

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 79. BUSINESS ENTITY FILINGS SUBCHAPTER C. ENTITY NAMES

The Office of the Secretary of State (hereinafter referred to as "the Office") proposes to reorganize Chapter 79, Subchapter C, relating to entity names, by proposing the repeal of 1 TAC §§79.30 - 79.50, 79.53 and 79.54 and the concurrent proposal of new §§79.30 - 79.46. The repeal and replacement of Chapter 79, Subchapter C are proposed to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Business Organizations Code enacted by the 85th Legislature, Regular Session, in House Bill 2856, effective June 1, 2018 (hereinafter referred to as "HB 2856").

In addition to the general changes noted above, the following specific changes are proposed:

Section 79.30 of the proposed rules sets forth definitions of consent, key word, and simultaneous submission which are terms used throughout the amended subchapter.

Section 79.31 of the proposed rules sets forth the applicability of the entity name rules by specifying the entity types subject to the rules and the circumstances in which the Office may accept a name.

Section 79.32 of the proposed rules sets forth the characters of print that are acceptable in entity names.

Section 79.33 of the proposed rules specifies that an entity name may not falsely imply a governmental affiliation or imply a purpose that would be unlawful for the entity to conduct. Additionally, the proposed rules specify that entity names that include certain words that imply an unlawful purpose must be accompanied by additional words that remove such implication.

Section 79.34 of the proposed rules sets forth words that require consent from either the United States Olympic Committee, Banking Commissioner, Higher Education Coordinating Board, or a veterans organization in order to be acceptable for filing.

Section 79.35 of the proposed rules specifies that foreign words that appear in an entity name will not be translated and that the use or omission of different articles, prepositions, or conjunctions of speech, although in a foreign language does not make an entity name distinguishable on the record.

Section 79.36 of the proposed rules specifies that entity names deemed to be grossly offensive are not acceptable.

Section 79.37 of the proposed rules specifies acceptable and non-acceptable organizational identifiers and clarifies when an organizational identifier operates to make an entity name distinguishable on the record.

Section 79.38 of the proposed rules sets forth the circumstances that make a proposed entity name distinguishable on the record and therefore acceptable for filing.

Section 79.39 of the proposed rules sets forth the circumstances that make a proposed entity name the same and therefore unacceptable for filing.

Section 79.40 of the proposed rules sets forth the circumstances under which names that are not distinguishable on the record are available with consent.

Section 79.41 of the proposed rules sets forth the manner in which names requiring consent will be reviewed and how the Office determines the entity from which consent will be required.

Section 79.42 of the proposed rules sets forth the form of consent which is acceptable.

Section 79.43 of the proposed rules establishes how alphabet names will be treated when determining which names are distinguishable on the record.

Section 79.44 of the proposed rules sets forth the matters not considered by the Office when making a name availability determination.

Section 79.45 of the proposed rules specifies that a final determination on a proposed entity name is not made until a document is submitted for filing and either filed or rejected by the Office.

Section 79.46 of the proposed rules sets forth that the examples provided in the rules are not exhaustive or exclusive.

FISCAL NOTE

Briana Godbey, Legal Manager of the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no significant fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

Public Benefit and Small Business Cost Note

Ms. Godbey has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to conform to the rules to the statutory revisions made by HB 2856 which will have the effect of simplifying the naming convention of business entities. There will be no effect on small or micro businesses or on rural communities. There is no anticipated ad-

ditional economic cost to persons who are required to comply with the proposed rules.

Government Growth Impact Statement

Finally, Ms. Godbey has determined that for each year of the first five years the sections are in effect, the rules will have the following effect on government growth. The proposed changes will not create or eliminate any government programs and will not create or eliminate any employee positions. Additionally, the proposed changes will not have an effect on appropriations to the agency or fees paid to the agency. The proposed changes do include new rules; therefore, by definition, the proposed changes create new regulations. However, the proposed changes do not expand, limit, or repeal any existing regulations. Certain business entity documents submitted to the Office are required to undergo a name availability determination. The same documents will still be required to undergo a name availability determination; however, the standards for making the determination have changed. The new standard should reduce the number of documents that are rejected due to a name conflict. Additionally, the proposed changes neither increase nor decrease the number of individuals subject to the applicability of the rules. The rules implement the changes to the name availability standard applied by the Office to business entity documents. The changes are not expected to affect the number of business entity documents filed by the Office. As a result, the rule is not anticipated to affect the state's economy.

COMMENTS

Comments on the proposed repeal and replacement of Chapter 79, Subchapter C may be submitted in writing to: Briana Godbey, Office of the Secretary of State, Business and Public Filings Division, P.O. Box 13697, Austin, Texas 78711-3697 or bgodbey@sos.texas.gov. Comments must be received not later than 12:00 noon, Friday, May 4, 2018.

1 TAC §§79.30 - 79.50, 79.53, 79.54

STATUTORY AUTHORITY

The repeal of 1 TAC §§79.30 - 79.50, 79.53 and 79.54 is proposed under the authority of §12.001 of the Code, which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Cross reference:

Chapter 5 of the Business Organizations Code

§9.105 Texas Business Organizations Code

§11.203 Texas Business Organizations Code

§79.30. *Applicability.*

§79.31. *Characters of Print Acceptable in Names.*

§79.32. *False Implication of Governmental Affiliation; False Implication of Purpose.*

§79.33. *Grossly Offensive Name.*

§79.34. *Words of Organization.*

§79.35. *Categories of Name Similarity.*

§79.36. *Same or Identical Defined.*

§79.37. *Deceptively Similar Defined.*

§79.38. *Deceptively Similar Name Not Acceptable.*

§79.39. *Deceptively Similar Name.*

§79.40. *Similar Requiring Letter of Consent Defined.*

§79.41. *Similar Requiring Letter of Consent Acceptable with Letter.*

§79.42. *Form of Consent.*

§79.43. *Similarity of Names Requiring Letter of Consent.*

§79.44. *Alphabet Names.*

§79.45. *Surnames.*

§79.46. *Exception for Churches and Ministries.*

§79.47. *Foreign Words Not Translated.*

§79.48. *Matters Not Considered.*

§79.49. *Final Determination of Name Availability.*

§79.50. *Professional Entities.*

§79.53. *Restricted Words.*

§79.54. *Examples Not Exclusive.*

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 March 26, 2018.

TRD-201801281

Carmen Flores

Interim General Counsel

Office of the Secretary of State

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 463-5590



1 TAC §§79.30 - 79.46

STATUTORY AUTHORITY

The concurrent proposal of new §§79.30 - 79.46 is proposed under the authority of §12.001 of the Code, which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Cross reference:

Chapter 5 of the Business Organizations Code

§9.105 Texas Business Organizations Code

§11.203 Texas Business Organizations Code

§79.30. *Definitions.*

The following terms as used in this Chapter shall have the following meanings:

(1) "Consent" means written notarized consent signed by an officer or authorized agent of the consenting entity.

(2) "Key word" means a word, other than an article of speech, preposition, conjunction or an organizational identifier.

(3) "Simultaneous submission" means the submission of two or more documents at the same time under the same cover by mail, fax or delivery. The submitter and payment must be the same for all documents being submitted simultaneously.

§79.31. *Applicability.*

(a) Pursuant to §5.053 of the Texas Business Organizations Code, a proposed entity name must be distinguishable on the record from the name of a Texas or registered foreign corporation, limited partnership, or limited liability company. Such names may be set forth in an entity's organizational document, reserved or registered name, or application for a foreign entity to transact business in Texas. Wherever

the terms "entity" or "entities" appear in this entity name availability section, they may be replaced with the following terms: "domestic or foreign corporation"; "domestic or foreign limited partnership"; or "domestic or foreign limited liability company" or the plural of such terms.

(b) Except as provided by subsection (c) of this section, the secretary of state may only accept for filing proposed entity names which are distinguishable on the record from the name of any existing entity, name registration or name reservation. The Secretary may not accept for filing proposed entity names which are the same and may not accept those which are not distinguishable on the record unless consent is granted in accordance with §79.40 of this subchapter (relating to Names that are available with consent).

(c) The secretary of state may accept a name if the entity or person seeking acceptance of the filing instrument with the indistinguishable name delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction that establishes the entity's or person's right to the name in this state.

§79.32. Characters of Print Acceptable in Names.

(a) Entity names may consist of letters of the Roman alphabet, Arabic numerals, symbols capable of being reproduced on a standard English language keyboard, and such other symbols as permitted by the secretary of state's database and as posted on the secretary of state's website, or a combination thereof.

(b) No distinction as to type face or font in the presentation of an entity name will be recognized. Subscript or superscript characters cannot be entered into the computer records of the secretary of state; consequently, such characters will not appear above or below the other characters in the entity name. Example: H2 O will appear as H2O. The secretary of state, however, will recognize the use of either upper or lower case letters in the presentation of the entity name.

(c) Arabic numerals include 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(d) The symbols recognized as part of a name may include ! " \$ % ' () * ? # = @ [] / + & and -.

§79.33. False Implication of Governmental Affiliation; False Implication of Purpose.

(a) The entity name may not be one that might falsely imply governmental affiliation (example: Texas Real Estate Commission, Inc.).

(b) The entity name may not imply a purpose that would be unlawful for the entity to conduct.

(1) The words "insurance" or "surety" must be accompanied by other words that remove the implication that the entity purpose is to be an insurer. The name may include the phrase "insurance agency," "insurance agent," "surety agency," or "surety agent."

(A) Example: John Hancock Insurance Company or A-1 Surety Company would not be filed.

(B) Example: John Hancock Insurance Agency, Inc. or A-1 Surety Agents, Company would be filed.

(2) The words "bail bond" imply an unlawful purpose as entities with these powers must be organized under the Texas Insurance Code and these words may not be used in the name of a business entity. Example: Ace Bail Bonds, Inc. would not be filed.

§79.34. Restricted Words.

(a) An entity name cannot include the words, "Olympic," "Olympiad," or "Citius Altius Fortius," or a combination or simulation of those words or use a trademark, trade name, symbol or insignia of the International Olympic Committee or the United States Olympic

Committee without the authorization or permission of the United States Olympic Committee. Example: Olympian Tours, Inc. would require a letter of consent, authorization, or no objection from the United States Olympic Committee. Example: Olympic Construction Company would require a letter of consent, authorization or no objection from the United States Olympic Committee.

(b) An entity name cannot include the words "Trust," "Bank," "Banque," "Banking," "Banker," or "Bancshares," may be used without a no objection letter from the Banking Commissioner.

(c) An entity name cannot include the words "College," "University," "School of Medicine," "Medical School," "Health Science Center," "School of Law," "Law Center," or "Law School," whether in English or in another language without a no objection letter prior to approval from the Higher Education Coordinating Board.

(d) An entity name cannot include the words "Veteran," "Legion," "Foreign," "Spanish," "Disabled," "War," or "World War" if the name implies the entity is created for the benefit of war veterans and their families, without written approval letter issued from a veterans organization pursuant to §5.062 of the Texas Business Organizations Code.

§79.35. Foreign Words Not Translated.

(a) Although entity names may consist, in whole or in part, of words in a foreign language which utilize letters of the Roman alphabet, such words will not be translated for purposes of determining entity name availability.

(1) Example: "Tejas Enterprises" is distinguishable on the record from "Texas Enterprises".

(2) Example: "Casa Blanca Productions" is distinguishable on the record from "White House Productions".

(b) Where the difference in the names consists in the use or omission of different articles, prepositions, or conjunctions of speech, although in a foreign language, the names will be considered the same.

(1) Example: "Las Brisas" is the same as "Brisas".

(2) Example: "La Boutique" is the same as "Le Boutique".

§79.36. Grossly Offensive Name.

The entity name may not be one that is deemed to be so grossly offensive as to be unacceptable as an entity name.

§79.37. Organizational Identifiers.

(a) Acceptable organizational identifiers are set forth in §§5.054 - 5.059 of the Texas Business Organizations Code.

(b) The following words, when used alone, do not satisfy the statutory requirements for organizational identifiers:

(1) "companies," "corporations," "incorporation," and "unlimited;"

(2) "limited partnerships;" and

(3) "limited" or "company," to identify a limited liability company.

(c) The organizational identifiers in §§5.054 - 5.059 of the Texas Business Organizations Code, when they operate as the organizational identifier for the entity or appear after all of the key words in the name, are not sufficient to make a name distinguishable on the record.

(d) A nonprofit corporation may omit an organizational identifier, but may not solely have an organizational identifier which is not consistent with §5.054 of the Texas Business Organizations Code.

(e) The addition or subtraction of the abbreviations Inc., LLC, and PLLC to a name, when these abbreviations do not operate as an organizational identifier for the entity, do not make the name distinguishable on the record.

(f) The words "public benefit corporation," the abbreviation "P.B.C.," or the designation "PBC" may be used as the words of organization for a domestic public benefit corporation.

§79.38. Distinguishable Names.

Proposed entity names are considered distinguishable on the record if:

(1) There is a difference of at least one key word.

(A) "Sunshine Community Development" is distinguishable on the record from "Sunshine Community Properties".

(B) "United" is distinguishable on the record from "United One".

(C) "Real Homes of Austin" is distinguishable on the record from "Real Homes".

(D) "Texas Cowboys" is the same as "The Texas Cowboys".

(2) The key words are the same but are in a different order.

(A) "Summit Energy" is distinguishable on the record from "Energy Summit".

(B) "Global One" is distinguishable on the record from "One Global".

(C) "Austin Auto Parts" is distinguishable on the record from "Auto Parts of Austin".

(3) The key words or contractions of key words are derived from the same root word.

(A) "Great Products" is distinguishable on the record from "Great Productions".

(B) "Magic Professionals" is distinguishable on the record from "Magical Professionals".

(4) The key words are the same but are in a different language.

(A) "Casa Blanca Productions" is distinguishable on the record from "White House Productions".

(B) "Tejas Enterprises" is distinguishable on the record from "Texas Enterprises".

(C) "El Rodeo" is the same as "Rodeo" or "The Rodeo".

(5) The key word or words sound the same but at least one word, on its face, has a different meaning or connotation.

(A) "Jones Tires" is distinguishable on the record from "Joan's Tires".

(B) "Capitol Investments" is distinguishable on the record from "Capital Investments".

(C) "Express Auto" is the same as "Xpress Auto".

(D) "One World" is the same as "1 World".

(6) The key word or words are the same except for the addition, substitution, or omission of prepositions which alter the names sufficiently to make the names readily distinguishable.

(A) "In the Know" is distinguishable on the record from "Know".

(B) "Friends" is distinguishable on the record from "Between Friends".

(C) "Books for People" is distinguishable on the record from "Books by People".

(D) "Look to the Future" is the same as "Look toward the Future".

§79.39. Same Defined.

Proposed names are considered the same therefore are not available if a comparison of the names reveals no differences or if the only difference between the proposed name and the existing name is one or more of the following:

(1) The use of upper case or lower case letters, distinctive lettering or typeface, or the use of superscript or subscript letters or numerals.

(A) "ACE Woodworks" is the same as "Ace Woodworks".

(B) "H2O Supplies" is the same as "H₂O Supplies".

(C) "NXNW" is the same as "NxNw".

(2) The addition, substitution, or omission of punctuation marks, accent marks, periods, spaces, or symbols that do not alter the name sufficiently to make the names readily distinguishable.

(A) "A.F.G. Consulting" is the same as "AFG Consulting".

(B) "Explore!" is the same as "Explore".

(C) "Crossroads Productions" is the same as "Cross Roads Productions".

(D) "Gotham" is distinguishable on the record from "Got Ham".

(3) The addition, substitution, or omission of different articles or conjunctions that do not alter the name sufficiently to make the names readily distinguishable.

(A) "The Truck Stop" is the same as "Truck Stop".

(B) "Fair View, a Rest Home" is the same as "Fairview Rest Home".

(4) The repetition, absence, or difference in letters that does not alter the names sufficiently to make the names readily distinguishable.

(A) "Texxxas Strong" is the same as "Texas Strong".

(B) "Going Strong" is the same as "Goin' Strong".

(C) "XX Tires" is distinguishable on the record from "X Tires".

§79.40. Names that are available with consent.

A proposed name is available with consent, under one or more of the following circumstances:

(1) The names are the same except for the existence, addition, substitution, or absence of a word, phrase, or abbreviation that identifies or indicates different types of entities.

(A) "Sampson, Inc." is available with consent from "Sampson, PLLC".

(B) "Adventure Unlimited, a Limited Liability Company" is available with consent from "Adventure Unlimited, LP".

(C) "Love Foundation" is the same as "Love Foundation, Inc."

(D) "ABC, LLC" is the same as "ABC Limited Liability Company".

(E) "Wild West, Inc." is distinguishable on the record from Wild West Companies, Ltd."

(2) The names are the same except for the use of a common abbreviation of the same word.

(A) "Smith Brothers Plumbing" is available with consent from "Smith Bros. Plumbing".

(B) "Steel Manufacturing Supplies" is available with consent from "Steel Mfg Supplies".

(C) "Sweet Treats of Dallas Ft. Worth" is available with consent from "Sweet Treats of DFW".

(D) "United States Enterprises" is available with consent from "U.S.A. Enterprises".

(3) The names are the same except for the use of the singular, plural, or possessive form of a word if the difference does not alter the name sufficiently to make the names readily distinguishable.

(A) "On the Banks" is available with consent from "On the Bank".

(B) "Child's Play is distinguishable on the record from "Children's Play".

(4) The only difference in the names is the addition or omission of a state to a name which already includes a city and which does not alter the name sufficiently to make the names readily distinguishable.

(A) "Resources of Austin, Texas" is available with consent from "Resources of Austin".

(B) "Atlanta Feed Company" is available with consent from "Atlanta, Georgia Feed Co."

(C) "Elite Realty of Athens, TX" is distinguishable on the record from "Elite Realty of Athens, GA".

§79.41. Administrative Review of Documents with Names Requiring Consent.

(a) A proposed name which is deemed to require consent cannot be filed without consent. No waiver of consent will be allowed even under the following conditions:

(1) there is related management or ownership;

(2) the existing entity is not actively engaged in business;

(3) the existing entity is about to change its name, be terminated, forfeited, or merged out of existence.

(b) The consent must accompany the document to which the consent relates at the time of submission.

(c) Upon the simultaneous submission of any filing instruments relating to the formation of two or more related entities, consent for the use of a name requiring consent will be implied. Example: Consent is not required for the simultaneous formation of a Texas limited partnership named ABC Ventures, Ltd. and its general partner, ABC Ventures, LLC.

(d) If proposed entity name conflicts with more than one entity name, the secretary of state will request that consent be obtained from the entity with the longest continuous use of the entity name as determined by the records of the secretary of state.

§79.42. Form of Consent.

The consent must be in writing and signed by an officer or authorized agent of the consenting entity. The signature of the person providing consent must be notarized. Consent given orally cannot be accepted. Consent from more than one entity may be required in some instances. Consent must not state conditions; it must give unequivocal consent.

§79.43. Alphabet Names.

Where a name or a unit of names consists of initials only or letters of the alphabet, the combination of initials will be considered as one word for the purpose of applying name availability rules.

(1) Example: The following are different "words" and are distinguishable on the record:

(A) A & A;

(B) AA;

(C) AAA;

(D) ABA;

(E) AAB.

(2) Example: A & B Supply is distinguishable on the record when compared to A & B, Inc.

(3) Example: A+A Car Rental, Inc. is the same as A & A Car Rental, Inc.

(4) Example: A and B Trucking, Inc. is distinguishable on the record when compared to AB Trucking, LLC.

§79.44. Matters Not Considered.

Only the proposed entity name, the current names of active (not revoked, cancelled, merged, dissolved, withdrawn, terminated, or forfeited) entities, name reservations, and name registrations for entities on file are considered in determining the availability of the entity name for purposes of filing with the secretary of state. Among matters not considered are the following:

(1) whether the purpose of a proposed entity is the same as or similar to the purpose of an existing entity;

(2) whether the entities will be carrying out activities in the same or nearby locations;

(3) whether an analogous situation has previously been acted upon by the Office;

(4) whether an "opinion" as opposed to a final determination has previously been expressed by an employee of the secretary of state in response to an oral or written request;

(5) whether an existing entity is actively engaged in business, or has a telephone listing, or a location of a place of business;

(6) whether an existing entity is about to change its name, or be terminated, or merged out of existence;

(7) whether a response to an inquiry can be obtained from an existing entity;

(8) whether the applicant has ordered stationery, opened a bank account, signed a contract, or otherwise taken other actions in the expectation, hope, or belief that the proposed name would be available;

(9) whether the applicant is more or less important, extensive, widely known, or influential than an existing entity;

(10) whether a previous determination on the same name was made by an employee of the secretary of state;

(11) whether an existing entity has filed for or intends to file for bankruptcy; or

(12) whether an applicant's submission of a document relating to the entity name at issue was prior to the submission of the document effecting the conflicting existing name.

§79.45. Final Determination of Name Availability.

An employee of the Office may express an opinion on name availability in response to a written, telephone, or other oral request, but such an opinion is not a final determination that the name will or will not be accepted for filing and stamped filed. A final determination is made only when the document is submitted for filing.

§79.46. Examples Not Exclusive.

(a) The conditions used in these sections are not meant to be exclusive, nor should they be used to limit the determination of whether a proposed name is distinguishable on the record from the name of an existing entity.

(b) The examples used in these sections are not meant to be exclusive, nor should they be used to limit the determination of whether a proposed name is distinguishable on the record from the name of an existing entity.

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 March 26, 2018.

TRD-201801282

Carmen Flores

Interim General Counsel

Office of the Secretary of State

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 463-5590



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER P. MENTAL HEALTH TARGETED CASE MANAGEMENT AND MENTAL HEALTH REHABILITATION

1 TAC §§353.1401, 353.1403, 353.1405, 353.1407, 353.1409, 353.1411, 353.1413, 353.1415, 353.1417, 353.1419

The Texas Health and Human Services Commission (HHSC) proposes new Title 1, Chapter 353 (Medicaid Managed Care), Subchapter P, concerning Mental Health Targeted Case Management and Mental Health Rehabilitation, §§353.1401, 353.1403, 353.1405, 353.1407, 353.1409, 353.1411, 353.1413, 353.1415, 353.1417, 353.1419.

BACKGROUND AND PURPOSE

Senate Bill (S.B.) 58, 83rd Legislature, Regular Session, 2013, integrated two Medicaid State Plan mental health benefits, mental health targeted case management (TCM) and mental health rehabilitative (MHR) services, into Medicaid managed care. Prior to S.B. 58, the local mental health authorities (LMHAs) operated under the Texas Department of State Health

Services were the sole providers of these services. Effective September 1, 2014, Medicaid managed care organization contracted providers of mental health TCM and MHR services, in addition to LMHAs, were allowed to deliver these benefits. HHSC is proposing these rules to provide managed care organizations and contracted mental health TCM and MHR comprehensive provider agencies, including local mental health and local behavioral health authorities, with necessary guidance on the delivery of these two services to ensure the services are delivered appropriately.

SECTION-BY-SECTION SUMMARY

Proposed new §353.1401, Purpose, sets forth the purpose of the subchapter.

Proposed new §353.1403, Definitions, defines words and terms used throughout the subchapter.

Proposed new §353.1405, Managed Care Organization Responsibilities, sets forth Medicaid managed care organization responsibilities in providing mental health TCM and MHR through comprehensive provider agencies.

Proposed new §353.1407, Information Systems and Medical Records Systems, sets forth requirements related to management information systems, medical records, documentation retention, and disaster recovery plans for information resources.

Proposed new §353.1409, Patient Safety, Rights, and Protections, requires effective communication with individuals receiving TCM or MHR services and cross references other rules regarding patient safety, rights, and protections with which MCOs and comprehensive provider agencies must comply.

Proposed new §353.1411, Access to Mental Health Services, outlines requirements for a comprehensive provider agency's telephone system access as well as crisis services access during non-business hours.

Proposed new §353.1413, Staff Member Competency, outlines the knowledge and training requirements for comprehensive provider agency staff members.

Proposed new §353.1415, Staff Member Credentialing, outlines the specific minimum qualifications for specific staff member positions.

Proposed new §353.1417, Comprehensive Provider Agency Requirements for Staff Member Credentialing and Appeals, outlines the requirements for a comprehensive provider agency's credentialing process, including appeals, and gives comprehensive provider agencies the option to use the managed care organization's credentialing and appeals process.

Proposed new §353.1419, Supervision Requirements, outlines requirements for staff member supervision, including specific requirements based on licensure or staff member position.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rules are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will not expand, limit, or repeal an existing rule (*in the sense that those required to comply will be required to do less or more based on the proposal*); and
- (7) the proposed rules will not change the number of individuals subject to the rule.

HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

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

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be to provide managed care organizations and contracted mental health TCM and MHR comprehensive provider agencies with necessary guidance on the delivery of these two services to ensure the services are delivered appropriately.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Penny Larkin, Senior Policy Advisory, 4900 North Lamar, Mail Code 1045, Austin, Texas 78751; by fax to (512) 487-3455; or by email to HHSRulesCoordinationOffice@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last

day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed by midnight on the last day of the comment period. When faxing or emailing comments, please indicate "Comments on Proposed Rule 1R024" in the subject line.

STATUTORY AUTHORITY

These new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§353.1401. Purpose.

(a) The purpose of this subchapter is to establish requirements for providing mental health targeted case management and mental health rehabilitative services through Medicaid managed care. This subchapter applies to managed care organizations and public and private comprehensive provider agencies of mental health targeted case management and mental health rehabilitative services.

(b) Managed care organizations and public and private comprehensive provider agencies providing mental health targeted case management and mental health rehabilitative services under this subchapter must meet the applicable requirements outlined in Chapter 354, Subchapter M, of this title (relating to Mental Health Targeted Case Management and Mental Health Rehabilitation).

§353.1403. Definitions.

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

- (1) Adult--An individual who is age 21 or older.
- (2) CFP--Certified Family Partner. A person who meets the credentialing requirements in §353.1415(d) of this subchapter (relating to Staff Member Credentialing).
- (3) CFR--Code of Federal Regulations.
- (4) Child or youth--An individual who is under age 21.
- (5) Clinical supervision--An LPHA's or QMHP-CS's oversight of a staff member who delivers mental health targeted case management and mental health rehabilitative services to ensure that services are clinically appropriate and in compliance with this subchapter.
- (6) Community data--Additional information gathered during the uniform assessment.
- (7) CSSP--Community services specialist. A staff member of a local mental health authority who has documented full-time experience in the provision of mental health targeted case management and mental health rehabilitative services prior to August 31, 2004. See definition in 25 TAC §412.303 (relating to Definitions).
- (8) Comprehensive provider agency--An entity that provides or subcontracts for the delivery of the full array of mental health targeted case management and mental health rehabilitative services set forth in Chapter 354, Subchapter M of this title (relating to Mental Health Targeted Case Management and Mental Health Rehabilitation), with the exception of §354.2715 of this title (relating to Day Programs for Acute Needs).

(9) Credentialing--A process by which the comprehensive provider agency reviews and approves a staff member's educational background, work experience, and licensure status (as applicable) to ensure that the staff member meets requirements for staff member credentialing as outlined in §353.1415. The process includes primary source verification of credentials, establishing and applying specific criteria and prerequisites to determine the staff member's initial and ongoing competency, and assessing and validating the staff member's qualifications to deliver care.

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

(11) Individual--A person seeking or receiving mental health targeted case management, mental health rehabilitative services, or both under this subchapter.

(12) Intensive case management--A level of mental health targeted case management that includes a focused effort to coordinate community resources, uses evidence-based wraparound process planning to address a child's or youth's unmet needs across life domains, and assists a child or youth in gaining access to necessary care and services appropriate to the child's or youth's needs.

(13) Intensive case management plan--A written document that is part of the medical record for a child or youth receiving intensive case management and is developed by a case manager, in collaboration with the child or youth and the child's or youth's LAR or primary caregiver, that identifies services needed by the child or youth and sets forth a plan for how the child or youth may gain access to the identified services.

(14) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(15) Life domains--Areas of life, including safety, health, emotional, psychological, social, educational, cultural, and legal.

(16) LPHA--Licensed Practitioner of the Healing Arts. A staff member who is:

- (A) a physician;
- (B) a licensed professional counselor;
- (C) a licensed clinical social worker;
- (D) a licensed psychologist;
- (E) an advanced practice registered nurse;
- (F) a physician assistant; or
- (G) a licensed marriage and family therapist.

(17) Management information system--An information system designed to plan, organize, staff, direct, and control the operations and clinical decision-making of a managed care organization or comprehensive provider agency.

(18) Medication training and support services--Medication training and support services consist of education and guidance about medications and their possible side effects.

(19) Mental health rehabilitative services--Services that are individualized, age-appropriate, and provide training and instructional guidance that restore an individual's functional deficits due to serious mental illness or serious emotional disturbance. The services are designed to improve or maintain the individual's ability to remain in the community as a fully integrated and functioning member of that community.

(20) Mental health targeted case management--Services furnished to assist individuals with severe mental illness and functional impairments or serious emotional disorders and functional impairments to gain access to needed medical, social, educational, and other services.

(21) Peer provider--Staff with lived experience with a mental health condition who meet the credentialing requirements in §353.1415(c) of this subchapter.

(22) Pharmacological management--In-depth management of psychopharmacological agents to treat an individual's mental health symptoms.

(23) Primary caregiver--A person 18 years of age or older who has:

(A) actual care, control, and possession of a child or youth; or

(B) assumed responsibility for providing shelter and care for an adult.

(24) Psychiatric diagnostic evaluation--An integrated biopsychosocial assessment, including history, mental status, and recommendations.

(25) QMHP-CS--Qualified Mental Health Professional-Community Services. Staff who meet the credentialing requirements in §353.1415(a) of this subchapter.

(26) Re-credentialing--The periodic process of reevaluating a staff member's competency and qualifications.

(27) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(28) Recovery or treatment plan (recovery/treatment plan)--A written plan that:

(A) is developed with the individual, the LAR if required, other persons whose inclusion is requested by the individual or LAR and who agree to participate, and a QMHP-CS or LPHA;

(B) is completed in conjunction with the uniform assessment;

(C) is amended at any time based on an individual's needs;

(D) guides the recovery process and fosters resiliency;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) identifies services and supports to meet the individual's goals, preferences, needs and desired outcomes.

(29) Referral and linkage--Activities that help link an individual with medical, social, educational, and other providers that are capable of providing needed services.

(30) Staff member--Comprehensive provider agency personnel, including a full-time or part-time employee, contractor, or intern, but excluding a volunteer.

(31) Strengths-based--The concept used in service delivery that identifies, builds on, and enhances the capabilities, knowledge, skills, and assets of the individual, LAR, or primary caregiver, and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(32) UA--Uniform assessment. A required assessment that assists in determining the medical necessity of services. For adults, the UA includes the Adult Needs and Strengths Assessment (ANSA), community data, relevant rating scales, diagnostic information, and any other state-required assessment tools and procedures. For children or youth, the UA includes the Child and Adolescent Needs and Strengths (CANS) assessment, community data, relevant rating scales, diagnostic information, and any other state-required assessment tools and processes.

(33) Utilization management guidelines--Guidelines developed by HHSC that establish the type, amount, and duration of mental health targeted case management services and mental health rehabilitative services for each individual.

(34) Wraparound Process Planning--A strengths-based approach used in intensive case management to develop an intensive case management plan that addresses the child's or youth's unmet needs across life domains.

§353.1405. Managed Care Organization Responsibilities.

(a) A managed care organization (MCO) must ensure that each contracted comprehensive provider agency meets the requirements established in this subchapter.

(b) An MCO must develop policies, procedures, and contract requirements to ensure that contracted comprehensive provider agencies adhere to the requirements in this subchapter.

(c) An MCO must not approve or contract with a comprehensive provider agency as a provider of mental health targeted case management and mental health rehabilitative services unless the comprehensive provider agency:

(1) is enrolled as a Texas Medicaid provider in accordance with §352.7 of this title (related to Applying for Enrollment);

(2) attests in the credentialing application to the MCO and agrees in the contract to comply with applicable state and federal regulations, rules, policies, and procedures relating to mental health targeted case management and mental health rehabilitative services;

(3) agrees to comply with applicable state and federal laws governing participation of providers in the Medicaid program;

(4) agrees to submit accurate and complete cost reports in accordance with applicable HHSC requirements;

(5) has never been disqualified from being a Medicaid provider;

(6) is not listed on the HHSC Inspector General's Excluded Individuals/Entities Listing;

(7) provides or subcontracts for the full array of mental health targeted case management and mental health rehabilitative services listed in Chapter 354, Subchapter M, of this title (relating to Mental Health Targeted Case Management and Mental Health Rehabilitation), with the exception of §354.2715 of this title (relating to Day Programs for Acute Needs (DPAN)); and

(8) has staff that are credentialed in accordance with §353.1415 of this subchapter (relating to Staff Member Credentialing).

(d) If an MCO contracts with a comprehensive provider agency to provide mental health targeted case management and mental health rehabilitative services specific to children who are at risk of juvenile justice involvement, expulsion from school, displacement from the home, hospitalization, residential treatment, or serious injury to self, others, or animals, the MCO must ensure the comprehensive provider agency has a referral arrangement with a Texas Medicaid

enrolled provider within the MCO network that has the ability to otherwise meet the needs of the child and that can provide the services to the child without interruption in services and without otherwise affecting the child's access to care.

§353.1407. Information Systems and Medical Records Systems.

(a) Management information system. Managed care organizations (MCOs) and comprehensive provider agencies must ensure their management information systems provide timely, accurate, and accessible information that supports clinical, administrative, and fiscal decision-making.

(b) Maintenance of medical records. MCOs and comprehensive provider agencies must ensure:

(1) protection against unauthorized access, disclosure, modification, or destruction of medical records, whether accidental or deliberate;

(2) the availability, integrity, utility, authenticity, and confidentiality of information within the medical record;

(3) a current, organized, legible, and comprehensive records system that:

(A) conforms to good professional practice;

(B) permits effective clinical review and audit; and

(C) facilitates prompt and systematic retrieval of information;

(4) a medical records system with sufficient redundancy to ensure access to individual records; and

(5) a medical records system that ensures compliance with applicable federal and state laws, rules, and regulations, including the Health Insurance Portability and Accountability Act and 42 CFR Part 2.

(c) Documentation retention. A comprehensive provider agency must maintain all records necessary to fully disclose the services delivered. These records must be retained for a period of ten years from the date of the service, or until all audit questions are resolved, whichever is longer. Records and supporting information regarding any payment of claims, as well as premises access, must be made available to HHSC, HHSC OIG, the federal Health and Human Services, the State Auditor's Office, or any person acting on behalf of such entity, upon request.

(d) Disaster recovery plan. A comprehensive provider agency must maintain a written disaster recovery plan for information resources in order to ensure service continuity, and must implement the plan as necessary.

§353.1409. Patient Safety, Rights, and Protections.

(a) Each comprehensive provider agency and staff member must adhere to the following rules regarding patient safety, rights, and protections even if the comprehensive provider agency is not a type of entity specified in the rule:

(1) 25 TAC §404.154 (relating to Rights of All Persons Receiving Mental Health Services);

(2) 25 TAC §404.165 (relating to Staff Member Training in Rights of All Persons Receiving Mental Health Services);

(3) 25 TAC §412.312 (relating to Environment of Care and Safety);

(4) 25 TAC §412.313 (relating to Rights and Protection);

(5) 25 TAC §412.315 (relating to Medical Records System);

(6) 25 TAC Chapter 415 (relating to Provider Clinical Responsibilities--Mental Health Services), Subchapter F (relating to Interventions in Mental Health Services); and

(7) 40 TAC §711.201 (relating to What is Your Duty to Report If You Are a Direct Provider or Service Provider?);

(b) A comprehensive provider agency must ensure effective communication with each individual and LAR, if applicable, in an understandable format as appropriate to meet the needs of each individual, which may require the use of:

(1) interpretative services;

(2) translated materials; or

(3) staff who can effectively respond to the cultural and language needs of an individual and LAR, if applicable.

(c) A comprehensive provider agency must obtain a criminal history background check on each staff member and applicant to whom an offer of employment is made if the responsibilities of the position include personal contact with an individual receiving services, in order to ensure that individuals do not come in contact with, and are not provided services by, a staff member who has a conviction for any of the criminal offenses listed in Texas Health and Safety Code §250.006, or for any criminal offense that the comprehensive provider agency has determined to be a contraindication to employment.

§353.1411. Access to Mental Health Services.

(a) Telephone system access. A comprehensive provider agency must ensure the availability of a telephone system that allows individuals to contact the comprehensive provider agency through a toll-free number that must:

(1) be answered by a person without being answered by telephone answering equipment at least on business days during normal business hours, except:

(A) on national holidays;

(B) due to uncontrollable interruption of service; or

(C) with prior approval of HHSC;

(2) have sufficient staff to operate efficiently;

(3) collect, document, and store detailed information, including special needs information, on all telephone inquiries and calls;

(4) during times other than those described in paragraph (1) of this subsection, provide electronic call answering methods that:

(A) include an outgoing message providing a toll-free crisis hotline telephone number in languages relevant to the service area; and

(B) allows callers to leave a message; and

(5) return routine calls before the end of the next business day for all messages left during non-business hours.

(b) Crisis services access during non-business hours. The comprehensive provider agency must assist individuals in their care to access crisis services outside of business hours by documenting in each individual's recovery/treatment plan:

(1) how the individual will access emergency medical and psychiatric crisis services during non-business hours;

(2) a list of all crisis resources that are easily accessible to the individual; and

(3) the toll-free telephone number to access crisis services.

§353.1413. Staff Member Competency.

(a) Prior to providing services or accessing an individual's confidential information, the comprehensive provider agency must ensure that each staff member:

(1) can provide services within the scope of the staff member's license, job description, or contract specification;

(2) has completed required training modules as identified by HHSC; and

(3) has the following minimum competencies:

(A) an understanding of the nature of severe mental illness and serious emotional disturbances;

(B) an understanding of the developmental needs of an adult, child, or youth;

(C) the ability to interact appropriately with an individual who has a physical disability;

(D) the ability to respond to an individual's linguistic and cultural needs through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social groups;

(E) identification of an individual experiencing a crisis and the process for accessing crisis services;

(F) knowledge of appropriate actions to take in managing a crisis;

(G) knowledge of available resources within the local community;

(H) an understanding of the dignity and rights of an individual, as described in 25 TAC §404.154 (relating to Rights of All Persons Receiving Mental Health Services) and 25 TAC §404.163 (relating to Communication of Rights to Individuals Receiving Mental Health Services);

(I) the ability to identify, prevent, and report abuse, neglect, and exploitation, in accordance with 40 TAC Chapter 705 (relating to Adult Protective Services) and Chapter 711 (relating to Investigations of Individuals Receiving Services from Certain Providers);

(J) knowledge of individual confidentiality and relevant state and federal laws affecting confidentiality of medical records, including Title 42 CFR Part 2;

(K) knowledge of professional ethics and standards of conduct;

(L) knowledge of proper documentation of services provided;

(M) understanding exposure control of blood borne pathogens; and

(N) the ability to respond to severe weather, disasters, and bioterrorism.

(b) For a staff member whose primary duties include assessment and service authorization, the comprehensive provider agency must ensure that the staff member has the ability to:

(1) complete the uniform assessment; and

(2) understand and apply the utilization management guidelines.

(c) For a staff member whose primary duties include individual service contacts and interactions, the comprehensive provider agency must ensure that the staff member has adequate knowledge of:

- (1) cardio pulmonary resuscitation (CPR);
- (2) first aid;
- (3) safe management of verbally and physically aggressive behavior;
- (4) use of assistive technology, such as communication devices, with individuals who are deaf or hard of hearing;
- (5) seizure assessment and response;
- (6) infection control;
- (7) how to recognize, report, and record side effects, contraindications, and drug interactions of psychoactive medication;
- (8) assessment and intervention with children, youth, and families; and
- (9) clinical specialties directly related to the services to be performed.

(d) A staff member who provides mental health targeted case management must also have:

- (1) knowledge of strategies for advocating effectively on behalf of individuals;
- (2) the ability to document the mental health targeted case management services described in §354.2655 of this title (relating to Case Management Services); and
- (3) knowledge gained from the completion of training modules as identified by HHSC.

(e) A staff member who provides intensive case management, before providing services to children and youth, must complete training approved by HHSC on wraparound process planning and demonstrate understanding of wraparound process planning.

(f) A staff member who routinely provides or supervises the provision of mental health targeted intensive case management to a child or youth must receive training and demonstrate competency in the aspects of a child's or youth's growth and development (including physical, emotional cognitive, educational and social) and the treatment needs of a child or youth.

(g) Additional competencies for providers of mental health rehabilitative services.

(1) A comprehensive provider agency must ensure that a staff member who provides mental health rehabilitative services is trained in the rehabilitative practice techniques related to:

- (A) medication training and support services;
- (B) skills training and development; and
- (C) psychosocial rehabilitation.

(2) A comprehensive provider agency must ensure that staff members who provide or supervise the provision of mental health rehabilitative services receive initial training in:

- (A) the nature of serious mental illness and serious emotional disturbance;
- (B) the concepts of recovery and resilience;
- (C) the rehabilitative practice techniques found in curricula, program practices, and protocols;

(D) the prevalence of physical health risk factors; and

(E) other training modules as identified by HHSC.

§353.1415. Staff Member Credentialing.

(a) Qualified Mental Health Professional-Community Services (QMHP-CS). A staff member must meet at least one of three minimum requirements to be credentialed as a QMHP-CS:

(1) The staff member has at least a bachelor's degree from an accredited college or university and a minimum number of hours that is equivalent to a major in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention.

(2) The staff member is a registered nurse.

(3) The staff member is a Licensed Practitioner of the Healing Arts (LPHA).

(b) Community Services Specialist (CSSP). A staff member who, as of August 31, 2004, met the criteria set forth in 25 TAC §412.303 (relating to Definitions).

(c) Peer Provider. The minimum requirements to credential a staff member as a peer provider are that the staff member has:

(1) a high school diploma or high school equivalency certificate issued in accordance with the law of the issuing state;

(2) at least one cumulative year of receiving mental health services; and

(3) demonstrated competency in the provision and documentation of mental health rehabilitative services, supported employment, or supported housing.

(d) Certified Family Partners (CFPs). The minimum requirements to credential a staff member as a CFP include verifying that the staff member:

(1) is 18 years of age or older;

(2) has a high school diploma or high school equivalency certificate issued in accordance with the law of the issuing state;

(3) has at least one year of personal experience as a parent or LAR raising a child or youth with serious emotional disturbance or mental illness;

(4) has at least one year of personal experience as a parent or LAR navigating a child-service system (e.g., mental health, juvenile justice, social security, or special education); and

(5) has successfully completed and passed the HHSC-approved certification process.

§353.1417. Comprehensive Provider Agency Requirements for Staff Member Credentialing and Appeals.

(a) A comprehensive provider agency must:

(1) justify in writing and document in a staff member's personnel file support of the staff member's qualifications to provide mental health targeted case management and mental health rehabilitative services based on credentialing requirements listed in §353.1415 of this division (relating to Staff Member Credentialing); and

(2) regularly monitor each staff member's demonstrated competency throughout the staff member's tenure.

(b) A comprehensive provider agency must:

(1) credential each staff member in a timely fashion; and

(2) have a process for staff members to appeal credentialing decisions.

(c) A comprehensive provider agency may choose to use the managed care organization's credentialing and appeals processes for licensed staff, QMHP-CSs, CSSPs, peer providers, family partners, and utilization management positions.

§353.1419. Supervision Requirements.

(a) Policies and procedures. The comprehensive provider agency must develop and implement written policies and procedures for supervision of all applicable levels of staff members providing services to individuals.

(b) Licensed staff member supervision. All licensed staff members must be supervised in accordance with applicable law and rules.

(c) Clinical supervision.

(1) Clinical supervision must be provided by an LPHA or a QMHP-CS.

(2) The supervising LPHA or QMHP-CS must conduct at least monthly documented meetings with each staff member being supervised.

(3) For staff members providing mental health rehabilitative services, the supervising LPHA or QMHP-CS must be an employee of the comprehensive provider agency and conduct a documented observation of the staff member providing mental health rehabilitative services at a frequency determined by the supervisor based on the staff member's skill level.

(4) For staff members providing mental health targeted case management, the supervising QMHP-CS must:

(A) be an employee of the comprehensive provider agency;

(B) demonstrate competency in mental health targeted case management evidenced-based practices; and

(C) demonstrate competencies outlined in §353.1413 of this subchapter (relating to Staff Member Competency).

(d) QMHP-CS supervision. A QMHP-CS's designated clinical duties must be clinically supervised by:

(1) a QMHP-CS; or

(2) an LPHA if the QMHP-CS is clinically supervising another QMHP-CS for the provision of mental health targeted case management and mental health rehabilitative services.

(e) CSSP supervision. A CSSP's designated clinical duties must be clinically supervised by a QMHP-CS. The CSSP must have access to clinical consultation with an LPHA when necessary.

(f) CFP supervision. A CFP must be directly supervised by a QMHP-CS who has at least one year's experience in the HHSC-approved recovery and resilience protocol.

(g) Peer provider supervision.

(1) A peer provider's designated clinical duties must be under the direct clinical supervision of an LPHA.

(2) The supervising LPHA must conduct at least monthly documented meetings with each peer provider being supervised.

(3) The supervising LPHA must conduct and document an additional monthly observation of each peer provider providing mental health rehabilitative services.

(h) Peer review. The comprehensive provider agency must implement a peer review process for licensed staff members that:

(1) promotes sound clinical practice consistent with the HHSC-approved resiliency and recovery protocol;

(2) promotes professional growth; and

(3) complies with applicable state laws and rules.

(i) Documentation. All clinical supervision must be documented.

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 March 23, 2018.

TRD-201801263

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 428-1961



CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER M. MENTAL HEALTH TARGETED CASE MANAGEMENT AND MENTAL HEALTH REHABILITATION

The Texas Health and Human Services Commission (HHSC) proposes new Title 1, Part 15, Chapter 354 (Medicaid Health Services) Subchapter M, concerning Mental Health Targeted Case Management and Mental Health Rehabilitation.

BACKGROUND AND PURPOSE

Senate Bill (SB) 58, 83rd Legislature, Regular Session, 2013, integrated two Medicaid State Plan mental health benefits, mental health targeted case management (TCM) and mental health rehabilitative (MHR) services, into Medicaid managed care. Prior to SB 58, the local mental health authorities (LMHAs) operated under the Texas Department of State Health Services were the sole providers of these services. Effective September 1, 2014, Medicaid managed care organization contracted providers of mental health TCM and MHR services, in addition to LMHAs, were allowed to deliver these benefits. HHSC is proposing these rules to provide managed care organizations and contracted mental health TCM and MHR comprehensive provider agencies, including local mental health and local behavioral health authorities, with necessary guidance on the delivery of these two services to ensure the services are delivered appropriately.

SECTION-BY-SECTION SUMMARY

Division 1, General Provisions

Proposed new §354.2601, Purpose and Applicability, sets forth the purpose and applicability of the subchapter.

Proposed new §354.2603, Definitions, defines words and terms used throughout the subchapter.

Proposed new §354.2605, Fair Hearings and Appeal Processes, outlines appeal options for an individual requesting or receiving TCM or MHR services, through either an HHSC fair hearing or the managed care organization's appeal process.

Proposed new §354.2607 Assessment and Service Authorization, outlines comprehensive provider agency requirements for assessment, diagnosis, and managed care organization authorization prior to providing services to an individual under this subchapter.

Proposed new §354.2609, Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary, outlines requirements for recovery/treatment planning, review of recovery/treatment plans, and discharge summaries.

Proposed new §354.2611, Pharmacological Management, Psychiatric Diagnostic Evaluations, and Psychotherapy, outlines comprehensive provider agency requirements for pharmacological management and psychiatric diagnostic evaluations and psychotherapy

Proposed new §354.2613, Related to Criminal History Background Checks, outlines requirements for conducting criminal history background checks.

Division 2, Mental Health Targeted Case Management

Proposed new §354.2651, Eligible Individuals, outlines who is eligible to receive mental health targeted case management.

Proposed new §354.2653, Continued Eligibility, outlines reassessment and reauthorization requirements for individuals receiving mental health targeted case management.

Proposed new §354.2655, Mental Health Targeted Case Management Services, outlines the services included in mental health targeted case management, including routine case management and intensive case management.

Proposed new §354.2657, Documentation Requirements, outlines the documentation requirements for mental health targeted case management, including specific requirements related to routine case management, intensive case management, and crisis services.

Proposed new §354.2659, Exclusions, lists the services not covered by mental health targeted case management and the services included in the Medicaid rate for mental health targeted case management.

Division 3, Mental Health Rehabilitation

Proposed new §354.2701, Eligible Individuals, outlines who is eligible to receive mental health rehabilitation.

Proposed new §354.2703, Continued Eligibility, outlines reassessment requirements for individuals receiving mental health rehabilitation.

Proposed new §354.2705, Mental Health Rehabilitative Services, lists the services included in mental health rehabilitative services.

Proposed new §354.2707, Crisis Intervention Services, describes and outlines requirements for crisis intervention services.

Proposed new §354.2709, Medication Training and Support Services, describes and outlines requirements for medication training and support services.

Proposed new §354.2711, Psychosocial Rehabilitative Services, describes and outlines requirements for psychosocial rehabilitative services.

Proposed new §354.2713, Skills Training and Development Services, describes and outlines requirements for skills training and development services.

Proposed new §354.2715, Day Programs for Acute Needs, describes and outlines requirements for a day program for acute needs.

Proposed new §354.2717, Exclusions, lists the services not covered by mental health rehabilitation services.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rules are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will not expand, limit, or repeal an existing rule; and
- (7) the proposed rules will not change the number of individuals subject to the rule.

HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

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

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be to provide managed care organizations and contracted mental health TCM and MHR comprehensive provider agencies with necessary guidance on the delivery of these two services to ensure the services are delivered appropriately.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Penny Larkin, Senior Policy Advisor, 4900 North Lamar, Mail Code 1045, Austin, Texas 78751; by fax to (512) 487-3455; or by e-mail to HHSRulesCoordinationOffice@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 1R024" in the subject line.

DIVISION 1. GENERAL PROVISIONS

1 TAC §§354.2601, 354.2603, 354.2605, 354.2607, 354.2609, 354.2611, 354.2613

STATUTORY AUTHORITY

These new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.2601. Purpose and Applicability.

(a) The purpose of this subchapter is to establish requirements for providing mental health targeted case management and mental health rehabilitative services throughout Medicaid, including the managed care and the fee-for-service models.

(b) This subchapter applies to public and private comprehensive provider agencies delivering Medicaid mental health targeted case management and mental health rehabilitative services.

§354.2603. Definitions.

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

(1) Adult--An individual who is age 21 or older.

(2) Appeal--A mechanism for an independent review of an adverse determination or a request for a review of an action or failure to act that may result in a fair hearing.

(3) Behavioral health emergency--A situation involving an individual who is behaving in a violent or self-destructive manner and in which preventive, de-escalation, or verbal techniques have been determined to be ineffective and it is immediately necessary to restrain or seclude the individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual is attempting to commit suicide or inflict serious bodily harm; or

(B) imminent physical harm to others because of acts the individual commits.

(4) Case manager--A staff member of the comprehensive provider agency who provides mental health targeted case management services.

(5) CFP--Certified Family Partner. A person who meets the credentialing requirements in §353.1415(d) of this title (relating to Staff Member Credentialing).

(6) CFR--Code of Federal Regulations.

(7) Child or youth--An individual who is under age 21.

(8) Community-based--Mental health targeted case management services that are provided at a location other than the comprehensive provider agency's office.

(9) Community data--Additional information gathered during the uniform assessment.

(10) CSSP--Community services specialist. A staff member of a local mental health authority who has documented full-time experience in the provision of mental health targeted case management and mental health rehabilitative services prior to August 31, 2004. See definition in 25 TAC §412.303 (relating to Definitions).

(11) Comprehensive provider agency--An entity that provides or subcontracts for the delivery of the full array of mental health targeted case management and mental health rehabilitative services set forth in this subchapter, with the exception of §354.2715 of this subchapter (relating to Day Programs for Acute Needs).

(12) Crisis plan--A plan developed in advance of a crisis and in collaboration with the individual, LAR, caregiver, or family of the individual receiving services that identifies circumstances that determine a crisis that would jeopardize the individual's ability to remain in the community and the actions preferred and necessary to avert removal from the community.

(13) CSU--Crisis stabilization unit. A crisis stabilization unit licensed under Chapter 577 of the Texas Health and Safety Code and 25 TAC Chapter 134 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

(14) Family Psychotherapy--Therapy that focuses on the dynamics of the family unit where the goal is to strengthen the family's problem solving and communication skills.

(15) Group Psychotherapy--Therapy that involves one or more therapists working with several clients at the same time.

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

(17) IMD--Institution for mental diseases. Based on 42 CFR §435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, including medical attention, nursing care, and related services.

(18) Independent Living--A service within psychosocial rehabilitative services that assists an individual in acquiring the most immediate, fundamental functional skills needed to enable the individual to reside in the community and avoid more restrictive levels of treatment or reducing behaviors or symptoms that prevent successful functioning in the individual's environment of choice. Such services include training in symptom management, personal hygiene, nutrition, food preparation, exercise, money management, and community integration activities.

(19) Individual--A person seeking or receiving mental health targeted case management, mental health rehabilitative services, or both under this subchapter.

(20) Individual Psychotherapy--Therapy that focuses on a single client.

(21) Intensive case management--A level of mental health targeted case management that includes a focused effort to coordinate community resources, uses evidence-based wraparound process planning to address a child's or youth's unmet needs across life domains, and assists a child or youth in gaining access to necessary care and services appropriate to the child's or youth's needs.

(22) Intensive case management plan--A written document that is part of the medical record for a child or youth receiving intensive case management and is developed by a case manager, in collaboration with the child or youth and the child's or youth's LAR or primary caregiver, that identifies services needed by the child or youth and sets forth a plan for how the child or youth may gain access to the identified services.

(23) In-vivo--The individual's natural environment (e.g., the individual's residence, work place, or school).

(24) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(25) Licensed medical personnel--A staff member who is:

- (A) a physician;
- (B) a physician assistant;
- (C) an advanced practice registered nurse;
- (D) a registered nurse;
- (E) a licensed vocational nurse; or
- (F) a pharmacist.

(26) Life domains--Areas of life, including safety, health, emotional, psychological, social, educational, cultural, and legal.

(27) LPHA--Licensed Practitioner of the Healing Arts. A staff member who is:

- (A) a physician;
- (B) a licensed professional counselor;
- (C) a licensed clinical social worker;
- (D) a licensed psychologist;
- (E) an advanced practice registered nurse;
- (F) a physician assistant; or
- (F) a licensed marriage and family therapist.

(28) Medication training and support services--Medication training and support services consist of education and guidance about medications and their possible side effects.

(29) Mental health rehabilitative services--Services that are individualized, age-appropriate, and provide training and instructional guidance that restore an individual's functional deficits due to serious mental illness or serious emotional disturbance. The services are designed to improve or maintain the individual's ability to remain in the community as a fully integrated and functioning member of that community.

(30) Mental health targeted case management--Services furnished to assist individuals with severe mental illness and functional impairments or serious emotional disorders and functional impairments to gain access to needed medical, social, educational, and other services.

(31) On-site--Services that are provided at a location operated by a comprehensive provider agency.

(32) Peer provider--Staff with lived experience with a mental health condition who meet the credentialing requirements in §353.1415(c) of this title.

(33) Pharmacological management--In-depth management of psychopharmacological agents to treat an individual's mental health symptoms.

(34) Primary caregiver--A person 18 years of age or older who has:

- (A) actual care, control, and possession of a child or youth; or
- (B) assumed responsibility for providing shelter and care for an adult.

(35) Psychiatric diagnostic evaluation--An integrated biopsychosocial assessment, including history, mental status, and recommendations.

(36) Psychosocial rehabilitative services--Social, behavioral, and cognitive interventions provided by members of an adult's therapeutic team that build on strengths and focus on restoring the adult's ability to develop and maintain social relationships, occupational or educational achievements, and other independent living skills that are affected by a serious mental illness in adults. Psychosocial rehabilitative services may also address the impact of co-occurring disorders upon the adult's ability to reduce symptomology and increase daily functioning.

(37) QMHP-CS--Qualified Mental Health Professional-Community Services. Staff who meet the credentialing requirements in §353.1415(a) of this title.

(38) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(39) Recovery or treatment plan (recovery/treatment plan)--A written plan that:

- (A) is developed with the individual, the LAR if required, other persons whose inclusion is requested by the individual or LAR and who agree to participate, and a QMHP-CS or LPHA;
- (B) is completed in conjunction with the uniform assessment;
- (C) amended at any time based on an individual's needs;
- (D) guides the recovery process and fosters resiliency;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) identifies services and supports to meet the individual's goals, preferences, needs and desired outcomes.

(40) Recovery or treatment planning (recovery/treatment planning)--A systematic process for engaging the individual, LAR, and the primary caregiver and others to develop goals and identify a course of action to respond to the individual's clinically assessed needs, including medical, social, educational, and other services needed by the individual.

(41) Referral and linkage--Activities that help link an individual with medical, social, educational, and other providers that are capable of providing needed services.

(42) Routine care services--Mental health services provided to an individual who is not in crisis.

(43) Service provider--An entity separate from the comprehensive provider agency which may also provide services to an individual outside of the services performed under this subchapter.

(44) Staff member--Comprehensive provider agency personnel, including a full-time or part-time employee, contractor, or intern, but excluding a volunteer.

(45) Strengths-based--The concept used in service delivery that identifies, builds on, and enhances the capabilities, knowledge, skills, and assets of the individual, LAR, or primary caregiver, and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(46) Therapeutic team--A group of staff members who work together in a coordinated manner for the purpose of providing comprehensive mental health services to an individual.

(47) UA--Uniform assessment. A required assessment that assists in determining the medical necessity of services. For adults, the UA includes the Adult Needs and Strengths Assessment (ANSA), community data, relevant rating scales, diagnostic information, and any other state-required assessment tools and procedures. For children or youth, the UA includes the Child and Adolescent Needs and Strengths (CANS) assessment, community data, relevant rating scales, diagnostic information, and any other state-required assessment tools and processes.

(48) Utilization management guidelines--Guidelines developed by HHSC that establish the type, amount, and duration of mental health targeted case management services and mental health rehabilitative services for each individual.

(49) Wraparound Process Planning--A strengths-based approach used in intensive case management to develop an intensive case management plan that addresses the child's or youth's unmet needs across life domains.

§354.2605. Fair Hearings and Appeal Processes.

(a) A Medicaid eligible individual whose request for services is denied or is not acted upon with reasonable promptness, or whose services are terminated, suspended, or reduced, is entitled to an HHSC fair hearing per Chapter 357, Subchapter A, of this title (relating to Uniform Fair Hearing Rules).

(b) An individual receiving services through enrollment in a managed care organization may also appeal with the managed care organization per §353.415 of this title (relating to Member Complaint and Appeal Procedures).

§354.2607. Assessment and Service Authorization.

(a) Assessment and documentation. A QMHP-CS with appropriate supervision and training must perform a face to face assessment of the individual. The assessment must be documented and must include:

(1) the individual's identifying information;

(2) completion of the appropriate uniform assessment(s) and assessment guideline calculations;

(3) the individual's present status and relevant history, including education, employment, housing, legal, military, developmental, and current available social and support systems;

(4) the individual's co-occurring substance use, intellectual or developmental disability, or physical health condition, if any;

(5) the individual's relevant past and current medical and psychiatric information, which may include trauma history;

(6) information from the individual and LAR, if applicable, regarding the individual's strengths, needs, natural supports, community participation, responsiveness to previous treatment, as well as preferences for and objections to specific treatments;

(7) the need or desire of the individual for family member involvement or other identified natural supports in treatment and mental health community services, if the individual is an adult without an LAR,;

(8) the identification of the LAR's or family members' need for education and support services related to the individual's mental illness or emotional disturbance and the plan to facilitate the LAR's or family members' receipt of the needed education and support services;

(9) recommendations and conclusions regarding treatment needs; and

(10) date, signature, and credentials of the staff member completing the assessment.

(b) Diagnostics. The diagnosis of a mental illness must be:

(1) rendered by an LPHA, acting within the scope of his license, who has interviewed the individual face-to-face (either in person or via telemedicine);

(2) based on diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

(3) documented in writing, including the date, signature, and credentials of the person making the diagnosis; and

(4) supported by and included in the uniform assessment.

(c) Provision of services. The comprehensive provider agency and staff members must implement procedures to ensure that each individual is provided mental health services based on:

(1) the assessment conducted under subsection (a) of this section;

(2) medical necessity as determined by an LPHA; and

(3) when available, physical health care needs as determined by a physician, physician assistant, or advanced practice registered nurse.

(d) Prerequisites to provision of services. With the exception of crisis intervention services provided under §354.2707 of this subchapter (relating to Crisis Intervention Services), before providing ser-

vices to an individual under this subchapter a comprehensive provider agency must:

(1) if required by the managed care organization, submit authorization requests to the managed care organization with which the individual is enrolled for the type(s), amount, and duration of services to be provided to the individual in accordance with the uniform assessment and the utilization management guidelines; and

(2) in collaboration with the individual and his LAR, if applicable, develop a recovery/treatment plan for the individual that complies with the requirements of this subchapter.

§354.2609. Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary.

(a) Timeframe for recovery/treatment plan. A comprehensive provider agency must develop a written recovery/treatment plan:

(1) before the provision of mental health targeted case management or mental health rehabilitative services; and

(2) within 10 business days after the date the individual is eligible and has been authorized for routine care services.

(b) Credentials for completing recovery/treatment plan. A staff member credentialed as a QMHP-CS, at a minimum, is responsible for completing and signing the plan.

(c) Content of recovery/treatment plan (plan).

(1) The plan must reflect input from the individual and each of the disciplines of treatment to be provided to the individual based on the assessment. The plan must include:

(A) a description of the individual's presenting problem(s);

(B) a description of the individual's strengths;

(C) a description of the individual's needs arising from the mental illness or serious emotional disturbance;

(D) a description of the individual's co-occurring substance use disorder, intellectual or developmental disability, or physical health condition(s), if any;

(E) a description of the recovery goals and objectives based on the assessment, and expected outcomes of the treatment in accordance with paragraph (2) of this subsection;

(F) the expected date by which the recovery/treatment goals will be achieved; and

(G) a list of the type(s) of intervention(s) within each form of treatment that will be provided to the individual (e.g., psychosocial rehabilitation, medication services, supported employment), and for each type of service listed:

(i) a description of the strategies to be implemented by staff members in providing the service and achieving goals;

(ii) the frequency, number of units (e.g., 10 counseling sessions, two skills training sessions), and duration of each service to be provided (e.g., .5 hour, 1.5 hours); and

(iii) the credentials of the staff member responsible for providing the service.

(2) The goals and objectives with expected outcomes required by paragraph (1)(E) of this subsection must:

(A) specifically address the individual's unique needs, preferences, experiences, and cultural background;

(B) specifically address the individual's co-occurring substance use or physical health disorder, if any;

(C) be expressed in terms of overt, observable actions of the individual;

(D) be objective and measurable using quantifiable criteria; and

(E) reflect the individual's self-direction, autonomy, and desired outcomes.

(3) The plan must be developed in consultation with the individual, and LAR if applicable.

(4) The individual, and LAR if applicable, must be provided, in an understandable format as appropriate to meet the needs of each individual, a copy of the plan and each subsequent reviewed and revised plan.

(d) Review of recovery/treatment plan.

(1) A comprehensive provider agency must:

(A) review an individual's continued eligibility for services as specified in §354.2703 of this subchapter (relating to Continued Eligibility); and

(B) review an individual's plan prior to requesting an authorization for the continuation of services, including:

(i) reviewing the individual's plan in its entirety, considering input from the individual, the individual's LAR as applicable, and each member of the therapeutic team;

(ii) determining if the plan is adequately addressing the needs of the individual;

(iii) documenting progress on all goals and objectives; and

(iv) documenting any recommendation for continuing services, any change from current services, and any discontinuation of services.

(2) In addition to the required review under paragraph (1)(B) of this subsection, a comprehensive provider agency may review an individual's recovery/treatment plan:

(A) if clinically indicated; and

(B) at the request of the individual or the LAR, or the primary caregiver of a child or youth.

(3) Any time an individual's recovery/treatment plan is reviewed, the comprehensive provider agency must:

(A) meet with the individual face-to-face to solicit and consider input from the individual regarding a self-assessment of progress toward the recovery goals;

(B) solicit and consider the input from each member of the therapeutic team in assessing the individual's progress toward the recovery goals and objectives with expected outcomes;

(C) solicit and consider input from the LAR or primary caregiver, as applicable, regarding the level of satisfaction with the services provided; and

(D) document all the input described in subparagraphs (A) - (C) of this paragraph.

(e) Revisions to the recovery/treatment plan. If, after any review of the recovery/treatment plan, the individual or comprehensive provider agency determines that the plan does not adequately address

the needs of the individual, the comprehensive provider agency, with input from the individual, must appropriately revise the content of the plan.

(f) Discharge Summary. Not later than 21 calendar days after an individual's discharge from services, whether planned or unplanned, a comprehensive provider agency must document in the individual's medical record:

(1) a summary, based on input from each member of the therapeutic team, of all the services provided, the individual's response to treatment, and any other relevant information;

(2) recommendations made to the individual, LAR, or primary caregiver for follow up services, if any; and

(3) the individual's most current diagnosis, based on diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

§354.2611. Pharmacological Management, Psychiatric Diagnostic Evaluations, and Psychotherapy.

(a) Service Array. A comprehensive provider agency must have the capability to deliver pharmacological management, psychiatric diagnostic evaluation, and psychotherapy, either directly or through subcontract(s).

(b) Pharmacological management. Pharmacological management is the in-depth management of psychopharmacological agents to treat a client's mental health symptoms. Pharmacological management is a physician service and cannot be provided by a non-physician or "incident to" a physician service, with the exception of advanced practice registered nurses and physician assistants whose scope of license in Texas permits them to prescribe under delegation of prescriptive authority. Supporting documentation for pharmacological management must include:

(1) complete diagnosis using diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

(2) current list of medications;

(3) current psychiatric symptoms and problems, to include presenting mental status;

(4) problems, reactions, and side effects, if any, to medications;

(5) any medication modifications made during the visit and the reasons for medication adjustments, including the discontinuation of a medication;

(6) desired therapeutic drug levels, if applicable, for medications requiring blood level monitoring;

(7) current laboratory values, if applicable, for medications requiring monitoring for potential side effects; and

(8) the individual's related treatment goals.

(c) Psychiatric diagnostic evaluation.

(1) Psychiatric diagnostic evaluations must be conducted by:

(A) a psychiatrist;

(B) a psychologist;

(C) an advanced practice registered nurse;

(D) a physician assistant;

(E) a licensed clinical social worker;

(F) a licensed professional counselor; or

(G) a licensed marriage and family therapist.

(2) Documentation for a psychiatric diagnostic evaluation must include:

(A) the individual's presenting problem(s);

(B) the individual's prior diagnoses and any prior treatment;

(C) other pertinent medical, social, and family history;

(D) clinical observations and results of a mental status examination;

(E) complete diagnosis using diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

(F) expected long-term and short-term goals; and

(G) recommendations.

(d) Psychotherapy. Psychotherapy services may include individual psychotherapy, group psychotherapy, or family psychotherapy. A comprehensive provider agency is required to use, and be able to demonstrate fidelity to, evidence-based psychotherapy modalities approved by HHSC.

§354.2613. Criminal History Background Checks.

A comprehensive provider agency must obtain a criminal history background check on each staff member and applicant to whom an offer of employment is made if the responsibilities of the position include personal contact with an individual receiving services, in order to ensure that individuals do not come in contact with and are not provided services by a staff member who has a conviction for any of the criminal offenses listed in Texas Health and Safety Code, §250.006, or for any criminal offense that the comprehensive provider agency has determined to be a contraindication to employment.

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 March 23, 2018.

TRD-201801264

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 428-1961

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DIVISION 2. MENTAL HEALTH TARGETED
CASE MANAGEMENT

1 TAC §§354.2651, 354.2653, 354.2655, 354.2657, 354.2659

STATUTORY AUTHORITY

These new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.2651. Eligible Individuals.

(a) Mental health targeted case management is available to a child or youth who:

- (1) is a resident of the State of Texas;
- (2) is a recipient of the Texas Medicaid Program; and
- (3) has a diagnosis or diagnoses of mental illness or serious emotional disturbance as defined in the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, not including a single diagnosis of an intellectual or developmental disability or a substance use disorder and who:

(A) has been determined via the uniform assessment process as described in §354.2607 of this subchapter (relating to Assessment and Service Authorization) to have serious functional impairments and is in need of mental health targeted case management services;

(B) is at risk of disruption of a preferred living or child-care environment due to psychiatric symptoms; or

(C) is enrolled in a school system's special education program because of serious emotional disturbance.

(b) Mental health targeted case management is available to an adult who:

- (1) is a resident of the State of Texas;
- (2) is a recipient of the Texas Medicaid Program;
- (3) has a diagnosis or diagnoses of mental illness as defined in the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, not including a single diagnosis of an intellectual or developmental disability, dementia, or a substance use disorder; and
- (4) who has been determined via an assessment process based on §354.2607 of this subchapter to have serious functional impairments and is in need of mental health targeted case management services.

(c) An individual is not eligible for Medicaid-funded mental health targeted case management if the individual is:

- (1) an inmate of a public institution, as defined in 42 CFR §435.1009;
- (2) a resident of an intermediate care facility for individuals with an intellectual disability or related conditions as described in 42 CFR §440.150;
- (3) a resident of an IMD;
- (4) a patient of a general medical hospital; or
- (5) receiving psychosocial rehabilitative services, a component of mental health rehabilitative services.

§354.2653. Continued Eligibility.

Continued eligibility for mental health targeted case management services is based on:

- (1) the eligibility criteria described in §354.2651 of this division (relating to Eligible Individuals);
- (2) a reassessment by the comprehensive provider agency every:

(A) 90 days for children and youth; or

(B) 180 days for adults; and

(3) reauthorization of services by the managed care organization, as applicable.

§354.2655. Mental Health Targeted Case Management Services.

(a) Mental health targeted case management services are provided to eligible individuals to assist them in gaining access to needed medical, social/behavioral, educational, and other services and supports that are appropriate to the individual's needs.

(b) Mental health targeted case management includes:

(1) development and periodic revision of a specific recovery/treatment plan per §354.2609 of this subchapter (relating to Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary);

(2) making referrals and performing other related activities to help an individual obtain needed services and supports, including activities that help link an individual with:

(A) medical, social/behavioral, and educational providers; and

(B) other providers that provide needed services to address identified needs and achieve goals in the recovery/treatment plan;

(3) monitoring and follow up activities of service effectiveness, with the individual, family members, providers, or other entities or individuals, that occur regularly or at least annually to ensure the recovery/treatment plan is implemented and adequately addresses the individual's needs; and

(4) coordination with, and not duplication of, activities provided as part of institutional services and discharge planning activities that take place at inpatient facilities.

(c) Mental health targeted case management services must be provided, at minimum, by an individual credentialed as a QMHP-CS.

(d) A mental health targeted case manager must be assigned to an individual within two business days after receiving notification that the individual has been authorized to receive mental health targeted case management services.

(e) The assigned mental health targeted case manager must:

(1) meet face-to-face with the individual and the individual's LAR or primary caregiver within 7 calendar days after the case manager is assigned;

(2) assist the individual in identifying the individual's immediate needs and in determining access to community resources that may address those needs;

(3) identify the individual's strengths, service needs, and assistance required to address identified needs;

(4) identify the goals and actions required to meet the individual's identified needs;

(5) take the steps necessary to accomplish the goals required to meet the individual's identified needs by using referral, linking, advocacy, and monitoring;

(6) meet face-to-face with the individual at the individual's, the LAR's, or the primary caregiver's request, or document why the meeting did not occur;

(7) meet face-to-face with the LAR, with or without the individual present, to provide a service that assists the individual in gaining and coordinating access to necessary care and services;

(8) meet face-to-face with the individual and the LAR or primary caregiver upon notification of a clinically significant change in the individual's functioning, life status, or service needs, or document why the meeting did not occur; and

(9) if notified that the individual is in crisis, coordinate with the appropriate providers of emergency services to respond to the crisis.

(f) Intensive case management services, available only to children and youth, incorporate wraparound process planning in the approach to recovery/treatment planning and recovery/treatment plan implementation. The assigned mental health targeted case manager must:

(1) incorporate wraparound process planning in developing a recovery/treatment plan that addresses the child's or youth's unmet needs across life domains and includes, in addition to the required elements listed in §354.2609 of this subchapter (relating to Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary):

(A) a list of the child's or youth's natural strengths and supports;

(B) a crisis plan developed in collaboration with the LAR, caregiver, and family;

(C) a prioritized list of the child's or youth's unmet needs that includes a discussion of the priorities and needs expressed by the child or youth and the LAR or primary caregiver;

(D) a description of the objective and measurable outcomes for each of the unmet needs as well as a projected time frame for each outcome;

(E) a description of the actions the child or youth, the case manager, and other designated people must take to achieve those outcomes;

(F) a list of the necessary services and service providers and the availability of the services; and

(G) a statement of the maximum period of time between face-to-face contacts with the child or youth, and the LAR or primary caregiver, determined in accordance with the utilization management guidelines;

(2) develop and document an intensive case management plan based on the child's or youth's needs that may include information across life domains from relevant sources such as the child or youth, the LAR or primary caregiver, other agencies and organizations providing services to the child or youth, the child's or youth's medical record, and other sources identified by the child or youth, LAR, or primary caregiver;

(3) ensure services are delivered in clinically appropriate, client-centered, community-based settings;

(4) meet face-to-face with the child or youth and the LAR or primary caregiver:

(A) within seven calendar days after the case manager is assigned to the child or youth or document the reasons the meeting did not occur;

(B) within seven calendar days after discharge from an inpatient psychiatric setting or document the reasons the meeting did not occur; and

(C) according to the child's or youth's recovery/treatment plan or document the reasons the meeting did not occur;

(5) take necessary steps to assist the child or youth in gaining access to needed services and service providers, and document these activities, including:

(A) making referrals to potential service providers;

(B) initiating contact with potential service providers;

(C) arranging, facilitating linkages, and accompanying the child or youth to initial meetings and non-routine appointments;

(D) arranging transportation to ensure the child's or youth's attendance at appointments with services providers;

(E) advocating with service providers; and

(F) providing relevant information to service providers; and

(6) monitor the child's or youth's progress toward the outcomes set forth in the recovery/treatment plan, including:

(A) gathering information from the child or youth, current service providers, LAR, primary caregiver, and other resources;

(B) reviewing pertinent documentation, including the child's or youth's clinical records and assessments;

(C) ensuring that the recovery/treatment plan was implemented as agreed upon;

(D) ensuring that needed services were provided;

(E) determining whether progress toward the desired outcomes was made;

(F) identifying barriers to accessing services or to obtaining maximum benefit from services;

(G) advocating for the modification of services to address changes in the needs or status of the child or youth;

(H) identifying emerging unmet service needs;

(I) determining whether the recovery/treatment plan needs to be modified to address the child's or youth's unmet service needs more adequately; and

(J) revising the recovery/treatment plan as necessary to address the child's or youth's unmet service needs.

§354.2657. Documentation Requirements.

(a) Mental health targeted case management services must be documented in the individual's medical record. Case managers are required to maintain a record of each individual receiving mental health targeted case management, including:

(1) the name of the individual;

(2) the name of the comprehensive provider agency and the name of the assigned case manager;

(3) the date, nature, content, and units of each service received and whether goals specified in the recovery/treatment plan have been achieved;

(4) whether the individual has declined services in the recovery/treatment plan;

(5) the need for, and occurrences of, coordination with other staff members;

(6) a timeline for obtaining needed services; and

(7) a timeline for reevaluation of the recovery/treatment plan.

(b) Service documentation. The case manager must document the following for each service provided:

(1) the event or behavior that occurs while providing the service or the reason for the specific encounter;

(2) the person, persons, or entity, including other staff members, with whom the encounter or contact occurred;

(3) a collateral contact that is directly related to identifying the needs and supports for helping the individual access services and managing the individual's care, including coordination with other staff members;

(4) the recovery/treatment plan goal(s) that was the focus of the service, including the progress or lack of progress in achieving recovery plan goal(s);

(5) the specific intervention provided;

(6) date the service was provided;

(7) the start and end time of the service;

(8) location where the service was provided, and whether it was a face-to-face or telephone contact; and

(9) signature of the case manager providing the service, including credentials.

(c) Crisis service documentation. In addition to the general documentation requirements described in subsection (b) of this section, a staff member must document the following for crisis intervention services:

(1) behavioral description of the presenting problem;

(2) lethality (e.g., suicide, violence);

(3) the individual's relevant substance use or abuse;

(4) the individual's relevant trauma, abuse, or neglect;

(5) all actions, including rehabilitative interventions and referrals to other agencies, used by the provider of crisis intervention services to address the problems presented;

(6) the response of the individual, and if appropriate, the response of the LAR or primary caregiver and family members;

(7) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA or a QMHP-CS;

(8) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service;

(9) follow up activities, which may include referral to another provider; and

(10) the outcome of the individual's crisis.

(d) Refusing mental health targeted case management services. If the individual refuses mental health targeted case management services, the assigned case manager must:

(1) document the reason for the refusal in the individual's medical record; and

(2) request that the individual sign a waiver of case management services that is filed in the individual's medical record.

§354.2659. Exclusions.

(a) The following services are not covered as mental health targeted case management:

(1) case management activities that are an integral component of another covered Medicaid service;

(2) the provision of a medical, educational, social/behavioral, or another service to which an individual has been referred, including foster care services;

(3) performing an activity that does not directly assist an individual in gaining or coordinating access to needed services;

(4) providing medical or nursing services;

(5) performing pre-admission or intake activities;

(6) providing services to the LAR or primary caregiver of the individual outside of the services allowable under this subchapter;

(7) transporting the individual, LAR, or primary caregiver outside of what is allowable under this subchapter;

(8) monitoring the individual's general health status;

(9) performing outreach activities;

(10) performing quality oversight of a service provider;

(11) conducting utilization review or utilization management activities;

(12) conducting quality assurance activities; and

(13) authorizing services or authorizing the provision of services.

(b) The following activities are included in the mental health targeted case management rate and, therefore, Medicaid payment is not made separately for the following activities:

(1) documenting the provision of mental health targeted case management services;

(2) on-going assessment to determine the amount, duration, and type of mental health targeted case management for each individual;

(3) travel time required to provide mental health targeted case management services at a location not owned, operated or under arrangement with the comprehensive provider agency; and

(4) quality assurance activities that are specific to mental health targeted case management.

(c) Texas Medicaid does not reimburse for mental health targeted case management services provided before the establishment of a diagnosis of mental illness and the authorization of services.

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

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801265

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Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 428-1961

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DIVISION 3. MENTAL HEALTH REHABILITATION

1 TAC §§354.2701, 354.2703, 354.2705, 354.2707, 354.2709, 354.2711, 354.2713, 354.2715, 354.2717

STATUTORY AUTHORITY

These new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.2701. Eligible Individuals.

(a) Mental health rehabilitation services are available to a child or youth who:

- (1) is a resident of the State of Texas;
- (2) is a recipient of the Texas Medicaid Program; and
- (3) has a diagnosis or diagnoses of mental illness or serious emotional disturbance as defined in the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, not including a single diagnosis of an intellectual or developmental disability or a substance use disorder and who:

(A) has been determined via the uniform assessment process as described in §354.2607 of this subchapter (relating to Assessment and Service Authorization) to have serious functional impairments and is in need of mental health rehabilitation services;

(B) is at risk of disruption of a preferred living or child-care environment due to psychiatric symptoms; or

(C) is enrolled in a school system's special education program because of serious emotional disturbance.

(b) Mental health rehabilitation services are available to an adult who:

- (1) is a resident of the State of Texas;
- (2) is a recipient of the Texas Medicaid Program;
- (3) has a diagnosis or diagnoses of mental illness as defined in the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, not including a single diagnosis of an intellectual or developmental disability, dementia, or a substance use disorder; and

(4) who has been determined via an assessment process based on §354.2607 of this subchapter to have serious functional impairments and is in need of mental health rehabilitation services.

(c) An individual is not eligible for Medicaid-funded mental health rehabilitation services if the individual:

- (1) is an inmate of a public institution, as defined in 42 CFR §435.1009;
- (2) is a resident of an intermediate care facility for individuals with an intellectual disability or related conditions as described in 42 CFR §440.150;
- (3) is a resident of an IMD;
- (4) is a patient of a general medical hospital; or

(5) is a resident of a nursing facility who has not been identified through the Preadmission Screening and Resident Review (PASSR) process as needing specialized mental health services.

§354.2703. Continued Eligibility.

(a) A QMHP-CS conducts an assessment, as described in §354.2607 of this subchapter (relating to Assessment and Service Authorization), to determine the individual's continued eligibility for mental health rehabilitative services, based on the eligibility requirements described in §354.2701 of this division (relating to Eligible Individuals).

(b) An adult is automatically eligible for continued services, regardless of whether his or her level of functioning has improved and regardless of requirements described in this section, if the individual has a diagnosis of:

- (1) schizophrenia;
- (2) bipolar disorder; or
- (3) major depressive disorder with a level of functioning that qualified the individual initially.

(c) Unless automatically eligible under subsection (b) of this section, an adult is reassessed for continued eligibility for mental health rehabilitation:

- (1) at least every 180 days; or
- (2) more frequently if clinically indicated.

(d) A child or youth is reassessed for continued eligibility for mental health rehabilitation:

- (1) at least every 90 days; or
- (2) more frequently if clinically indicated.

§354.2705. Mental Health Rehabilitative Services.

Mental health rehabilitative services are interventions that provide assistance to individuals in maintaining functioning and achieving rehabilitation goals as defined in the individual's recovery/treatment plan. Mental health rehabilitative services include:

- (1) crisis intervention services;
- (2) medication training and support services;
- (3) psychosocial rehabilitative services;
- (4) skills training and development services; and
- (5) day programs for acute needs.

§354.2707. Crisis Intervention Services.

(a) Crisis intervention services are intensive, community-based, one-to-one services provided to an individual who requires services to control acute symptoms that place the individual at immediate risk of hospitalization, incarceration, or placement in a more restrictive treatment setting. The intervention:

- (1) is in response to a crisis;
- (2) seeks to reduce or manage symptoms of serious mental illness or serious emotional disturbance; and
- (3) seeks to prevent admission of the individual to a more restrictive environment.

(b) Crisis intervention services include:

- (1) an assessment of dangerousness of the individual to self or others;
- (2) the coordination of emergency care services;

(3) behavior skills training to assist the individual in reducing distress and managing symptoms;

(4) problem-solving;

(5) reality orientation to help the individual identify and manage his or her symptoms of serious mental illness or serious emotional disturbance; and

(6) providing instruction, structure, and emotional support to the individual in adapting to and coping with immediate stressors.

(c) Crisis intervention services must be provided one-to-one.

(d) Crisis intervention services may be provided on-site or in-vivo.

(e) Crisis intervention services must be provided by a QMHP-CS, at a minimum.

(f) Crisis intervention services may be provided without a recovery/treatment plan, as described in §354.2609 of this subchapter (relating to Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary).

(g) Crisis intervention services may not be provided to an individual who is currently admitted to a CSU.

§354.2709. Medication Training and Support Services.

(a) Medication training and support services must assist an individual in:

(1) understanding the nature of his/her serious mental illness or serious emotional disturbance;

(2) understanding the concepts of recovery and resilience within the context of the serious mental illness or serious emotional disturbance;

(3) understanding the role of his/her prescribed medications in reducing symptoms and increasing or maintaining his/her functioning;

(4) identifying and managing his/her symptoms and potential side effects of his/her medication;

(5) learning the contraindications of his/her medication;

(6) understanding the overdose precautions of his/her medication; and

(7) learning self-administration of his/her medication.

(b) Medication training and support services may be provided to:

(1) an adult;

(2) a child or youth; or

(3) the LAR or primary caregiver of an adult, child, or youth.

(c) Medication training and support services may be provided individually or in a group, and on-site or in-vivo.

(d) Medication training and support services provided to an adult or an adult's LAR or primary caregiver must be provided by a:

(1) QMHP-CS;

(2) CSSP;

(3) peer provider; or

(4) licensed medical personnel.

(e) Medication training and support services provided to a child or youth or the child's or youth's LAR or primary caregiver must be provided by a:

(1) QMHP-CS;

(2) CSSP;

(3) CFP; or

(4) licensed medical personnel.

(f) Medication training and support services may not be provided to an individual who is currently admitted to a CSU.

§354.2711. Psychosocial Rehabilitative Services.

(a) Psychosocial rehabilitative services must include the following services, as determined necessary for each individual:

(1) independent living;

(2) coordination;

(3) employment related;

(4) housing related; and

(5) medication related.

(b) Independent living services assist an individual in acquiring the most immediate, fundamental functional skills needed to enable the individual to reside in the community and avoid more restrictive levels of treatment, or assist an individual in reducing behaviors or symptoms that prevent successful functioning in the individual's environment of choice. Such services include training in symptom management, personal hygiene, nutrition, food preparation, exercise, money management, and community integration activities.

(c) Coordination services are training activities that assist an individual in improving the ability to gain and coordinate access to necessary care and services appropriate to the individual's needs. Coordination services include instruction and guidance in such areas as:

(1) assessment--identifying strengths and areas of need across life domains;

(2) recovery/treatment planning--prioritizing needs, establishing life and treatment goals, selecting interventions, and developing and revising recovery/treatment plans that include wellness, relapse prevention, and crisis plans;

(3) access--identifying and initiating contact with potential service providers and support systems across all life domains, including advocacy groups;

(4) coordination--setting appointments, arranging transportation, and facilitating communication between providers; and

(5) advocacy--

(A) asserting treatment needs, requesting special accommodations, and evaluating provider effectiveness and compliance with the agreed upon recovery/treatment plan; and

(B) requesting improvements and modifications to ensure maximum benefit from the services and supports.

(d) Employment related services provide supports and skills training that are not job-specific and focus on developing skills to reduce or manage the symptoms of serious mental illness that interfere with an individual's ability to make vocational choices or obtain or retain employment. Such services consist of:

(1) instruction in dress, grooming, socially and culturally appropriate behaviors, and etiquette necessary to obtain and retain employment;

(2) training in task focus, maintaining concentration, task completion, and planning and managing activities to achieve outcomes;

(3) instruction in obtaining appropriate clothing, arranging transportation, utilizing public transportation, accessing and utilizing available resources related to obtaining employment, and accessing employment-related programs and benefits;

(4) interventions or supports provided on or off the job site to reduce behaviors or symptoms of serious mental illness that interfere with job performance or that interfere with the development of skills that would enable the individual to obtain or retain employment; and

(5) interventions designed to develop natural supports on or off the job site to compensate for skill deficits that interfere with job performance.

(e) Housing related services develop an individual's strengths and abilities to manage the symptoms of the individual's serious mental illness that interfere with the individual's capacity to obtain or maintain independent, integrated housing. Such services consist of:

(1) skills training related to:

(A) home maintenance and cleanliness;

(B) problem-solving with the individual's landlord and neighbors, mortgage lender, or homeowners association; and

(C) maintaining appropriate interpersonal boundaries;
and

(2) supportive contacts with the individual to reduce or manage the behaviors or symptoms related to the individual's serious mental illness that interfere with maintaining independent, integrated housing.

(f) Medication related services provide training regarding an individual's medication adherence. Such services consist of training in:

(1) the importance of the individual taking the medications as prescribed;

(2) the self-administration of the individual's medication;

(3) determining the effectiveness of the individual's medications;

(4) identifying side-effects of the individual's medications;
and

(5) contraindications for medications prescribed.

(g) Conditions for the delivery of psychosocial rehabilitative services.

(1) Psychosocial rehabilitative services may be provided:

(A) only to adults who are not currently admitted to a CSU;

(B) individually or in a group;

(C) on-site or in-vivo; and

(D) only by a member of the individual's therapeutic team.

(2) The therapeutic team must be constituted and organized in a manner that ensures:

(A) the team includes a sufficient number of staff to adequately address the rehabilitative needs of individuals assigned to the team;

(B) team members are appropriately credentialed to provide the full array of component services;

(C) team members have regularly scheduled team meetings either in person or by teleconference; and

(D) every member of the team is knowledgeable of the needs and services available to the specific individuals assigned to the team.

(3) Independent living services, coordination services, employment-related services, and housing-related services must be provided by a:

(A) QMHP-CS;

(B) CSSP; or

(C) peer provider.

(4) Only licensed medical personnel may provide medication-related services.

(5) Crisis-related services must be provided by a QMHP-CS.

(h) An individual receiving psychosocial rehabilitation is not eligible to simultaneously receive either skills training and development or targeted case management services.

§354.2713. Skills Training and Development Services.

(a) Skills training and development is training provided to an individual or the LAR or primary caregiver of an individual. The training:

(1) addresses serious mental illness or serious emotional disturbance and symptom-related problems that interfere with the individual's functioning;

(2) provides opportunities for the individual to acquire and improve skills needed to function in the community as appropriately and independently as possible; and

(3) facilitates the individual's community integration.

(b) Skills training and development services consist of:

(1) teaching an individual:

(A) skills for managing daily responsibilities, such as paying bills, attending school, and performing chores;

(B) communication skills, such as effective communication and recognizing or changing problematic communication styles;

(C) pro-social skills, such as replacing problematic behaviors with behaviors that are socially and culturally appropriate or developing interpersonal relationship skills necessary to function effectively with family, peer, teachers, or other people in the community;

(D) problem-solving skills;

(E) assertiveness skills, such as resisting peer pressure, replacing aggressive behaviors with assertive behaviors, and expressing one's own opinion in a manner that is socially appropriate;

(F) social skills and expanding the individual's social support network, such as selection of appropriate friends and healthy activities;

(G) stress reduction techniques, such as progressive muscle relaxation, deep breathing exercises, guided imagery, and selected visualization;

(H) anger management skills, such as identification of antecedents to anger, calming down, stopping and thinking before acting, handling criticism, and avoiding and disengaging from explosive situations;

(I) skills to manage the symptoms of serious mental illness or serious emotional disturbance and to recognize and modify unreasonable beliefs, thoughts and expectations;

(J) skills to identify and use community resources and informal supports;

(K) skills to identify and use acceptable leisure time activities; and

(L) independent living skills, such as money management, accessing and using transportation, grocery shopping, maintaining housing, maintaining a job, and decision making; and

(2) increasing the LAR's or primary caregiver's understanding of and ability to respond to the individual's needs identified in the assessment or documented in the recovery/treatment plan.

(c) Skills training and development services provided to an individual, LAR, or primary caregiver may be provided individually or in a group.

(d) Skills training and development services may be provided on-site or in-vivo.

(e) Skills training and development services provided to an adult or an adult's LAR or primary caregiver must be provided by a:

- (1) QMHP-CS;
- (2) CSSP; or
- (3) peer provider.

(f) Skills training and development services provided to a child or youth or the child's or youth's LAR or primary caregiver must be provided by a:

- (1) QMHP-CS;
- (2) CSSP; or
- (3) CFP.

(g) Skills training and development services may not be provided to an individual who is currently:

- (1) admitted to a CSU; or
- (2) receiving psychosocial rehabilitation.

§354.2715. Day Programs for Acute Needs.

(a) Day programs for acute needs provide short term, intensive treatment to an individual who requires multidisciplinary treatment in order to stabilize acute psychiatric symptoms or prevent admission to a more restrictive setting. Day programs for acute needs:

- (1) are provided in a highly structured and safe environment with constant supervision;
- (2) ensure an opportunity for frequent interaction between an individual and staff members;
- (3) include services that are goal oriented and focus on:
 - (A) reality orientation;
 - (B) symptom reduction and management;

(C) appropriate social behavior;

(D) improving peer interactions;

(E) improving stress tolerance; and

(F) the development of coping skills; and

(4) consist of the following component services:

(A) psychiatric nursing services;

(B) pharmacological instruction;

(C) symptom management training; and

(D) functional skills training.

(b) Components of day programs for acute needs.

(1) Psychiatric nursing services must consist of:

(A) a nursing assessment;

(B) the coordination of medical activities (e.g., referrals to specialists and scheduling medical laboratory tests);

(C) the administration of medication;

(D) laboratory specimen collections and screenings;

(E) emergency medical interventions as ordered by a physician; and

(F) other nursing services.

(2) Pharmacological instruction is training to an individual that addresses medication issues related to the crisis precipitating the provision of day programs for acute needs. Such training must include:

(A) the role of the individual's medications in stabilizing acute psychiatric symptoms or preventing admission to a more restrictive setting;

(B) the identification of substances that reduce the effectiveness of the individual's medications;

(C) appropriate interventions to reduce side effects of the medications; and

(D) the self-administration of the individual's medication.

(3) Symptom management training assists an individual in recognizing and reducing psychiatric symptoms and must include training the individual on:

(A) the identification of thoughts, feelings, or behaviors that indicate the onset of acute psychiatric symptoms;

(B) developing coping strategies to address the symptoms;

(C) ways to avoid symptomatic episodes;

(D) identification of external circumstances that trigger the onset of acute psychiatric symptoms; and

(E) relapse prevention strategies.

(4) Functional skills training assists an individual in acquiring the skills needed to continue to reside in the community and avoid more restrictive levels of treatment and must include training the individual on:

(A) personal hygiene;

(B) nutrition;

(C) food preparation;

- (D) money management;
- (E) socially and culturally appropriate behavior; and
- (F) accessing and participating in community activities.

(c) Conditions.

(1) Day programs for acute needs:

- (A) may only be provided to adults;
- (B) may be provided in a setting with any number of individuals; and

(C) may be provided:

- (i) on-site; or
- (ii) in a short-term, crisis resolution oriented residential treatment setting that is not:

- (I) a general medical hospital;
- (II) a psychiatric hospital; or
- (III) an IMD.

(2) Except as provided by paragraphs (4) and (5) of this subsection, services in a day program for acute needs must be provided by a:

- (A) QMHP-CS;
- (B) CSSP; or
- (C) peer provider.

(3) Day programs for acute needs must, at all times:

(A) have a sufficient number of staff members to ensure safety and program adequacy;

(B) have one registered nurse at the day program's location for every 16 individuals;

(C) have one physician available by phone within a 15 minute timeframe; and

(D) have at least two staff members at the day program's location who are QMHP-CSs, CSSPs, or certified peer providers, with:

(i) additional QMHP-CSs, CSSPs, or certified peer providers at the day program's location sufficient to maintain a ratio of one staff member to every four individuals; and

(ii) one additional QMHP-CS who is not assigned full-time to another day program and who is physically available within 30 minutes of notification additional staff is needed.

(4) Psychiatric nursing services, as described in subsection (b)(1) of this section, must be provided by a registered nurse at the day program's location.

(5) Pharmacological instruction, as described in subsection (b)(2) of this section, must be provided by licensed medical personnel at the day program's location.

§354.2717. Exclusions.

(a) Mental health rehabilitative services do not include:

- (1) job task-specific vocational services;
- (2) educational services;
- (3) room and board residential costs;
- (4) services that are an integral and inseparable part of another Medicaid-reimbursable service, including targeted case manage-

ment services, residential rehabilitative behavioral health services, institutional, and waiver services;

(5) services that are covered elsewhere in the state Medicaid plan;

(6) respite services; or

(7) family support services.

(b) Texas Medicaid does not reimburse for mental health rehabilitative services provided before the establishment of a diagnosis of mental illness and the authorization of services.

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

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801266

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 428-1961



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 15. EGG LAW

4 TAC §15.5

The Texas Department of Agriculture (the Department) proposes amendments to Title 4, Part 1, Chapter 15, §15.5, concerning special fees for the egg law program. The amendments to §15.5 decrease the monthly egg law special fees.

Pursuant to §15.5, the Department collects special fees from regulated entities on a monthly basis. As a result of the economic expansion and population growth in Texas, Texas is experiencing additional demand for eggs produced in this state. Additionally, due to external factors out of state, such as increased governmental regulation, the export market for Texas eggs has increased and production has grown to meet in state and out of state demand for Texas eggs.

The Legislature requires that all of the costs of administering the Texas egg law program, codified at Chapter 132 of the Texas Agriculture Code, be entirely offset by revenue generated for the program and has authorized the agency to collect fees for such cost recovery efforts. The Department has been engaged in an ongoing review of programs for cost savings and efficiencies, and, as a result of such review, the Department has determined that the reduction in special fees set out in this proposal will allow TDA to meet cost recovery requirements and provide a benefit to industry and consumers through lower regulatory costs. Assuming this proposal is implemented after receipt and consideration of comments by industry and the public, the Department is confident that it will continue to effectively offer consumer protection required by the egg law program while operating the program.

Philip Wright, Administrator for Agriculture Consumer Protection, has determined that for the first five-year period the proposed

amendments are in effect, there will be no negative fiscal implications for state government due to the decrease in fees collected. The egg program is operated entirely on a cost recovery basis and the decrease in fees will not have an impact affecting the revenue of the Department. Although the Department expects this proposed reduction to be revenue neutral because of increased demand for Texas eggs, the Department is also in a position to reduce its operating costs for this program to meet the total revenue collected from egg producers, if necessary.

Mr. Wright has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be more efficient administration of the egg program, while reducing fees for licensees. There will be no anticipated increased costs to micro-businesses, small businesses or individuals required to comply with the amendments, as the fees will decrease for those licensed under this chapter. There will be no adverse impact on rural communities. Additionally, based on recent and long term historical volume of egg production in this state, the Department expects this proposal to result in a 16.6% reduction of special fees collected from egg producers subject to regulation under the Texas egg law.

Mr. Wright has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.021. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

- (1) no new or current government or Department programs will be created or eliminated;
- (2) no employee positions will be created, nor will any existing Department staff positions be eliminated; and
- (3) there will not be an increase or decrease in future legislative appropriations to the Department.

Additionally, Mr. Wright has determined that for the first five years the proposed rules are in effect:

- (1) there will be a decrease in fees paid to the Department;
- (2) there will be no new regulations created by the proposal;
- (3) there will be no expansion, limit or repeal of current regulations;
- (4) there will be no increase or decrease to the number of individuals subject to the proposal; and
- (5) the proposal will positively affect the Texas economy and Texas consumers by reducing the amount of special egg fees that licensees and processors must pay.

Comments on the proposal may be submitted to Philip Wright, Administrator for Agriculture Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Philip.Wright@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments are proposed under Texas Agriculture Code, §132.003, which designates the Department as the agency for egg law regulation and §§132.026, 132.027, 132.028, and 132.043, which require the Department to charge fees for each egg law licenses.

The code affected by the proposal is Chapter 132 of the Agriculture Code.

§15.5. *Special Fees.*

(a) A person licensed under this chapter who first establishes the grade, size, and classification of eggs offered for sale or sold in this state shall collect a fee of \$0.05 [~~\$0.06~~] per case of eggs on the first sale of the eggs.

(b) A processor licensed under this chapter shall pay a fee of \$0.05 [~~\$0.06~~] per case of eggs on the processor's first use or change in form of the eggs processed.

(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 March 20, 2018.

TRD-201801195

Jessica Escobar

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Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 463-4075

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.70

The Railroad Commission of Texas (Commission) proposes amendments to §3.70, relating to Pipeline Permits Required, to implement fees to fund the Commission's Pipeline Safety Program pursuant to Texas Natural Resources Code §81.071. The proposed amendments also specify time periods for filing permit renewals, require the electronic filing of permits, require specific time periods for Commission review of permit filings, specify time periods and procedures for transfers of permits, and state that an operator who fails to comply with the rule may be assessed a penalty.

The Sunset Advisory Commission (Sunset Commission) reviewed the Commission from 2016-2017. Upon completion of its review, the Sunset Commission submitted a final report to the 85th Legislature, Regular Session, 2017, containing various recommendations for changes to the Commission's funding and operations. The legislature reviewed the Sunset Commission's recommendations and adopted a final "sunset bill", House Bill 1818 (HB 1818). HB 1818, through various statutory amendments, directs the Commission to develop and implement new policies and procedures. Included in HB 1818 were amendments to §81.071 of the Natural Resources Code, which authorizes the Commission to establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program. Before the enactment of §81.071, the Commission received funding for the pipeline safety program from the legislature's General Revenue Fund. However, the 85th Legislature directed the Commission to fund its pipeline safety program with federal funds and fees collected from the industry. Therefore, §81.071 was promulgated to

provide necessary funding for the Commission's pipeline safety and regulatory program.

Section 81.071(b) authorizes the Commission to assess: (1) an annual fee to permit or registration holders; and (2) individual fees for new permits or registrations, permit or registration renewals, and permit or registration amendments. Section 81.071(d) authorizes the Commission to establish by rule the methods by which the fees will be calculated and assessed. The Commission may base the fees on any factor it considers necessary to efficiently and fairly recover the pipeline safety and regulatory program's costs. Section 81.071(e) authorizes reasonable late payment penalties for such fees. In accordance with these provisions, the Commission proposes amendments to §3.70 to establish an annual mileage fee, a permit processing fee for new permits and annual permit renewals, and the procedure by which pipeline operators will pay both fees.

The Commission proposes amendments to subsection (a) to clarify that operators are required to renew permits annually.

Proposed amendments to subsections (b) and (c) require an operator to utilize the Commission's online filing system (currently known as the Pipeline Online Permitting System or POPS) to file an application for a new permit, renew an existing permit, amend an existing permit, or cancel an existing permit.

Proposed amendments to subsections (d) and (e) shorten the time period for Commission staff's review of permit filings from 45 days upon the receipt of an administratively complete application to 30 days.

Proposed amendments in subsection (h) add that the Commission may call a hearing to revoke a permit if the permit is not renewed annually.

Proposed new subsection (i) establishes an annual fee based on the pipeline operator's permitted mileage. For purposes of calculating the mileage fee, the Commission proposes to categorize pipeline operators into two groups. Group A includes transmission and gathering pipelines that are required by Commission rules to have a valid T-4 permit to operate and are subject to the regulations in 49 Code of Federal Regulations (CFR) Parts 192 and 195. Group A pipelines include natural gas transmission and storage pipelines, natural gas gathering pipelines, hazardous liquids transmission and storage pipelines, and hazardous liquids gathering pipelines. Group A pipelines are subject to pipeline safety inspections by the Commission. Group B includes gathering pipelines that are required by Commission rules to have a valid T-4 permit to operate but are not subject to the regulations in 49 CFR Parts 192 and 195. Group B pipelines include intrastate production and gathering pipelines leaving a lease. Group B pipelines are subject to pipeline safety inspections as codified in Texas Natural Resources Code, §§117.011 and 117.012, and Texas Utilities Code, §121.201 pursuant to House Bill 2982, 83rd Regular Session, and are also required to comply with any other applicable Commission rules. However, because the Commission inspects pipelines in Group A more regularly pursuant to 49 CFR Parts 192 and 195, Group A pipelines create higher costs to the Commission. Therefore, pipelines in Group A will be assessed a higher annual mileage fee.

Proposed new subsection (i)(2) requires pipeline operators in Group A to pay an annual fee of \$20 per mile of pipeline based on the number of miles permitted to the operator as of June 29, 2018, for the initial year that the proposed amendments are in

effect, and as of December 31 for each subsequent year. Proposed subsection (i)(3) requires pipeline operators in Group B to pay an annual fee of \$10 per mile of pipeline based on the number of miles permitted to the operator as of June 29, 2018 for the initial year that the proposed amendments are in effect, and as of December 31 for each subsequent year. Proposed subsection (i)(4) assesses a \$20 or \$10 fee, as appropriate, for any pipeline distance that is a fraction of a mile.

For the first year that the proposed amendments are in effect, the mileage fee will be calculated using the number of pipeline miles permitted to an operator as of June 29, 2018, with the mileage fee payable to the Commission by August 31, 2018. For all subsequent years, the mileage fee will be calculated using the number of pipeline miles permitted to an operator as of December 31 of each year with the mileage fee payable to the Commission by April 1 of each subsequent year.

For example, a pipeline operator in Group A that has 20.1 miles of pipeline included on its permit as of June 29, 2018, must pay \$420 to the Commission by August 31, 2018. A pipeline operator in Group B that has 20.1 miles of pipeline included on its permit as of June 29, 2018, must pay \$210 to the Commission by August 31, 2018.

The Commission will provide an online portal for the payment of all fees. Pipeline operators are directed to monitor the Commission's website for more information regarding the online payment portal. The Commission will post on its website by the end of March 2018 a chart showing the number of permitted miles in Commission records assigned to each operator. If an operator needs to update its number of permitted miles, the operator must submit a permit amendment no later than May 15, 2018, to allow Commission staff adequate time to process the amendment. The number of permitted miles assigned to each operator in Commission records on June 29, 2018, will be the number used in the online payment portal to calculate the mileage fee that each operator must pay by August 31, 2018. The Commission's online payment portal will be available no later than August 1, 2018, giving the operators a month to pay the mileage fee.

Proposed subsection (j) establishes a \$500 permit processing fee, which beginning upon the effective date of the adopted amendments, must be paid for each new permit application and permit renewal. Each pipeline operator is required to annually renew its T-4 permit. Therefore, the \$500 permit processing fee will be assessed annually upon the pipeline operator's renewal date. When applying for a new permit, a pipeline operator will pay the \$500 fee and will subsequently pay the fee every year thereafter upon the permit renewal date. The permit renewal date for a pipeline operator who has an existing, valid permit will be the date shown in the Commission's online filing system on June 29, 2018, when the pipeline mileage is calculated for purposes of paying the mileage fee. Permit amendments that may occur in the future will not change the permit renewal date.

Subsections (k) and (l) establish reasonable late fees, as authorized by Texas Natural Resources Code, §81.071(e), for a pipeline operator who fails to pay the annual fee or renewal processing fee on time. A pipeline operator who fails to renew a permit on or before the permit expiration date or who fails to timely pay the annual mileage fee will owe a late-filing fee.

Proposed amendments in subsection (m) specify that an operator has 30 days after completion of a transfer to notify the Commission of the transfer and the procedure to do so, and in subsection (n), clarify that a violation of §3.70 may result in a penalty.

As authorized by HB 1818, the proposed fees would be sufficient to support the Commission's pipeline safety and regulatory program costs. The fees generated will be used entirely to support the pipeline safety and regulatory program costs, including permitting or registration costs, administrative costs, costs of employee salaries and benefits, inspection costs including travel, and supplies and equipment. The General Appropriations Act (Senate Bill 1, 85th Legislature, Regular Session, 2017) appropriated \$14,047,137 for Pipeline Safety funding in state fiscal year 2018, of which \$9,037,449 is from the General Revenue Dedicated Fund, the Oil and Gas Regulation Cleanup Account. Existing fees assessed pursuant to Utilities Code §121.211 contribute over half of that cost and therefore the remaining, additional cost must be covered by the proposed new fees.

The proposed annual mileage fee will generate the majority of the program funding. Commission staff estimates that there are currently approximately 73,000 miles of Group A pipelines permitted in Texas and 173,000 miles of Group B pipelines permitted in Texas. Thus, the proposed annual mileage fee of \$20 per Group A mile would generate \$1,460,000 and the proposed annual mileage fee of \$10 per Group B mile would generate \$1,730,000 for a total of \$3,190,000.

Commission staff estimates that the new \$500 fee for each permit application and permit renewal will generate an estimated \$1,095,000 per year. On average, Commission staff processes approximately 170 new permit applications a year, and 2,020 permit renewals per year, which will continue to be required pursuant to subsection (a) to be renewed every year. The annual revenue derived from the \$500 permit processing fee will vary depending on the number of new permits and permit renewals requested in any given year. Therefore, Commission staff estimates that the annual mileage fee and the permit application and permit renewals fee will generate approximately \$4,285,000 a year.

To consider possible fee structures, the Commission held a public workshop on November 28, 2017, at the Commission's Austin office. The Commission received seven informal written comments after the public workshop. Atmos Pipeline--Texas, a division of Atmos Energy Corporation (APT), commented generally that it supports the concept of a self-funded regulatory program administered by the Commission as authorized in HB 1818. APT additionally supports the concept of a set fee per permitted mile and an additional permit processing fee for T-4 permit applications and renewals. Finally, APT supports revising the pipeline transfer notice period from 45 days before the transfer to within 30 days following the transfer. The Commission thanks APT for its support.

The Texas Pipeline Association (TPA) commented that it recognizes the importance of the Commission having a properly funded pipeline safety program. TPA supports the Commission's decision to reduce the amount of time that Commission staff has to review an administratively complete T-4 permit application from 60 days to within 30 days. TPA additionally supports revising the pipeline transfer notice period from 45 days before the transfer to within 30 days following the transfer. EPCOR, on behalf of Hughes Gas Resources Inc., commented that it believes a set fee per permitted mile is the most equitable approach to assess the T-4 permit fees and additionally agrees with TPA's submitted comments. The Commission thanks TPA and EPCOR for their support.

ONEOK, Inc. (ONEOK) commented that it supports a fixed dollar amount per mile of permitted pipeline as opposed to a fee based

on pipe diameter size. Ensuring accuracy of the fees collected is best accomplished by making the mileage fee collection process consistent each year. ONEOK also suggests setting a specific date for permit renewals to allow operators to properly budget costs and supports a single fee payment rather than multiple individual payments by permit with varying dates.

The Commission thanks ONEOK for its support of a set fee per permitted mile. The Commission disagrees that all pipeline operators should have the same date for permit renewals. Under the proposed amendments, a particular permit's renewal date after the effective date of these amendments will be the date shown for the permit in the Commission's online filing system on June 29, 2018, when an operator's mileage is calculated. This fixed date based on each operator's permit would remain in place even if an operator files a permit amendment during the year. The Commission proposes the fixed renewal date for two reasons. First, it would result in a regular, consistent renewal date for each permit, allowing the Commission to better track the status of a permit. Having a fixed renewal date is also consistent with the Commission's requirements for P-5 Organization Report renewals in the Oil and Gas Division. Second, now that the Commission is authorized by §81.071 of the Natural Resources Code to fund the pipeline safety program through the Oil and Gas Regulation and Cleanup Fund, the fixed renewal date for each operator would ensure that the Commission's regulatory and financial burdens are met.

The Commission proposes a corresponding amendment in subsection (j) to state that a permit renewal date will not be affected or changed by an operator requesting a permit amendment. This proposed change also ensures that the Commission will meet the requirements of §81.071.

The Dow Chemical Company (Dow) commented that it supports a fee allocation based strictly on pipeline mileage and states that the length of the pipeline should be the primary variable in calculating a fee. Dow does not support a separate T-4 permit application fee for permit amendments or permit renewals. Dow also stated that a pipeline mileage fee should be based on mileage reported on an operator's T-4 at the end of the Commission's fiscal year or at the end of the calendar year. Finally, Dow commented that it does not support revising the Commission staff review period of a T-4 permit application to 30 days because a shorter period may result in poorly reviewed permits.

The Commission disagrees with Dow that a separate fee for permit renewals is unnecessary; however, the Commission does not propose a fee for permit amendments. The annual mileage fee will only accrue an estimated \$3,190,000 of the \$9,037,449 fee revenue needed to support the pipeline safety regulatory program. Therefore, a fee for new permits and permit renewals is necessary to fully fund the program. As stated previously, this methodology is consistent with the Commission's requirements for P-5 Organization Report renewals in the Oil and Gas Division.

The Commission agrees with Dow that the number of permitted miles used to calculate the annual mileage fee should be calculated at the end of the calendar year. With the exception of 2018, in which the number of permitted miles will be determined as of June 29, 2018, the proposed amendments in subsection (i)(1) and (2) specify December 31 of each year as the date the number of permitted miles will be determined in order to calculate the annual mileage fee that an operator must pay. Proposed new subsection (i)(5) requires fees due to the Commission for mileage transferred from one operator to another operator pur-

suant to subsection (m) of this section to be captured in the next mileage fee to be calculated on the following December 31 and paid by the new operator.

The Commission disagrees with Dow's comment that shortening the time for Commission staff to review a T-4 permit application to 30 days will result in poorly reviewed permits. Commission staff is already reviewing administratively complete T-4 permit applications within 30 days, so the current rule wording allowing 45 days is unnecessary. In addition, Commission staff's review of electronically filed permits using its online filing system is more efficient. The Commission also recognizes Dow's comment that the online filing system needs to be fully functional before the Commission requires its use and notes that enhancements are in progress to ensure the system is workable.

Sander Resources commented that the amendments to §3.70 should balance any assessed fees between all pipeline operators and those subject to pipeline safety regulations. Sander Resources additionally commented that the fees should be assessed based on the following tiers: pipes with 12 inches or less in diameter, pipes with a diameter between 12 and 24 inches, and pipes with a diameter larger than 24 inches. The Commission agrees that the mileage fee should be balanced between all pipeline operators and those subject to pipeline safety regulations; therefore, the Commission proposes a different mileage fee for Group A and Group B operators. However, the Commission disagrees that a fee should be assessed based on size of pipe diameter. Pipeline safety inspections are the highest cost of the pipeline safety program. The Pipeline Safety Department's inspection costs increase the more miles a particular pipeline operator has permitted. Inspection costs are not affected by pipe diameter. As a result, an annual fee based on mileage is the most equitable way to fund the pipeline safety program.

CPS Energy's comments asked how the Commission foresees utilizing the funds generated from the fees and what growth the Commission expects in the pipeline safety program. The Commission has previously discussed the necessity for proposed pipeline fees and how the funds will be used. The proposed fee structure is used to cover the costs of the pipeline safety program. The Commission continues to strengthen its pipeline safety program. For example, funds collected from the proposed fees will be used to hire additional pipeline safety inspectors.

Kari French, Director, Oversight and Safety Division, has determined that for each year of the first five years the amendments will be in effect there will be fiscal implications to the Commission and to the regulated industry as a result of the amendments. There will be no fiscal effect on local government.

The fiscal impact on the Commission as a result of administering the amendments will be a maximum cost of approximately \$65,000. This cost is based on the estimated 1,150 hours of programming required to modify existing programs to update the timing of review workflows, add new fee codes, modify the Commission's payment portal to accommodate the new fees, and recertify the new fee codes through the payment portal. As explained above, in accordance with HB 1818, the proposed new fees will generate approximately \$4,285,000 in revenue to the Commission each year, and the fiscal impact on the regulated industry will be \$20 per mile of pipeline permitted to a Group A pipeline operator, \$10 per mile of pipeline permitted to a Group B pipeline operators, \$500 to apply for a new T-4 permit, and \$500 to renew a pipeline operator's T-4 permit.

Ms. French has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be continued revenue to support public safety through the Commission's Pipeline Safety Program, pursuant to HB 1818 and the General Appropriations Act.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on rural communities, small businesses, and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities, small businesses, or micro-businesses. The proposed amendments will not have an adverse economic effect on rural communities. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons operating a pipeline under the Commission's jurisdiction classify as small businesses or micro-businesses, as those terms are defined. However, based on the information available, the Commission expects that there are pipeline operators that fall within the definition of a small business or micro-business.

In preparing the proposed rule, the Commission considered whether the purpose of the rule amendment could still be achieved if (1) small or micro-businesses pay reduced fees, or (2) small or micro-businesses are exempt from the fee requirements. The Commission rejected these alternatives because the amendments to §81.071 of the Natural Resources Code enacted by HB 1818 were specifically intended by the Texas Legislature to allow the Commission to set reasonable fees to fund its Pipeline Safety Program, including recovering costs incurred in processing permit applications. The alternatives would not only impact the amount of funds the Commission could collect but would also result in new costs to the Commission due to the administrative burden of determining whether each operator qualifies for a fee exemption or reduction. Further, the proposed fees minimize the adverse impact on small businesses and micro-businesses by charging an operator based on the operator's permitted pipeline mileage. As smaller pipeline operators are likely to have a lower number of pipeline mileage, the overall cost to a smaller operator should be less.

During the first five years that the rules would be in effect, the proposed rules do not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or effect the state's economy.

The proposed amendments require an increase to the existing fee for a new permit application, create a new fee for permit renewals, and create a new annual mileage fee.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, May 7, 2018. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Kari French at (512) 463-8859. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendments to §3.70 pursuant to Texas Natural Resources Code, §81.071, enacted by the 85th Legislature (Regular Session, 2017) in House Bill 1818, which authorizes the Commission to establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program. Additionally, the Commission proposes the amendments pursuant to §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Natural Resources Code §81.0531, which authorizes the Commission to assess a penalty for a violation of a provision of Title 3 of the Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; §85.202, which authorizes the Commission to promulgate rules requiring records to be kept and reports made, and providing for the issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the Commission's rules for the prevention of waste; Natural Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; Natural Resources Code §111.131 and §111.132, which authorize the Commission to promulgate rules for the government and control of common carriers and public utilities; Natural Resources Code §§117.001 - 117.101, which give the Commission jurisdiction

over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, et seq.; and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 81.0531, 81.071, 85.202, 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§3.70. Pipeline Permits Required.

(a) Each operator of a pipeline or gathering system, other than a production or flow line that does not leave a lease or an operator excluded under §8.1(b)(4) of this title, [(r)relating to General Applicability and Standards, subject to the jurisdiction of the Commission, shall obtain a pipeline permit, to be renewed annually[renewable annually], from the Commission as provided in this rule.

(b) To obtain a new pipeline permit or to amend a permit because of a change of classification, an operator shall file an application for a pipeline permit on the Commission's online permitting system. The operator shall include or attach [a form approved by the Commission which includes or is accompanied by] the following documentation and information:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation or maintenance;

(2) the requested classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line;

(3) a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification and purpose being sought for the pipeline, including, if applicable, an attestation to the applicant's knowledge of the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights as published by the Office of the Attorney General of Texas; and

(4) documentation to provide support for the classification and purpose being sought for the pipeline, if applicable;[,] and

(5) any other information requested by the Commission.

(c) To renew an existing permit, to amend an existing permit for any reason other than a change in classification, or to cancel an existing permit, an operator shall file an application for a pipeline permit on the Commission's online filing system. The operator shall include or attach [a form approved by the Commission which includes or is accompanied by]:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation, or maintenance; change in operator or ownership; or other change including operator cessation of pipeline operation;

(2) a statement from the pipeline operator confirming the current classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line, if applicable; and

(3) any other information requested by the Commission.

(d) Upon receipt of a complete permit application, the Commission has 30 calendar days to issue, amend, or deny the pipeline permit as filed. If the Commission determines that the application is incomplete, the Commission shall promptly notify the applicant of the deficiencies and specify the additional information necessary to complete the application. Upon receipt of a revised application, the Commission has 30 calendar days to determine if the application is complete and issue, amend, or deny the pipeline permit as filed. [The Commission shall determine if the application is complete within 15 calendar days following the date of filing of an application and shall notify the operator either that the application is complete or that the application is incomplete. The notice of an incomplete application shall specify the additional information needed to complete the application.]

(e) [Once an application is determined to be complete and sufficient, the Commission shall issue, amend, or cancel the pipeline permit or deny the pipeline permit as filed.] If the Commission is satisfied from the application and the documentation and information provided in support thereof, and its own review, that the proposed line is, or will be laid, equipped, managed and operated in accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted. The pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private pipeline based upon the information and documentation submitted by the applicant and the Commission's review of the application. [The Commission's decision on issuance of a pipeline permit shall be completed within 45 calendar days following the Commission's determination that an application is complete.]

(f) This rule applies to applications made for new pipeline permits and to amendments, renewals, and cancellations of existing pipeline permits [which are submitted to the Commission on or after the effective date of this rule]. The classification of a pipeline under this rule applies to extensions, replacements, and relocations of that pipeline.

(g) The Commission may delegate the authority to administratively issue pipeline permits.

(h) The pipeline permit, if granted, shall be revocable at any time after a hearing, held after 10 days' notice, if the Commission finds that the pipeline is not being operated in accordance with the laws of the state and the rules and regulations of the Commission including if the permit is not renewed annually as required in subsection (a) of this section.

(i) Each pipeline operator shall pay an annual fee based on the pipeline operator's permitted mileage of pipeline by August 31, 2018, for the initial year that the requirement is in effect, and by April 1 for each subsequent year.

(1) For purposes of calculating the mileage fee, the Commission will categorize pipeline operators into two groups.

(A) Group A includes transmission and gathering pipelines that are required by Commission rules to have a valid T-4 permit to operate and are subject to the regulations in 49 CFR Parts 192 and 195. Group A pipelines include natural gas transmission and storage pipelines, natural gas gathering pipelines, hazardous liquids transmission and storage pipelines, and hazardous liquids gathering pipelines.

(B) Group B includes gathering pipelines that are required by Commission rules to have a valid T-4 permit to operate but are not subject to the regulations in 49 CFR Parts 192 and 195. Group B pipelines include intrastate production and gathering pipelines leaving a lease.

(2) A pipeline operator in Group A shall pay an annual fee of \$20 per mile of pipeline based on the number of miles permitted to that operator as of June 29, 2018, for the initial year that the requirement is in effect and as of December 31 for each subsequent year.

(3) A pipeline operator in Group B shall pay an annual fee of \$10 per mile of pipeline based on the number of miles permitted to that operator as of June 29, 2018, for the initial year that the requirement is in effect and as of December 31 for each subsequent year.

(4) Any pipeline distance that is a fraction of a mile will be considered as one mile and will be assessed a \$20 or \$10 fee, as appropriate.

(5) Fees due to the Commission for mileage transferred from one operator to another operator pursuant to subsection (m) of this section will be captured in the next mileage fee to be calculated on the following December 31 and paid by the new operator.

(j) Each pipeline operator shall pay a \$500 permit processing fee for each new permit application and permit renewal, beginning on the effective date of this amendment. The permit renewal date for a pipeline operator who has an existing, valid permit in the Commission's online filing system will be the date shown in the online filing system on June 29, 2018, when the pipeline mileage is calculated for purposes of paying the mileage fee. A permit renewal date will not be affected or changed by an operator requesting or receiving a permit amendment.

(k) A pipeline operator who fails to renew a permit on or before the permit expiration date shall pay a late-filing fee as follows:

(1) \$250, if the renewal application is received within 30 calendar days after the expiration date;

(2) \$500, if the renewal application is received more than 30 calendar days and no more than 60 calendar days after the expiration date; and

(3) \$700, if the renewal application is received more than 60 calendar days after the expiration date.

(4) If the renewal application is not received within 90 calendar days of the expiration date, the Commission may assess a penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

(l) A pipeline operator who fails to pay the annual mileage fee shall pay a late-filing fee as follows:

(1) \$250, if the fee is received within 30 calendar days of August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year;

(2) \$500, if the fee is received more than 30 calendar days and no more than 60 calendar days after August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year; and

(3) \$700, if the fee is received more than 60 calendar days after August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year.

(4) If the fee is not received within 90 calendar days of August 31 for the initial year that the requirement is in effect or April 1 for each subsequent year, the Commission may assess a penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

(m) A pipeline operator who has been issued a permit and is transferring the pipeline or a portion of the pipeline included on the permit to another operator shall file a notification of transfer with the Commission within 30 days following the transfer. An operator may

file a fully executed Form T-4B as a notification of transfer. The Commission may use a fully executed Form T-4B to remove the pipeline that is the subject of the transfer from the transferor operator and assign the mileage to the transferee operator for calculation of the annual mileage fee. The operator to which the pipeline has been transferred shall amend its permit to include the pipeline or portion of the pipeline within 30 days following the transfer or the operator may be subject to a penalty for operating without a permit pursuant to subsection (n) of this section.

(n) A pipeline operator who operates a pipeline without a permit, with an expired permit, or who otherwise fails to comply with this section, may be assessed a penalty as prescribed in §8.135 of this title, relating to Penalty Guidelines for Pipeline Safety Violations.

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 March 20, 2018.

TRD-201801196

Haley Cochran

Rules Attorney, Office of the General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 475-1295



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) proposes the amendment of Texas Administrative Code Part 1, Title 22 §1.5 (Terms Defined Herein), §1.21 (Registration by Examination), §1.22 (Registration by Reciprocal Transfer), §1.41 (Requirements), and §1.123 (Titles).

This proposed rulemaking action would implement a non-substantive change in terminology for the program previously known in the Board's rules as the "Intern Development Program." This program is administered by the National Council of Architectural Registration Boards (NCARB). It is a standardized program that is accepted by Texas and most other jurisdictions to demonstrate sufficient experience to become registered as an architect. Recently, NCARB renamed this program the "Architectural Experience Program." To ensure that agency rules remain current, the Board proposes to replace obsolete references to the "Intern Development Program," with citations to the updated term "Architectural Experience Program." This rule change is non-substantive and will not affect current or future eligibility for any person who completed the program under the previous name.

Additionally, the Board proposes to correct a reference in §1.5(39), which defines "National Council of Architectural Registration Boards (NCARB)." Currently, the definition states that NCARB is a nonprofit federation of architectural registration boards from 55 states and territories of the United States. In fact, NCARB is made up of 54 jurisdictions. Therefore, the Board proposes to amend the definition to provide accurate information.

FISCAL NOTE

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect, the amendments will have no fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules make non-substantive changes to existing regulations as opposed to create new ones. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rule would not require an increase or decrease in legislative appropriations to the agency and the proposed rule would not increase or decrease the Board's fees. The proposed rule would not increase the number of individuals subject to regulation. The proposed rule is not expected to have any impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

For the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be greater consistency between the Board's rules and the terminology used by NCARB in describing and administering the Architectural Experience Program. This will decrease potential confusion of applicants for architectural registration in Texas.

Compliance with the proposed amendments is not expected to result in increased economic costs compared to the existing rules. The proposed rules will have no negative fiscal impact on small or micro-business or rural communities, and no economic impact statement or regulatory flexibility analysis is required.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; and Texas Occupations Code §1051.705, which authorizes the Board to prescribe satisfactory architectural experience to sit for the registration examination.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§1.5. *Terms Defined Herein.*

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

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

(10) Architectural Experience Program-- The comprehensive architectural experience program established, interpreted, and enforced by NCARB, or the predecessor Intern Development Program.

(11) ~~[(40)]~~ Architectural Intern--An individual enrolled in the Architectural Experience Program (AXP) ~~[Intern Development Program (IDP)]~~.

(12) ~~[(41)]~~ ARE--Architect Registration Examination.

(13) ~~[(42)]~~ AREFAF--Architect Registration Examination Financial Assistance Fund.

(14) AXP--The Architectural Experience Program.

(15) ~~[(43)]~~ Barrier-Free Design--The design of a building or a facility or the design of an alteration of a building or a facility which complies with the Texas Accessibility Standards, the Americans with Disabilities Act, the Fair Housing Accessibility Guidelines, or similarly accepted standards for accessible design.

(16) ~~[(44)]~~ Board--Texas Board of Architectural Examiners.

(17) ~~[(45)]~~ Cancel, Cancellation, or Cancelled--The termination of a Texas architectural registration certificate by operation of law two years after it expires without renewal by the certificate-holder.

(18) ~~[(46)]~~ Candidate--An Applicant approved by the Board to take the ARE.

(19) ~~[(47)]~~ CEPH--Continuing Education Program Hour(s).

(20) ~~[(48)]~~ Chair--The member of the Board who serves as the Board's presiding officer.

(21) ~~[(49)]~~ Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents prepared for the purpose(s) of Regulatory Approval, permitting, or construction.

(22) ~~[(20)]~~ Consultant--An individual retained by an Architect who prepares or assists in the preparation of technical design documents issued by the Architect for use in connection with the Architect's Construction Documents.

(23) ~~[(21)]~~ Contested Case--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(24) ~~[(22)]~~ Continuing Education Program Hour (CEPH)-At least fifty (50) minutes of time spent in an activity meeting the Board's continuing education requirements.

(25) ~~[(23)]~~ Council Certification--Certification granted by NCARB to architects who have satisfied certain standards related to architectural education, training, and examination.

(26) ~~[(24)]~~ Delinquent--A registration status signifying that an Architect:

(A) has failed to remit the applicable renewal fee to the Board; and

(B) is no longer authorized to Practice Architecture in Texas or use any of the terms restricted by the Architects' Registration Law.

(27) ~~[(25)]~~ Emeritus Architect (or Architect Emeritus)--An honorary title that may be used by an Architect who has retired from the Practice of Architecture in Texas pursuant to Texas Occupations Code, §1051.357.

(28) ~~[(26)]~~ Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption

of energy in the use of the project. The term includes energy efficiency strategies by design as well as the incorporation of alternative energy systems.

(29) ~~[(27)]~~ Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed architectural project from a technical architectural standpoint.

(30) ~~[(28)]~~ Good Standing--

(A) a registration status signifying that an Architect is not delinquent in the payment of any fees owed to the Board; or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by an architectural registration board that would provide a ground for the denial of the application for architectural registration in Texas.

(31) ~~[(29)]~~ Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(32) ~~[(30)]~~ Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

~~[(31)] IDP--The Intern Development Program as administered by NCARB.]~~

(33) ~~[(32)]~~ Inactive--A registration status signifying that an Architect may not Practice Architecture in the State of Texas.

~~[(33)] Intern Development Program (IDP)--A comprehensive internship program established, interpreted, and enforced by NCARB.]~~

(34) Institutional Residential Facility--A building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietors or operators of the building. Hospitals, dormitories, nursing homes and other assisted living facilities, and correctional facilities are examples of buildings that may be Institutional Residential Facilities.

(35) Licensed--Registered.

(36) Member Board--An architectural registration board that is part of the nonprofit federation of architectural registration boards known as NCARB.

(37) NAAB--National Architectural Accrediting Board.

(38) National Architectural Accrediting Board (NAAB)-An agency that accredits architectural degree programs in the United States.

(39) National Council of Architectural Registration Boards (NCARB)--A nonprofit federation of architectural registration boards from ~~fifty-four (54)~~ ~~[fifty-five (55)]~~ states and territories of the United States.

(40) - (71) (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 March 22, 2018.

TRD-201801232



SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.21, §1.22

The amendments are proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; and Texas Occupations Code §1051.705, which authorizes the Board to prescribe satisfactory architectural experience to sit for the registration examination.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§1.21. *Registration by Examination.*

(a) In order to obtain architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from:

(A) an architectural education program accredited by the National Architectural Accreditation Board (NAAB),

(B) an architectural education program that became accredited by NAAB not later than two years after the Applicant's graduation,

(C) an architectural education program that was granted candidacy status by NAAB and became accredited by NAAB not later than three years after the Applicant's graduation, or

(D) an architectural education program outside the United States where an evaluation by NAAB or another organization acceptable to the Board has concluded that the program is substantially equivalent to an NAAB accredited professional program;

(2) shall successfully demonstrate completion of the Architectural Experience Program (AXP) [~~Intern Development Program~~]; and

(3) shall successfully complete the architectural registration examination as more fully described in Subchapter C.

(b) An Applicant who applies for architectural registration by examination on or before August 31, 2011 is not required to complete the Architectural Experience Program (AXP) [~~Intern Development Program~~] if the Applicant successfully demonstrates that prior to January 1, 1984, he/she acquired at least eight (8) years of acceptable architectural experience or eight (8) years of a combination of acceptable education and experience. This subsection is repealed effective September 1, 2011.

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

§1.22. *Registration by Reciprocal Transfer.*

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed the Architect Registration Examination (ARE) or another architectural registration examination which the National Council of Architectural Registration Boards (NCARB) has approved as conforming to NCARB's examination standards; and

(B) successfully completed the requirements of the Architectural Experience Program (AXP) [~~Intern Development Program (IDP)~~] or acquired at least three years of acceptable architectural experience following registration in another jurisdiction; or

(2) the Applicant has been given Council Certification by NCARB and such Council Certification is not currently in an expired or revoked status.

(c) An Applicant for architectural registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.

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

Filed with the Office of the Secretary of State on March 22, 2018.

TRD-201801233

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 305-8519



SUBCHAPTER C. EXAMINATION

22 TAC §1.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; and Texas Occupations Code §1051.705, which authorizes the Board to prescribe satisfactory architectural experience to sit for the registration examination.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§1.41. *Requirements.*

(a) Every Applicant for architectural registration by examination in Texas must successfully complete all sections of the Architect Registration Examination (ARE).

(b) The Board may approve an Applicant to take the ARE only after the Applicant has completed the educational requirements for architectural registration by examination in Texas, has completed at least

six (6) months of full-time experience working under the direct supervision of a licensed architect, has enrolled in the Architectural Experience Program (AXP)~~[Intern Development Program]~~ by establishing a council record with NCARB, and has submitted the required application materials.

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

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

Filed with the Office of the Secretary of State on March 22, 2018.

TRD-201801234

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 305-8519



SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §1.123

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; and Texas Occupations Code §1051.705, which authorizes the Board to prescribe satisfactory architectural experience to sit for the registration examination.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§1.123. Titles.

(a) - (c) (No change.)

(d) A person enrolled in the Architectural Experience Program (AXP) ~~[Intern Development Program (IDP)]~~ may use the title "architectural intern."

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 March 22, 2018.

TRD-201801235

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 305-8519



PART 9. TEXAS MEDICAL BOARD

CHAPTER 198. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

The Texas Medical Board (Board) proposes amendments to §§198.1 - 198.4 and new §198.5 and §198.6, concerning Standards for Use of Investigational Agents.

The Board proposes to amend Chapter 198 by dividing Chapter 198 into two separate subchapters, and adding Subchapter A, "Standards for Use of Investigational Drugs, Biological Products, or Devices" in an effort to distinguish the applicability of the provisions contained in Subchapter A and those provisions contained in proposed Subchapter B. Subchapter A contains proposed amendments to §§198.1 - 198.4.

The amendment to §198.1, concerning Purpose, removes the word "agents" and replaces it with the terms "drugs, biological products, or devices" in order to align with statutory language contained in Health and Safety Code Chapter 489. It also includes new language to distinguish the applicability of Subchapter A and to differentiate Subchapter B.

The amendment to §198.2, concerning Definitions, removes the definition of "investigational agent" and defines the terms "drugs, biological products, or devices" and "terminal illness." These proposed changes are consistent with the definitions and terms used in the Texas Health and Safety Code Chapter 489. The proposed changes also include limiting language to clarify that such definitions are not applicable to Subchapter B.

The amendments to §198.3, concerning Practice Guidelines for the Use of Investigational Agents, removes the term "agent" throughout the section and includes the terms "drugs, biological products, or devices" in line with statutory language contained in Health and Safety Code, Chapter 489.

The amendments to §198.4, concerning Use of Investigational Agents for Patients with Terminal Illnesses, changes the title of this section by removing the term "agent" and replacing it with the terms "drugs, biological products, or devices" in order to correspond with statutory terms in Chapter 489 of the Texas Health and Safety Code. The remainder of this section is deleted, as it is contained in Chapter 489 of the Health and Safety Code.

The Board proposes new Subchapter B, "Investigational Stem Cell Treatments for Patients With Certain Severe Chronic Diseases or Terminal Illnesses" to distinguish the provisions contained therein with those provisions contained in proposed Subchapter A. Subchapter B, contains proposed new §198.5 and §198.6.

Proposed new §198.5, concerning Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses implements the requirements of House Bill 810, 85th Leg. R.S. (2017) which establishes the regulation of investigational stem cell treatments in Texas as set forth in Chapter 1003 of the Texas Health and Safety Code.

Proposed new §198.6, concerning Process and Procedures for IRBs Engaged in the Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses, implements the requirements of House Bill 810, 85th Leg. R.S. (2017) which establishes the regulation of investigational stem cell treatments in Texas through statutory changes in Chapter 1003 of the Texas Health and Safety Code.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with statutes and to eliminate unnecessary language that mirrors statutory requirements and to implement statutory requirements in Chapter

1003 of the Texas Health and Safety Code, which allows patients with severe chronic diseases or terminal illnesses, defined by forthcoming DSHS rulemaking, to gain access to potentially beneficial investigational stem cell treatments.

Mr. Freshour has also determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses. There will be no effect on rural communities.

Government Growth Impact Statement. Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

- (1) The proposed rules do not create or eliminate a government program.
- (2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rules do not require an increase or decrease in fees paid to the agency.
- (5) The proposed rules 198.5 and 198.6 implement the new regulation created by HB810.
- (6) The proposed rules do not expand or repeal any existing regulations.
- (7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
- (8) The proposed rules do not positively or adversely affect this state's economy.

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

SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES

22 TAC §§198.1 - 198.4

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

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

§198.1. Purpose.

(a) The purpose of this chapter is to recognize that physicians should be allowed a reasonable and responsible degree of latitude in the kinds of therapies they offer their patients. The Board has determined

that use of investigational agents constitutes the practice of medicine and is[;] thus[;] subject to all applicable statutory and regulatory provisions of the Medical Practice Act and Board Rules unless otherwise specifically stated. Section 198.4 of this chapter (relating to Use of Investigational Drugs, Biological Products, or Devices [Agents] for Patients with Terminal Illnesses) sets forth specific requirements applicable only to terminal patients being treated with investigational drugs, biological products or devices [agents].

(b) Subchapter B of this title (relating to Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses) sets forth separate requirements applicable only to the use of investigational stem cell treatments.

§198.2. Definitions.

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

(1) Investigational drug, biological product, or device--A drug, biological product, or device that is [Investigational Agents--Investigational agents include; but are not limited to medications; biological products; devices; diagnostic products and treatment regimens] not approved or licensed by the Food and Drug Administration (FDA) for use in humans. Investigational drugs, biological products, and devices [These investigational agents] may be used for the purposes of prevention, treatment, diagnosis or for relieving symptoms of a disease. An investigational drug, biological product or device [agent] shall not include:

(A) [(1)] a drug [medications], biological product, device, [products; devices;] diagnostic product or [products and] treatment regimen [regimens] approved by the FDA, but used for off-label purposes;

(B) [(2)] a drug [medications], biological product, device, [products; devices;] diagnostic product or [products and] treatment regimen which is [regimens that are] already approved for use by an existing Institutional Review Board (IRB);

(C) [(3)] products processed or manufactured as human cell, tissue or cellular-or-tissue-based product ("HCT/P") pursuant to Sections 351 and 361 of the Public Health Service Act ("PHSA") (42 U.S.C. 264); or [not]

(D) [(4)] a drug, device or biological product [biologie] pursuant to the federal Food Drug and Cosmetic Act (FDCA).

(2) Terminal illness--An advanced stage of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

(b) These definitions do not apply to Subchapter B, of this title (relating to Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses).

§198.3. Practice Guidelines for the Use of Investigational Agents.

(a) The administration or provision of an [Administering or providing] investigational drug, biological product, or device [agents] constitutes the practice of medicine and, therefore, must be performed under the direction of a licensed physician who is responsible for compliance with the Medical Practice Act, Texas Occupations Code, Title 3, Subtitle B and applicable Board Rules. [Use of stem cells in humans shall be considered investigational unless they are used in the conduct of an FDA-approved clinical trial or until such time as they are approved by the FDA.] Physicians administering or providing an investigational drug, biological product, or device [using investigational agents] are obligated to maintain their ethical and professional respon-

sibilities. ~~This includes, including~~ maintaining a distinction between their roles as physician-investigators and their roles as treating physicians, as required by applicable federal law.

(b) Prior to the administration or provision ~~[administering or providing]~~ of an investigational drug, biological product or device, ~~[investigational agents,]~~ physicians must have their proposed use either included in an FDA/NIH approved protocol/study or approved by an IRB. The IRB must:

- (1) be affiliated with an academic setting or a Texas licensed hospital;
- (2) be accredited by the Association for the Accreditation of Human Research Protection Programs, Inc. (AAHRPP);
- (3) be registered by the U.S. Department of Health and Human Services Office for Human Research Protection, pursuant to 21 CFR Part 56; or
- (4) have received national accreditation by an organization acceptable to the TMB.

(c) Physicians who fall under subsection (a) of this section ~~[engaged in administering or providing investigational agents]~~ must obtain written assurances from the individual or facility from which they obtained the investigational drug, biological product or device ~~[agents]~~ that the investigational drug, biological product or device ~~[these agents were]~~ manufactured, labeled, and distributed in a manner consistent with the Texas Food, Drug, and Cosmetic Act and the federal Food, Drug, and Cosmetic Act.

(d) Physicians who fall under subsection (a) of this section ~~[engaged in administering or providing of investigational agents]~~ shall be expected to conform to the following standards:

(1) The administration or provision of an investigational drug, biological product, or device ~~[investigational agents]~~ should be part of a systematic program competently designed, under accepted standards of scientific research, to evaluate the efficacy and safety of the investigational drug, biological product, or device ~~[investigational agents]~~, which shall include:

(A) oversight by a principal investigator whose specific responsibility is to ensure that subjects are enrolled through appropriate inclusion and exclusion criteria;

(B) written documentation regarding the objectives of the study that is made available to subjects, including information regarding the distinction between the goals of the clinical research study and the goals, risks and benefits of treatment~~;~~ and

(C) written disclosure to patients if the clinical research study involves the use of placebos, including an explanation of the placebos.

(2) It is the physician's responsibility to ensure that the name and complete contact information of the individuals to whom an investigational drug, biological product, or device ~~[investigational agents]~~ are administered or provided as well as data regarding efficacy and safety of the investigational drug, biological product, or device ~~[agents]~~ is available for review by TMB within 14 days of request by the TMB and to ensure that subjects are aware of the TMB's ability to obtain such information.

(3) In accordance with the Declaration of Helsinki, the Belmont Report, and CFR Part 46, physicians who engage in the administration or provision of an investigational drug, biological product, or device ~~[administering or providing investigational agents]~~ should demonstrate the highest concern and caution for the welfare, safety, and comfort of the patient to whom an investigational drug, biological

product, or device is ~~[investigational agents are]~~ administered or ~~[and]~~ provided.

(4) Physicians who fall under subsection (a) of this section, ~~[engaged in administering or providing investigational agents]~~ must have patients sign informed consent forms that are compliant with applicable ~~[state and federal]~~ regulations, and which indicate that an investigational drug, biological product, or device is ~~[investigational agents are]~~ or may be administered or provided to ~~[used in]~~ these patients. These consent forms shall:

(A) be approved by the IRB; and

(B) when ~~[if]~~ applicable, state whether drugs, [medications] biological products, or devices ~~[; diagnostic products or treatment regimens]~~ are not commercially available and~~;~~ therefore, are also an ~~an~~ investigational and [agent] subject to clinical investigation standards as discussed in §200.3(7) of this title (relating to Practice Guidelines for the Provision of Complementary and Alternative Medicine).

(e) The TMB will use the guidelines as provided herein to determine whether a physician's conduct violates the Medical Practice Act, §§164.051 - 164.053 in regard to administering or providing an investigational drug, biological product, or device ~~[using investigational agents]~~.

(1) Patient Assessment. Prior to the enrollment of patients into a clinical research study that involves the administration of an investigational drug, biological product, or device ~~[agent]~~, the attending physician or the physician enrolling the patient in the research study shall undertake an assessment of the patient. Such assessment shall be documented in the patient's medical record and the clinical research study record and be based on performance and review of an appropriate medical history and physical examination of the patient;

(2) Treatment Plan. A treatment plan tailored for the individual needs of the patient shall be compiled by the attending physician and should include criteria by which treatment progress or success can be evaluated with stated objectives. Such a documented treatment plan shall consider pertinent medical history, previous medical records and physical examination, as well as the need for further diagnostic further testing, consultations, referrals, or the use of other treatment modalities.

(3) Adequate Medical Records. A physician using an investigational drug, biological product or device ~~[agents]~~ shall keep accurate and complete medical records to include:

(A) any diagnostic, therapeutic and laboratory results;

(B) the results of evaluations, consultations and referrals;

(C) treatments employed and their progress toward the stated objectives, expected outcomes, and goals of the treatment and clinical research study;

(D) the date, type, dosage, and quantity prescribed of any drug, supplement, or remedy used in the treatment plan;

(E) all patient instructions and agreements regarding the investigational agents and the clinical research study;

(F) periodic reviews of the condition of the patient;

(G) documentation of any communications with the patient's concurrent healthcare providers informing them of treatment plans; and

(H) a copy of the executed consent form.

(f) A licensed physician shall not be found guilty of unprofessional conduct or be found to have committed professional failure to practice medicine in an acceptable manner solely on the basis of administering or providing an [using] investigational drug, biological product, or device [agents], unless it can be demonstrated that such use does not comply with this section.

§198.4. Use of Investigational Drugs, Biological Products, or Devices [Agents] for Patients with Terminal Illnesses.

[(a)] [Definitions. The following words, when used in this section, will have the following meanings:]

[(+)] Investigational drugs [drug], biological products [product], or devices which meet the criteria enumerated in §198.2, of this title (relating to Definitions) and have [device--A drug, biological product, or device that has] successfully completed phase one of a clinical trial [but has not yet been approved for general use by the United States Food and Drug Administration] and remains under investigation in the clinical trial shall be administered and provided to patients with terminal illnesses in accordance with applicable law, including Chapter 489 of the Texas Health and Safety Code.[;]

[(2)] Terminal illness--An advanced stage of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.;

[(b)] Patient Eligibility. A patient is eligible to access and use an investigational drug, biological product, or device under this chapter if:;

[(1)] the patient has a terminal illness, attested to by the patient's treating physician; and]

[(2)] the patient's physician:;

[(A)] in consultation with the patient, has considered all other treatment options currently approved by the United States Food and Drug Administration and determined that those treatment options are unavailable or unlikely to prolong the patient's life; and]

[(B)] has recommended or prescribed in writing that the patient use a specific class of investigational drug, biological product, or device.;

[(c)] Informed Consent. Before receiving an investigational drug, biological product, or device, an eligible patient must sign a written informed consent. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian may provide informed consent on the patient's behalf.;

[(d)] Discipline. The Board shall not revoke, fail to renew, suspend, or take any action against a physician's license under Texas Occupations Code Chapter 164, Subchapter B, based solely on the physician's recommendations to an eligible patient with terminal illness regarding access to or treatment with an investigational drug, biological product, or device, provided that the recommendations made to the patient meet the medical standard of care.;

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 March 26, 2018.

TRD-201801276

Scott Freshour
Interim Executive Director
Texas Medical Board

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 305-7016

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SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DIAGNOSES OR TERMINAL ILLNESSES

22 TAC §198.5, §198.6

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

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

§198.5. Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.

(a) The Legislature recognizes the need for patient access to innovative medical treatments. At the same time, the health and welfare of Texas citizens must be protected. These goals must be carefully balanced.

(b) The purpose of this subchapter is to set out the requirements for a patient to be eligible for consideration of receiving investigational stem cell treatment and under what circumstances a certified physician may administer or provide investigational stem cell treatments. The implementation of this rule is contingent upon qualifying chronic diseases or terminal illness being defined, as set out in §1003.052 of the Texas Health and Safety Code.

(c) This rule does not require an eligible patient receive such treatment, but rather the statute sets the eligibility standards and the parameters under which treatment may be provided to an individual with a qualifying severe chronic disease or terminal illness.

(d) Stem cell treatments which are under investigation in a clinical trial and being administered to human participants:

(1) may be administered or provided to eligible patients with qualifying terminal illnesses or severe chronic diseases as defined by the executive commissioner of the Health and Human Services Commission; and

(2) must be done in compliance with applicable law.

(e) In order for a patient to be eligible to receive treatment with investigational stem cells, the eligible patient must:

(1) be enrolled in a clinical trial investigating the use of adult stem cells in humans;

(2) sign a written informed consent before receiving treatment, include documentation in the medical record of compliance with §1003.053(2)(a) of the Texas Health and Safety Code;

(3) receive treatment from a physician certified under §1003.055 of the Texas Health and Safety Code by:

(A) a qualifying IRB;

(B) a medical school as defined by §61.501 of the Education Code; or

(C) a hospital licensed under Chapter 241 of the Texas Health and Safety Code; and

(4) receive treatment in a qualifying facility under §1003.055 of the Texas Health and Safety Code.

§198.6. Process and Procedures for IRBs Engaged in the Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.

(a) In accordance with Chapter 1003 of the Texas Health and Safety Code, each IRB overseeing clinical trials of investigational stem cell treatments shall submit an annual report to the Board that:

(1) sets forth the study's current findings;

(2) specifies the number of patients participating in the stem cell clinical trial(s);

(3) includes the treatment results of all patients treated with investigational stem cell treatments;

(4) generally describes the effects of the treatments and study's findings to date, including all adverse events;

(5) includes the medical school or hospital the IRB is affiliated with in accordance with §1003.055 of the Texas Health and Safety Code;

(6) includes the location where the patients' treatments were provided in accordance with §1003.055 of the Texas Health and Safety Code;

(7) includes the names of all physicians certified by the IRB or the affiliated entity to administer or provide investigational stem cell treatments and the time-period of that certification; and

(8) shall not include any patient identifying information, as the report will be made available to the public upon request.

(b) Each IRB overseeing clinical trials must be current with required reporting to the TMB. The annual report shall cover the time-period beginning September 1 and ending on August 31. The report must be submitted to the Medical Board before the end of the calendar year in which the reporting time-period ends.

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 March 26, 2018.

TRD-201801277

Scott Freshour

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 305-7016



PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.18

The Texas Funeral Service Commission (Commission) proposes to amend Title 22 Texas Administrative Code, Part 10, Chapter 201, Licensing and Enforcement--Practice and Procedure by proposing new §201.18, Agency Staff Training and Education.

The Commission is proposing this rule because the State Employee Training Act (Texas Government Code Chapter 656 Subchapter C) sets out requirements for state agencies to adopt rules regarding training and education for state employees.

FISCAL NOTE: Janice McCoy, Executive Director, has determined for the first five-year period the new rule is in effect there will be no fiscal implication for state or local governments, or local economies.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed new rule will be in effect, the public benefit is compliance with state law regarding state employee training. There will not be any economic cost to any individuals required to comply with the proposed new rule and there is no anticipated negative impact on local employment because the rule impacts how the Commission offers training and education to its employees.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The agency has determined that there will be no economic effect on small or micro-businesses or rural communities because the rule impacts how the Commission offers training and education to its employees.

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years a rule would be in effect: 1. The proposed rule does not create or eliminate a government program; 2. The proposed rule will not require a change in the number of employees of the agency; 3. The proposed rule will not require additional future legislative appropriations; 4. The proposed rule will not require an increase in fees paid to the agency; 5. The proposed rule will not create a new regulation; 6. The proposed rule will not expand, limit, or repeal an existing regulation; 7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed rule will neither positively nor negatively affect this state's economy because no new fees are imposed. This rule impacts how the Commission offers training and education to its employees.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed new rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government because the rule only impacts how the Commission offers training and education to its employees. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

The agency has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the agency is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Government Code §656.048, which requires the agency to adopt rules regarding training offered to state employees.

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

§201.18. Agency Staff Training and Education.

(a) In accordance with the State Employee Training Act, Commission staff may be permitted or required to attend training or education programs if those programs are related to the employee's duties or prospective duties, and the training materially aids effective administration of the Cemetery and Crematory Services, Funeral Directing, and Embalming Act or Commission rules and serves an important purpose.

(b) The Commission's Executive Director shall be eligible to attend training and education programs, and shall determine which other employees will be permitted or required to attend training or education programs.

(c) Employees who receive training or education must utilize the training or educational opportunity to prepare for technological and legal developments facing the Commission, or to increase their work capabilities or competence.

(d) An employee, prior to receiving training or education for three or more months, during which the employee does not perform his or her regular duties, must enter into a written agreement with the Commission to comply with the requirements of Tex. Gov't Code §656.103(a)(1). Employees who fail or refuse to enter into such an agreement shall not be permitted to attend training or educational programs lasting three or more months.

(e) The Commission shall pay the costs and expenses related to approved training or educational programs in accordance with the State Employee Training Act, the Comptroller's rules and regulations, and the Commission's own policies relating to employee reimbursement.

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

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801241

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 936-2480



CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

22 TAC §203.26

The Texas Funeral Service Commission (Commission) proposes to amend 22 Texas Admin. Code §203.26, Presentation of Consumer Brochure. The rule currently requires funeral establishments to display and offer consumer brochures promulgated under §201.7 of the title. The rule states only the Commission may print the brochure and authorizes the Commission to charge a fee for the brochures.

Many entities, especially pre-need trust and insurance funded companies, are starting to move to an online only presence. With the Commission's current rule, the entity is required to mail a copy of the brochure to the online only consumer.

The Commission was asked to provide a mechanism to allow for the digital transmission of the consumer brochure. This rule amendment authorizes the Commission to provide a digital "license" to an entity so the entity can provide the consumer brochure in digital form. The rule maintains the requirement that a Commission printed brochure is required for any in-person arrangements, whether pre-need or at-need.

FISCAL NOTE: Janice McCoy, Executive Director, has determined for the first five-year period the new chapter is in effect there will be no fiscal implication for state or local governments, or local economies.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed new rule will be in effect, the public benefit is that all consumers are provided the brochure in a timely and efficient manner. There is no additional economic cost to individuals required to comply with the proposed new rule. There is no anticipated negative impact on local employment.

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

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years a rule would be in effect: 1. The proposed rule does not create or eliminate a government program; 2. The proposed rule will not require a change in the number of employees of the agency; 3. The proposed rule will not require additional future legislative appropriations; 4. The proposed rule will not require an increase in fees paid to the agency; 5. The proposed rule will not create a new regulation; 6. The proposed rule will not expand, limit, or repeal an existing regulation; 7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed rule will neither positively nor negatively affect this state's economy. This rule only provides an additional mechanism to presenting the consumer brochure.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless

the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed new rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government because the entity who chooses to use the digital brochure may purchase fewer printed copies and will save on postage costs of mailing the printed brochure to its online only customers. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

The agency has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the agency is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and §651.201 which requires the Commission to provide brochures of public interest to licensed entities as it considers appropriate.

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

§203.26. Presentation of Consumer Brochure.

(a) Consumer brochures as promulgated under §201.7 of this title shall be prominently displayed in the public view, offered free of charge for keeping to any person, and presented at the beginning of the arrangement conference for the disposition of a dead body.

(b) For entities that are transacting business exclusively via digital means with a consumer, the entity may present the consumer brochure in a digital format as authorized and provided by the Commission. In-person arrangements, whether pre-need or at-need, still require presentation of the Commission printed paper copy of the consumer brochure.

(c) [(b)] Consumer brochures are designed and printed by the Commission and may be copied only when the Commission is unable to furnish the funeral establishment with an ordered supply.

(d) [(e)] The Commission determines the minimum order size and the fees for the brochures, however the Commission may provide the digital brochure to a consumer or public interest group formed to assist consumers in funeral proceedings free of charge.

(e) Each digital consumer brochure shall be labeled with the entity's name and effective dates of the right to provide the consumer brochure in a digital format.

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 March 23, 2018.

TRD-201801242

Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: May 6, 2018
For further information, please call: (512) 936-2480

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**CHAPTER 205. CEMETERIES AND
CREMATORIES**

22 TAC §205.11

The Texas Funeral Service Commission (Commission) proposes to amend Title 22, Texas Administrative Code, Part 10, Chapter 205, Cemeteries and Crematories, by amending rule §205.11, Prerequisites for Cremation.

In 2014, the agency updated Chapter 205 in its entirety as a part of the agency's quadrennial rules review. The update was intended to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the rules were updated and clarified.

However, it has been brought to the agency's attention that changes made to §205.11, Prerequisites for Cremation, have created delays in the cremation process which negatively impact consumers and their requests for timely disposition of their loved ones.

This proposed rule would clarify that the death record required by Texas Health and Safety Code, Chapter 716.051, could be the burial transit permit as required by 25 TAC §181.2. In effect, this clarification allows only two documents to be presented before cremation can occur.

FISCAL NOTE: Janice McCoy, Executive Director, has determined for the first five-year period the new chapter is in effect there will be no fiscal implication for state or local governments, or local economies.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed new rule will be in effect, the public benefit is requested cremations are done in a timely manner. There is no additional economic cost to an individuals required to comply with the proposed new rule. There is no anticipated negative impact on local employment.

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

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years a rule would be in effect: 1. The proposed rule does not create or eliminate a government program; 2. The proposed rule will not require a change in the number of employees of the agency; 3. The proposed rule will not require additional future legislative appropriations; 4. The proposed rule will not require an increase in fees paid to the agency; 5. The proposed rule will not create a new regulation; 6. The proposed rule will not expand, limit, or repeal an existing regulation; 7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed rule will neither positively nor negatively affect this state's economy.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code, §2001.0045, a state agency

may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed new rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government because the rule only clarifies the documents that are need before a cremation can be performed. Therefore, the agency is not required to take any further action under Government Code, §2001.0045(c).

The agency has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the agency is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Health and Safety Code, §716.002, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Health and Safety Code, §716.051, which outlines the documents necessary for cremation.

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

§205.11. Prerequisites for Cremation.

(a) The following [~~Three~~] documents are required to cremate deceased human remains:

(1) a cremation authorization form signed by the person responsible for making arrangements for final disposition; and

(2) a death certificate or other death record indicating that the deceased human remains may be cremated[; and].

(b) A [~~(3)~~ a] burial transit permit is [as] required under [by] 25 TAC §181.2 and may be considered other death record under subsection (a)(2).

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 March 23, 2018.

TRD-201801240

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: May 6, 2018

For further information, please call: (512) 936-2480



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.3

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §461.3, Former Board Members. The proposed amendment is necessary because the agency has repealed former Board rule §463.15, Oral Examination. The proposed amendment makes conforming changes by deleting any references to the former oral examination rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the in-

crease or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§461.3. Former Board Members.

A Board member whose term has expired and who has ceased to serve as a Board member will not be employed or utilized to represent the Board in any official capacity except to serve as [an oral examiner or as] a professional reviewer. A former Board member may not hold himself or herself out as an official or unofficial representative of the Board. Any such representations are not binding upon the Board in any way. Disclosure of confidential or privileged information obtained by a former Board member in his or her capacity as a Board member is unprofessional conduct and grounds for disciplinary action by the Board.

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

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801243

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.6

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.6, Regionally Accredited Institutions. The proposed amendment is necessary to update changes in the regional accrediting organizations recognized as providing accreditation to universities through the U.S. The proposed change is necessary because the North Central Association of Colleges and Schools, also known as the North Central Association, was dissolved in 2014, and the Higher Learning Commission acquired the assets of the association some time thereafter. Additionally, the Middle States Commission on Higher Education, while associated with the Middle States Association of Colleges and Schools, is the entity responsible for accreditation for institutions of higher education; the Middle States Association of Colleges and Schools is responsible for accreditation of elementary and secondary schools.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide more accurate and up-to-date information regarding licensing requirements and standards. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation (it amends an existing regulation); it does not expand or repeal an existing regulation (it clarifies an existing regulation); it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably nec-

essary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

Lastly, the Board proposes this rule amendment pursuant to the authority found in §§501.255, 501.259, and 501.260 of the Texas Occupations Code which vests the Board with the authority to set the standards to qualify for a license.

No other code, articles or statutes are affected by this section.

§463.6. Regionally Accredited Institutions.

A regionally accredited educational institution stated in §§501.255(a)(1)(A), 501.259, 501.004 and 501.260 of the Act is defined as an educational institution accredited by one of the following regional accrediting organizations [which satisfies the standards of the accrediting association in one of the following six regions throughout the United States]:

- (1) Southern Association of Colleges and Schools Commission on Colleges
- (2) Western Association of Schools and Colleges, Senior College and University Commission
- (3) Northwest Commission on Colleges and Universities
- (4) Higher Learning Commission [North Central Association of Colleges and Schools]
- (5) New England Association of Schools and Colleges
- (6) Middle States Commission on Higher Education, also known as the Mid-Atlantic Region Commission on Higher Education [Middle States Association of Colleges and Schools]

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 March 23, 2018.

TRD-201801244

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §463.12

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §463.12, Licensed Psychologist by Reciprocity. The proposed repeal is necessary to ensure the Board achieves maximum efficiency and licensure mobility when exploring reciprocity with other jurisdictions. The proposed repeal is also necessary to ensure an equal opportunity for reciprocity among the various types of licensure issued by this agency.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal of this rule. Additionally, Mr. Spinks has determined that enforcing or administering the repeal of this rule does not have

foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity in the Board's rules. Mr. Spinks has also 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 repeal of the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with the repeal of the rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Board estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand or repeal an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments.

Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the proposed repeal, describe and estimate the economic impact of the proposed repeal on small businesses, offer alternative methods of achieving the purpose of the proposed repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this repeal pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.12. Licensed Psychologist by Reciprocity.

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 March 23, 2018.

TRD-201801245

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §463.12

The Texas State Board of Examiners of Psychologists proposes a new rule §463.12, Licensure by Reciprocity. The proposed new rule is necessary to ensure the Board achieves maximum efficiency and licensure mobility when exploring reciprocity with other jurisdictions. The proposed new rule is also necessary to ensure an equal opportunity for reciprocity among the various types of licensure issued by this agency.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or

local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed new rule is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed new rule will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed new rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed new rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed new rule will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed new rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed new rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed new rule is in effect, the Board estimates that the proposed new rule will have no effect on government growth. The proposed new rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed new rule. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed new rule may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this new rule pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.12. Licensure by Reciprocity.

An individual applying for licensure by reciprocity with this agency must meet each of the following criteria to be eligible for licensure by reciprocity:

- (1) Submit an application and corresponding fee;
- (2) Submit written verification that the applicant is actively licensed, certified, or registered in good standing in a jurisdiction with which Texas shares reciprocity. The written verification must be sent directly to the Board from the other jurisdiction;
- (3) Submit a self-query report from the National Practitioner Data Bank (NPDB) reflecting no disciplinary history, other than disciplinary history related to continuing education or professional development. The report must be submitted with the application in the sealed envelope in which it was received from the NPDB;
- (4) Pass the jurisprudence examination;
- (5) Undergo a fingerprint based criminal history check which reflects no disqualifying criminal history; and
- (6) Submit any other documentation or information requested in the application or which the Board may deem necessary in order to ensure the public's safety when processing the application.

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 March 23, 2018.



22 TAC §463.18

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.18, Failing Written Examinations. The proposed amendment is necessary because the agency has repealed former Board rule §463.15, Oral Examination. The proposed amendment makes conforming changes by deleting any references to the former oral examination rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and

welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.18. Failing Written~~[Oral]~~ Examinations.

Applicants who fail the written examinations ~~[or the Oral Examination]~~ are permitted to take them again by paying additional examination fees. ~~[Split decisions on the Oral Examination are considered to be failures.]~~

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 March 23, 2018.

TRD-201801247

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §463.19

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.19, Time Limit on Examination Failures and Passing Scores. The proposed amendment is necessary because the agency has repealed former Board rule §463.15, Oral Examination. The proposed amendment makes conforming changes by deleting any references to the former oral examination rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or addi-

tional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.19. *Time Limit on Examination Failures and Passing Scores.*

(a) Applicants must successfully pass all examinations required of them within two years from the date they are approved by the Board to sit for the exams. [The Board may adjust this requirement within 10 days to provide flexibility in the Board's scheduling of Oral Examinations.]

(b) For the purpose of fulfilling application requirements for licensure, a passing score on the Board's Jurisprudence Examination is valid for only four years, unless the applicant has other active licensure with the Board at the time the application is received by the Board.

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

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801248

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §463.20

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.20, Refunds and Transfers of Application and Examination Fees. The proposed amendment is necessary because the agency has repealed former Board rule §463.15, Oral Examination. The proposed amendment makes conforming changes by deleting any references to the former oral examination rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small busi-

nesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which

provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.20. Refunds and Transfers of Application and Examination Fees.

(a) Application fees are non-refundable and non-transferable.

~~[(b) The Oral Examination fee may be transferred to a subsequent examination when an applicant fails to appear for their scheduled examination, if an applicant makes a written request for a transfer and provides the Board with documentation demonstrating good cause for why the applicant failed to appear on their scheduled examination date. Upon written request and showing of good cause, the Board shall excuse the applicant's failure to appear, and allow the examination fee to be applied, one time only, toward the next regularly scheduled examination.]~~

(b) ~~[(e)]~~ The Jurisprudence Examination fee may be transferred to a subsequent examination when an applicant fails to timely complete the examination, if an applicant makes a written request for a transfer and provides the Board with documentation demonstrating good cause for why the applicant failed to timely complete the examination. Upon written request and showing of good cause, the Board shall excuse the applicant's failure to timely complete the examination, and allow the Board's portion of the examination fee to be applied, one time only, toward a subsequent examination. The Applicant however, must pay that portion of the examination fee attributable to the third-party vendor administering the online examination, before they will be allowed to retake the examination.

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

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801249

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §463.21

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.21, Board Members as Reviewers of Examinations. The proposed amendment is necessary because the agency has repealed former Board rule §463.15, Oral Examination. The proposed amendment makes conforming changes by deleting any references to the former oral examination rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the

rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to pre-

pare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Texas Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.21. Board Members as Reviewers of Examination.

All Board members serve as reviewers of written examination [~~and Oral Examination~~] materials and procedures unless a member is matriculated in a graduate program in psychology or is related within the second degree of affinity or within the second degree of consanguinity to a person who matriculated in a graduate program in psychology.

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 March 23, 2018.

TRD-201801250

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §463.23

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.23, Criteria for Examination Consultants. The proposed amendment is necessary because the agency has repealed former Board rule §463.15, Oral Examina-

tion. The proposed amendment makes conforming changes by deleting any references to the former oral examination rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase

or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.23. Criteria for Examination Consultants.

The Board may employ licensees to act as consultants for purposes of developing and administering the Jurisprudence Examination [and the Oral Examination]. All such consultants shall be considered as agents of the Board. To be eligible to serve as a consultant for an examination, an individual must:

- (1) Be currently licensed by the Board and must have three years of experience in their area of expertise as a licensee;
- (2) Not be related within the second degree of affinity (marriage) or consanguinity (blood relationship) to an individual who has applied to take the examination;
- (3) Have no restrictions or pending complaints against his/her license; and
- (4) Be approved by the Board.

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

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801251

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §463.24

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §463.24, Oral Examination Work Group. The proposed repeal is necessary because the agency has repealed former Board rule §463.15, Oral Examination. The proposed repeal makes conforming changes by deleting any references to the former oral examination rule, thus the oral examination working group is no longer needed.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal of this rule. Additionally, Mr. Spinks has determined that enforcing or administering the repeal of this rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity in the Board's rules. Mr. Spinks has also 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 repeal of the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with the repeal of the rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required

to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Board estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand or repeal an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments.

Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the proposed repeal, describe and estimate the economic impact of the proposed repeal on small businesses, offer alternative methods of achieving the purpose of the proposed repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this repeal pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.24. *Oral Examination Work Group.*

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 March 23, 2018.

TRD-201801252

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §465.1, Definitions. The proposed amendment is necessary to eliminate the duplicative definition of "multiple relationship." The proposed amendment is also necessary to bring the agency's definition of "professional relationship" into alignment with the U.S. 5th Cir. Court of Appeals opinion in *Serafine vs. Branaman*. More specifically, the Court opined that with regard to professional speech, "outside of the fiduciary relationship between client and therapist, speech is granted ordinary First Amendment protection." The proposed amendment seeks to clarify that a professional relationship is a fiduciary relationship, and one where the patient or client, at a minimum, reasonably believes his or her treatment provider is subject to Chapter 611 of the Health and Safety Code. These two factors help ensure that protected speech enjoys the full benefit of §501.003(c) of the Occupations Code, while speech constituting the practice of psychology remains subject to this agency's jurisdiction.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity for the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the

Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation but does clarify an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists

with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Texas Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

§501.003 of the Tex. Occ. Code and Board rules §§465.8, 465.11, 465.13, and 465.21 will be affected by this proposed rule amendment.

No other code, articles or statutes are affected by this section.

§465.1. Definitions.

The following terms have the following meanings:

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

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

(3) [(4)] "Client" means a party other than a patient seeking or obtaining psychological services, as defined in §501.003 of the Occupations Code, for a third-party with the goal of assisting or caring for that third-party or answering a referral question through the use of forensic psychological services.

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

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

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

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

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

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

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

(9) [(8)] "Patient" means a person who receives psychological services, as defined in §501.003 of the Occupations Code, regardless of whether the patient or a third-party pays for the services. The term "patient" shall include a client if the client is a person listed in §611.004(a)(4) or (5) of the Health and Safety Code who is acting on a patient's behalf. A person who is the subject of a forensic evaluation is not considered to be a patient under these rules.

(10) "Private school" has the same meaning as assigned by §5.001 of the Texas Education Code, but does not include a parent or legal guardian who chooses to homeschool a child.

(11) [(9)] "Professional relationship" means a fiduciary relationship between a licensee and a patient or client involving communications and records deemed confidential under §611.002 of the Health and Safety Code. A professional relationship also exists where licensees are appointed by a court or other governmental body to answer a referral question through the use of forensic psychological services [is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization].

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

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

(14) "Public school" means any state agency, regional education service center, diploma program, school district, or charter school established or authorized under Title 2 of the Texas Education Code and supported in whole or in part by state tax funds.

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

(16) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery,

progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments, treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

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

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

(19) "Test data" refers to a patient's specific answers to test materials, whether spoken or written, generated in drawings, or recorded by computers or other lab devices.

(20) "Test materials" refers to test booklets, forms, manuals, instruments, protocols, software, as well as test questions, and stimuli protected by federal copyright law and used in psychological testing to generate test results and test reports.

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

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

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

[(15) "Test materials" refers to test booklets, forms, manuals, instruments, protocols, software, as well as test questions, and stimuli protected by federal copyright law and used in psychological testing to generate test results and test reports.]

[(16) "Test data" refers to a patient's specific answers to test materials, whether spoken or written, generated in drawings, or recorded by computers or other lab devices.]

[(17) "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provi-

sion of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.]

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

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

[(20) "Private school" has the same meaning as assigned by §5.001 of the Texas Education Code, but does not include a parent or legal guardian who chooses to homeschool a child.]

[(21) "Public school" means any state agency, regional education service center, diploma program, school district, or charter school established or authorized under Title 2 of the Texas Education Code and supported in whole or in part by state tax funds.]

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 March 23, 2018.

TRD-201801260

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §465.13

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §465.13, Personal Problems, Conflicts and Dual Relationships. The proposed amendment is brought to clarify the standards for licensees confronted with multiple relationships and to eliminate duplicate or confusing language. The amendment is also being offered to provide a more balanced approach by requiring the likelihood of certain harms before prohibitions in the rule are triggered, as opposed to the mere potential for such harm.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect,

there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be

impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§465.13. *Personal Problems, Conflicts and Dual Relationships.*

(a) In General.

(1) Licensees refrain from providing services when they know or should know that their personal problems or a lack of objectivity are likely [have the potential] to impair their competency or harm a patient, client, colleague, student, supervisee, research participant, or other person with whom they have a professional relationship.

(2) Licensees seek professional assistance for any personal problems, including alcohol or substance abuse likely [that have the potential] to impair their competency.

(3) Licensees do not exploit persons over whom they have supervisory evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients.

(4) Licensees refrain from entering into or must withdraw from any professional relationship that conflicts with their ability to comply with all Board rules applicable to other existing professional relationships.

~~[(5) Licensees withdraw from any professional relationship that conflicts, or comes into conflict with, their ability to comply with Board rules relating to other existing professional relationships.]~~

(b) Dual Relationships.

(1) A licensee must refrain from entering into a dual relationship with a client, patient, supervisee, student, group, organization, or any other party if such a relationship is likely to [presents a risk that the dual relationship could] impair the licensee's objectivity, prevent the licensee from providing competent psychological services, or exploit or otherwise cause harm to the other party.

(2) A licensee must refrain from entering into or withdraw from a professional relationship where personal, financial, or other relationships are likely to impair the licensee's objectivity or pose an unreasonable risk of harm to a patient or client. [A licensee must refrain from a professional relationship where pre-existing personal, financial, professional, or other relationships have the potential to impair the licensee's objectivity or have any other potential to harm or exploit the other party.]

(3) A licensee who is considering or involved in a professional or non-professional relationship that could result in a violation

of this rule must take appropriate measures, such as obtaining professional consultation or assistance, to determine whether the licensee's relationships, both existing and contemplated, are likely to impair the licensee's objectivity or cause harm to the other party.

(4) ~~[(3)]~~ Licensees do not provide psychological services to a person with whom they have had a sexual relationship.

(5) ~~[(4)]~~ Licensees do not terminate psychological services with a person in order to have a sexual relationship with that person. Licensees do not terminate psychological services with a person in order to have a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of the client.

~~[(5) A licensee considering a professional relationship that would result in a dual or multiple relationship shall take appropriate measures, such as obtaining professional consultation or assistance, to determine whether there is a risk that the dual relationship could impair the licensee's objectivity or cause harm to the other party. If potential for impairment or harm exists, the licensee shall not provide services regardless of the wishes of the other party.]~~

~~[(6) A licensee in a potentially harmful dual or multiple relationship must cease to provide psychological services to the other party, regardless of the wishes of that party.]~~

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 March 23, 2018.

TRD-201801253

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §465.18, Forensic Services. The proposed amendment is necessary to comply with Section 6 of HB 1501 passed by the 85th Legislature, Regular Session. In short, the proposed change will ensure child custody evaluators licensed by this agency are held accountable for maintaining the confidentiality of the sensitive information referenced in §107.1111 of the Family Code.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules and consistency with the Texas Family Code. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§465.18. Forensic Services

(a) In General.

(1) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees, must comply with all applicable Board rules concerning forensic services regardless of whether the licensee is acting as a factual witness or an expert.

(2) Licensees who engage in forensic services must have demonstrated appropriate knowledge of and competence in all underlying areas of psychology about which they provide such services.

(3) All forensic opinions, reports, assessments, and recommendations rendered by a licensee must be based on information and techniques sufficient to provide appropriate substantiation for each finding.

(4) A licensee who provides forensic services must comply with all other applicable Board rules and state and federal law relating to the underlying areas of psychology relating to those services.

(5) When appointed or designated in writing by a court to provide psychological services, a licensee shall obtain and keep a copy of the court order.

(6) When providing forensic psychological services to a minor who is the subject of a court order or the ward of guardianship, a licensee shall obtain and keep a copy of the relevant portions of any court order, divorce decree, or letters of guardianship authorizing the individual to provide substitute consent on behalf of the minor or ward.

(b) Limitation on Services.

(1) A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.

(2) A licensee who is asked to provide an opinion concerning a specific matter for which the licensee lacks sufficient information to render a professional opinion shall decline to render that opinion unless the required information is provided.

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without conducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

(4) A written or oral opinion about the psychological characteristics of an individual rendered by a licensee who did not conduct an examination of that individual must contain clarification of the extent to which this limits the reliability and validity of the opinion and the conclusions and recommendations of the licensee.

(5) When seeking or receiving court appointment or designation as an expert for a forensic evaluation a licensee specifically avoids accepting appointment or engagement for both evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case.

(c) Describing the Nature of Services. A licensee must document in writing that subject(s) of forensic evaluations or their parents or legal representative have been informed of the following:

- (1) The nature of the anticipated services (procedures);
- (2) The specific purpose and scope of the evaluation;
- (3) The identity of the party who requested the psychologist's services;
- (4) The identity of the party who will pay the psychologist's fees and if any portion of the fees is to be paid by the subject, the estimated amount of the fees;
- (5) The type of information sought and the uses for information gathered;
- (6) The people or entities to whom psychological records will be distributed;
- (7) The approximate length of time required to produce any reports or written results;
- (8) Applicable limits on confidentiality and access to psychological records;
- (9) Whether the psychologist has been or may be engaged to provide testimony based on the report or written results of forensic psychological services in a legal proceeding; and
- (10) The licensee's name as it appears in their professional file with the Board prior to initiating services.

(d) Certain Testimony Prohibited.

(1) A licensee may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation.

(2) In a contested suit, a licensee may provide other relevant information and opinions, other than those prohibited by paragraph (1) of this subsection, relating to any party that the licensee has personally evaluated or treated.

(3) This subsection does not apply to a suit in which the Department of Family and Protective Services is a party.

(e) Child Custody Evaluations.

(1) The role of the child custody evaluator is one of professional expert. A licensee serving as a child custody evaluator shall not function as an advocate, but must remain impartial and objective. Licensees conducting child custody evaluations, including those licensees appointed by a court, are subject to the Board's jurisdiction and must follow all applicable Board rules.

(2) The term "supervision" as used in this subsection shall have the meaning assigned by Tex. Fam. Code Ann. §107.101. However, the term shall not encompass the restrictions and requirements set forth in Board rule §465.2 of this title (relating to Supervision) nor shall a licensee providing supervision under this subsection have supervisory responsibility under Board rule §465.2 of this title.

(3) Minimum Qualifications of Child Custody Evaluator.

(A) A licensee must be qualified to conduct a child custody evaluation pursuant to Tex. Fam. Code Ann. §107.104 before the licensee may conduct an evaluation. Licensees qualified to conduct evaluations under Tex. Fam. Code Ann. §107.104(b)(2) must conduct evaluations under supervision in accordance with that section.

(B) Notwithstanding any other grounds for qualification, the Board has determined that a licensed psychologist is qualified to conduct child custody evaluations if the licensee:

(i) has obtained a minimum of 8 professional development hours directly related to the performance of child custody evaluations since becoming a licensed psychologist, and is board certified in forensic psychology by the American Board of Professional Psychology (ABPP); or

(ii) has obtained a minimum of 40 professional development hours directly related to the performance of child custody evaluations since becoming a licensed psychologist, and has conducted at least three child custody evaluations under the supervision of a qualified licensee.

(C) A licensee who does not meet the minimum qualification requirements set forth in Tex. Fam. Code Ann. §107.104, may nevertheless conduct a child custody evaluation if:

(i) appointed to do so pursuant to Tex. Fam. Code Ann. §107.106. A licensee appointed under Tex. Fam. Code Ann. §107.106 must comply with the provisions of Subchapter D of the Texas Family Code and this rule;

(ii) the individual is licensed as a psychologist, and has completed at least ten social studies or other child custody evaluations ordered by a court in suits affecting the parent-child relationship prior to September 1, 2015; or

(iii) the licensee was qualified to conduct a social study evaluation under former Tex. Fam. Code Ann. §107.0511(g). This subpart shall expire on August 31, 2017, at which time it shall have no further force and effect.

(D) If requested by a court, a licensee selected to conduct or who is conducting a child custody evaluation must demonstrate appropriate knowledge and competence in child custody evaluation services consistent with professional models, standards, and guidelines.

(E) In addition to the minimum qualifications set forth by this rule, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct child custody evaluations.

(4) Disclosure of Conflicts and Bias.

(A) Licensees shall comply with all disclosure requirements set forth in Tex. Fam. Code Ann. §107.107.

(B) Following any disclosure required by Tex. Fam. Code Ann. §107.107(c), a licensee must resign as child custody evaluator, unless:

(i) the court finds that no conflict of interest exists and that any previous knowledge of a party or child who is the subject of the suit is not relevant; or

(ii) the parties and any attorney for a child who is the subject of the suit agree in writing to the licensee's continued appointment as the child custody evaluator.

(C) Except as authorized by Tex. Fam. Code Ann. §107.107(f), licensees may not accept appointment as a child custody evaluator if they have worked in a professional capacity with a party, a child who is the subject of the suit, or a member of the party's or child's family. The term "family" as used in this subpart has the meaning assigned by Tex. Fam. Code Ann. §71.003.

(5) Elements of Child Custody Evaluation.

(A) Licensees shall comply with Tex. Fam. Code Ann. §§107.108, 107.109, and 107.1101 when conducting child custody evaluations.

(B) Licensees may conduct psychometric testing as part of a child custody evaluation in accordance with Tex. Fam. Code Ann. §107.110.

(6) Communications and Recordkeeping of Child Custody Evaluator.

(A) Licensees shall comply with the requirements of Tex. Fam. Code Ann. §107.112 regarding:

(i) the disclosure of communications between evaluation participants;

(ii) the creation and retention of records relevant to the evaluation; and

(iii) access to evaluation records.

(B) Licensees conducting child custody evaluations shall maintain the confidentiality of records obtained from the Department of Family and Protective Services pursuant to Tex. Fam. Code Ann. §107.111, as well as any records obtained pursuant to Tex. Fam. Code Ann. §107.1111. Licensees may not disclose any information obtained from the records except as required or allowed by law. Failure to maintain confidentiality as required by law [~~Tex. Fam. Code Ann. §107.111~~] will result in disciplinary action against a licensee.

(7) Evaluation Report.

(A) A licensee who conducts a child custody evaluation shall prepare and file a report in accordance with Tex. Fam. Code Ann. §107.113.

(B) A licensee shall provide a copy of any report filed with the Court in accordance with Tex. Fam. Code Ann. §107.114.

(f) Adoption Evaluations.

(1) The role of the adoption evaluator is one of professional expert. A licensee serving as an adoption evaluator shall not function as an advocate, but must remain impartial and objective. Licensees conducting adoption evaluations, including those licensees appointed by a court, are subject to the Board's jurisdiction and must follow all applicable Board rules.

(2) Minimum Qualifications of Adoption Evaluator.

(A) A licensee must be qualified to conduct an adoption evaluation pursuant to Tex. Fam. Code Ann. §107.154 before the licensee may conduct an evaluation.

(B) Licensees qualified to conduct a child custody evaluations are also qualified to conduct adoption evaluations.

(C) A licensee who does not meet the minimum qualification requirements set forth in Tex. Fam. Code Ann. §107.154, may nevertheless conduct an adoption evaluation if:

(i) appointed to do so pursuant to Tex. Fam. Code Ann. §107.155. A licensee appointed under Tex. Fam. Code Ann. §107.155 must comply with the provisions of Subchapter E of the Texas Family Code and this rule; or

(ii) the individual is licensed as a psychologist, and has completed at least ten social studies or other child custody evaluations ordered by a court in suits affecting the parent-child relationship prior to September 1, 2015.

(3) Disclosure of Conflicts and Bias.

(A) Licensees shall comply with all disclosure requirements set forth in Tex. Fam. Code Ann. §107.156.

(B) Following any disclosure required by Tex. Fam. Code Ann. §107.156(c), a licensee must resign as adoption evaluator, unless:

(i) the court finds that no conflict of interest exists and that any previous knowledge of a party or child who is the subject of the suit is not relevant; or

(ii) the parties and any attorney for a child who is the subject of the suit agree in writing to the licensee's continued appointment as the adoption evaluator.

(C) Except as authorized by Tex. Fam. Code Ann. §107.156(e), licensees may not accept appointment as an adoption evaluator if they have worked in a professional capacity with a party, a child who is the subject of the suit, or a member of the party's or child's family. The term "family" as used in this subpart has the meaning assigned by Tex. Fam. Code Ann. §71.003.

(4) A licensee shall report to the Department of Family and Protective Services any adoptive placement that appears to have been made by someone other than a licensed child-placing agency or a child's parent or managing conservator.

(5) Licensees shall comply with Tex. Fam. Code Ann. §§107.158, 107.159, and 107.160 when conducting adoption evaluations.

(6) Licensees conducting adoption evaluations shall maintain the confidentiality of records obtained from the Department of Family and Protective Services pursuant to Tex. Fam. Code Ann. §107.163. Licensees may not disclose any information obtained from the records except as required or allowed by law. Failure to maintain confidentiality as required by Tex. Fam. Code Ann. §107.163 will result in disciplinary action against a licensee.

(g) Duty to Report Complaints. Licensees must report any complaint filed against them with this Board that alleges facts tending to show a violation of this rule in connection with a child custody or adoption evaluation. The report must be made to the court that ordered the evaluation within 30 days of receiving notice of the complaint from the Board. Only those complaints for which a licensee receives notice from the Board need to be reported.

(h) Parenting Facilitators.

(1) The title "parenting facilitator" is defined in the Texas Family Code, Title 5, Subtitle B, Chapter 153, Subchapter K, Parenting Plan, Parenting Coordinator, and Parenting Facilitator.

(2) The Board's jurisdiction over licensees who also accept engagements as parenting facilitators is limited to its enforcement of Board rules. The Family Code sets forth procedures for the qualifications, duties, appointment and removal, reporting, record retention, and compensation of parenting facilitators. The Family Code also provides procedures for disclosure of conflicts of interest by parenting facilitators. In the event of conflict between the Family Code and Board rules, the Family Code controls, pursuant to Board rule §461.14 of this title (relating to Conflict between Laws and Board Rules).

(3) A parenting facilitator who is also a licensed psychologist in Texas is a provider of forensic psychological services and must comply with all other applicable Board rules and state and federal laws relating to the underlying areas of psychology relating to those services.

(4) Participants in parenting facilitation are not patients as defined in these rules and in Texas Health and Safety Code §611.001. Records created during parenting facilitation are not confidential.

(5) Parenting facilitators must comply with the Texas Family Code at §153.6061 as to duties and §153.6101 as to qualifications, and with the "Guidelines for Parenting Coordination" developed by the Association of Family and Conciliation Courts Task Force on Parenting Coordination, dated May 2005.

(6) The following psychologist-parenting facilitator practice standards are set forth consistent with Texas Family Code §153.6101.

(A) Parenting facilitators licensed by the Board shall comply with the standard of care applicable to the license to practice psychology in Texas.

(B) Psychologist-parenting facilitators meet all requirements of Texas Family Code §153.6101, including active licensure to practice as a psychologist in Texas; completion of 8 hours of family violence dynamics training provided by a family violence service provider; 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court; 24 classroom hours of training in the fields of family dynamics, child development, and family law; and 16 hours of training in the laws governing parenting coordination and parenting facilitation and the multiple styles and procedures used in different models of service.

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 March 23, 2018.

TRD-201801254

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §465.33

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §465.33, Improper Sexual Conduct. The

Board's intent behind this proposed rule amendment is to more accurately describe sexual harassment. The proposed rule amendment is intended to provide greater clarity to licensees and the general public regarding what acts constitute sexual harassment, which may result in disciplinary action by the Board.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this

agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§465.33. *Improper Sexual Conduct.*

(a) "Sexual Harassment" means sexual advances, requests for sexual favors, or other verbal or physical conduct or contact of a sexual nature that has the purpose or effect of creating an intimidating, hostile, or offensive environment and that occurs within a professional relationship. The determination of whether conduct or comments rise to the level of sexual harassment must be made based upon the totality of the circumstances, and from the viewpoint of a reasonable person. Sexual harassment does not include simple teasing, offhand comments, or isolated incidents that are not serious in nature. [includes solicitation, physical advances, or verbal or nonverbal conduct consisting of a single intense or severe act or of multiple persistent or pervasive acts by a licensee toward another individual that are sexual in nature and occur in connection with licensee's professional activities and that are unwelcome, offensive, or create a hostile workplace environment for that individual.]

(b) "Sexual Impropriety" is deliberate or repeated comments, gestures, or physical acts of a sexual nature that include, but are not limited to:

- (1) Behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexually demeaning;
- (2) Making inappropriate comments about an individual's body;
- (3) Making sexually demeaning comments to an individual;
- (4) Making comments about an individual's potential sexual performance, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction in therapy/counseling;
- (5) Requesting details of a patient or client's sexual history when not clinically indicated for the type of consultation;
- (6) Requesting a date;
- (7) Initiating conversation regarding the sexual problems, preferences, or fantasies of either party; or
- (8) Kissing of a sexual nature.

(c) A sexual relationship is the engaging in any conduct that is sexual or may be reasonably interpreted as sexual in nature including, but not limited to:

- (1) Sexual intercourse;
- (2) Genital contact;
- (3) Oral to genital contact;
- (4) Genital to anal contact;
- (5) Oral to anal contact;
- (6) Touching breasts or genitals;
- (7) Encouraging another to masturbate in one's presence;
- (8) Masturbation in another's presence; or
- (9) Exposure of sexual organs, breasts or buttocks.

(d) A dating relationship is a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature, but does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The existence of such a relationship shall be determined based on consideration of:

- (1) The length of the relationship;
- (2) The nature of the relationship; and
- (3) The frequency and type of interaction between the persons involved in the relationship.

(e) A licensee may not engage in sexual harassment, sexual impropriety, or a sexual relationship with a current patient or client; a former patient or client over whom the licensee has influence due to a therapeutic relationship; current students or trainees of the licensee; individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of current patients or a supervisee over whom the licensee has administrative or clinical responsibility. A licensee may not engage in a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of former patients for at least two years after termination of services.

(f) A licensee may not engage in a dating relationship with a current client or former client over whom the licensee has influence due to therapeutic relationship; current students or trainees of the licensee; individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of current clients, or a supervisee over whom the licensee has administrative or clinical responsibility. A licensee may not engage in a dating relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of former clients, for at least two years after termination of services. A licensee may never engage in a dating relationship when there is potential for harm to any of these individuals.

(g) Psychologists do not accept as clients individuals with whom they have engaged in sexual relationships.

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 March 23, 2018.

TRD-201801255

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.8

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §469.8, Rehabilitation Guidelines. The proposed amendment is necessary because the agency has repealed former Board rule §463.15, Oral Examination. The proposed amendment makes conforming changes by deleting any references to the former oral examination rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year pe-

riod the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§469.8. Rehabilitation Guidelines.

(a) In the event of revocation or suspension of a license due to non-compliance with the rules of the Board and/or its ethical principles, the Board, in its discretion, may implement a plan of rehabilitation. The plan shall outline the steps the person must follow in order to be considered for relicensure or removal of suspension. Completion of the plan may lead to consideration of submission of an application for relicensure; removal of suspension; or removal of supervision requirements. In the event the licensee has not met the Board's criteria for rehabilitation, the plan may be revised, expanded, and/or continued depending upon the progress of the rehabilitation program. The licensee, before beginning the options outlined in subsection (b) of this section, must address any outstanding complaints.

(b) The Board may follow one or more options in devising a rehabilitation program:

(1) The individual may be supervised for a specified length of time in all or selected areas of activities related to his/her practice as a licensee by a licensed psychologist approved by the Board.

(A) The Board will specify the focus of the supervision.

(B) The Board will specify the number of hours per week required in a face-to-face supervisory contract.

(C) The supervisor will provide periodic and timely reports to the Board concerning the progress of the supervisee.

(D) Any fees for supervision time will be the responsibility of the supervisee.

(2) The individual may be expected to successfully complete a variety of appropriate educational programs. Appropriate educational formats may include but are not limited to workshops, seminars, courses in regionally accredited universities, or organized pre- or post-doctoral internship settings. Workshops or seminars which are not held in a setting of academic review (approved professional development) need prior approval of the Board. Any course of study must be approved by the Board prior to enrollment if it is to meet the criteria of a rehabilitation plan.

(3) The Board may require of the individual:

(A) psychodiagnostic evaluations by a psychologist approved by the Board;

(B) a physical examination including alcohol and drug screening by a physician approved by the Board;

(C) psychotherapy on a regular basis from a psychologist approved by the Board; or

(D) any other requirement that seems appropriate to the individual case.

(4) The Board may require the individual to:

(A) take or retake and pass the appropriate professional examination;

(B) take or retake and pass the Jurisprudence Examination; or

~~[(C) take or retake and pass the Oral Examination;]~~

~~[(D)]~~ complete any other requirement that seems appropriate to the individual case.

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 March 23, 2018.

TRD-201801256

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.21

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §470.21, Disciplinary Guidelines. The proposed amendment removes the schedule of sanctions for violations the Board considers worthy of revocation. The schedule of sanctions for revocation violations is proposed to be moved to §470.22, regarding the Board's schedule of sanctions, which is published elsewhere in this issue of the *Texas Register*. The Board proposes this change so the Board's schedule of disciplinary sanctions can be included in a single rule instead of two rules. This amendment is proposed to simplify the Board's rules, make the Board's schedule of sanctions more straightforward, and provide greater clarity to licensees and the general public. This proposed amendment also adds a fifth category to the Board's schedule of sanctions, administrative penalty, for the least severe violations of Board rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the pro-

posed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See § 2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment pursuant to the authority found in §501.404 of the Tex. Occ. Code which grants the Board with the authority to adopt a schedule of disciplinary sanctions that the Board may impose.

No other code, articles or statutes are affected by this section.

§470.21. *Disciplinary Guidelines.*

(a) Purpose. The Purpose of the guidelines is to:

(1) Provide guidance and a framework of analysis for administrative law judges in the making of recommendations in contested licensure and disciplinary matters;

(2) Promote consistency in the exercise of sound discretion by the Board in the imposition of sanctions in disciplinary matters; and

(3) Provide guidance for the resolution of potentially contested matters.

(b) Limitations. The Board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act. The Board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the Board is not bound by such recommendations. A sanction should be consistent with sanctions imposed in other similar cases and should reflect the Board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the Board. The appropriate sanction is not a proper finding of fact or conclusion of law. This chapter shall be construed and applied so as to preserve the Board's discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and Board rule.

{(c) Revocation. The Board shall revoke the license of any licensee if the Board determines that the continued practice of psychology by the licensee poses a harm to the public. The Board shall revoke the license of any licensee who is convicted of a felony involving Medicare or Medicaid fraud. The Board may revoke the license of any licensee who receives deferred adjudication for a felony involving Medicare or Medicaid fraud, if, after consideration of the factors de-

scribed by Sections 53.022 and 53.023(a) of the Occupations Code, the Board determines that the licensee may pose a continued threat to public safety; or the practice of psychology by the licensee would create a situation in which the licensee has an opportunity to repeat the prohibited conduct. Licensees who violate the following Board rules shall be subject to revocation without reference to subsections (e) through (g) of this section:}

~~{(1) Board rule §465.13(b)(3) and (b)(6) of this title (relating to Personal Problems, Conflicts and Dual Relationships) pertaining to certain forms of sexual impropriety with current patients;}~~

~~{(2) Board rule §465.33(d) of this title (relating to Improper Sexual Conduct) as it pertains to sexual relations, defined in §465.33(e), with current patients; and}~~

~~{(3) Board rule §469.7(d)(1)(A) of this title (relating to Persons with Criminal Backgrounds) pertaining to offenses against the person (for example, homicide, kidnapping, sexual offenses, and assaultive offenses).}~~

~~{(4) Board rule §461.16 of this title (relating to Inaccurate and False Information in Licensure Application/Documentation and for Annual Licensure Renewal Application/Documentation), as it pertains to serious falsification of an application or documentation to obtain a license or renewal, and therefore fraud in obtaining a license.}~~

~~(c) [(d)] The Board's rules concerning disciplinary guidelines, schedule of sanctions, and aggravating and mitigating circumstances [enumerated above] are not intended to be exhaustive. The Board may recommend revocation for licensees who violate one or more Board rules, [that are not listed above.}~~

~~(d) [(e)] Disciplinary Sanctions. If the Board does not revoke a license in connection with a [the license of a licensee as part of a] disciplinary matter, it may impose the following disciplinary sanctions which are listed in descending order of severity:~~

- ~~(1) Suspension for a definite period of time;~~
- ~~(2) Suspension plus probation of any or all of the suspension period;~~
- ~~(3) Probation of the license for a definite period of time;~~
- ~~(4) Reprimand; and [-]~~
- ~~(5) Administrative penalty.~~

~~(e) [(f)] Additional conditions. As terms of any sanction imposed by the Board upon a licensee pursuant to a disciplinary matter the Board may, at its discretion, impose any additional conditions and/or restrictions upon the license of the licensee that the Board deems necessary to facilitate the rehabilitation and education of the licensee and to protect the public, including but not limited to:~~

- ~~(1) Consultation with the licensee on matters of ethics rules, laws and standards of practice by a licensed psychologist approved by the Board;~~
- ~~(2) Restrictions on the licensee's ability to provide certain types of psychological services or to provide psychological services to certain classes of patients;~~
- ~~(3) Restrictions on the licensee's supervision of others in the practice of psychology;~~
- ~~(4) Completion of a specified number of continuing education hours on specified topics approved in advance by the Board in addition to any minimum number required of all licensees as a condition of licensure;~~

(5) Taking and passing with the minimum required score of any examination required by the Board of a licensee;

(6) Undergoing a psychological and/or medical evaluation by a qualified professional approved in advance by the Board and undergoing any treatment recommended pursuant to the evaluation;

(7) Writing a research paper on a specific topic;

(8) Any other condition reasonably related to the rehabilitation and education of the licensee.

~~(f) [(g)] The length of the sanction period shall be determined by the Board taking into account the time reasonably required to complete the required terms and conditions set forth in the order imposing the sanction.~~

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 March 23, 2018.

TRD-201801257

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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



22 TAC §470.22

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §470.22, Schedule of Sanctions. The proposed amendment adds the schedule of sanctions for violations the Board considers worthy of revocation. The schedule of sanctions for revocation violations is proposed to be removed from §470.21, regarding disciplinary guidelines, which is published elsewhere in this addition of the Texas Register. The Board proposes this change so that the schedule of disciplinary sanctions can be included in a single rule instead of two rules. This amendment is proposed to simplify the Board's rules, make the Board's schedule of sanctions more straightforward, and provide greater clarity to licensees and the general public. This proposed amendment also reflects the Board's recent review of its rules and updates have been made to accurately reflect the Board's current categorization of what each sanction should be for each rule violation.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees, applicants, and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also 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 to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities and that the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the pro-

posed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment pursuant to the authority found in §501.404 of the Tex. Occ. Code which grants the Board with the authority to adopt a schedule of disciplinary sanctions that the Board may impose.

No other code, articles or statutes are affected by this section.

§470.22. *Schedule of Sanctions.*

(a) These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Psychologists' Licensing Act and Board Rules of conduct. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) Single Violation. The standard sanctions outlined below shall apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply.

(2) Multiple Violations. The board may impose more restrictive sanctions when there are multiple violations of the Act.

(3) Aggravating and Mitigating Factors. The Board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §470.23 of this chapter (relating to Aggravating and Mitigating Circumstances) that are found to apply in a particular case.

(4) The standard and minimum sanctions outlined below are applicable to first time violators. The Board shall consider more severe sanctions if the person is a repeat offender.

(5) The maximum sanction in all cases is revocation of the license, which may be accompanied by an administrative penalty of up to \$1,000 per violation. In accordance with §501.452 of the Act, each day the violation continues is a separate violation.

(6) Each violation constitutes a separate offense, even if arising out of a single act.

(7) Failure to list a type of violation or Board Rule in this rule does not prevent the Board from taking disciplinary action for such a violation.

(8) If a sanction for a violation of Board Rules is not listed in this rule, or specifically stated elsewhere in laws, the default sanction shall be a reprimand.

(9) Notwithstanding paragraph (8) of this subsection, the Board will evaluate and determine, on a case-by-case basis, the appropriate sanction for an individual with a qualifying conviction under §501.401(2) of the Act, as well as for an individual found to be incompetent under §501.158 of the Act.

(b) The following standard sanctions shall apply to violations of the Act and Rules:

Figure: 22 TAC §470.22(b)

[(1) Reprimand; assessment of up to \$1,000 in administrative penalties per violation per day; administrative costs; and professional development in the appropriate areas for the following offenses:]

[(A) repeated failure to timely report professional development (Board rule §461.11);]

[(B) basic supervision violation (Board rule §465.2);]

[(C) advertising or specialty title violations (Board rule §465.6);]

[(D) informed consent (Board rule §465.11);]

[(E) misuse of professional services by a third party (Board rule §465.14);]

[(F) fee and third party financial arrangements (Board rule §465.15);]

[(G) technical teaching violations (most of Board rule §465.19);]

[(H) technical research violations (Board rule §465.20(a));]

[(I) records violations (Board rule §465.22);]

[(J) providing services to those served by others (Board rule §465.34);]

[(K) technical violation of some other law pertaining to the practice of psychology (Board rule §465.37);]

[(L) technical violations of supervision rules and other laws pertaining to school psychology (Board rule §465.38); and]

[(M) failure to post complaint notice or inform another about the Board's complaint process (Board rule §469.2).]

[(2) Probated suspension; monitoring of professional practice by independent professional; assessment of up to \$1,000 in administrative penalties per violation per day; administrative costs; and professional development in the appropriate areas for the following offenses:]

[(A) employment of unlicensed and non-exempt individuals (Board rule §465.4);]

[(B) one-time incompetence, including violations related to evaluations, testing, use of professional judgment, forensic services, or treatment plans (includes Board rules §§465.9; 465.10; 465.16; 465.17; 465.18; and 465.25);]

[(C) breach of confidentiality (Board rule §465.12);]

[(D) sexual harassment of any type (Board rule 465.33(e));]

[(E) dual relationships, conflicts and personal problems (Board rule §465.13);]

[(F) improper termination, abandonment of clients, and disposition of a professional practice (Board rules §465.21 and §465.32); and]

[(G) failure to remedy or report a violation of the Rules by another (Board rule §465.35).]

[(3) Actual suspension for a period of time, followed by a period of probated suspension with the terms and conditions outlined in paragraph (2) for the following offenses:]

[(A) Sexual relationship with prohibited classes other than current patients (former patients, students, supervisees) or any type of sexual impropriety (Board rule §465.33);]

[(B) Commission of a crime listed in Board rule §469.7, other than those that lead to automatic revocation as outlined in Board rule §470.21;]

[(C) Use of alcohol or drugs in a way that impairs professional competency, as outlined in §501.401(3) of the Act; and]

[(D) Failure to abide by a Board order, as outlined in Board rule §461.15.]

[(4) The types of violations that would automatically lead to revocation are enumerated in Board rule §470.21 and are not subject to aggravating or mitigating circumstances. These offenses include sexual relationships with current patients, severe criminal offenses, and fraud in obtaining a 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.

Filed with the Office of the Secretary of State on March 23, 2018.

TRD-201801262

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 6, 2018

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

