the candidate or certificant, which relates to the candidate's or certificant's ability to carry out EMS duties and/or the responsibilities of an EMS Instructor;~~

(Z) - (EE) (No change.)

(3) Notification. If the department proposes to take disciplinary action against an EMS instructor, the certificant shall be notified at the address shown in the current records of the department. The notice must state the alleged facts or conduct warranting the action and state that the certificant has an opportunity to request a hearing.

(A) The certificant may request a hearing within 15 days after the date of the notice. This request shall be in writing and submitted to the department [bureau chief]. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(B) (No change.)

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

(j) - (k) (No change.)

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §412.108, §412.303, and §412.322, concerning local mental health authority (LMHA) responsibilities.

BACKGROUND AND PURPOSE

The purpose of the amendments is to clarify processes related to billing for community mental health services; expand the provider base authorized to determine medical necessity to include physician assistants with specialized psychiatric/mental health training; provide a reference to the criteria set forth in the subchapter for LMHAs to use in developing an alternative credentialing process for qualified mental health professionals- community services (QMHP-CS); and update specific references to the *Diagnostic and Statistical Manual* with a generic reference to eliminate the need to revise rules should the manual change in the future.

SECTION-BY-SECTION SUMMARY

In §412.108 concerning billing procedures, subsection (a) describes the process for determining the monthly account for each person; subsection (b) directs that the LMHA access all available funding sources before using department funds to pay for a person's services; subsection (c) directs the LMHA to bill the person's third-party coverage for the monthly account amount for covered services; subsection (d) sets the processes for billing the person (or parents) the monthly account amount when there is no third-party coverage, when there is Medicare third-party coverage, or when there is non-Medicare third-party coverage; and subsection (e) describes the information that must be included in monthly billing statements that are sent to individuals who have been determined as having an ability to pay for the services the individuals receive. The requirements and processes for payments, collections, and non-payment, including when a financial hardship exists are located in §412.109.

Section 412.108(d)(3) concerns non-Medicare third-party coverage and reflects separate billing scenarios depending on whether a person's cost sharing exceeds or is less than the person's maximum monthly fee (MMF). Subparagraph (A) requires that if all cost sharing exceeds the MMF, the person is billed all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by the non-Medicare third-party coverage. Subparagraph (B) requires that if a person's cost sharing does not exceed the person's MMF, then the amounts described in new subsection

(d)(3)(B)(i)(I) and (II) are added to equal the total amount applied toward the person's MMF. These fees when added together determine whether the account amount exceeds or is less than the person's MMF.

In §412.303(19), the definition of the term "DSM--The current edition of the *Diagnostic Statistical Manual of Mental Disorders* published by the American Psychiatric Association is clarified by adding the phrase "that is approved for use by the department" so that when the DSM is revised the department's system has the ability to switch to the use of the most current version at the same time. Further, the local mental health authority performance will prescribe which version of the DSM is to be used.

In §412.303(35), the definition of the term "LPHA or licensed practitioner of the healing arts" is clarified by adding the acronyms for the respective clinical/clinical profession titles in subparagraphs (B), (C), and (G). In paragraph (D), the word "licensed" is deleted because the term "licensed psychologist" is not used as part of a psychologist's clinical title as is the case when using the term "licensed clinical social worker." The definition of each clinical/medical title sets forth the requirement that the professional be licensed according to the Occupations Code, Chapter 204. A new paragraph (F) is added to include "physician assistant (PA)" and the subsequent paragraph is re-lettered.

In §412.303(45), the following requirement that the PA "has specialized psychiatric/mental health training" was added in addition to being licensed in accordance with the Occupations Code, Chapter 204.

In §412.303(48), the definition of the term "QMHP--CS or qualified mental health professional--community services," paragraph (C) is revised to refer to the criteria in §412.316(c) and (d) that the LMHA or MCO must use to determine an alternative credentialing process for QMHPs.

The amendments to §412.322(b) and (g) is amended by deleting the language "all five axes of the current" because the current edition DSM V, no longer uses axes in the formulation of mental health diagnoses.

FISCAL NOTE

Lauren Lacefield Lewis, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Lauren Lacefield Lewis has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Mrs. Lacefield Lewis has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be clear, concise process for determining cost sharing for individuals with non-Medicare third-party coverage; expand the licensed professionals who are authorized to determine medical necessity to include physician assistants with specialized psychiatric/mental health training; provides a reference to the criteria set forth in the subchapter for local mental health authorities to use in developing an alternative credentialing process for qualified QMHP-CS; and update references to the *Diagnostic and Statistical Manual* to a generic format so future amendments will be unnecessary.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Janet Fletcher, Department of State Health Services, Mail Code 2018/552, P.O. Box 149347, Austin 78714-9347, or by email to mhsarules@dshs.state.tx.us with the phrase "Chapter 412 Misc. Changes- Formal Comment" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §412.108

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§412.108. *Billing Procedures.*

- (a) - (c) (No change.)
- (d) Billing the person (or parents).

(1) No third-party coverage. If the monthly account amount for services not covered by third-party coverage:

(A) exceeds the person's maximum monthly fee (MMF), then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or

(B) is less than the person's MMF, then the LMHA bills the person (or parent) the monthly account amount for services not covered by third-party coverage.

(2) Medicare third-party coverage. Nothing in this paragraph is intended to conflict with any applicable law, rule, or regulation with which a LMHA must comply.

(A) The following amounts are added to equal the total amount applied toward the person's MMF:

(i) the amount of all applicable co-payments and co-insurance for services listed in the monthly account as covered by Medicare third-party coverage;

(ii) the amount Medicare third-party coverage was billed but did not pay because the deductible hasn't been met; and

(iii) the monthly account amount for services not covered by third-party coverage.

(B) If the total amount applied toward the person's MMF as described in paragraph (2)(A) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the LMHA bills the person (or parent) the total amount applied toward the MMF.

(3) Non-Medicare third-party coverage.

(A) Cost-sharing exceeds MMF. If the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by non-Medicare third-party coverage exceeds the person's MMF, then the LMHA bills the person (or parent) all applicable co-payments, co-insurance, and deductibles.

(B) Cost-sharing does not exceed MMF.

(i) If the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by non-Medicare third-party coverage does not exceed the person's MMF, then the following amounts are added to equal the total amount applied toward the person's MMF:

(I) the amount of all applicable co-payments, co-insurance, and deductibles; and

(II) the monthly account amount for services not covered by third-party coverage.

(ii) If the total amount applied toward the person's MMF as described in paragraph (3)(B) of this subsection:

(I) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or

(II) is less than the person's MMF, then the LMHA bills the person (or parent) the total amount applied toward the MMF.

(C) Annual cost-sharing limit. If the person (or parent) has reached his/her annual cost-sharing limit (i.e., maximum out-of-pocket expense) as verified by the non-Medicare third-party coverage, then the LMHA will not bill the person (or parent) any co-payments, co-insurance, or deductibles, as applicable to the annual cost-sharing limit, for services covered by the non-Medicare third-party coverage for the remainder of the policy-year.

(4) Social Security work incentive provisions.

(A) If the person identified a payment amount for specific services in his/her approved plan utilizing Social Security work incentive provisions (i.e., Plan to Achieve Self-Sufficiency; Impairment Related Work Expense), then the LMHA bills the person the monthly account amount for the specific services up to the identified payment amount. If the monthly account amount for the specific services is greater than the identified payment amount, then the remaining balance is applied toward the person's MMF.

(B) The following amounts are added to equal the total amount applied toward the person's MMF:

(i) any remaining balance as described in paragraph (4)(A) of this subsection; and

(ii) the monthly account amount for services not covered by third-party coverage.

(C) If the total amount applied toward the person's MMF as described in paragraph (4)(B) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the LMHA bills the person (or parent) the total amount applied toward the MMF.

(e) (No change.)

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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SUBCHAPTER G. MENTAL HEALTH
COMMUNITY SERVICES STANDARDS
DIVISION 1. GENERAL PROVISIONS

25 TAC §412.303

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation

and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§412.303. Definitions.

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

(1) - (18) (No change.)

(19) DSM--The current edition of the *Diagnostic Statistical Manual of Mental Disorders* published by the American Psychiatric Association that is approved for use by the department.

(20) - (34) (No change.)

(35) LPHA or licensed practitioner of the healing arts--A staff member who is:

(A) a physician;

(B) a licensed professional counselor (LPC);

(C) a licensed clinical social worker (LCSW);

(D) a [heensed] psychologist;

(E) an advanced practice nurse; [øf]

(F) a physician assistant (PA); or

(G) [(F)] a licensed marriage and family therapist (LMFT).

(36) - (44) (No change.)

(45) Physician assistant--A staff member who has specialized psychiatric/mental health training and who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(46) - (47) (No change.)

(48) QMHP-CS or qualified mental health professional-community services--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing)) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is a registered nurse; or

(C) completes an alternative credentialing process as determined by the LMHA or MCO in accordance with §412.316(c) and (d) of this title (relating to Competency and Credentialing) [identified by the department].

(49) - (64) (No change.)

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

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DIVISION 3. STANDARDS OF CARE

25 TAC §412.322

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§412.322. Provider Responsibilities for Treatment Planning and Service Authorization.

(a) (No change.)

(b) Diagnostics. The diagnosis of a mental illness must be:

(1) rendered by an LPHA, acting within the scope of his/her license, who has interviewed the individual, either face-to-face or via telemedicine;

(2) based on the [all five axes of the current] DSM;

(3) documented in writing, including the date, signature, and credentials of the person making the diagnosis; and

(4) supported by and included in the assessment.

(c) - (g) (No change.)

(h) Discharge Summary. Not later than 21 calendar days after an individual's discharge, whether planned or unplanned, the provider must document in the individual's medical record:

(1) a summary, based upon input from all the disciplines of treatment involved in the individual's treatment plan, of all the services provided, the individual's response to treatment, and any other relevant information;

(2) recommendations made to the individual or their LAR (if applicable) for follow up services, if any; and

(3) the individual's last diagnosis, based on the [upon all five axes of the current] DSM.

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

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Lisa Hernandez

General Counsel

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41, §23.42

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 37 TAC §23.41(b) and 37 TAC §23.42(b) are not included in the print version of the Texas Register. The figure is available in the on-line version of the August 12, 2016, issue of the Texas Register.)

The Texas Department of Public Safety (the department) proposes amendments to §23.41 and §23.42, concerning Vehicle Inspection Items, Procedures, and Requirements. The amendments reflect changes to the attached graphics, including the addition of the center mounted brake light as a required component of the vehicle inspection procedure for stop lamps, along with general updates relating to the vehicle inspection program required by Transportations Code, Chapter 548.

In the July 1, 2016 issue of the *Texas Register* (41 TexReg 4785), the department published proposed amendments to §23.41 and §23.42. The department's Commercial Vehicle Enforcement staff noted errors in 06.05.00(7) and 06.05.00(8) of the new graphic for §23.42. In 06.05.00(7), the noted 75 mile radius is no longer consistent with language in the Federal Motor Carrier Safety Administration's regulations. This language has been struck from the graphic. In 06.05.00(8), the language has been changed to reflect that not all farm vehicles are able to display farm license plates.

No changes have been made to §23.41 from the original July 1st proposal.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be consistency with recent legislative changes and with federal regulations governing vehicle safety equipment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sec-

tor of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0240, or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 are affected by this proposal.

§23.41. *Passenger (Non-Commercial) Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations Manual prior to the issuance of a vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 4.)
Figure: 37 TAC §23.41(b)
[Figure: 37 TAC §23.41(b)]

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) may be confirmed by any appropriate combination of the items detailed in this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or (c)(2) are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG

systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (2) are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

§23.42. Commercial Vehicle Inspection Items.

(a) All items of inspection enumerated in this section must be inspected in accordance with the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the DPS Training and Operations Manual prior to the issuance of a passing vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 6.

Figure: 37 TAC §23.42(b)
[Figure: 37 TAC §23.42(b)]

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 423. FIRE SUPPRESSION

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 423, Fire Suppression, Subchapter A, Minimum Standards For Structure Fire Protection Personnel Certification, concerning, §423.13, International Fire Service Accreditation Congress (IFSAC) Seal, and Subchapter B, Minimum Standards For Aircraft Rescue Fire Fighting Personnel, concerning §423.211, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed amendments is to delete "grandfather" language that allowed persons holding an active certification issued prior to a certain date to automatically qualify for the applicable IFSAC seal(s). New language is added to clarify the

requirement that an individual may only apply for an IFSAC seal from an active (non-expired) exam.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that agency rules will be in compliance with the recommendations of the International Fire Service Accreditation Congress. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.13

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§423.13. International Fire Service Accreditation Congress (IFSAC) Seal.

~~[(a) Individuals holding a current commission Structure Fire Protection Personnel certification received prior to March 10, 2003, may be granted International Fire Service Accreditation Congress (IFSAC) seals for Hazardous Materials Awareness Level Personnel, Hazardous Materials Operations Level Responders, Fire Fighter I, and Fire Fighter II by making application to the commission for the IFSAC seals and paying applicable fees. This subsection will expire on August 1, 2016.]~~

(a) ~~[(b)]~~ Individuals completing a commission approved basic fire suppression program, meeting any other NFPA requirement, and passing the applicable examination(s) based on the basic fire suppression curriculum, may be granted IFSAC seal(s) for Hazardous Materials Awareness Level Personnel, Hazardous Materials Operations Level Responders (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control), Fire Fighter I, and/or Fire Fighter II by making application to the commission for the IFSAC seal(s) and paying applicable fees, provided they meet the following provisions:

(1) To receive the IFSAC Hazardous Materials Awareness Level Personnel seal, the individual must:

(A) complete the Hazardous Materials Awareness section of a commission approved course; and

(B) pass the Hazardous Materials Awareness section of a commission examination.

(2) To receive the IFSAC Hazardous Materials Operations Level Responders seal (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control) the individual must:

(A) complete the Hazardous Materials Operation section of a commission approved course;

(B) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and

(C) pass the Hazardous Materials Operations section of a commission examination.

(3) To receive the IFSAC Fire Fighter I seal, the individual must:

(A) complete a commission approved Fire Fighter I course;

(B) provide medical documentation as outlined in subsection (c) of this section;

(C) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and

(D) document possession of an IFSAC Hazardous Materials Operations Level Responders seal; and

(E) pass the Fire Fighter I section of a commission examination.

(4) To receive the IFSAC Fire Fighter II seal, the individual must:

(A) complete a commission approved Fire Fighter II course;

(B) document possession of an IFSAC Fire Fighter I seal; and

(C) pass the Fire Fighter II section of a commission examination.

(b) [(e)] In order to meet the medical requirements of NFPA 1001, the individual must document successful completion of an emergency medical training course or program. The commission recognizes the following emergency medical training:

(1) The Texas Department of State Health Services Emergency Medical Service Personnel certification training;

(2) American Red Cross Response course (including optional lessons and enrichment sections);

(3) American Safety and Health Institute First Responder course;

(4) National Registry of Emergency Medical Technicians certification; or

(5) medical training deemed equivalent by the commission.

(c) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3812



SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.211

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§423.211. International Fire Service Accreditation Congress (IF-SAC) Seal.

~~[(a) Individuals holding a current commission Aircraft Rescue Fire Fighting Personnel certification received prior to March 10, 2003, may be granted an International Fire Service Accreditation Congress (IF-SAC) seal as an Airport Fire Fighter by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 1, 2016.]~~

~~[(b)] Individuals completing a commission approved basic aircraft rescue fire suppression program, documenting an IFSAC seal for Fire Fighter II, and passing the applicable state examination may be granted an IFSAC seal as an Airport Fire Fighter by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.~~

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

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CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §425.11

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 425, Fire Service Instructors, concerning §425.11, International Fire Service Accreditation Congress (IF-SAC) Seal.

The purpose of the proposed amendments is to delete "grandfather" language that allowed persons holding an active certification issued prior to a certain date to automatically qualify for the applicable IFSAC seal(s). New language is added to clarify the

requirement that an individual may only apply for an IFSAC seal from an active (non-expired) exam.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that agency rules will be in compliance with the recommendations of the International Fire Service Accreditation Congress. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§425.11. *International Fire Service Accreditation Congress (IFSAC) Seal.*

(a) [~~Individuals who hold commission Instructor I certification prior to March 1, 2006 may be granted an IFSAC seal for Instructor I by making application to the commission and paying the applicable fee before August 1, 2016.~~] Individuals completing a commission approved Fire Service Instructor I training program and passing the applicable state examination may be granted an IFSAC seal for Instructor I by making application to the commission and paying the applicable fee.

(b) [~~Individuals who hold commission Instructor II certification prior to March 1, 2006 may be granted an IFSAC seal for Instructor II by making application to the commission and paying the applicable fee before August 1, 2016.~~] Individuals holding an IFSAC Instructor I seal, completing a commission approved Fire Service Instructor II training program, and passing the applicable state examination may be granted an IFSAC seal for Instructor II by making application to the commission and paying the applicable fee.

(c) [~~Individuals who hold commission Instructor III certification prior to March 1, 2006 may be granted an IFSAC seal for Instructor III by making application to the commission and paying the applicable fee before August 1, 2016.~~] Individuals holding an IFSAC Instructor II seal, completing a commission approved Fire Service Instructor III training program, and passing the applicable state examination may be granted an IFSAC seal for Instructor III by making application to the commission and paying the applicable fee.

(d) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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Executive Director

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For further information, please call: (512) 936-3812

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.211

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 429, Minimum Standards For Fire Inspector Certification, concerning §429.211, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed amendments is to delete "grandfather" language that allowed persons holding an active certification issued prior to a certain date to automatically qualify for the applicable IFSAC seal(s). New language is added to clarify the requirement that an individual may only apply for an IFSAC seal from an active (non-expired) exam.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that agency rules will be in compliance with the recommendations of the International Fire Service Accreditation Congress. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or emailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.211. *International Fire Service Accreditation Congress (IFSAC) Seal.*

~~[(a) Individuals who hold commission Fire Inspector certification prior to January 1, 2005, may be granted International Fire Service Accreditation Congress (IFSAC) seals for Inspector I and Inspector II by making application to the commission for the IFSAC seals and paying applicable fees. This subsection will expire on August 1, 2016.]~~

(a) ~~[(b)]~~ Individuals who hold commission Fire Inspector certification ~~issued~~ prior to January 1, 2005, may apply to test for Plan Examiner I. Upon successful completion of the examination, an IFSAC seal for Plan Examiner I may be granted by making application to the commission for the IFSAC seal and paying the applicable fee.

(b) [(e)] Individuals who pass the applicable section of the state examination [on or after January 1, 2005], may be granted IFSAC seal(s) for Inspector I, Inspector II, and/or Plan Examiner I by making application to the commission for the IFSAC seal(s) and paying the applicable fees, provided they meet the following provisions:

(1) To receive the IFSAC Inspector I seal, the individual must:

(A) complete the Inspector I section of a commission approved course; and

(B) pass the Inspector I section of a commission examination.

(2) To receive the IFSAC Inspector II seal, the individual must:

(A) complete the Inspector II section of a commission approved course;

(B) document possession of an IFSAC Inspector I seal; and

(C) pass the Inspector II section of a commission examination.

(3) To receive the IFSAC Plan Examiner I seal, the individual must:

(A) complete the Plan Examiner I section of a commission approved course; and

(B) pass the Plan Examiner I section of a commission examination.

(c) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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Tim Rutland

Executive Director

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For further information, please call: (512) 936-3812



CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards For Arson Investigator Certification, concerning, §431.13, International Fire Service Accreditation Congress (IFSAC) Seal, and Subchapter B, Minimum Standards For Fire Investigator Certification, concerning §431.211, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed amendments is to delete "grandfather" language that allowed persons holding an active certification issued prior to a certain date to automatically qualify for the applicable IFSAC seal(s). New language is added to clarify the requirement that an individual may only apply for an IFSAC seal from an active (non-expired) exam.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that agency rules will be in compliance with the recommendations of the International Fire Service Accreditation Congress. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.13

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§431.13. International Fire Service Accreditation Congress (IFSAC) Seal.

~~[(a) Individuals holding a current commission Arson Investigator certification received prior to March 10, 2003 may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 1, 2016.]~~

[(b)] Individuals completing a commission approved basic fire investigator program and passing the applicable state examination may be granted an IFSAC seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.211

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§431.211. *International Fire Service Accreditation Congress (IF-SAC) Seal--Fire Investigator.*

[(a) Individuals holding a current commission Fire Investigator certification received prior to March 10, 2003 may be granted an International Fire Service Accreditation Congress (IF-SAC) seal as a Fire Investigator by making application to the commission for the IF-SAC seal and paying applicable fees. This subsection will expire on August 1, 2016.]

[(b)] Individuals completing a commission approved basic fire investigator program and passing the applicable state examination may be granted an IF-SAC seal as a Fire Investigator by making application to the commission for the IF-SAC seal and paying applicable fees. In order to qualify for an IF-SAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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Tim Rutland

Executive Director

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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.7

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 433, Minimum Standards For Driver/Operator-Pumper, concerning §433.7, International Fire Service Accreditation Congress (IF-SAC) Seal.

The purpose of the proposed amendments is to delete "grandfather" language that allowed persons holding an active certification issued prior to a certain date to automatically qualify for the applicable IF-SAC seal(s). New language is added to clarify the requirement that an individual may only apply for an IF-SAC seal from an active (non-expired) exam.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that agency rules will be in compliance with the recommendations of the International Fire Service Accreditation Congress. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§433.7. *International Fire Service Accreditation Congress (IF-SAC) Seal.*

[(a) Individuals holding a current commission Driver/Operator-Pumper certification received prior to March 10, 2003, may be granted an International Fire Service Accreditation Congress (IF-SAC) seal as a Driver/Operator-Pumper by making application to the commission for the IF-SAC seal and paying the applicable fees. This subsection will expire on August 1, 2016.]

[(b)] Individuals completing a commission approved driver/operator-pumper program; documenting, as a minimum, an IF-SAC seal for Fire Fighter I; and passing the applicable state examination may be granted an IF-SAC seal as a Driver/Operator-Pumper by making application to the commission for the IF-SAC seal and paying applicable fees. In order to qualify for an IF-SAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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Tim Rutland

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For further information, please call: (512) 936-3812



CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.25

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 435, Fire Fighter Safety, concerning §435.25, Courage to be Safe So Everyone Goes Home Program.

The purpose of the proposed amendments is to delete obsolete language and update ongoing requirements for persons completing the Courage to Be Safe course.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that all certified fire protection personnel ap-

pointed to duties with regulated entities will be in compliance with the rule requirement. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§435.25. *Courage to be Safe So Everyone Goes Home Program.*

(a) In an effort to improve firefighter safety in the State of Texas, all regulated entities will ensure that the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program be completed as part of the continuing education required for certified fire protection personnel [by December 1, 2015]. Individuals will be credited with four hours of continuing education credit for completing this program.

~~[(b) All regulated fire protection personnel must complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program prior to December 1, 2015.]~~

~~(b) [(e) All fire protection personnel [appointed after December 1, 2015] will be required to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program training within one year following [e]f appointment to a fire department if the individual has not previously completed the program.~~

~~(c) [(d) Departments will report the completion of training through the commission's web based reporting system.~~

~~(d) [(e) Failure to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program before the required deadlines will be considered a violation of continuing education rules found in Chapter 441 of this title (relating to Continuing Education).~~

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

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 451, Fire Officer, Subchapter A, Minimum Standards For Fire Officer I, concerning, §451.7, International Fire Service Accreditation Congress (IFSAC) Seal, and

Subchapter B, Minimum Standards For Fire Officer II, concerning §451.207, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed amendments is to delete "grandfather" language that allowed persons holding an active certification issued prior to a certain date to automatically qualify for the applicable IFSAC seal(s). New language is added to clarify the requirement that an individual may only apply for an IFSAC seal from an active (non-expired) exam.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that agency rules will be in compliance with the recommendations of the International Fire Service Accreditation Congress. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.7

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§451.7. *International Fire Service Accreditation Congress (IFSAC) Seal.*

~~[(a) Individuals holding a current commission Fire Officer I certification received prior to March 10, 2003, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer I by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 1, 2016.]~~

~~[(b)] Individuals completing a commission approved Fire Officer I program, documenting an IFSAC seal for Fire Fighter II and Instructor I, and passing the applicable state examination may be granted an IFSAC seal as a Fire Officer I by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.~~

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

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.207

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§451.207. International Fire Service Accreditation Congress (IF-SAC) Seal.

~~[(a) Individuals holding a current commission Fire Officer II certification received prior to March 10, 2003, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer II by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 1, 2016.]~~

~~[(b)] Individuals completing a commission approved Fire Officer II program; documenting IFSAC seals for Fire Fighter II, Instructor I and Fire Officer I; and passing the applicable state examination, may be granted an IFSAC seal as a Fire Officer II by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.~~

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

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

TRD-201603671
Tim Rutland
Executive Director
Texas Commission on Fire Protection

Earliest possible date of adoption: September 11, 2016
For further information, please call: (512) 936-3812



CHAPTER 453. HAZARDOUS MATERIALS SUBCHAPTER A. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.7

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 453, Hazardous Materials, Subchapter A, Minimum Standards For Hazardous Materials Technician, concerning §453.7, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed amendments is to delete "grandfather" language that allowed persons holding an active certification issued prior to a certain date to automatically qualify for the applicable IFSAC seal(s). New language is added to clarify the requirement that an individual may only apply for an IFSAC seal from an active (non-expired) exam.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that agency rules will be in compliance with the recommendations of the International Fire Service Accreditation Congress. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to *info@tcfp.texas.gov*. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§453.7. International Fire Service Accreditation Congress (IFSAC) Seal.

~~[(a) Individuals holding a current commission Hazardous Materials Technician certification received prior to March 10, 2003, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Hazardous Materials Technician by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 1, 2016.]~~

~~[(b)] Individuals completing a commission approved Hazardous Materials Technician program, documenting an IFSAC seal for Hazardous Materials Awareness Level Personnel; and~~

~~(1) Hazardous Materials Operations Level Responders, including the Mission-Specific Competencies for Personal Protective Equipment and Product Control under the current edition; or~~

~~(2) NFPA 472 Hazardous Materials Operations prior to the 2008 edition; and~~

~~(3) upon passing the applicable state examination, may be granted an IFSAC seal as a Hazardous Materials Technician by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.~~

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

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

TRD-201603672



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.332, 700.802, 700.804, 700.821, 700.825, 700.850, 700.851, 700.863, 700.880, 700.881, 700.1013, 700.1025, 700.1027, 700.1029, 700.1031, 700.1037, 700.1039, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, 700.1051, 700.1053, 700.1726, 700.1728, 700.1731, and 700.1733; new §§700.334, 700.883, 700.1059, 700.1061, and 700.1727 in Chapter 700, concerning Child Protective Services. The amendments and new sections are proposed in Subchapter C relating to Eligibility for Child Protective Services; Subchapter H relating to the Adoption Assistance Program; Division 1 of Subchapter J relating to the Relative And Other Designated Caregiver Program; Division 2 of Subchapter J relating to the Permanency Care Assistance Program; and Division 2 of Subchapter Q relating to Post-Permanency Services.

The primary purpose of the revisions is to ensure that the rules regarding eligibility for financial assistance and services for foster families, kinship families, and families that assume legal responsibility of children in the conservatorship of DFPS are consistent with federal mandates as well as DFPS's current policies and practices. In addition, the changes are intended to aid in public understanding of DFPS's eligibility criteria for the financial assistance and services. The practice and policy shifts that are being proposed in the rules are as follows:

(1) New rule §700.883 which states that in limited circumstances, an adoptive parent who took conservatorship of the child prior to the finalization of the adoption, may qualify for adoption assistance benefits through the fair hearing process at DFPS's discretion and in limited circumstances if specific criteria have been met. While this new rule is somewhat of a shift in current practice, DFPS has previously interpreted the existing rules pertaining to adoption assistance to permit adoptive parents to file for a fair hearing in such situations when the parent otherwise meets the criteria for adoption assistance benefits. This rule clarifies and makes explicit that interpretation.

(2) New rule §700.1059 which provides that a relative or fictive kin who was granted permanent managing conservatorship of a child prior to signing a permanency care assistance agreement, may still receive benefits on behalf of the child through the fair hearing process if the child meets all eligibility requirements and the caregiver shows that there is good reason to excuse the failure to sign the agreement prior to the grant of conservatorship. Federal law and guidance require DFPS to offer a fair hearing as a procedural protection in cases in which benefits are denied,

including denial of permanency care assistance benefits. Further, the adoption assistance rules explicitly permit reversal of a denial of adoption assistance if there is good reason to excuse failure to have signed an adoption assistance agreement; however, the existing permanency care assistance rules do not have a similar provision, although legally DFPS has interpreted federal requirements to supersede the state rules on this point. As such, this new rule clarifies DFPS's current practice and implements federal law and guidance.

(3) New rule §700.1061 which states that if the child's permanent managing conservator dies or becomes incapacitated, permanency care assistance benefit may continue to an individual that is subsequently granted permanent managing conservatorship of the child if that person was named as the successor in the original permanency care assistance agreement or in an amendment to that agreement. This proposed addition is made pursuant to the mandates of federal legislation, Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980) from the 113th United States Congress, which became public law on September 29, 2014.

(4) Amendments to existing rules §§700.1726, 700.1728, and 700.1731 and new rule §700.1727 which clarify that children in permanent managing conservatorships, with non-parent relatives and fictive kin, are eligible to receive various post-permanency services similar to post-adopt services, if specific criteria has been met. The purpose of these proposed rules is to ensure that children that exit into conservatorship receive the same services as children that exit into an adoptive placement in order to help the children and families adjust to the permanency, cope with any history of abuse in the child's background, cope with mental health issues the child may have, and avoid permanent or long-term removal of the children from their family.

The other rule changes primarily consist of updating and clarifying the agency's existing rules.

A summary of the changes is as follows:

The amendment to §700.332 incorporates policy-based eligibility criteria and restrictions for foster child day care, including eligibility requirements related to the child, the purposes for which care may be authorized, and the types of centers and homes that may be utilized.

New §700.334 adds eligibility criteria for special needs foster child day care to the agency's publicly adopted rules.

The amendment to §700.802 clarifies that children with special needs who are not adopted from DFPS conservatorship must meet the criteria of §700.803(b) of this title to be eligible for Title IV-E adoption assistance.

The amendment to §700.804: (1) provides that in order for a child to qualify as a child with special needs, the child must be in the managing conservatorship of DFPS from the time of adoptive placement until consummation of the adoption, unless it is a subsequent adoption; and (2) changes the term "handicapping condition" to "disabling condition" to reflect current terminology.

The amendment to §700.821: (1) provides clarity regarding the current federal requirement that to be eligible for Title IV-E Medicaid and monthly adoption assistance payments, the adoption assistance agreement must be signed before consummation of the adoption; and (2) makes additional clarifying edits related to the underlying federal requirements.

The amendment to §700.825: (1) conforms the rule to the federal definition of "applicable child;" (2) deletes the requirement in subsections (b) and (c) that the child meet one of the criteria of §700.821(c) of this title to be considered an applicable child because the language is duplicative of §700.821; and (3) deletes the effective date of October 1, 2009, for subsections (b) and (c) since it has passed.

The amendment to §700.850 clarifies subsection (c) to specify that claims for reimbursement received later than 18 month after the adoption is finalized may be referred to the Texas Comptroller of Public Accounts for processing as a miscellaneous claim to allow for flexibility in filing the claims.

The amendment to §700.851 modifies subsection (a)(1) to clarify that the child must be adoptively placed in the home after the child's 16th birthday but before the child's 18th birthday to qualify for extended adoption assistance benefits to reflect the legislative intent of extended adoption assistance benefits which is to promote the adoption of older children.

The amendment to §700.863 provides clarity that a child who has been receiving adoption assistance benefits under a signed adoption assistance agreement would remain eligible for adoption assistance benefits in a subsequent adoption when certain conditions are met, even if the child is not in the conservatorship of DFPS from the time of adoptive placement until the consummation of the subsequent adoption.

The amendment to §700.880 clarifies that a fair hearing to appeal the denial, suspension, reduction, or termination of adoption assistance benefits is also available as provided in new rule §700.883 under this title (relating to "Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?").

The amendment to §700.881 changes the term "handicapping condition" to "disabling condition" to reflect current terminology.

New §700.883 permits, in extremely limited circumstances, an adoptive parent who intervenes in a court proceeding and assumes permanent managing conservatorship of a child prior to the adoption being finalized to apply for adoption assistance benefits at DFPS's discretion if certain criteria enumerated in the rule are met.

The amendment to §700.1013 incorporates policy-based eligibility criteria and restrictions for kinship day care, including eligibility requirements related to the child, the purposes for which care may be authorized, and the types of centers and homes that may be utilized.

The amendment to §700.1025: (1) clarifies that the maximum amount of reimbursement a permanent managing conservator may receive for nonrecurring expenses related to becoming the permanent managing conservator; and (2) updates the terminology used to refer to a permanent managing conservator and permanent managing conservatorship to be consistent throughout the rule.

The amendment to §700.1027: (1) adds the definition for a successor guardian to the rule to explain when an individual who was subsequently granted permanent managing conservatorship of a child after the death or incapacitation of the initial permanent managing conservator is entitled to receive permanency care assistance benefits for that child; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology and definitions used to refer to the relative or

fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1029 updates terminology used to refer to the permanency care assistance agreement, terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS, and terminology used when a child is returned to the home the child was originally removed from.

The amendment to §700.1031: (1) updates subsection (b) of the rule to clarify that the simplest way for relatives and fictive kin to be eligible for foster care reimbursement payments is to become verified as foster parents; and (2) updates subsection (d) of the rule to clarify that a person who has been awarded sole or joint managing conservatorship of a child in a temporary or final order is not entitled to foster care reimbursements for that child.

The amendment to §700.1037: (1) updates subsection (d) with a reference to new §700.1059 (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?) to clarify when an individual may receive permanency care assistance benefits even if the individual did not sign a permanency care assistance agreement prior to being granted permanent managing conservatorship; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin that is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1039 updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin that is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1041: (1) updates subsection (a) with a reference to new §700.1059 (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?) to clarify that in limited circumstances an individual may receive permanency care assistance benefits even if the individual did not sign a permanency care assistance agreement prior to the grant of permanent managing conservatorship; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1043: (1) updates terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS; and (2) deletes content regarding the maximum amount of reimbursement a permanent managing conservator is entitled to receive for permanency care assistance agreements signed prior to and post August 1, 2012 as all agreements now signed will be after 2012.

The amendment to §700.1045 updates terminology used to refer to the permanency care assistance agreement; and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1047: (1) clarifies that if the permanent kinship conservator dies or becomes incapacitated and a successor guardian assumes legal custody of the child, the permanency care assistance agreement is terminated and the successor guardian must enter into a new agreement with DFPS in order to receive permanency care assistance on behalf of the child; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1049: (1) specifies that a permanent kinship conservator who enters into a permanency care assistance agreement is responsible for notifying DFPS when he or she has identified a potential successor guardian; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1051 updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1053: (1) clarifies that the permanent kinship conservator must be granted permanent managing conservatorship of the youth after the child's 16th birthday to receive extended permanency care assistance to reflect the legislative intent of promoting permanency of older children; and (2) updates terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

New §700.1059: (1) provides that a permanent kinship conservator who did not sign a permanency care assistance agreement before being granted permanent managing conservatorship of a child may still receive permanency care assistance benefits if the conservator requests a fair hearing, shows that there is good reason to excuse the failure to have signed the agreement, and meets the eligibility requirements for permanency care assistance benefits; and (2) further provides that if DFPS agrees that the child is eligible for benefits and the failure to have signed a permanency care assistance agreement should be excused, DFPS and the conservator can sign an agreed order and forgo the fair hearing; however, the hearing officer must approve the agreed order and the conservator must sign an agreement consistent with the provisions of the order prior to receiving benefits.

New §700.1061: (1) provides that a child remains eligible for permanency care assistance benefits when the child's permanent kinship conservator dies or becomes incapacitated and a successor guardian assumes legal responsibility of the child as long as the successor guardian was named by the permanent kinship conservator in the original permanency care assistance agreement or in an amendment to that agreement as a potential successor guardian to receive permanency care assistance benefits on the child's behalf; meets all DFPS standards regarding background checks; signs a permanency care assistance agreement with DFPS; and submits to DFPS proof demonstrating that he or she has been granted permanent managing conservatorship of the child by the court; and (2) specifies when the successor guardian will start receiving payments, when retroactive payments may be granted, and the terms and conditions of the agreement.

The amendment to §700.1726 specifies that post-permanency services are provided to families that have been granted permanent managing conservatorship of a child previously in the conservatorship of DFPS, in addition to adoptive families.

New §700.1727 provides the types of post-permanency services available to adoptive families and families that were granted permanent managing conservatorship of a child previously in the conservatorship of DFPS.

The amendment to §700.1728 includes the eligibility criteria for post-permanency services available to families that were granted permanent managing conservatorship of a child previously in the conservatorship of the department.

The amendment to §700.1731: (1) specifies that families granted permanent managing conservatorship of a child previously in the conservatorship of the department are eligible to receive post-permanency counseling services; and (2) includes the maximum length of time post-permanency counseling services are provided for and the procedure for seeking an extension of services.

The amendment to §700.1733 clarifies that Residential Treatment Services are only available for adopted children.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments and new sections will be in effect, DFPS anticipates the following costs to state government as a result of enforcing or administering the proposed rule changes:

(1) DFPS does not anticipate any costs associated with implementing existing rules §700.332 and §700.1013 and proposed rule §700.334 relating to day care eligibility as the rule changes merely update the agency's rules to conform with current practice and policy, consistently with the requirements of the Administrative Procedure Act. There is no fiscal impact because the eligibility limitations and clarifications are currently applied across the state; they just have not previously been incorporated into the agency's rules, which is the purpose of the changes in this portion of the rule packet.

(2) DFPS anticipates that any costs associated with proposed rule §700.883 relating to the eligibility of an adoptive parent to request adoption assistance benefits through a fair hearing if the parent assumed legal responsibility of the child prior to consummation will be negligible. While exact costs of awarding benefits to these individuals cannot be determined, DFPS has only awarded adoption assistance benefits in these situations approximately four times in the last ten years.

(3) DFPS does not anticipate any additional costs pursuant to proposed rule §700.1059 which permits a permanent managing conservator to request permanency care assistance benefits through a fair hearing for failure to sign a permanency care assistance agreement prior to the grant of conservatorship. As DFPS currently interprets federal law and guidance and existing agency rules to require a fair hearing in such situations, the fair hearing officers who receive these applications already approve payment of the benefits if the child is otherwise eligible.

(4) DFPS estimates that the cost of continuing permanency care assistance benefits to a subsequent conservator appointed upon the death or incapacitation of the original conservator pursuant to proposed rule §700.1061 will be negligible as additional payments will not be made to the subsequent conservator but rather, the conservator will continue receiving payments that DFPS had already allocated towards the original conservator. While the

subsequent conservator will be entitled to a one-time reimbursement of nonrecurring expenses related to the cost of assuming legal custody of the child, this one time reimbursement is limited to \$1,200 per child. As approximately only 3,071 children have exited DFPS's care into a permanent managing conservatorship with a relative caregiver since fiscal year 2011, DFPS anticipates that the cost of providing non-recurring expenses to a subsequent conservator in the event that the original conservator dies or becomes incapacitated will be negligible.

(5) DFPS estimates that the cost for providing post-permanency services statewide to kinship conservators for a full fiscal year, pursuant to amendments to existing rules §§700.1726, 700.1728, 700.1731, and new rule §700.1727 will be \$600,000. This amount has already been identified for the corresponding Request for Proposals (RFP). Ms. Subia also has determined that for each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule change will be that the public will be aware of the types of funding and services that are available to foster families, kinship families, and families that adopt or are granted permanent managing conservatorship of children previously in the conservatorship of DFPS. There is no anticipated economic cost to the public to comply with the proposed sections. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes because the proposed rule changes should not affect the cost of doing business, do not impose new requirements on any business, and do not require the purchase of any new equipment or any increased staff time in order to comply. No local employment impact statement was required for these rules. The agency is not required to complete a takings impact assessment regarding the proposed sections. There is no anticipated impact on technology as a result of the proposed rule changes.

Ms. Subia has determined that the proposed amendments and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Sophia Karimjee at (512) 438-4358 in DFPS's Legal Services Division. Electronic comments may be submitted to Sophia.Karimjee@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-557, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.332, §700.334

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement Texas Family Code §264.124.

§700.332. *Eligibility for Foster Care Day Care Services.*

(a) In this subchapter [~~section~~], the following terms have the following meanings:

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

(3) "School-aged child" means a child who has reached the age of 6 by September 1 of the current year or who enrolls in school and reaches the age of 6 during the school year.

(b) To the extent funds are available and in accordance with any priority system established under subsection (e), DFPS may provide day care for authorized purposes to a foster parent if:

(1) the child is 13 years or younger and either:

(A) placed in a foster family home or foster group home where each foster parent in the home works outside the home 40 hours per week or more; or

(B) the child of a parent who is a minor in foster care if the child:

(i) is not in the conservatorship of DFPS;

(ii) resides with the child's minor parent in a foster home where all caregivers are employed full-time;

(iii) receives primary care from the minor parent outside of school hours;

(iv) needs day care to allow the minor parent to remain in school and complete the minor parent's educational goals; and

(v) has a minor parent who is unable to access child care through a Texas Workforce Commission work or training program or through a school-based operation.

(2) the foster parent is a resident of Texas; [and]

(3) the child's service level is basic;

(4) the child is in DFPS' managing conservatorship and not in an adoptive placement; and

(5) [~~3~~] there is no other available type of day care provided by the community, and the foster parent verifies in writing that the foster parent has attempted to find appropriate day-care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools; and

(D) Any other available and appropriate resources in the foster parent's community.

(c) Day care for foster parents is authorized for the purpose of providing daily supervision:

(1) during the foster parents' work hours; or

(2) while the foster parents are attending judicial reviews, case conferences, or foster parent training.

(d) Day care for foster parents is not authorized for the following:

(1) full-time day care during school holidays;

(2) teacher in-service days;

(3) inclement-weather days;

(4) short breaks between semesters in a year-round school program;

(5) part-time care; or

(6) after-school care for school-aged children.

(e) [(e)] To monitor the spending of funds, a priority system among foster parents will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the foster parent; and

(2) at least one child placed by DFPS:

(A) is under six years of age [~~or over six years of age but in day care during a scheduled break in the public school system~~]; or

(B) has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(f) [(f)] Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a foster parent's attempts to find appropriate community day-care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the foster parent's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day-care services.

(g) [(g)] The Assistant Commissioner for Child Protective Services may grant a good cause waiver of any of the requirements in [paragraphs (1) and (2) of] subsection (b) or (d) of this section, if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the foster parent cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the foster parent and caregivers must be outside the home for employment.

(h) For a child who becomes ineligible during the term of a prior authorization, DFPS may in its discretion permit day care to continue through the end of the previously authorized period.

(i) DFPS pays for day care only in licensed child-care centers and registered child-care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.

§700.334. Eligibility for Special Needs Foster Child Day Care Services.

(a) To the extent funds are available, DFPS may provide special needs foster child day care services for authorized purposes to a foster parent if the child:

(1) meets all eligibility requirements in §700.332 of this title (relating to Eligibility for Foster Care Day Care Services);

(2) is placed in a foster family or foster group home;

(3) has a billing service level of Basic or receives an approved waiver of the required basic service level through the regional day care coordinator;

(4) is age 5 or younger;

(5) has been diagnosed by a professional as having a developmental delay, which is documented in the case record, in at least one of the following areas: physical, social, emotional, cognitive or language development; and

(6) has a service plan that specifies:

(A) the need for therapeutic or habilitative child day care; and

(B) how therapeutic child day care will meet specific needs related to the child's developmental delays that cannot be met by the foster parents.

(b) DFPS pays for special needs foster child day care only in licensed child-care centers and registered child-care homes that are contracted through the local child care management service agency, provide services beyond basic supervision, and are certified to provide care for children with special needs.

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

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

TRD-201603817

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 11, 2016

For further information, please call: (512) 929-6739



SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §700.802, §700.804

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Texas Family Code §162.301 and §162.304.

§700.802. What is adoption assistance?

(a) - (c) (No change.)

(d) If you adopt a child with special needs who is not in the conservatorship of DFPS on the day immediately preceding the date of adoption, and you reside in Texas, you may be entitled to receive one or more of the three types of adoption assistance benefits, depending upon whether some or all of the eligibility criteria for receipt of Title IV-E adoption assistance benefits are satisfied, as described in Division 2 of this subchapter (relating to Title IV-E Eligibility Requirements) and

as long as the criteria specified in subsection (b) of §700.803 of this title (relating to What are the eligibility criteria for receipt of adoption assistance for children adopted from the conservatorship of DFPS?) are satisfied.

(e) (No change.)

§700.804. *Who is a child with special needs?*

A child with special needs is one who meets all of the criteria in this section:

(1) At the time the adoptive placement agreement is signed, the child is less than 18 years old and meets at least one of the following conditions:

(A) Except as provided in §700.863 of this title (relating to Does a child remain eligible for benefits in a subsequent adoption?) and §700.883 of this title (relating to Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?), [On the day immediately preceding the date of adoption,] the child was in the managing conservatorship of DFPS or an authorized entity from the time of adoptive placement until the consummation of the adoption, and:

(i) - (iii) (No change.)

(iv) the child has a verifiable physical, mental, or emotional disabling [handicapping] condition, as established by an appropriately qualified professional through a diagnosis that addresses:

(I) (No change.)

(II) that the condition is disabling [handicapping]; or

(B) (No change.)

(2) - (3) (No change.)

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

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For further information, please call: (512) 929-6739



DIVISION 2. TITLE IV-E ELIGIBILITY REQUIREMENTS

40 TAC §700.821, §700.825

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Texas Family Code §162.301 and §162.304.

§700.821. *What are the additional Title IV-E eligibility requirements for Medicaid and monthly assistance payments?*

(a) In addition to the requirements in §700.820 of this title (relating to What are the Title IV-E eligibility requirements for reimbursement of nonrecurring expenses?), to be eligible for Medicaid and monthly assistance benefits, the child with special needs you adopt must be in an adoptive placement, you must sign an adoption assistance agreement before the adoption is final and the child [and] must meet the requirements in either subsection (b) or (c) of this section, depending upon whether the child is an applicable child, as that term is defined in §700.825 of this title (relating to Who is considered an applicable child?).

(b) (No change.)

(c) A child who is an applicable child must meet one of the following conditions:

(1) At the time the adoptive placement is made, the [The] child is [was] in the managing conservatorship of a public child welfare agency, an LCPA, or an authorized entity pursuant to an involuntary removal as provided in §700.823 of this title (relating to What is necessary for a court order to be considered a removal?) [at the time the adoptive placement is made];

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

§700.825. *Who is considered an applicable child?*

(a) Subject to exceptions in subsections [subsection] (b) and (c) of this section, an "applicable child" is a child for whom an adoption assistance agreement is entered into during the federal fiscal year listed in the figure in this subsection and who will have attained the age listed in the same figure in this subsection prior to the end of that federal fiscal year, as follows:

Figure: 40 TAC §700.825(a)

~~[(b) Notwithstanding subsection (a) of this section, beginning October 1, 2009, the term "applicable child" shall include a child who meets one of the following criteria:]~~

~~[(b) [(4)] The child meets the "duration in care" exception because the child:~~

~~[(1) [(A)] has been in the conservatorship of DFPS for at least 60 consecutive months;~~

~~[(2) [(B)] is considered a child with special needs under §700.804 of this title (relating to Who is a child with special needs?); and~~

~~[(C) meets one of the criteria in §700.821(e) of this title (relating to What are the additional Title IV-E eligibility requirements for Medicaid and monthly assistance payments?); or]~~

~~[(c) [(2)] The child meets the "member of a sibling group" exception because the child:~~

~~[(1) [(A)] is the sibling of a child who meets the definition of "applicable child" in subsection (a) of this section or the duration in care exception in subsection (b) of this section [paragraph (4) of this subsection]; and~~

~~[(2) [(B)] is to be placed in the same adoptive placement as an applicable child who is their sibling.]; and]~~

~~[(C) meets one of the criteria in §700.821(e) of this title.]~~

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

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DIVISION 3. APPLICATION PROCESS, AGREEMENTS, AND BENEFITS

40 TAC §700.850, §700.851

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments to §700.850 implement Texas Family Code §162.301 and §162.304 and the amendments to §700.851 implements Texas Family Code §162.3041.

§700.850. *How do I get reimbursement of nonrecurring expenses?*

(a) - (b) (No change.)

(c) We must receive your claim for reimbursement no later than 18 months after the adoption is finalized. A claim for reimbursement received later than 18 months after the adoption is finalized may be referred to the Texas Comptroller of Public Accounts for processing as a miscellaneous claim. If your right to reimbursement is authorized by a DFPS hearing order after the adoption is final, we must receive your claim as soon as possible.

(d) (No change.)

§700.851. *How can my child qualify for extended adoption assistance benefits?*

(a) In order to qualify for extended adoption assistance benefits:

(1) The child must be adoptively placed in your home [Your child must be the subject of an existing adoption assistance agreement that was initially entered into] after the child's 16th birthday and prior to the child's 18th birthday; and

(2) (No change.)

(b) - (c) (No change.)

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

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DIVISION 4. CHANGES IN CIRCUMSTANCES

40 TAC §700.863

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §162.301 and §162.304.

§700.863. *Does a child remain eligible for benefits in a subsequent adoption?*

(a) Yes; if you live in Texas and plan to adopt a child that had been receiving adoption assistance under a signed adoption assistance agreement, that child can remain eligible for adoption assistance benefits even if the child is not in the conservatorship of DFPS from the time of adoptive placement until the consummation of the adoption, if the following conditions are met:

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

(b) (No change.)

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

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DIVISION 5. APPEALS AND HEARINGS

40 TAC §§700.880, 700.881, 700.883

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner

regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement Texas Family Code §162.301 and §162.304.

§700.880. *What are my rights to appeal a DFPS decision regarding adoption assistance benefits?*

(a) You have the right to request a hearing whenever adoption assistance benefits are denied, delayed, suspended, reduced, or terminated ~~or~~ A hearing is also available when the processing of your application is unreasonably delayed. A hearing is also available as provided in §700.883 of this title (relating to Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?). The hearing, as described in §730.1102 of this title (relating to Definitions), provides you the opportunity to appeal a decision made in a local DFPS office to a higher authority within DFPS.

(b) - (e) (No change.)

§700.881. *Can my child still get benefits if I did not sign an adoption assistance agreement before the adoption?*

(a) Yes, but only after you request a hearing and show that there is good reason to excuse your failure to have a signed adoption assistance agreement. Some good reasons that provide for a hearing are:

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

(3) The child's physical, mental, or emotional ~~disabling~~ [handicapping] condition could not be diagnosed before the adoption, but was later diagnosed by an appropriately qualified professional as having existed prior to the consummation of the adoption.

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

(b) - (c) (No change.)

§700.883. *Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?*

Generally not. However, in limited circumstances you may qualify for adoption assistance benefits at DFPS's discretion, if you request a fair hearing and the hearing officer finds that the following criteria have been met:

(1) You were awarded permanent managing conservatorship of the child;

(2) The child was in the managing conservatorship of DFPS on the day immediately prior to the court awarding you permanent managing conservatorship of the child;

(3) You have an approved adoptive home study or approved adoption evaluation recommending adoption of the child by you;

(4) There is no information regarding your history, including information obtained from a state child abuse and neglect registry check or criminal background check that would make you ineligible to adopt a child who was in the conservatorship of DFPS;

(5) There are no other factors that would make you ineligible to adopt a child who was in DFPS conservatorship;

(6) The child was eligible for adoption and otherwise would have met the criteria for special needs as described in §700.804 of this title (relating to Who is a child with special needs?) on the day that you assumed legal responsibility of the child from the conservatorship of DFPS; and

(7) The intended permanent plan for the child was adoption, and DFPS would have placed the child in your home for adoption if you had not assumed legal responsibility prior to consummation.

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

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SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1013

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §264.755.

§700.1013. *Who is eligible for child-care services?*

(a) (No change.)

(b) To the extent funds are available, and in accordance with any priority system established under subsection (e), DFPS may provide child-care services to a caregiver who meets the requirements in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) if:

(1) (No change.)

(2) the caregiver is a resident of Texas; ~~and~~

(3) the child is in DFPS' managing conservatorship;

(4) the child is 13 years old or younger, or is younger than 18 years old if the child has a developmental delay or a physical disability;

(5) the child is not receiving adoption assistance; and

(6) ~~[(3)]~~ the caregiver verifies in writing that the caregiver has attempted to find appropriate day-care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools;

and

(D) Any other available and appropriate resources in the caregiver's community.

(c) Day care for caregivers is authorized for the purpose of providing daily supervision:

(1) during the caregivers' work hours; or

(2) while the caregivers are attending judicial reviews, case conferences, or kinship caregiver training.

(d) To the extent funds are available, day care may also be authorized for the following:

(1) full-time day care during spring break and summer vacation for children who attend school full-time; and

(2) after-school day care.

(e) [(e)] To monitor the spending of funds, a priority system among caregivers will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the caregiver; and

(2) at least one child placed by DFPS is:

(A) under six years of age or over six years of age but in day care during a scheduled break in the public school system; or

(B) at least one child placed by DFPS has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(f) [(f)] Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a caregiver's attempts to find appropriate community day-care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the caregiver's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day care services.

(g) [(g)] The Assistant Commissioner for Child Protective Services may grant a good cause waiver of any of the requirements in [paragraphs (1) and (2) of] subsection (b) of this section if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the caregivers cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the relative caregiver must be outside the home for employment.

(h) DFPS pays for day care only in licensed child-care centers and registered child-care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.

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

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DIVISION 2. PERMANENCY CARE ASSISTANCE PROGRAM

40 TAC §§700.1025, 700.1027, 700.1029, 700.1031, 700.1037, 700.1039, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, 700.1051, 700.1053, 700.1059, 700.1061

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments to §§700.1025, 700.1027, 700.1029, 700.1031, 700.1037, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, and 700.1051 and new §700.1059 and §700.1061 implement Texas Family Code §§264.760, 264.851, 264.852, 264.8521, and 264.853. The amendments to §700.1039 implement Texas Family Code §264.854. The amendments to §700.1053 implement Texas Family Code §264.855.

§700.1025. *What is the Permanency Care Assistance Program?*

(a) The permanency care assistance program provides the following benefits to certain individuals who assume permanent managing conservatorship of a child who was previously in the temporary or permanent managing conservatorship of DFPS, provided that all of the eligibility criteria in this division are satisfied:

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

(3) a one-time reimbursement of nonrecurring expenses relating to the legal process of becoming the permanent managing conservator of the child, not to exceed \$1,200 [\$2,000] per child.

(b) - (c) (No change.)

§700.1027. *What definitions apply to this division?*

The following terms have the following meanings in this division:

(1) Deferred permanency care assistance agreement--A type of permanency care assistance agreement that may be entered into when a kinship caregiver [prospective permanent eustodian] meets the eligibility criteria for receipt of permanency care assistance, but does not need any assistance at the time the agreement is signed; a deferred permanency care assistance agreement allows a person to preserve eligibility to receive permanency care assistance in the future, should the need for such assistance arise.

(2) - (3) (No change.)

(4) Permanency care assistance agreement--A negotiated, written and legally binding agreement that is signed by DFPS and a prospective permanent kinship conservator [eustodian] setting forth the

specific terms and conditions of the agreement, including the types and amounts of permanency care assistance benefits that will be provided under the agreement.

(5) Permanent kinship conservator [eustodian]--A relative or other individual with a prior longstanding and significant relationship to a child [person who is granted managing conservatorship of a child] who was in the temporary or permanent managing conservatorship of DFPS immediately prior to permanent managing conservatorship being granted to that person. The[; the] term does not include a parent of the child or other person from whom the child was legally removed by DFPS.

(6) Prospective permanent kinship conservator [eustodian]--A relative or other individual with a prior longstanding and significant relationship to a child who was in the temporary or permanent managing conservatorship of DFPS [person] who has demonstrated a strong commitment to caring permanently for the [a] child [in the temporary or permanent managing conservatorship of DFPS] and who applies for or has entered into a [an agreement with DFPS for] permanency care assistance agreement with DFPS, but has not yet been granted permanent [named the] managing conservatorship [conservator] of the child.

(7) Successor guardian--A person who:

(A) was named as a successor to the permanent kinship conservator in the permanency care assistance agreement or in an amendment to that agreement;

(B) is granted legal custody of the child upon the death or incapacitation of the permanent kinship conservator;

(C) meets all DFPS standards regarding background checks;

(D) signs a new permanency care assistance agreement with DFPS; and

(E) receives permanency care assistance for the child.

§700.1029. *What are the eligibility criteria for receipt of permanency care assistance?*

(a) To receive permanency care assistance for a child, a person must:

(1) become the permanent kinship conservator [eustodian] of a child who meets all of the eligibility criteria in subsection (b) or (c) of this section; and

(2) enter into a permanency care assistance agreement with DFPS on behalf of the child prior to becoming the child's permanent kinship conservator [eustodian].

(b) A child is eligible to be the subject of a permanency care assistance agreement if all of the following eligibility criteria apply to that child:

(1) the child's prospective permanent kinship conservator [eustodian]:

(A) - (B) (No change.)

(2) the child's prospective permanent kinship conservator [eustodian] must have been eligible for the receipt of foster care reimbursements on behalf of the child who is the subject of the permanency care assistance agreement for at least six consecutive months prior to the effective date of the permanency care assistance agreement;

(3) the child has demonstrated a strong attachment to the prospective permanent kinship conservator [eustodian] and that person has a strong commitment to caring permanently for the child;

(4) at the time the permanency care assistance agreement is signed, DFPS has determined that neither adoption nor reunification [return of the child to the home from which the child was removed] are appropriate permanency options; and

(5) if the child will be at least 14 years of age at the time the permanency care assistance agreement is signed, DFPS has consulted with the child about the prospective permanent kinship conservator's [eustodian's] commitment to assume permanent managing conservatorship of the child.

(c) If a prospective permanent kinship conservator [eustodian] or permanent kinship conservator [eustodian] has entered into a permanency care assistance agreement on behalf of one child for whom all the eligibility criteria in subsection (b) of this section are satisfied, that same individual [eustodian] will be eligible to receive permanency care assistance on behalf of a sibling of the child if all of the following criteria apply to the sibling child:

(1) the sibling must have been placed in the home of the same individual [eustodian] by DFPS; and

(2) DFPS has temporary or permanent managing conservatorship of the sibling child at the time the permanency care assistance agreement is signed with respect to the sibling child.

(d) (No change.)

§700.1031. *How does a person become eligible for receipt of foster care reimbursement on behalf of a child for at least six consecutive months?*

(a) (No change.)

(b) The [For most relatives or other individuals with whom a child in DFPS conservatorship is placed, the] simplest way for relatives or other individuals to become eligible to receive foster care reimbursement on behalf of that child is to become a verified foster parent through Child Protective Services or a private child-placing agency and to enter into a Placement Authorization agreement with DFPS to provide 24-hour residential care for the child.

(c) (No change.)

(d) A person who has been awarded sole or joint managing conservatorship of a child in a temporary or final order is not entitled to foster care reimbursements for that child.

§700.1037. *What is the process for entering into a permanency care assistance agreement?*

(a) At least 30 days prior to the date on which a prospective permanent kinship conservator [eustodian] anticipates being granted permanent managing conservatorship of the child by the court, the prospective permanent kinship conservator [eustodian] must complete an application for permanency care assistance, which can be obtained from the child's caseworker. In addition to documenting the eligibility criteria for the receipt of permanency care assistance, as specified in this subchapter, the application may request additional information that will be used to negotiate the amount of monthly payments for which the person may be eligible.

(b) After receiving a completed application, and prior to the date on which permanent managing conservatorship is awarded to the prospective permanent kinship conservator [eustodian], DFPS will notify the applicant of whether or not benefits are approved and, if so, negotiate the terms of the permanency care assistance agreement with the prospective permanent kinship conservator [eustodian].

(c) Notwithstanding subsection (a) of this section, if through no fault of the prospective permanent kinship conservator [eustodian]

there is insufficient time to submit the application at least 30 days prior to the date of an anticipated award of permanent managing conservatorship by the court, the application should be submitted as soon as possible and DFPS will expedite its handling of the application.

(d) The prospective permanent kinship conservator must sign a permanency care assistance agreement [Under no circumstances may a person be paid permanency care assistance if the permanency care agreement is not signed] prior to [the person] becoming the child's permanent kinship [managing] conservator. Exceptions can be made to this requirement only in certain circumstances, as described in §700.1059 of this title (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?).

§700.1039. *What is the amount of monthly payments that a permanent kinship conservator [eustodian] may receive under a permanency care assistance agreement?*

(a) The amount of monthly payments that will be paid to a permanent kinship conservator [eustodian] will be negotiated between DFPS and the prospective permanent kinship conservator [eustodian] prior to the signing of the permanency care assistance agreement, based on the criteria specified in subsection (b) of this section, subject to the maximum monthly payment amounts specified in subsection (c) of this section. These amounts may be periodically re-negotiated as circumstances change.

(b) The following factors are considered when negotiating the amount of monthly permanency care assistance payments to be made:

(1) the child's present need for services will be assessed in relation to the permanent kinship conservator's [family's] income, expenses, circumstances, and plans for the future;

(2) benefits are intended only to assist the permanent kinship conservator [eustodian] in meeting the child's needs and the permanent kinship conservator's [eustodian's] responsibilities for meeting those needs;

(3) (No change.)

(4) whether a publicly funded source may be used to meet the child's needs, even if the permanent kinship conservator [eustodian] does not choose to take advantage of the publicly funded source; and

(5) (No change.)

(c) The maximum monthly payment amount depends upon the child's authorized service level (ASL) at the time the permanency care assistance agreement is negotiated. The payment ceiling for a child whose ASL is Basic Care is \$400 per month; the payment ceiling for a child whose ASL is Moderate, Specialized or Intense is \$545 per month.

§700.1041. *What is the effective date of a permanency care assistance agreement and when will benefits begin?*

(a) Although the permanency care assistance agreement must be signed prior to the prospective permanent kinship conservator [eustodian] being awarded permanent managing conservatorship of the child, except as provided in §700.1059 of this title (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?), the agreement does not become effective until the date that permanent managing conservatorship is granted to the permanent kinship conservator [eustodian] by the court.

(b) Permanency care assistance benefits are available beginning in the first month following the date upon which the agreement becomes effective.

(c) Under no circumstances may a permanent kinship conservator [eustodian] receive both foster care reimbursement and monthly permanency care assistance payments for the same time period on behalf of the same child.

§700.1043. *How and when is a permanent kinship conservator [eustodian] reimbursed for the costs of the nonrecurring expenses associated with obtaining permanent managing conservatorship of the child and how are these expenses calculated?*

(a) A permanent kinship conservator [eustodian] who has entered into a permanency care assistance agreement will not be reimbursed for nonrecurring expenses associated with obtaining permanent managing conservatorship of the child who is the subject of the agreement until after that person becomes the child's permanent managing conservator.

(b) To obtain reimbursement, the permanent kinship conservator [eustodian] must submit receipts or other proof of payment, such as cancelled checks, to DFPS.

(c) The nonrecurring expenses for which a person may be reimbursed include only those expenses incurred directly by the permanent kinship conservator [eustodian], or for which the permanent kinship conservator [eustodian] was required to reimburse a third party, that were reasonable and necessary to complete the legal process of becoming the child's permanent kinship [managing] conservator. Such expenses may include the costs of obtaining a home study, legal fees, court costs, health and psychological examinations, and transportation and reasonable costs of lodging and food for the permanent kinship conservator [eustodian] or the child.

(d) The permanent kinship conservator [eustodian] must submit a claim for reimbursement and receipts or other proof of payment no more than 18 months after obtaining permanent managing conservatorship of the child.

(e) The [For permanency care agreements signed prior to August 1, 2012, the maximum amount that you may be reimbursed for nonrecurring expenses is \$2,000 per child covered by a permanency care agreement. For permanency care agreements signed on or after August 1, 2012, the] maximum amount that a permanent kinship conservator [you] may be reimbursed for nonrecurring expenses is \$1,200 per child covered by a permanency care assistance agreement.

§700.1045. *If no assistance is needed at the time a person becomes the permanent kinship conservator [eustodian], can that person still enter into a permanency care assistance agreement?*

Yes. If a prospective permanent kinship conservator [eustodian] meets the eligibility criteria for permanency care assistance, but does not need any monetary assistance or Medicaid to meet the child's needs at the time the court awards permanent managing conservatorship of the child, that person may enter into a deferred permanency care assistance agreement to preserve eligibility to receive permanency care assistance benefits for the child in the future, should the need arise.

§700.1047. *How long does the permanency care assistance agreement remain in effect?*

(a) Unless there is a change in circumstances that affects a person's continuing eligibility for benefits, as provided in subsection (b) of this section, a permanency care assistance agreement remains in effect at least through the end of the month in which the child turns 18 years, and possibly longer if the child and family are eligible for extended

permanency care assistance after age 18, as specified in §700.1053 of this title (relating to Who is eligible for extended permanency care assistance?).

(b) A permanency care assistance agreement may be terminated before a child turns 18 years when any of the following occurs:

(1) the prospective permanent kinship conservator [eustodian] is not granted managing conservatorship of the child;

(2) DFPS determines that the permanent kinship conservator [eustodian] was mistakenly determined to be eligible for permanency care assistance;

(3) the permanent kinship conservator [eustodian] is no longer legally responsible for the child's care due to a change in legal status prior to the child reaching the age of 18 years;

(4) the permanent kinship conservator [eustodian] is no longer providing any care or other support to the child;

(5) (No change.)

(6) the permanent kinship conservator [eustodian] requests that the agreement be terminated.

(c) If the child who is the subject of the permanency care assistance agreement is over the age of 18 years, and the child's family is receiving benefits under §700.1053 of this title, the agreement and benefits may be terminated if the child no longer meets the eligibility conditions in §700.1053(b) of this title.

(d) If a person receives monthly payments for a period of time for which the permanency care assistance agreement could have been terminated, DFPS may require that person to repay the total amount of benefits for which the person was not eligible or may deduct the amount of any overpayment from any future benefits under a repayment plan.

(e) In the event the permanent kinship conservator dies or becomes incapacitated and a successor guardian assumes legal custody of the child, the permanency care assistance agreement is terminated and the successor guardian must enter into a new agreement with DFPS in order to receive permanency care assistance on behalf of the child, as specified in §700.1061 of this title (relating to Does a child remain eligible for permanency care assistance benefits in the event that the permanent kinship conservator dies or becomes incapacitated?).

§700.1049. What happens if a family's circumstances change after the permanency care assistance agreement is signed?

(a) Each permanent kinship conservator [eustodian] who enters into a permanency care assistance agreement is responsible for notifying DFPS when any of the following changes in circumstances occur with respect to the permanent kinship conservator [eustodian] or the child who is the subject of the agreement:

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

(3) the child is no longer living with the permanent kinship conservator [eustodian];

(4) there is a change in the child's legal status; [or]

(5) the permanent kinship conservator has identified a potential successor guardian; or

(6) [~~5~~] there is any change in circumstances that would warrant termination of the permanency care assistance agreement, as described in §700.1047 of this title (relating to How long does the permanency care assistance agreement remain in effect?).

(b) If the permanent kinship conservator [eustodian] is not already receiving the maximum monthly assistance payment allowable for the child, the conservator [eustodian] may submit a written request

to increase the monthly assistance payments, specifying the change in circumstances that may justify an increase in the payment amount. Any request for an increase in the monthly payment amount is subject to the same requirements and limitations described in §700.1039 of this title (relating to What is the amount of monthly payments that a permanent kinship conservator [eustodian] may receive under a permanency care assistance agreement?).

(c) DFPS may periodically require a permanent kinship conservator [eustodian] to recertify continued eligibility for the receipt of benefits as provided under the permanency care assistance agreement and these rules. A request for recertification must be completed and returned to DFPS within 60 days of receipt. Failure to promptly provide the recertification information may result in an overpayment, which DFPS may require the permanent kinship conservator [eustodian] to repay or which DFPS may deduct from any future benefits under a repayment plan.

(d) DFPS may periodically require documentation from the permanent kinship conservator [you] that is sufficient to demonstrate that the child who is the subject of the permanency care assistance agreement and who has attained the minimum age for compulsory school attendance in Texas or the child's state of residence is a full-time elementary or secondary student as that term is defined in §700.1027 of this title (relating to What definitions apply to this division?). DFPS may require such documentation to include proof sufficient to demonstrate that the [you] child is rendered incapable of being a full-time elementary or secondary student because of a medical condition.

§700.1051. Is a permanent kinship conservator [eustodian] still eligible to receive permanency care assistance from Texas if the conservator [eustodian] moves outside the [to another] state?

Yes. DFPS will continue to provide the monthly assistance payments specified in the permanency care assistance agreement no matter where the permanent kinship conservator [eustodian] resides, provided the permanent kinship conservator [eustodian] notifies DFPS of any change of address.[;] DFPS provides Texas Medicaid coverage only if the state to which the permanent kinship conservator custodian moves does not agree to cover the child who is the subject of the permanency care assistance agreement under its state Medicaid program.

§700.1053. Who is eligible for extended permanency care assistance?

(a) Youth are eligible to [A person who was the child's permanent eustodian before the child turned 18 years may] continue receiving [to receive] permanency care assistance [for the continued support of the young adult] from the youth's 18th birthday through the last day of the month in which the youth turns 21 if the following criteria are met:

(1) The permanent kinship conservator is granted permanent managing conservatorship of the youth [permanency care assistance agreement was first entered into on behalf of the child] after the child's 16th birthday and before [prior to] the child's 18th birthday; and

(2) The permanent kinship conservator [eustodian] provides sufficient documentation on a periodic basis as required by the permanency care assistance agreement to demonstrate that the youth is:

(A) - (E) (No change.)

(b) - (c) (No change.)

§700.1059. Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?

(a) Yes, but only after the permanent kinship conservator requests a fair hearing and shows that there is good reason to excuse the

failure to have signed a permanency care assistance agreement. Some good reasons that allow for a fair hearing are:

(1) DFPS did not inform the permanent kinship conservator of the permanency care assistance program before the court granted him or her permanent managing conservatorship of the child;

(2) The court awarded the permanent kinship conservator permanent managing conservatorship of the child without prior notice;

(3) DFPS knew facts relevant to the child's eligibility for permanency care assistance but did not disclose them to the permanent kinship conservator before the court awarded him or her permanent managing conservatorship of the child; or

(4) DFPS made an error in determining that the child was not eligible before the court granted permanent managing conservatorship of the child to the permanent kinship conservator.

(b) In the hearing, the permanent kinship conservator has the burden to prove both:

(1) the reason for not having signed a permanency care assistance agreement before being awarded permanent managing conservatorship of the child; and

(2) that the child meets all eligibility requirements.

(c) If DFPS agrees that the child is eligible and the failure to have signed a permanency care assistance agreement should be excused, DFPS and the permanent kinship conservator can sign an agreed order and avoid having a fair hearing. The hearing officer must approve the agreed order, and the permanent kinship conservator must sign a permanency care assistance agreement consistent with its provisions, before he or she can receive benefits.

§700.1061. Does a child remain eligible for permanency care assistance payments in the event that the permanent kinship conservator dies or becomes incapacitated?

(a) Yes. Permanency care assistance payments may continue to a successor guardian if the successor guardian meets the definition in §700.1027(7) of this title (relating to What definitions apply to this division?).

(b) The successor guardian cannot begin receiving permanency care assistance payments from DFPS until the individual has signed a permanency care assistance agreement and has assumed permanent managing conservatorship of the child.

(c) If the successor guardian signs the permanency care assistance agreement after being granted legal custody of the child by the court, DFPS may, for good cause, grant retroactive benefits back to the date permanent managing conservatorship was granted, for a period not to exceed 12 months, if the successor guardian can demonstrate that:

(1) DFPS caused a delay in the activation of benefits; or

(2) The successor guardian's failure to sign a permanency care assistance agreement prior to being granted permanent managing conservatorship of the child was because the successor guardian was not aware that the child remained eligible for continuation of benefits in a subsequent conservatorship.

(d) The terms and conditions of the permanency care assistance agreement originally signed by the previous permanent kinship conservator will also apply to the successor guardian. This means that the successor guardian:

(1) is entitled to a one-time reimbursement of nonrecurring expenses not to exceed \$1,200 per child;

(2) is entitled to receive the child's benefits for the same duration determined in the original agreement signed by the previous permanent kinship conservator;

(3) may exercise his or her right to a fair hearing if benefits are denied, delayed, suspended, or reduced; and

(4) must abide by the same conditions for continuation of permanency care assistance payments, including, but not limited to, annual notification, certification, and documentation requirements.

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

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

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 11, 2016

For further information, please call: (512) 929-6739



SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

DIVISION 2. POST-PERMANENCY SERVICES

40 TAC §§700.1726 - 700.1728, 700.1731, 700.1733

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement Texas Family Code §162.306.

§700.1726. What are post-permanency [postadoption] services?

Post-permanency [Postadoption] services are purchased client services [that consist of counseling, educational, and supportive services] provided to an adoptive family or a family that was granted permanent managing conservatorship of a child to help the [adopted] child and the family:

(1) adjust to the adoption or permanent managing conservatorship;

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

§700.1727. What types of post-permanency services are available?

The following post-permanency services may be authorized subject to funding and any additional eligibility criteria specified in this division (relating to Post-Permanency Services):

(1) support groups;

(2) parent/caregiver training;

(3) post-permanency counseling;

(4) therapeutic or specialized camps;

- (5) intermittent alternate care (respite);
- (6) crisis intervention;
- (7) residential treatment services; and
- (8) other services approved by the Department of Family and Protective Services.

§700.1728. Who is eligible [Is Eligible] for post-permanency services [Postadoption Services]?

(a) The Department of Family and Protective Services' (DFPS's) [~~DFPS's~~] provision of purchased post-permanency [postadoption] services is subject to the availability of funds appropriated for that purpose. When funds are available, and subject to any additional eligibility requirements for specific types of post-permanency [postadoption] services as provided in DFPS's [DFPS'] rules, DFPS provides purchased post-permanency [postadoption] services to the [an adopted] child and the child's [adoptive] family if each of the following four conditions is satisfied:

(1) either:

(A) the department or a licensed Texas child-placing agency served as the child's managing conservator, [and] placed the child for adoption, and the placement resulted in a court-order consummating the adoption. If a licensed Texas child-placing agency served as the child's managing conservator and placed the child for adoption, the department must be providing Title IV-E adoption assistance to the child; or

(B) the department or a licensed Texas child-placing agency served as the child's managing conservator and a kinship caregiver was granted permanent managing conservatorship of the child with or without permanency care assistance [placed the child for adoption, and the department is currently providing Title IV-E adoption assistance to the child];

~~{(2) the department's or the child-placing agency's placement resulted in a court-order consummating the adoption;}~~

(2) [(3) if the child was adopted, the adoption is still intact or if the child is in a permanent managing conservatorship the child is still with that caregiver; and

(3) the adoptive parent or permanent managing conservator, as applicable, has [parents have] requested post-permanency [postadoption] services; and

(4) the [adopted] child is under 18. If determined necessary by DFPS, services may continue for up to 90 days past the child's 18th birthday in order to ensure an orderly termination of services.

(b) (No change.)

§700.1731. Who is eligible [Eligible] for post-permanency counseling [Postadoption Counseling]?

(a) Post-permanency counseling includes:

- (1) Diagnostic and assessment services;
- (2) Individual, group, and family counseling; and
- (3) Day treatment.

(b) Post-permanency [The following individuals may be eligible for postadoption] counseling is provided as follows:

(1) Post-permanency [Adopted children and adoptive parents. Postadoption] counseling services are ordinarily restricted to a child who was in the conservatorship of the Department of Family and Protective Services and was adopted or exited into a permanent

managing conservatorship and the child's adoptive parents or permanent managing conservator, as applicable, if they [adopted children and adoptive parents who] meet the requirements for client eligibility specified in §700.1728 of this title (relating to Who is eligible [Eligible] for post-permanency services [Postadoption Services]?).

(2) [~~Siblings.~~] Siblings under 18, however, may also receive post-permanency [postadoption] counseling services if:

(A) they are living in the [adoptive family's] household; and

(B) their need for counseling stems from the [adopted] child's placement in the family.

(3) [~~Additional restriction on diagnostic and assessment services.~~] Diagnostic and assessment services are restricted to the adopted child or child placed in a permanent managing conservatorship [children]. For the [an adopted] child to receive diagnostic and assessment services, the child's case record must include written documentation that the child is not eligible to receive diagnostic testing under state or federal programs that provide such testing through the child's school.

(c) The services listed in subsection (a) of this section are provided for the following length of time:

(1) up to 12 hours per a 12 month period for diagnostic and assessment services.

(2) up to 12 hours per family member for any combination of counseling services received per a 6 month period.

(3) up to 2 weeks of daily intensive treatment for the child over a 6 month period.

(d) Notwithstanding subsection (b) of this section, a caregiver may submit a written request justifying the need to exceed the maximum length of services to the Child Protective Services (CPS) Regional Liaison and the CPS Contract Manager at least 10 calendar days prior to the need for the service.

§700.1733. Who is eligible [Eligible] for residential treatment services [Residential Treatment Services]?

(a) Client eligibility. Only adopted children are eligible for residential treatment services through the post-permanency [postadoption]-services program. To qualify, an adopted [a] child:

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

(b) - (c) (No change.)

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

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 929-6739



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

SUBCHAPTER I. PORT OF HARLINGEN AUTHORITY PERMITS

43 TAC §§28.110 - 28.117

The Texas Department of Transportation (department) proposes new §§28.110 - 28.117, concerning Port of Harlingen Authority Permits.

EXPLANATION OF PROPOSED NEW SECTIONS

Under Transportation Code, Chapter 623, Subchapter K, the Texas Transportation Commission (commission) has the authority to authorize Port of Harlingen Authority (Authority) to issue permits for oversize and overweight vehicles on certain roads within the Authority. The Authority contacted the department and expressed the desire to obtain the authority needed to issue permits as allowed under current state law. The proposed new sections are necessary to authorize the Authority to issue permits and to implement and carry out the provisions of Transportation Code, Chapter 623, Subchapter K. These rules add new Subchapter I which was developed to be consistent with similar optional permitting programs previously established by the commission.

New §28.110 sets out the purpose of Subchapter I, which is to allow the Authority to issue permits for the movement of oversize or overweight vehicles weighing up to 125,000 pounds on roads designated by Transportation Code, §623.219(a)(2)(B), (C), (D), and (E).

New §28.111 sets out the applicable definitions used in the subchapter by defining the Port of Harlingen as the "Authority."

New §28.112 provides the powers and duties of the Authority and the department for the implementation and oversight of the Authority's permit program. Subsection (a) authorizes the issuance of permits and collection of fees and provides the maximum dimensions and gross weight that may be allowed under a permit. Subsection (b) authorizes the department to require a surety bond to pay for the costs of the maintenance of the roadways that are used by the permitted vehicles if the amount of the fees deposited in the state highway fund is not sufficient to cover those costs. The Authority can prevent recovery on the bond by paying the amount not covered by the fees. This section also covers the verification of permits, the provision of training necessary for the Authority to issue permits, accounting and auditing requirements, and audits. Subsection (g) provides the department's authority to ensure that the Authority complies with applicable law, including the rules in new Subchapter I. Subsection (h) sets out the fee requirements. Subsection (i) requires the Authority to enter into a contract with the department for the maintenance of roads on which the permitted vehicles will travel. Finally, subsection (j) sets out the Authority's reporting requirements. The provisions of the section were developed to be in compliance with Transportation Code, Chapter 623, Subchapter K, and to be consistent with similar optional permitting programs previously established.

New §28.113 establishes the eligibility requirements that must be satisfied for the issuance of a permit by the Authority. The section

prohibits the Authority from issuing a permit to a person or for a vehicle if administrative penalties imposed under Transportation Code, §623.271 have not been paid. This prohibition is required under Transportation Code, §623.271.

New §28.114 sets out the requirements related to the form and content of the application for a permit. The requirements are necessary to comply with Transportation Code §623.215 and are as consistent as possible with similar optional permitting programs previously established by the department.

New §28.115 provides the permit weight limits for axles that the Authority must follow as part of the permit program. Requirements and specifications include minimum axle group spacing and maximum permit weight for single and multiple axles.

New §28.116 sets forth movement requirements and restrictions that the Authority and a permittee must follow as part of the permit program. A permittee is required to carry the issued permit when moving the permitted vehicle and is prohibited under this section from moving an oversize or overweight load if a permit becomes void. A permit is void on issuance if the applicant for the permit gives false or incorrect information and becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit. The section provides limitations on the movement of a permitted vehicle because of weather conditions, road work, or time of day. Finally, the section sets out the requirements for types of scales that may be used to weigh permitted vehicles and provides speed restrictions.

New §28.117 provides the records maintenance requirements that the Authority must follow as part of the permit process to ensure the department has adequate access to oversee the program.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections. The statute and rules allows for a permit fee to cover the administrative costs for the local government and provide funds for the increased maintenance costs to the state.

Mr. Michael Lee, P.E., Director, Maintenance Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT AND COST

Mr. Lee has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be convenience and improved public safety. There are anticipated economic costs for persons required to comply with the sections as proposed. Companies operating oversize or overweight vehicles will be required to purchase a permit to cover the cost of additional required maintenance due to extra roadway consumption. The actual amount is set by the Authority, but cannot exceed \$80. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the new §§28.110 - 28.117 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas

78701-2483 or to RuleComments@txdot.gov with the subject line "Port of Harlingen Rules." The deadline for receipt of comments is 5:00 p.m. on September 12, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed new sections, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.212, which allows the commission to authorize the authority to issue permits for the movement of oversize or overweight vehicles, and Transportation Code, §623.002, which provides the commission with the authority to establish rules necessary to implement Transportation Code, Chapter 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter K.

§28.110. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the commission may authorize Port of Harlingen Authority to issue permits for the movement of oversize or overweight vehicles carrying cargo on roads designated by Transportation Code, §623.219(a)(2)(B), (C), (D), and (E). This subchapter sets forth the requirements and procedures applicable to the issuance of permits by Port of Harlingen Authority for the movement of oversize and overweight vehicles.

§28.111. Definition.

In this subchapter, "Authority" means Port of Harlingen Authority.

§28.112. Authority's Powers and Duties.

(a) Authority authorized to issue permits. The Authority may issue a permit and collect a fee for the movement on roads designated by Transportation Code, §623.219(a)(2)(B), (C), (D), and (E) of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight.

(b) Surety bond. The department may require the Authority to post a surety bond in the amount of \$500,000 for the reimbursement of the department for actual maintenance costs of roads designated by Transportation Code, §623.219(a)(2)(B), (C), (D), and (E) if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the Authority fails to reimburse the department for those costs. The estimated maintenance costs will be based on the amortized cost of the identified roads, projected regular maintenance and operations costs, and the bridge consumption costs associated with the movement of overweight and oversize vehicles issued a permit by the Authority.

(c) Verification of permits. The Authority shall provide law enforcement and department personnel access to any of the Authority's property to verify compliance with this subchapter by the Authority or another person.

(d) Training. The Authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the Authority.

(e) Accounting. The Authority must comply with the department's accounting procedures for revenue collections and payments made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the Authority. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the Authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the Authority allowing 30 days for the Authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the Authority has not corrected the issue, the executive director may revoke the Authority's authority to issue permits under this subchapter. The Authority may appeal to the commission in writing the revocation of its authority under this subsection. If the Authority appeals the revocation, the Authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.214. The Authority may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation of the Authority's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the Authority shall pay to the department all permit fees collected by the Authority, less allowable administrative costs.

(i) Maintenance agreement. The Authority shall enter into an agreement with the department for the maintenance of roads designated by Transportation Code, §623.219(a)(2)(B), (C), (D), and (E) for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Reporting. The Authority shall provide monthly and annual reports to the department's Financial Management Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

§28.113. Permit Eligibility.

(a) Registration requirements. To be eligible for a permit under this subchapter:

(1) a vehicle or combination of vehicles must be registered under Transportation Code, Chapter 502; and

(2) the owner of the vehicle or combination of vehicles must be registered as a motor carrier under Transportation Code, Chapter 643 or 645.

(b) Prohibition for unpaid penalties. The Authority may not issue a permit under this subchapter:

(1) to a person or company that is prohibited under Transportation Code, §623.271 from being issued a permit; or

(2) for a vehicle that is prohibited under Transportation Code, §623.271 from being issued a permit.

§28.114. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter must be in a form approved by the department and at a minimum must include:

- (1) the name of the applicant;
- (2) the name of the driver of the vehicle in which the cargo is to be transported;
- (3) a description of the kind of cargo to be transported;
- (4) the kind and weight of each commodity to be transported;
- (5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;
- (6) the route the carrier will travel on roads designated by Transportation Code, §623.219(a)(2)(B), (C), (D), and (E);
- (7) the date or dates on which movement is requested.

(b) Permit form and contents. A permit issued under this subchapter must be in a form approved by the department and at a minimum must include all information required under Transportation Code, §623.215(a) and §623.216.

§28.115. Permit Weight Limits for Axles.

(a) Minimum axle group spacing. For an axle group to be permitted for maximum weight authorized under this section:

- (1) an axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group; and
- (2) two or more consecutive axle groups must have a minimum axle spacing of 12 feet, measured from center of the last axle of a group to center of the first axle of the immediately following group.

(b) Maximum permit weight. Maximum permit weight for an axle or axle group is the weight computed by multiplying 650 pounds times the total number of inches of the width of tires on the axle or group or the following applicable axle or axle group weight, whichever is less:

- (1) single axle - 25,000 pounds;
- (2) two-axle group - 46,000 pounds;
- (3) three-axle group - 60,000 pounds;
- (4) four-axle group - 70,000 pounds;
- (5) five-axle group - 81,400 pounds; or
- (6) trunnion axles - 60,000 pounds if:

- (A) the trunnion configuration has two axles;
- (B) there are a total of 16 tires for the trunnion configuration; and

(C) the trunnion axle, as shown in the following diagram, is 10 feet in width.
Figure: 43 TAC §28.115(b)(6)(C)

(c) Tire load rating. A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Permits for vehicles exceeding permit weight limits. For a vehicle exceeding weight limits provided in this section, a person must apply directly to the Texas Department of Motor Vehicles for an oversize or overweight permit in accordance with Transportation Code, Chapter 623.

§28.116. Movement Requirements and Restrictions.

(a) Carrying of permit. The original permit issued by the Authority must be carried in the permitted vehicle.

(b) Prohibition on movement with void permit. A permittee is prohibited from transporting an oversize or overweight load with a void permit. A permit is void if the applicant gives false or incorrect information. A permit becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit.

(c) Weather conditions or road work. Movement of a permitted vehicle is prohibited when:

- (1) visibility is reduced to less than 2/10 of one mile;
- (2) the road surface is hazardous due to weather conditions, such as rain, ice, sleet, or snow; or
- (3) highway maintenance or construction work is being performed.

(d) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours. A permitted vehicle that is overweight but not oversize may be moved at any time.

(e) Weight ticket requirement. Any vehicle issued a permit by the Authority must be weighed on scales that are capable of determining gross vehicle weights and individual axle loads and are certified by the Texas Department of Agriculture or accepted by the United Mexican States.

(f) Speed. The maximum speed for a permitted vehicle is set by Transportation Code, §623.217.

§28.117. Records.

The Authority shall maintain records that evidence compliance with this subchapter. Those records are subject to audit by department personnel.

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

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Joanne Wright

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630

