

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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.507

The Public Utility Commission of Texas (commission) proposes amendment to §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS). The proposed amendment will enable the deployment of ERS to help prevent or mitigate involuntary load curtailment by ERCOT in the event of actual or anticipated localized transmission congestion, and will excuse an ERS participant from ERS contractual obligations in order to permit that participant to serve as an alternative to a reliability-must-run agreement. Project Number 45927 is assigned to this proceeding.

Mark Bryant, Senior Economist, Competitive Markets Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Bryant has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a reduced likelihood of involuntary load curtailment due to localized transmission congestion and potential cost savings in the procurement of MRA resources. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Dr. Bryant has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on November 30, 2016. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 45927.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.151, which provides the commission with the authority to oversee ERCOT.

§25.507. *Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS).*

(a) (No change.)

(b) ERS procurement. ERCOT shall procure ERS, a special emergency response service that is intended to be deployed by ERCOT in an Energy Emergency Alert (EEA) event, or to forestall or mitigate involuntary load curtailment in the event of actual or anticipated localized transmission congestion.

(1) (No change.)

(2) ERCOT may spend a maximum of \$50 million per calendar year on ERS. ERCOT may determine cost limits for each ERS contract period in order to ensure that the ERS cost cap is not exceeded. To minimize the cost of ERS, ERCOT may reject any offer that ERCOT determines to be unreasonable or outside of the parameters of an acceptable offer. ERCOT may also reject any offer placed on behalf of any ERS resource if ERCOT determines that it lacks a sufficient basis to verify whether the ERS resource complied with ERCOT-established performance standards in an ERS deployment event ~~[EEA]~~ during the preceding ERS contract period.

(c) (No change.)

(d) Participation in ERS. In addition to requirements established by ERCOT, the following requirements shall apply for the provision of ERS:

(1) - (9) (No change.)

(10) If, during an ERS contract period, the owner of a participating ERS resource enters into an agreement with ERCOT under which the resource serves as an alternative to a reliability-must-run

(RMR) resource, the ERS resource's obligation shall be extinguished on the effective date of the agreement for the remainder of the contract period for all hours in any ERS time period that coincides in part or in whole with any hours for which the resource is obligated to provide service as an RMR alternative. The QSE representing the resource shall receive no payment for that resource for such ERS time periods for the remainder of the ERS contract period. Any ERS resource or group of sites in an ERS resource that is obligated to provide ERS for the purpose of addressing local congestion, or that has offered to provide such ERS, may not be offered to provide service as an RMR alternative for any hours in which the resource is already obligated to provide ERS.

(e) - (i) (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 October 10, 2016.

TRD-201605140

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 20, 2016

For further information, please call: (512) 936-7223



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 140. ORTHOTICS AND PROSTHETICS

16 TAC §§140.1 - 140.31

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 140, §§140.1 - 140.31, regarding the Orthotics and Prosthetics program.

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 were 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.

On April 13, 2016, the Commission adopted its own set of rules for the Orthotics and Prosthetics program located at 16 TAC Chapter 114. The Commission's rules were effective October 1, 2016. (41 TexReg 4467). The Department officially commenced all regulatory functions for the Orthotics and Prosthetics program on October 3, 2016.

The current 16 TAC Chapter 140 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 821. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of §§140.1 - 140.31 eliminates industry and public confusion by removing duplicate rules for the Orthotics and Prosthetics program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Orthotics and Prosthetics program in chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed 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 repeal is proposed under Texas Occupations Code, Chapters 51 and 605, 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 and 605. No other statutes, articles, or codes are affected by the proposal.

§140.1. *Introduction.*

§140.2. *Definitions.*

§140.3. *Operation of the Board.*

§140.4. *Fees.*

§140.5. *General Application Procedures.*

§140.6. *General Licensing Procedures.*

§140.7. *Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.*

§140.8. *Acquiring Professional Licensure as a Uniquely Qualified Person.*

§140.9. *Licensing by Examination.*

§140.10. *Assistant License.*

§140.11. *Technician Registration.*

§140.12. *Temporary License.*

§140.13. *Student Registration.*

§140.14. *Upgrading a Student Registration.*

- §140.15. *Accreditation of Prosthetic and Orthotic Facilities.*
- §140.16. *Standards, Guidelines, and Procedures for a Professional Clinical Residency.*
- §140.17. *License Renewal.*
- §140.18. *Continuing Education.*
- §140.19. *Change of Name and Address.*
- §140.20. *Complaints.*
- §140.21. *Professional Standard and Disciplinary Provisions.*
- §140.22. *Licensing Persons with Criminal Backgrounds.*
- §140.23. *Default Orders.*
- §140.24. *Surrender of License.*
- §140.25. *Suspension of License under the Family Code.*
- §140.26. *Civil Penalty.*
- §140.27. *Program Accessibility.*
- §140.28. *Consumer Notification.*
- §140.29. *Petition for the Adoption of a Rule.*
- §140.30. *Criminal History Evaluation Letter.*
- §140.31. *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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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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



CHAPTER 141. DIETITIANS

SUBCHAPTER A. LICENSED DIETITIANS

16 TAC §§141.1 - 141.22

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 141, Subchapter A, §§141.1 - 141.22, regarding the Dietitians program.

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 were 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.

On April 13, 2016, the Commission adopted its own set of rules for the Dietitians program located at 16 TAC Chapter 116. The Commission's rules were effective October 1, 2016. (41 TexReg 4481). The Department officially commenced all regulatory functions for the Dietitians program on October 3, 2016.

The current 16 TAC Chapter 141 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 711. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §§141.1 - 141.22 eliminates industry and public confusion by removing duplicate and inactive rules for the Dietitians program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Dietitians program in chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed 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 repeal is proposed under Texas Occupations Code, Chapters 51 and 701, 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 and 701. No other statutes, articles, or codes are affected by the proposal.

§141.1. *Definitions.*

§141.2. *The Board's Operation.*

§141.3. *Fees.*

§141.4. *The Profession of Dietetics and Code of Ethics.*

§141.5. *Academic Requirements for Licensure.*

§141.6. *Preplanned Professional Experience Requirements for Licensure.*

§141.7. *Examination for Dietitian Licensure.*

§141.8. *Application Procedures.*

§141.9. *Determination of Eligibility for Licensure.*

§141.10. *Provisional Licensed Dietitians.*

§141.11. *Qualifications of Licensed Dietitians to Provide Diabetes Self-Management Training.*

§141.12. *Licensing.*

- §141.13. *Temporary License.*
- §141.14. *Changes of Name or Address.*
- §141.15. *License Renewal.*
- §141.16. *Continuing Education Requirements.*
- §141.17. *Licensing of Persons with Criminal Convictions.*
- §141.18. *Violations, Complaints and Subsequent Board Actions.*
- §141.19. *Formal Hearings.*
- §141.20. *Informal Disposition.*
- §141.21. *Default Orders.*
- §141.22. *License Suspension or Denial Relating to Child Support and Child Custody.*

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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Brian E. Francis
Executive Director

Texas Department of Licensing and Regulation

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



CHAPTER 142. ATHLETIC TRAINERS SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

16 TAC §§142.1 - 142.20

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 142, Subchapter A, §§142.1 - 142.20, regarding the Athletic Trainers program.

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 were 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.

On April 13, 2016, the Commission adopted its own set of rules for the Athletic Trainers program located at 16 TAC Chapter 110. The Commission's rules were effective October 1, 2016. (41 TexReg 4435). The Department officially commenced all regulatory functions for the Athletic Trainers program on October 3, 2016.

The current 16 TAC Chapter 142 rules were transferred from DSHS to be repealed to eliminate industry and public confusion.

(41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 871. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §§142.1-142.20 eliminates industry and public confusion by removing duplicate and inactive rules for the Athletic Trainers program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Athletic Trainers program in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed 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 repeal is proposed under Texas Occupations Code, Chapters 51 and 451, 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 and 451. No other statutes, articles, or codes are affected by the proposal.

- §142.1. *Definitions.*
- §142.2. *Scope of Practice.*
- §142.3. *The Board's Operation.*
- §142.4. *Petition for Rulemaking.*
- §142.5. *Processing Applications.*
- §142.6. *Fees.*
- §142.7. *Qualifications.*
- §142.8. *Student Athletic Trainer Activities.*
- §142.9. *Examination for Licensure.*
- §142.10. *Temporary License.*
- §142.11. *License Renewal.*
- §142.12. *Continuing Education Requirements.*
- §142.13. *Standards for Conduct.*
- §142.14. *Violations, Complaints and Disciplinary Actions.*
- §142.15. *Licensing of Persons with Criminal Backgrounds to be Athletic Trainers.*
- §142.16. *Formal Hearings.*
- §142.17. *Suspension of License Relating to Child Support and Child Custody.*

§142.18. *Administrative Penalties.*

§142.19. *Request for Criminal History Evaluation Letter.*

§142.20. *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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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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



CHAPTER 143. MIDWIFERY

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 143, Subchapter A, §§143.1 - 143.4 and 143.7; Subchapter B, §§143.11 - 143.17 and 143.20 - 143.25; Subchapter C, §§143.31 - 143.37, and 143.40; Subchapter D, §§143.51, 143.52, 143.57, 143.58, 143.60, 143.65, 143.70, 143.75, 143.101, 143.111, 143.121, 143.131, and 143.141; and Subchapter E, §§143.161 - 143.174, regarding the Midwives program.

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 were 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.

On April 13, 2016, the Commission adopted its own set of rules for the Midwives program located at 16 TAC Chapter 115. The Commission's rules were effective October 1, 2016. (41 TexReg 4477). The Department officially commenced all regulatory functions for the Midwives program on October 3, 2016.

The current 16 TAC Chapter 143 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 831. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §§143.1 - 143.4 and 143.7 eliminates industry and public confusion by removing duplicate and inactive rules for the Midwives program.

The proposed repeal of Subchapter B, §§143.11 - 143.17 and §§143.20 - 143.25 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

The proposed repeal of Subchapter C, §§143.31 - 143.37, and §143.40 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

The proposed repeal of Subchapter D, §§143.51, 143.52, 143.57, 143.58, 143.60, 143.65, 143.70, 143.75, 143.101, 143.111, 143.121, 143.131, and 143.141 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

The proposed repeal of Subchapter E, §§143.161 - 143.174 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Midwives program in chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed 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*.

SUBCHAPTER A. THE BOARD

16 TAC §§143.1 - 143.4, 143.7

The repeal is proposed under Texas Occupations Code, Chapters 51 and 203, 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 and 203. No other statutes, articles, or codes are affected by the proposal.

§143.1. *Introduction.*

§143.2. *Definitions.*

§143.3. *Midwifery Board.*

§143.4. *Board Member Training.*

§143.7. *Petition for the Adoption of a Rule.*

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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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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



SUBCHAPTER B. LICENSURE

16 TAC §§143.11 - 143.17, 143.20 - 143.25

The repeal is proposed under Texas Occupations Code, Chapters 51 and 203, 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 and 203. No other statutes, articles, or codes are affected by the proposal.

§143.11. *License Required.*

§143.12. *Fees.*

§143.13. *Initial Application for Licensure.*

§143.14. *License Renewal.*

§143.15. *Late Renewal.*

§143.16. *Renewal for Retired Midwives Performing Charity Work.*

§143.17. *State Roster of Licensed Midwives.*

§143.20. *Grounds for Denial of Application or Disciplinary Action.*

§143.21. *Application or Renewal with Criminal Conviction.*

§143.22. *License Surrender.*

§143.23. *Application for a New License after Revocation, Suspension, or Surrender.*

§143.24. *Request for a Criminal History Evaluation Letter.*

§143.25. *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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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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



SUBCHAPTER C. EDUCATION AND EXAMINATION

16 TAC §§143.31 - 143.37, 143.40

The repeal is proposed under Texas Occupations Code, Chapters 51 and 203, 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 and 203. No other statutes, articles, or codes are affected by the proposal.

§143.31. *Education Committee.*

§143.32. *Basic Midwifery Education.*

§143.33. *Education Course Approval.*

§143.34. *Education Course Denial or Revocation of Approval.*

§143.35. *Exam Approval, Denial, or Revocation of Approval.*

§143.36. *Complaints Concerning Education Courses and Comprehensive Exams.*

§143.37. *Jurisprudence Examination.*

§143.40. *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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Brian E. Francis

Executive Director

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



SUBCHAPTER D. PRACTICE OF MIDWIFERY

16 TAC §§143.51, 143.52, 143.57, 143.58, 143.60, 143.65, 143.70, 143.75, 143.101, 143.111, 143.121, 143.131, 143.141

The repeal is proposed under Texas Occupations Code, Chapters 51 and 203, 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 and 203. No other statutes, articles, or codes are affected by the proposal.

§143.51. *Standards for the Practice of Midwifery in Texas.*

§143.52. *Inter-professional Care.*

§143.57. *Termination of the Midwife-Client Relationship.*

§143.58. *Transfer of Care in An Emergency Situation.*

§143.60. *Prenatal Care.*

§143.65. *Labor and Delivery.*

§143.70. *Postpartum Care.*

§143.75. *Newborn Care During the First Six Weeks After Birth.*

§143.101. *Administration of Oxygen.*

§143.111. *Eye Prophylaxis.*

§143.121. *Newborn Screening.*

§143.131. *Informed Choice and Disclosure Statement.*

§143.141. *Provision of Support 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.

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TRD-201605149

Brian E. Francis
Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 20, 2016

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



SUBCHAPTER E. COMPLAINT REVIEW

16 TAC §§143.161 - 143.174

The repeal is proposed under Texas Occupations Code, Chapters 51 and 203, 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 and 203. No other statutes, articles, or codes are affected by the proposal.

§143.161. *Complaint Review Committee.*

§143.162. *Reporting Violations and/or Complaints.*

§143.163. *Records of Complaints.*

§143.164. *Complaint Categories.*

§143.165. *Disciplinary Action and Guidelines.*

§143.166. *Complaint Investigation.*

§143.167. *Informal Settlement Conferences.*

§143.168. *Formal Hearings.*

§143.169. *Disciplinary Action.*

§143.170. *Complaint Disposition and Appeals.*

§143.171. *Refunds.*

§143.172. *Cease and Desist Order.*

§143.173. *Emergency Suspension.*

§143.174. *Default Orders.*

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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Brian E. Francis
Executive Director

Texas Department of Licensing and Regulation

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



CHAPTER 144. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §§144.1 - 144.31

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 144, §§144.1 - 144.31, regarding the Hearing Instrument Fitters and Dispensers program.

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 were 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.

On April 13, 2016, the Commission adopted its own set of rules for the Hearing Instrument Fitters and Dispensers program located at 16 TAC Chapter 112. The Commission's rules were effective October 1, 2016. (41 TexReg 4458). The Department officially commenced all regulatory functions for the Hearing Instrument Fitters and Dispensers program on October 3, 2016.

The current 16 TAC Chapter 144 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 141. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of §§144.1 - 144.31 eliminates industry and public confusion by removing duplicate and inactive rules for the Hearing Instrument Fitters and Dispensers program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Hearing Instrument Fitters and Dispensers program in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed 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 repeal is proposed under Texas Occupations Code, Chapters 51, 402 and 401 as applicable, 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, 402 and 401 as applicable. No other statutes, articles, or codes are affected by the proposal.

- §144.1. *Purpose.*
- §144.2. *Definitions.*
- §144.3. *The Committee.*
- §144.4. *Licensees and the Committee.*
- §144.5. *Consumer Information and Display of License.*
- §144.6. *Application Procedures.*
- §144.7. *Processing Procedures.*
- §144.8. *Issuance of Permits.*
- §144.9. *Issuance of Licenses.*
- §144.10. *Application By License Holder From Another State.*
- §144.11. *Filing of Bond.*
- §144.12. *Surrender of a License or Permit.*
- §144.13. *Renewal of License.*
- §144.14. *Continuing Education Requirements.*
- §144.15. *Examination.*
- §144.16. *Conditions of Sales.*
- §144.17. *Complaints and Violations.*
- §144.18. *Formal Hearings.*
- §144.19. *Administrative Penalties.*
- §144.20. *Informal Disposition.*
- §144.21. *Suspension of License Relating to Child Support and Child Custody Orders.*
- §144.22. *Code of Ethics.*
- §144.23. *Relevant Factors.*
- §144.24. *Severity Level and Sanction Guide.*
- §144.25. *Request for Criminal History Evaluation Letter.*
- §144.26. *Criminal History Record Information Requirement for License or Permit Issuance.*
- §144.27. *Criminal History Record Information Requirement for License Renewal.*
- §144.28. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*
- §144.29. *Joint Rule Regarding the Sale of Hearing Instruments.*
- §144.30. *Joint Rule Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice.*
- §144.31. *Petition for Adoption of a Rule.*

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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Brian E. Francis
Executive Director

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



CHAPTER 145. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 145, Subchapter A, §145.1;

Subchapter B, §§145.11 - 145.15; Subchapter C, §§145.31 - 145.33; Subchapter D, §§145.41 - 145.45; Subchapter E, §§145.61 - 145.66; Subchapter F, §§145.81 - 145.86; Subchapter G, §145.91; Subchapter H, §§145.101 - 145.104; Subchapter I, §145.111 and §145.112; Subchapter J, §145.121 and §145.122; Subchapter K, §145.141 and §145.142; Subchapter L, §§145.161 - 145.165; Subchapter M, §145.181 and §145.182; Subchapter N, §§145.191 - 145.204; Subchapter O, §§145.211 - 145.216; Subchapter P, §§145.231 - 145.233, regarding the Speech-Language Pathologists and Audiologists program.

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 were 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.

On April 13, 2016, the Commission adopted its own set of rules for the Speech-Language Pathologists and Audiologists program located at 16 TAC Chapter 111. The Commission's rules were effective October 1, 2016. (41 TexReg 4441). The Department officially commenced all regulatory functions for the Speech-Language Pathologists and Audiologists program on October 3, 2016.

The current 16 TAC Chapter 145 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 741. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §145.1 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter B, §§145.11 - 145.15 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter C, §§145.31 - 145.33 eliminates industry and public confusion by removing duplicate and inactive rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter D, §§145.41 - 145.45 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter E, §§145.61 - 145.66 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter F, §§145.81 - 145.86 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter G, §145.91 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter H, §§145.101 - 145.104 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter I, §145.111 and §145.112 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter J, §145.121 and §145.122 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter K, §145.141 and §145.142 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter L, §§145.161 - 145.165 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter M, §145.181 and §145.182 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter N, §§145.191 - 145.204 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter O, §§145.211 - 145.216 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter P, §§145.231 - 145.233 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect there will be no direct cost to state or local government. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit by the elimination of confusion that would result that would result from the location of two sets of rules for the Speech-Language Pathologists and Audiologists in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed 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*.

SUBCHAPTER A. DEFINITIONS

16 TAC §145.1

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.1. Definitions.

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

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SUBCHAPTER B. THE BOARD

16 TAC §§145.11 - 145.15

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.11. Officers.

§145.12. Committees.

§145.13. Transaction of Official Business.

§145.14. Petition for Adoption of a Rule.

§145.15. Impartiality and Nondiscrimination.

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

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SUBCHAPTER C. SCREENING PROCEDURES

16 TAC §§145.31 - 145.33

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.31. *Communication Screening.*

§145.32. *Hearing Screening.*

§145.33. *Newborn Hearing Screening.*

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 OF ETHICS; DUTIES AND RESPONSIBILITIES OF SUPERVISORS

16 TAC §§145.41 - 145.45

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.41. *Professional Responsibilities of License Holders.*

§145.42. *Advertising.*

§145.43. *Recordkeeping and Billing.*

§145.44. *Requirements, Duties, and Responsibilities of Supervisors.*

§145.45. *Consumer Information and Display of 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 E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

16 TAC §§145.61 - 145.66

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.61. *Requirements for a Speech-Language Pathology License.*

§145.62. *Requirements for an Intern in Speech-Language Pathology License.*

§145.63. *Waiver of Clinical and Examination Requirements for Speech-Language Pathologists.*

§145.64. *Requirements for an Assistant in Speech-Language Pathology License.*

§145.65. *Requirements for a Temporary Certificate of Registration in Speech-Language Pathology.*

§145.66. *Licensing in Speech-Language Pathology for 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 F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

16 TAC §§145.81 - 145.86

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

- §145.81. *Requirements for an Audiology License.*
- §145.82. *Requirements for an Intern in Audiology License.*
- §145.83. *Waiver of Clinical and Examination Requirements for Audiologists.*
- §145.84. *Requirements for an Assistant in Audiology License.*
- §145.85. *Requirements for a Temporary Certificate of Registration in Audiology.*
- §145.86. *Licensing in Audiology for 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 G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

16 TAC §145.91

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.91. *Requirements for Dual Licenses in Speech-Language Pathology and Audiology.*

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

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SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §§145.101 - 145.104

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

- §145.101. *Registration of Audiologists and Interns in Audiology to Fit and Dispense Instruments.*
- §145.102. *General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.*
- §145.103. *Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.*
- §145.104. *Joint Rule Regarding the Sale of Hearing Instruments.*

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. APPLICATION PROCEDURES

16 TAC §145.111, §145.112

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.111. *Application Process.*

§145.112. *Required Application Materials.*

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) 463-8179



SUBCHAPTER J. LICENSURE EXAMINATIONS

16 TAC §145.121, §145.122

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.121. *Examination Administration.*

§145.122. *Jurisprudence 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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SUBCHAPTER K. ISSUANCE OF LICENSE

16 TAC §145.141, §145.142

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.141. *Issuance of License.*

§145.142. *Criminal History Record Information Requirement for License Issuance.*

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) 463-8179



SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION

16 TAC §§145.161 - 145.165

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.161. *Renewal Procedures.*

§145.162. *Requirements for Continuing Professional Education.*

§145.163. *Criminal History Record Information Requirement for License Renewal.*

§145.164. *Late Renewal of a License.*

§145.165. *Renewal of Licensee on 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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Brian E. Francis
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For further information, please call: (512) 463-8179



SUBCHAPTER M. FEES AND PROCESSING PROCEDURES

16 TAC §145.181, §145.182

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.181. *Schedule of Fees.*

§145.182. *Time Periods For Processing Applications and Renewals.*

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) 463-8179



SUBCHAPTER N. COMPLAINTS, VIOLATIONS, PENALTIES, AND DISCIPLINARY ACTIONS

16 TAC §§145.191 - 145.204

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.191. *Complaint Procedures.*

§145.192. *Disciplinary Action; Notices.*

§145.193. *Revocation, Suspension, Emergency Suspension, or Denial.*

§145.194. *Informal Disposition.*

§145.195. *Formal Hearings; Surrender of License.*

§145.196. *Default Orders.*

§145.197. *Monitoring of Licensees.*

§145.198. *Administrative Penalties.*

§145.199. *Schedule of Sanctions.*

§145.200. *Licensing of Persons with Criminal Convictions.*

§145.201. *Suspension of License Relating to Child Support and Child Custody.*

§145.202. *Request for Criminal History Evaluation Letter.*

§145.203. *Board Ordered Refund.*

§145.204. *Cease and Desist Order.*

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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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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



SUBCHAPTER O. TELEHEALTH

16 TAC §§145.211 - 145.216

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.211. *Definitions Relating to Telehealth.*

§145.212. *Service Delivery Models of Speech-Language Pathologists.*

§145.213. *Requirements for the Use of Telehealth by Speech-Language Pathologists.*

§145.214. *Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.*

§145.215. *Requirements for Providing Telehealth Services in Speech-Language Pathology.*

§145.216. *Requirements for Providing Telepractice Service in Audiology.*

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 P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §§145.231 - 145.233

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 402 as applicable, 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, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.231. *Purpose.*

§145.232. *Definitions.*

§145.233. *Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments.*

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 October 10, 2016.

TRD-201605170

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 20, 2016

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



CHAPTER 146. DYSLEXIA THERAPISTS AND DYSLEXIA PRACTITIONERS SUBCHAPTER K. DYSLEXIA THERAPISTS AND DYSLEXIA PRACTITIONERS

16 TAC §§146.575 - 146.596

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 146, Subchapter K, §§146.575 - 146.596, regarding the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program.

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 were 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.

On March 9, 2016, the Commission adopted its own set of rules for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program located at 16 TAC Chapter 120. Part of the Commission's rules were effective April 15, 2016, and the remaining sections were effective October 1, 2016. (41 TexReg 2476). The Department officially commenced all regulatory functions for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program on October 3, 2016.

The current 16 TAC Chapter 146 rules were transferred from DSHS to be repealed to eliminate industry and public confusion.

(41 TexReg 7585). These rules were formerly located at 25 TAC Chapter 140. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter K, §§146.575 - 146.596 eliminates industry and public confusion by removing duplicate and inactive rules for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed 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 repeal is proposed under Texas Occupations Code, Chapters 51 and 403, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

§146.575. *Introduction.*

§146.576. *Definitions.*

§146.577. *Fees.*

§146.578. *Petition for Rulemaking.*

§146.579. *Dyslexia Licensing Advisory Committee.*

§146.580. *Application Requirements and Procedures.*

§146.581. *Application Processing.*

§146.582. *Qualifications for Licensure as a Dyslexia Therapist.*

§146.583. *Qualifications for Licensure as a Dyslexia Practitioner.*

§146.584. *Requirements for Training Programs and Qualified Instructors.*

§146.585. *Examination for Licensure.*

§146.586. *Code of Ethics; Duties and Responsibilities of License Holders.*

§146.587. *Renewal of License.*

§146.588. *Changes of Name or Address.*

§146.589. *Continuing Education Requirements.*

§146.590. *Filing Complaints and Complaint Investigations.*

- §146.591. *Disciplinary Action.*
- §146.592. *Informal Disposition.*
- §146.593. *Formal Hearings.*
- §146.594. *Schedule of Sanctions.*
- §146.595. *Licensing of Persons with Criminal Backgrounds.*
- §146.596. *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.

Filed with the Office of the Secretary of State on October 10, 2016.

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 Brian E. Francis
 Executive Director
 Texas Department of Licensing and Regulation
 Earliest possible date of adoption: November 20, 2016
 For further information, please call: (512) 463 - 8179



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 27. FIELDS OF STUDY SUBCHAPTER I. COMPUTER SCIENCE/INFORMATION TECHNOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.261 - 27.267

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§27.261 - 27.267, concerning Computer Science/Information Technology Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a computer science/information technology field of study. The newly added rules will affect students when the computer science/information technology field of study is adopted by the Board.

Dr. Rex 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 adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a computer science/information technology degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections 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 new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.261. Authority and Specific Purposes of the Computer Science/Information Technology Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Computer Science/Information Technology Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Computer Science/Information Technology Field of Study Curricula.

§27.262. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8)

§27.263. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.264. Duration.

The Committee shall be abolished no later than January 31, 2021, in accordance with Texas Government Code, §2110.008. It may be reestablished by the Board.

§27.265. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.266. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Computer Science/Information Technology Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Computer Science/Information Technology Field of Study Curricula; and

(3) Any other issues related to the Computer Science/Information Technology Field of Study Curricula as determined by the Board.

§27.267. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

Filed with the Office of the Secretary of State on October 10, 2016.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 20, 2016

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



SUBCHAPTER J. CRIMINAL JUSTICE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.281 - 27.287

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§27.281 - 27.287, concerning Criminal Justice Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Criminal Justice field of study. The newly added rules will affect students when the criminal justice field of study is adopted by the Board.

Dr. Rex 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 adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a criminal justice degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections 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 new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.281. Authority and Specific Purposes of the Criminal Justice Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Criminal Justice Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the criminal justice field of study curricula.

§27.282. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.283. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution

of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.284. Duration.

The Committee shall be abolished no later than January 31, 2021, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.285. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.286. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Criminal Justice Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Criminal Justice Field of Study Curricula; and

(3) Any other issues related to the Criminal Justice Field of Study Curricula as determined by the Board.

§27.287. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

Filed with the Office of the Secretary of State on October 10, 2016.

TRD-201605154

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 20, 2016

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



SUBCHAPTER K. PERFORMING ARTS/DRAMA FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.301 - 27.307

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§27.301 - 27.307, concerning Performing Arts/Drama Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Performing Arts/Drama field of study. The newly added rules will affect students when the criminal justice field of study is adopted by the Board.

Dr. Rex 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 adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a performing arts/drama degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections 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 new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.301. Authority and Specific Purposes of the Performing Arts/Drama Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Performing Arts/Drama Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the performing arts/drama field of study curricula.

§27.302. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the

degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.303. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.304. Duration.

The Committee shall be abolished no later than January 31, 2021, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.305. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.306. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Performing Arts/Drama Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Performing Arts/Drama Field of Study Curricula; and

(3) Any other issues related to the Performing Arts/Drama Field of Study Curricula as determined by the Board.

§27.307. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its

evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes an amendment to §61.1011, concerning school finance. The section establishes in rule the definitions, assumptions, and calculations used in determining a district's Additional State Aid for Tax Reduction (ASATR). The proposed amendment would enable a school district receiving a reduced local share of Foundation School Program funding as a result of being combined with an academically unacceptable school district to receive the entire benefit of the adjustment rather than having it reduced by the ASATR calculation.

The Texas Education Code (TEC), §42.2516, allows school districts to be held harmless for the loss in local tax collections for maintenance and operations caused by the compression of adopted tax rates by one third. Section 61.1011, adopted under the TEC, §42.2516, details the calculation of the hold harmless levels for each district, known as revenue targets, as well as how to determine whether hold harmless money is needed or if the state and local revenue received through formula funding is sufficient so that hold harmless money is not needed. Since the annexation of an academically unacceptable school district under the TEC, §13.054, rarely occurs, neither the TEC, §42.2516, nor §61.1011 address the impact on the ASATR calculation of the state assistance provided under the TEC, §13.054(f), which requires the commissioner to annually adjust the local fund assignment for a district to which territory of an academically unacceptable district is annexed.

Because of the recent annexation of an academically unacceptable school district, the TEA has determined that §61.1011 should be modified to ensure the extra state aid under the TEC, §13.054(f), is not reduced by a reduction to the ASATR calculation. The proposed amendment would add language to subsection (b)(5)(C) to describe the calculation adjustment for districts entitled to the state assistance provided under the TEC, §13.054(f).

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect, there will be fiscal implications for state and local government as a result of the proposed amendment. For fiscal year (FY) 2017, the anticipated cost to TEA is \$12,489,972. One school district, Texas City Independent School District (ISD), will be eligible for the adjusted state aid and will receive \$12,489,972 in additional funding in FY 2017. There are no anticipated costs or benefits beyond FY 2017.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Lopez has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be allowing the TEA to provide Texas City ISD, which has been consolidated with an academically unacceptable school district for school year 2016-2017, with the full amount of the state aid intended under the TEC, §13.054(f). This would enable Texas City ISD to complete renovations to facilities and modifications to educational programs to benefit the students in the formerly academically unacceptable district. 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. The public comment period on the proposal begins October 21, 2016, and ends November 21, 2016. 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 proposal 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* on October 21, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §42.2516, which provides for hold harmless payments for school districts for the loss of local tax collections due to the tax rate compression instituted in 2006. TEC, §42.2516(g), authorizes the commissioner to adopt rules necessary to implement additional state aid for tax reduction.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §42.2516.

§61.1011. *Additional State Aid for Tax Reduction (ASATR).*

(a) (No change.)

(b) Additional State Aid for Tax Reduction (ASATR). A school district may be entitled to receive ASATR under the TEC, §42.2516(b). The entitlement to ASATR for a given fiscal year is determined by calculating the minimum revenue entitlement applicable

to that fiscal year and comparing the minimum revenue entitlement to the total state and local formula revenue based on the CTR for that fiscal year.

(1) - (4) (No change.)

(5) Fiscal year 2011-2012 and subsequent fiscal years. Minimum revenue; adjusted minimum revenue; state and local revenue (S4); and ASATR are calculated as follows for the 2011-2012 fiscal year and each subsequent fiscal year.

(A) - (B) (No change.)

(C) State and local revenue (S4) for the applicable year is calculated as follows [by adding Tier 1 state aid for that year to M&O tax collections at the CTR for that year and then subtracting from that sum recapture at the CTR for that year] .

(i) State and local revenue (S4) for the applicable year is calculated by adding Tier 1 state aid for that year to M&O tax collections at the CTR for that year and then subtracting from that sum recapture at the CTR for that year.

(ii) For the 2016-2017 fiscal year, the sum described by paragraph (5)(C)(i) of this subsection is adjusted for districts receiving an adjustment to the local fund assignment (LFA) under the TEC, §13.054(f), by subtracting the amount of additional Tier 1 state aid that results from the adjustment to the LFA from the Tier 1 state aid amount used in the calculation of state and local revenue (S4) for the applicable year.

(D) - (F) (No change.)

(c) - (d) (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 October 10, 2016.

TRD-201605163

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.574

The Comptroller of Public Accounts proposes new §3.574, concerning margin: new veteran-owned businesses.

This section implements Senate Bill 1049, 84th Legislature, 2015, effective January 1, 2016, which amended Tax Code, Chapter 171, to provide that qualifying new veteran-owned businesses are not subject to the franchise tax during an initial 5-year period of operation in Texas.

Throughout the section, the comptroller interprets the phrase "begins doing business in Texas" as used in SB 1049 to mean the date a new veteran-owned business is chartered, organized, or otherwise formed in Texas. As defined in SB 1049, a new veteran-owned business must be a Texas entity. Interpreting its formation date as the date a new veteran-owned business "begins doing business in Texas" is consistent with the imposition of franchise tax on all Texas entities from the date of formation. This interpretation is also consistent with the SB 1049 provision that allows for a 5-year waiver of fees collected by the Secretary of State for new veteran-owned businesses based on the entity's date of formation. Further, this interpretation provides a clear and unambiguous beginning date for new veteran-owned businesses that will make it easier for the owners to comply with their franchise tax obligations.

Subsection (a) provides the effective date of the provisions in this section as established in SB 1049.

Subsection (b) provides definitions for certain terms used throughout the section. Paragraph (1) defines the term "beginning date" for a taxable entity that qualifies as a new veteran-owned business as the fifth anniversary of the date the entity is chartered, organized, or otherwise formed in Texas or the date the entity ceases to qualify as a new veteran-owned business. Paragraph (1) also includes an example for illustration. Paragraph (2) defines "Letter of Verification of Veteran's Honorable Discharge." This is the written verification Texas Veterans Commission issues to a veteran, under Tax Code, §171.0005(b), for the comptroller to verify the veteran's discharge status. Paragraph (3) defines the term "new business" and is taken from the definition of the term "new veteran-owned business" in Tax Code, §171.0005, with changes. The statutory definition of new business only requires that a qualifying business begins doing business in Texas on or after January 1, 2016; however, SB 1049 also provides that this statutory provision expires effective January 1, 2020. The comptroller's definition of new business, therefore, requires that a qualifying business is chartered, organized, or otherwise formed in Texas on or after January 1, 2016, and before January 1, 2020. Paragraph (4) defines the term "new veteran-owned business" and is taken directly from Tax Code, §171.0005.

Subsection (c) provides that the franchise tax is not imposed on a qualifying new veteran-owned business for an initial five-year period provided that the business continues to qualify as a new veteran-owned business during that period.

Subsection (d) requires a qualifying new veteran-owned business to verify that all of the owners of its business are qualifying veterans. Paragraph (1) lists the documents required for verification. Paragraph (2) specifies when a taxable entity must submit the required documents to the secretary of state and when a taxable entity must submit the required documents to the comptroller.

Subsection (e) provides the reporting requirements for a qualifying new veteran-owned business. A taxable entity that meets all the qualifications of a new veteran-owned business is required to file a No Tax Due Report for each reporting period that the franchise tax is not imposed on the taxable entity to verify that the entity continues to qualify as a new veteran-owned business. The comptroller is authorized to require this information under Tax Code, §171.204(d). Paragraph (1) provides that, under Tax Code, §171.362(f), a \$50 penalty will be assessed if the No Tax Due Report is not filed as required. Paragraph (2) provides that a qualifying new veteran-owned business may not file a franchise

tax report with a combined group because the franchise tax is not imposed on qualifying veteran-owned businesses and they are, therefore, not subject to the combined reporting requirement during an initial five-year period. Paragraph (3) provides that a qualifying new veteran-owned business is not required to file a Public Information Report or an Ownership Information Report under Tax Code, §171.203 because the franchise tax is not imposed on qualifying veteran-owned businesses for an initial five-year period.

Subsection (f) provides the franchise tax beginning date for a qualifying new veteran-owned business that is exempt from franchise tax under Tax Code, §171.063, and subsequently has its federal tax exemption withdrawn. Paragraph (1) provides the beginning date if the new veteran-owned business loses its federal tax exemption before its first five years of business have elapsed. Paragraph (2) provides the beginning date if the new veteran-owned business loses its federal tax exemption after its first five years of business have elapsed.

Subsection (g) provides the expiration date of the provisions in this section as established in SB 1049.

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

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

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

This new section is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under the law.

This new section implements Tax Code, §§171.0001 (General Definitions), 171.0005 (Definition of New Veteran-Owned Business), 171.001 (Tax Imposed), 171.063 (Exemption-Nonprofit Corporation Exempt from Federal Income Tax), and 171.204 (Information Report).

§3.574. Margin: New Veteran-Owned Businesses.

(a) Effective date. This section is effective January 1, 2016.

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

(1) Beginning date--

(A) For a taxable entity that qualifies as a new veteran-owned business, the earlier of:

(i) the fifth anniversary of the date on which the taxable entity was chartered, organized, or otherwise formed in Texas; or

(ii) the date the taxable entity ceases to qualify as a new veteran-owned business.

(B) For example, if a qualifying entity files its certificate of formation with the secretary of state on June 1, 2016, and remains wholly-owned by honorably discharged veterans throughout its first five years of business, the entity becomes subject to franchise tax June 1, 2021. If one of the owners of this same new veteran-owned business sells his or her ownership percentage to anyone other than a qualifying veteran on December 31, 2017, the entity no longer qualifies as a new veteran-owned business and becomes subject to franchise tax January 1, 2018.

(2) Letter of Verification of Veteran's Honorable Discharge--A letter issued by the Texas Veterans Commission, upon request by a veteran, verifying the honorable discharge of the veteran.

(3) New business--A taxable entity that is chartered, organized, or otherwise formed in Texas on or after January 1, 2016, and before January 1, 2020.

(4) New veteran-owned business--A taxable entity that is a new business in which each owner is a natural person who:

(A) served in and was honorably discharged from a branch of the United States armed forces; and

(B) provides verification to the comptroller of the person's service and discharge, as required by subsection (d) of this section.

(c) Tax not imposed. The franchise tax is not imposed on a taxable entity that qualifies as a new veteran-owned business until the earlier of:

(1) the fifth anniversary of the date on which the taxable entity was chartered, organized, or otherwise formed in Texas; or

(2) the date the taxable entity ceases to qualify as a new veteran-owned business.

(d) Verification. A taxable entity that qualifies as a new veteran-owned business must verify that it is owned entirely by qualifying veterans.

(1) Required documents. A taxable entity must submit the following documents as required in paragraph (2) of this subsection:

(A) a "Letter of Verification of Veteran's Honorable Discharge" from the Texas Veterans Commission for each owner of the business; and

(B) comptroller Form 05-904, Certification of New Veteran-Owned Business, or any successor to the form promulgated by the comptroller.

(2) Submission. A taxable entity must submit the required documents identified in paragraph (1) of this subsection to the:

(A) secretary of state, if the taxable entity is formed with the secretary of state on or after January 1, 2016; or

(B) comptroller, along with the appropriate comptroller franchise tax questionnaire, if necessary, if the taxable entity is not required to file a certificate of formation with the secretary of state.

(e) Reporting requirement for a new veteran-owned business. A taxable entity that meets all of the qualifications of a new veteran-owned business is required to file a No Tax Due Report for each reporting period that the franchise tax is not imposed on the taxable entity.

(1) A qualifying new veteran-owned business that fails to file a No Tax Due Report as required shall pay a penalty of \$50 under Tax Code, §171.362(f).

(2) A qualifying new veteran-owned business may not file with a combined group for each reporting period that the franchise tax is not imposed.

(3) A qualifying new veteran-owned business is not required to file a Public Information Report or an Ownership Information Report for each reporting period that the franchise tax is not imposed.

(f) Beginning date upon withdrawal of federal tax exemption. A qualifying new veteran-owned business that is exempt from franchise tax under Tax Code, §171.063 (Exemption for a Non-profit Corporation Exempt from Federal Income Tax) and subsequently has its federal tax exemption withdrawn by the Internal Revenue Service for failure to qualify or maintain its qualification for the exemption has a beginning date:

(1) as provided in subsection (b)(1) of this section if:

(A) in the absence of the federal tax exemption, the franchise tax would not have been imposed on the taxable entity under subsection (c) of this section; and

(B) the effective date of the withdrawal is before the beginning date determined under subsection (b)(1) of this section; or

(2) that is the effective date of the withdrawal, if either paragraph (1)(A) or (B) of this subsection does not apply.

(g) Expiration. The provisions of this section expire January 1, 2020; however, a business that first qualifies as a new veteran-owned business before January 1, 2020, continues to qualify as a new veteran-owned business as provided by this section.

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 October 10, 2016.

TRD-201605171

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 20, 2016

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.901

The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendments to §§748.901, 748.2451, 748.2551, 748.2601, 748.2603, 748.2701, 748.2751, 748.2801, 748.2805, 748.2807, 748.2855, 748.2901, 748.2905, and 748.2907 in Chapter 748, concerning Minimum Standards for General Residential Operations.

BACKGROUND AND PURPOSE

The purpose of the amendments are to clarify the purpose, scope and notification requirements related to the use of Emergency Behavior Intervention (EBI) on a child in care. In late 2015, DFPS began development of rules related to Child Protective Services (CPS) and the provision of notice of significant events to key parties involved in the life of a child in care. See the February 12, 2016, issue of the *Texas Register* (41 TexReg 1372) and the May 20, 2016, issue of the *Texas Register* (41 TexReg 3754). In the course of discussions related to what constitutes a significant event, several stakeholders voiced concern regarding when or whether those parties would learn about the use of Emergency Behavior Intervention (EBI) on a child in care. In particular, there was general consensus that while CPS as the parent would not receive notice of each use of EBI, if the use of EBI reached the threshold at which an operation was required to hold a triggered review of EBI, CPS should be notified. However, this notification requirement was not clear in the relevant Minimum Standards, nor were all in agreement that the threshold for a review to be triggered was set appropriately.

Given the critical nature of the issues, DFPS undertook an immediate review of the related Minimum Standards. See the May 20, 2016, issue of the *Texas Register* (41 TexReg 3754). As a part of this review, the agency convened a temporary workgroup of affected providers, advocates, and agency staff in accordance with Texas Human Resources Code §42.042(i). The workgroup reached consensus regarding the need to clarify notification requirements related to triggered reviews, to add specificity regarding the purpose and scope of a triggered review, and to putting into place additional parameters if the operation is authorized to utilize personal restraints in excess of the limit ordinarily in place for the operation. DFPS also received information from individual workgroup members regarding other state and national practices and standards around EBI, which it reviewed in order to make additional recommendations to the Executive Commissioner and Executive Council. DFPS also included in the proposed changes that relate to EBI but were identified as part of the separate comprehensive review of Chapter 748. Those changes are primarily related to updating and clarifying existing language, and DFPS determined it would be of maximum clarity to the public to bundle the proposed changes together rather than propose two separate packets that affect Minimum Standards related to EBI.

Finally, in order to make its rules consistent as appropriate, DFPS is proposing corresponding amendments to those identified for Chapter 748, related to General Residential Operations in Chapter 749, related to Child-Placing Agencies.

SECTION-BY-SECTION SUMMARY

The amendment to §748.901 adds a component to the pre-service training regarding emergency behavior intervention, which will require addressing the circumstances when all de-escalation strategies fail.

The amendment to §748.2451 updates the treatment services terminology.

The amendment to §748.2551 deletes a masculine pronoun.

The amendment to §748.2601 clarifies that a personal restraint must be monitored to make sure the restraint is being performed appropriately.

The amendment to §748.2603 deletes a masculine pronoun.

The amendment to §748.2701 requires an operation to provide notification to the parent within 72 hours of any utilization of a mechanical restraint on the child.

The amendment to §748.2751 clarifies that in an emergency behavior intervention (EBI), a child must have bathroom privileges "as needed".

The amendment to §748.2801 limits the maximum length of time a personal restraint, other than a prone or supine restraint, may be utilized on a child of any age to 30 minutes.

The amendment to §748.2805 places limitations on exceeding the maximum length of time for EBI as follows: (1) eliminates possibility of an extension past the maximum length of time for a personal restraint; and (2) specifies that a seclusion or mechanical restraint may never exceed four hours.

The amendment to §748.2807 reiterates limit on exceeding time limits in seclusions and mechanical restraints.

The amendment to §748.2855: (1) clarifies that a caregiver "involved with the intervention" must document in the child's record the intervention; and (2) adds to the documentation requirements for an EBI to include: (a) the names of any witnesses to the EBI, including child witnesses in the home; and (b) the name of the person providing medical treatment or assistance to the child.

The amendment to §748.2901: (1) modifies threshold for triggered review of personal restraints to require a review if the same child is restrained either four times in a seven-day period or more than 12 times in a single 30-day period; and (2) retains existing authority for qualified individuals to authorize personal restraints in excess of the threshold above; adds requirement that in any 30-day period during which such excess restraints are authorized, the operation must conduct at least one triggered review in accordance with the subchapter.

The amendment to §748.2905: (1) specifies that parents and child, as applicable, must be invited to a triggered review so that they are given notice and an opportunity to participate; and (2) clarifies that if parent or child is invited but cannot participate, the operation is not required to delay the review so that the parent or child can participate.

The amendment to §748.2907 clarifies content and focus of a triggered review meeting.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is that requirements regarding the use of EBI will be clarified and, as appropriate, limited to further improve the safety and well-being of children in the care of a regulated operation.

The rule changes do impose some additional limitation on the use of EBI. However, they are not anticipated to have any direct fiscal implications. Requiring notification of a triggered review to the parent and child, as applicable, was arguably implied in prior standards and presents an insubstantial outlay of time and effort. Additional limitations related to mechanical restraints are unlikely to have any implications. Agency data reflect that there have been only 3 instances of mechanical restraints being utilized on children in care in the preceding 3 years. Decreasing the time limit for personal restraints and disallowing extension orders should have minimal impact in that lengthy personal restraints are not known to be common, and if the emergency continues, the operation may initiate a new restraint. The same is true for seclusion. Requiring a triggered review in any 30-day period in which personal restraints are authorized in excess of the general limitation should also have minimal impact, if any. Providers who participated in the temporary workgroup reported that such authorization is extremely rare, and only one provider could recall an instance of it occurring over the preceding decade. Clarifying the scope of a triggered review is a simplification for providers, and will permit them to focus on the issues related to EBI rather than being required to undergo a full service plan update. Finally, many of the rules relate primarily to updating and clarifying terminology and are similarly not expected to have any fiscal consequences.

TAKINGS IMPACT ASSESSMENT

Ms. Subia has determined that the proposed amendments 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.

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in DFPS's Legal Division. Electronic comments may be submitted to audrey.carmical@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-559, 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*.

STATUTORY AUTHORITY

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 HRC §42.042.

§748.901. *If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?*

If you do not allow the use of emergency behavior intervention, your pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the following components:

(1) - (6) (No change.)

(7) Less restrictive strategies caregivers can use to work with oppositional children; ~~and~~

(8) Addressing circumstances when all de-escalation strategies fail; and

(9) [(8)] The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

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 October 10, 2016.

TRD-201605175

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: November 20, 2016

For further information, please call: (512) 438-3854



SUBCHAPTER N. EMERGENCY BEHAVIOR INTERVENTION

DIVISION 2. TYPES OF EMERGENCY BEHAVIOR INTERVENTION THAT MAY BE ADMINISTERED

40 TAC §748.2451

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2451. *What types of emergency behavior intervention may I administer?*

(a) If permitted in your policies and you meet the requirements of this subchapter, you may administer the following types of emergency behavior intervention to a child in your care:

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

(4) Seclusion:

(A) Only for a child [~~children~~] with an emotional disorder or an Autism Spectrum Disorder [~~disorders or pervasive developmental disorders~~]; and only if you provide treatment services to 25 or more children with emotional disorders or Autism Spectrum Disorder [~~pervasive developmental disorders~~], or if more than 30% of the children in your care receive treatment services for emotional disorders or Autism Spectrum Disorder [~~pervasive development disorders~~]. Seclusion is not permitted for children receiving therapeutic camp services; or

(B) (No change.)

(5) Mechanical restraint, only if you are [~~have~~] a Residential Treatment Center [~~permit~~].

(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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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2551

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2551. *What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?*

(a) - (e) (No change.)

(f) If the child does not appear to understand what the child [~~he~~] must do to be released from the emergency behavior intervention, the caregiver must attempt to re-explain it every 15 minutes until the child understands or is released from the intervention.

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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DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

40 TAC §784.2601, §748.2603

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2601. *Who must monitor a personal restraint?*

(a) During any personal restraint, a caregiver qualified in emergency behavior intervention must:

(1) Monitor [~~monitor~~] the:

(A) Personal restraint to make sure it is being performed appropriately; and

(B) Child's [~~child's~~] breathing and other signs of physical distress; and

(2) Take [~~take~~] appropriate action to ensure adequate respiration, circulation, and overall well-being.

(b) If available, a caregiver who is not restraining the child should monitor the child. However, general residential operations [~~and residential treatment centers~~] with a capacity of more than 16 children must monitor prone and supine restraints as required in §748.2605(b) of this title (relating to What personal restraint techniques are prohibited?).

§748.2603. *What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?*

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates the child [he] cannot breathe and immediately seeking medical assistance from a health-care professional.

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) 438-3854



DIVISION 7. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A MECHANICAL RESTRAINT

40 TAC §748.2701

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2701. *What are the additional responsibilities for implementing a mechanical restraint?*

(a) - (d) (No change.)

(e) You must notify a child's parent that mechanical restraint was used on the child within 72 hours after the restraint is concluded.

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 October 10, 2016.

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Trevor Woodruff
General Counsel
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DIVISION 8. SUCCESSIVE USE AND COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2751

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2751. *May a caregiver successively use emergency behavior interventions on a child?*

(a) - (b) (No change.)

(c) A caregiver must allow the child:

(1) Bathroom privileges as needed and at least once every two hours;

(2) - (5) (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 9. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§748.2801, 748.2805, 748.2807

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2801. *What is the maximum length of time that an emergency behavior intervention can be administered to a child?*

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

Figure: 40 TAC §748.2801

[Figure: 40 TAC §748.2801]

§748.2805. *Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?*

A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

Figure: 40 TAC §748.2805

[Figure: 40 TAC §748.2805]

§748.2807. *May continuation orders be obtained verbally to exceed the maximum length of time that seclusion or mechanical restraint can be administered to a child?*

(a) (No change.)

(b) If the seclusion and mechanical restraint continues beyond the maximum length of time, then the caregiver must allow the child:

(1) Bathroom privileges as needed and at least once every two hours;

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

(c) (No change.)

(d) In no event may the order permit the seclusion or mechanical restraint to exceed four hours.

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

Earliest possible date of adoption: November 20, 2016

For further information, please call: (512) 438-3854



DIVISION 10. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2855

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2855. *When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?*

(a) As soon as possible, but no later than 24 hours after the initiation of the emergency behavior intervention, the caregiver involved in the intervention must document in the child's record the following information:

(1) - (8) (No change.)

(9) The names of any witnesses to the emergency behavior intervention, including any child in care who witnessed the intervention;

(10) [(9)] All attempts to explain to the child what behaviors were necessary for release from the intervention;

(11) [(10)] The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention. If the child received medical assistance or treatment, the caregiver must document the name of the person(s) who provided medical assistance or treatment; and

(12) [(11)] The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.

(b) - (f) (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

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Department of Family and Protective Services

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DIVISION 11. TRIGGERED REVIEWS

40 TAC §§748.2901, 748.2905, 748.2907

STATUTORY AUTHORITY

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 HRC §42.042.

§748.2901. *What circumstances trigger a review of the use of emergency behavior intervention for a specific child?*

(a) The following circumstances trigger a review for certain emergency behavior interventions:

Figure: 40 TAC §748.2901(a)

[Figure: 40 TAC §748.2901]

(b) You may exceed the number of restraints otherwise allowed in (2) Personal restraint of Figure: 40 TAC §748.2901(a) for a child if a licensed psychiatrist or psychologist issues a written order or if a service planning team makes a recommendation allowing you to do so and you ensure the following:

(1) If applicable, the recommendation from the service planning team includes the same written information as an order, as specified in §748.2505 of this title (relating to What information must a written order include?); and

(2) At least one triggered review is conducted in accordance with §748.2907 of this title (relating to What must the triggered review include and what must be documented in the child's record?) every 30 days that personal restraints in excess of the threshold are authorized.

§748.2905. *Who must participate in the triggered review?*

(a) A full service planning team must participate in the triggered review. You must invite the child, as appropriate, and the parents to the review, so they may have the opportunity to participate and provide input into the content of the review. However, you are not required to delay a review because a parent or child is unable to participate in the review at its scheduled time.

(b) Even if the child is not receiving treatment services, the two additional professions required in §748.1339(b) of this title (relating to Who must be involved in developing an initial service plan?) must be involved in the triggered review.

§748.2907. *What must the triggered review include and what must be documented in the child's record?*

(a) Except in cases in which the regularly scheduled review of the child's service plan also addresses the requirements of a triggered review in accordance with §748.2903(b) of this title (relating to When must a triggered review occur?), a triggered review is not a full review of the child's service plan and is focused on the requirements identified in subsection (c) of this section.

(b) Other than the requirements in this section and in §748.2905 of this title (relating to Who must participate in the triggered review?), the notification, participation, implementation, and documentation requirements in Division 4 of Subchapter I (relating to Admission, Service Planning, And Discharge) do not otherwise apply to a triggered review.

(c) The following must be included in a triggered review and documented in the child's record:

{(1) The same items that must be included and documented in an initial service plan (see §748.1337 of this title (relating to What must a child's initial service plan include?));}

(1) [(2)] A review of the records and orders of the emergency behavior interventions;

(2) [(3)] A review and documentation of any potential medical or psychiatric reason for not using emergency behavior interventions on the child, including the prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention;

(3) [(4)] An examination of identified behaviors and patterns, any significant events leading up to the use of emergency behavior intervention, and all attempted de-escalation methods, whether successful or unsuccessful; [alternatives to manage the child's behavior and to assist the child in managing his own behavior; and]

(4) Identification of alternatives to manage the child's behavior and more effectively prevent the use of emergency behavior intervention in the future; and

(5) A written plan for reducing the need for emergency behavior intervention.

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 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION

The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendments to §§749.2281, 749.2283, 749.2331, 749.2335, and 749.2337, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies (CPAs).

BACKGROUND AND PURPOSE

The purpose of the amendments are to clarify the purpose, scope and notification requirements related to the use of Emergency Behavior Intervention (EBI) on a child in care. In late 2015, DFPS began development of rules related to Child Protective Services and the provision of notice of significant events to key parties involved in the life of a child in care. See the February 12, 2016, issue of the *Texas Register* (41 TexReg 1372) and the May 20, 2016, issue of the *Texas Register* (41 TexReg 3754). In the course of discussions related to what constitutes a significant event, several stakeholders voiced concern regarding when or whether those parties would learn about the use of Emergency Behavior Intervention (EBI) on a child in care. In particular, there was general consensus that while CPS as the parent would not receive notice of each use of EBI, if the use of EBI reached the threshold at which an operation was required to hold a triggered review of EBI, CPS should be notified. However, this notification requirement was not clear in the relevant Minimum Standards, nor were all in agreement that the threshold for a review to be triggered was set appropriately.

Given the critical nature of the issues, DFPS undertook an immediate review of the related Minimum Standards. See the May 20, 1026, issue of the *Texas Register* (41 TexReg 3754). As a part of this review, the agency convened a temporary workgroup

of affected providers, advocates, and agency staff in accordance with Texas Human Resources Code §42.042(i). The workgroup reached consensus regarding the need to clarify notification requirements related to triggered reviews, to add specificity regarding the purpose and scope of a triggered review, and to putting into place additional parameters if the operation is authorized to utilize personal restraints in excess of the limit ordinarily in place for the operation. DFPS also received information from individual workgroup members regarding other state and national practices and standards around EBI, which it reviewed in order to make additional recommendations to the Executive Commissioner and Executive Council. DFPS also included in the proposed changes that relate to EBI but were identified as part of the separate comprehensive review of Chapter 748. Those changes are primarily related to updating and clarifying existing language, and DFPS determined it would be of maximum clarity to the public to bundle the proposed changes together rather than propose two separate packets that affect Minimum Standards related to EBI.

Finally, in order to make its rules consistent as appropriate, DFPS is proposing corresponding amendments to those identified for Chapter 748, related to General Residential Operations in Chapter 749, related to Child-Placing Agencies.

SECTION-BY-SECTION SUMMARY

The amendment to §749.2281 limits the maximum length of time a personal restraint, other than a prone or supine restraint, may be utilized on a child of any age to 30 minutes.

The amendment to §749.2283: eliminates the possibility of an extension past the maximum length of time for a personal restraint.

The amendment to §749.2331: (1) modifies threshold for triggered review of personal restraints to require a review if the same child is restrained either four times in a seven-day period or more than 12 times in a single 30-day period; and (2) retains existing authority for qualified individuals to authorize personal restraints in excess of the threshold above; adds requirement that in any 30-day period during which such excess restraints are authorized, the operation must conduct at least one triggered review in accordance with the subchapter.

The amendment to §749.2335: (1) specifies that parents and child, as applicable, must be invited to a triggered review so that they are given notice and an opportunity to participate; and (2) clarifies that if parent or child is invited but cannot participate, the operation is not required to delay the review so that the parent or child can participate.

The amendment to §749.2337 clarifies content and focus of a triggered review meeting.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no

anticipated economic cost to persons who are required to comply with the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is that requirements regarding the use of EBI will be clarified and, as appropriate, limited to further improve the safety and well-being of children in the care of a regulated operation.

The rule changes do impose some additional limitation on the use of EBI. However, they are not anticipated to have any direct fiscal implications. Requiring notification of a triggered review to the parent and child, as applicable, was arguably implied in prior standards and presents an insubstantial outlay of time and effort. Additional limitations related to mechanical restraints are unlikely to have any implications. Agency data reflect that there have been only 3 instances of mechanical restraints being utilized on children in care in the preceding 3 years. Decreasing the time limit for personal restraints and disallowing extension orders should have minimal impact in that lengthy personal restraints are not known to be common, and if the emergency continues, the operation may initiate a new restraint. The same is true for seclusion. Requiring a triggered review in any 30-day period in which personal restraints are authorized in excess of the general limitation should also have minimal impact, if any. Providers who participated in the temporary workgroup reported that such authorization is extremely rare, and only one provider could recall an instance of it occurring over the preceding decade. Clarifying the scope of a triggered review is a simplification for providers, and will permit them to focus on the issues related to EBI rather than being required to undergo a full service plan update. Finally, many of the rules relate primarily to updating and clarifying terminology and are similarly not expected to have any fiscal consequences.

TAKINGS IMPACT ASSESSMENT

Ms. Subia has determined that the proposed amendments 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.

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in DFPS's Legal Services Division. Electronic comments may be submitted to Audrey.Carmical@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-559, 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*.

DIVISION 7. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2281, §749.2283

STATUTORY AUTHORITY

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 HRC §42.042.

§749.2281. What is the maximum length of time that an emergency behavior intervention can be administered to a child?

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

Figure: 40 TAC §749.2281

[Figure: 40 TAC §749.2281]

§749.2283. Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?

A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

Figure: 40 TAC §749.2283

[Figure: 40 TAC §749.2283]

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

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DIVISION 9. TRIGGERED REVIEWS

40 TAC §§749.2331, 749.2335, 749.2337

STATUTORY AUTHORITY

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 HRC §42.042.

§749.2331. What circumstances trigger a review of the use of emergency behavior intervention for a specific child?

(a) The following circumstances trigger a review for certain emergency behavior interventions:

Figure: 40 TAC §749.2331(a)

Figure: 40 TAC §749.2331

(b) You may exceed the number of restraints otherwise allowed in (2) Personal restraint of Figure: 40 TAC §749.2331(a) for a child if a licensed psychiatrist or psychologist issues a written order or

if a service planning team makes a recommendation allowing you to do so and you ensure the following:

(1) If applicable, the recommendation from the service planning team includes the same written information as an order, as specified in §749.2105 of this title (relating to What information must a written order include?); and

(2) At least one triggered review is conducted in accordance with §749.2337 of this title (relating to What must the triggered review include and what must be documented in the child's record?) every 30 days that personal restraints in excess of the threshold are authorized.

§749.2335. Who must participate in the triggered review?

(a) The service planning team must participate in the triggered review.

(b) You must invite the child, as appropriate, and the parents to the review, so they may have the opportunity to participate and provide input into the content of the review. However, you are not required to delay a review because a parent or child is unable to participate in the review at its scheduled time.

§749.2337. What must the triggered review include and what must be documented in the child's record?

(a) Except in cases in which the regularly scheduled review of the child's service plan also addresses the requirements of a triggered review in accordance with §749.2333(b) of this title (relating to When must a triggered review occur?), a triggered review is not a full review of the child's service plan and is focused on the requirements identified in subsection (c) of this section.

(b) Other than the requirements in this section and in §749.2335 of this title (relating to Who must participate in the triggered review?), the notification, participation, implementation, and documentation requirements in Division 4 of Subchapter I (relating to Admission, Service Planning, And Discharge) do not apply to a triggered review.

(c) The following must be included in a triggered review and documented in the child's record:

{(1) The same items that must be included and documented in an initial service plan, (see §749.1309 of this title (relating to What must a child's initial service plan include?));}

(1) [(2)] A review of the records and orders of the emergency behavior interventions;

(2) [(3)] A review and documentation of any potential medical or psychiatric reason for not using emergency behavior interventions on the child, including the prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention;

(3) [(4)] An examination of identified behaviors and patterns, any significant events leading up to the use of emergency behavior intervention, and all attempted de-escalation methods, whether successful or unsuccessful; [alternatives to manage the child's behavior and to assist the child in managing his own behavior; and]

(4) Identification of alternatives to manage the child's behavior and more effectively prevent the use of emergency behavior intervention in the future; and

(5) A written plan for reducing the need for emergency behavior intervention.

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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