

# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER R. TELECOMMUNICATIONS IN MANAGED CARE SERVICE COORDINATION AND ASSESSMENTS

##### 1 TAC §§353.1501 - 353.1506

The Texas Health and Human Services Commission (HHSC) adopts new §353.1501, concerning Purpose; §353.1502, concerning Definitions; §353.1503, concerning Use of Telecommunications in Assessments; §353.1504, concerning Use of Telecommunications in Service Coordination and Service Management; §353.1505, concerning Additional Requirements for Assessments and Service Coordination in STAR+PLUS and STAR Kids; and §353.1506, concerning Additional Requirements for Assessments and Service Management.

Sections 353.1502 and 353.1504 are adopted without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8811). These rules will not be republished.

Sections 353.1501, 353.1503, 353.1505, and 353.1506 are adopted with changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8811). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

The adopted rules are necessary to implement Texas Government Code, §533.039, added by House Bill (H.B.) 4, 87th Texas Legislature, Regular Session, 2021. Section 533.039 requires HHSC to adopt rules to establish policies and procedures that allow a Medicaid managed care organization (MCO) to conduct assessments and provide care coordination services using telecommunications and information technology (IT), to the extent permitted by federal law.

Assessments conducted for managed care members enrolled in a home and community-based services (HCBS) waiver or for services such as attendant care (i.e., personal assistance services and personal care services) and Community First Choice are not medical services. Assessments are performed by Medicaid MCOs. Federal law requires states to conduct annual assessments to determine eligibility for HCBS waivers. Assessments are also required to determine a member's need for state plan services such as attendant care and Community First Choice.

HHSC consulted with the Centers for Medicare & Medicaid Services (CMS) for guidance related to the implementation of H.B. 4. CMS advised that HHSC must deploy an assessment method that is adequate to develop a person-centered plan that meets the requirements in Title 42 Code of Federal Regulations (42 CFR) §441.301(c)(2). CMS further advised that HHSC must meet the health and welfare assurances in 42 CFR §441.302 and determine if its assessment tools require in-person visual observations.

To implement Texas Government Code, §533.039, and to ensure compliance with federal regulations, the adopted rules: (1) establish requirements for the use of telecommunications in Medicaid managed care for service coordination and assessments conducted by MCOs that contract with HHSC; (2) require MCOs to conduct in-person initial assessments and annual reassessments using the HHSC-developed tools in STAR+PLUS, STAR Kids, and STAR Health, for waiver services and services requiring a functional assessment, such as personal assistance services, personal care services, and Community First Choice; (3) require a change in condition assessment that requires or potentially requires a change in the Resource Utilization Group (RUG) level to be conducted in person; (4) for change in condition assessments that do not require or potentially require a change in the RUG level, allow an MCO to offer members a choice of audio-visual communication in place of in-person, if the MCO obtains and documents member or member legally authorized representative (LAR) verbal consent; and (5) for limited circumstances, allow MCOs to submit, in a manner and format prescribed by HHSC, an exceptions policy for required in-person assessments for approval by HHSC.

In addition, the adopted rules: (1) allow an MCO to offer members in STAR+PLUS and STAR Kids a choice of audio-visual communication for service coordination in place of an in-person visit, if no assessment is occurring; (2) specify the requirements for audio-visual service coordination, including the responsibility of the MCO to obtain and document member or member LAR verbal consent for the use of audio-visual communication during a service coordination visit; (3) allow the STAR Health MCO to offer a choice of audio-visual or telephonic communication service management in place of an in-person visit if no assessment is occurring; (4) prohibit the use of IT, including text or email, as the sole means of conducting an assessment or service coordination, but allow their use to supplement audio-visual or in-person assessments and service coordination visits; (5) as outlined in Texas Government Code, §533.039, allow HHSC to require an MCO to discontinue service coordination or assessments using telecommunications on a case-by-case basis, if HHSC determines that the discontinuation is in the best interest of the member; (6) contain additional requirements related to assessments and service management in STAR Health, similar to the requirements for STAR+PLUS and STAR Kids; and (7) require

an MCO to honor a member's request in STAR+PLUS, STAR Kids, and STAR Health for in-person service coordination or assessments unless HHSC issues direction to MCOs during a declared state of disaster that service coordination or assessments must be conducted using audio-only communication or audio-visual communication.

In §353.1501, the adopted rules also establish July 1, 2023, as the MCO compliance date for the rules contained in Subchapter R to allow sufficient time for MCOs to implement the rules.

#### COMMENTS

The 31-day comment period ended January 30, 2023.

During this period and the public hearing held on January 11, 2023, HHSC received comments regarding the proposed rules from eleven commenters, including the Texas Association of Health Plans (TAHP) (two commenters), the Texas Association for Home Care and Hospice (TAHCH) (two commenters), the Texas e-Health Alliance (TeHA), Red River Health Care Systems, Inc., and Videra Health. In addition, HHSC received comments from four Medicaid MCO employees including a manager of service coordinators for STAR Kids and two service coordinators.

A summary of comments relating to the rules and HHSC's responses follows.

**Comment:** TAHP commented that the proposed rules lacked the intended flexibility of H.B. 4 to allow assessments and service coordination to be done by telehealth and require unnecessary in-person assessments that conflict with H.B. 4. Similarly, TeHA is concerned that the proposed rules overly limit the use of telecommunications. TAHP stated H.B. 4 requires, to the extent permitted by federal law, that HHSC improve access to care by allowing MCOs to do assessments and provide care coordination services using telecommunications or IT. TAHP recommended eliminating any in-person assessments beyond the initial waiver eligibility determination for the HCBS waiver population. TAHP further commented that H.B. 4 contains no consideration for initial assessments, annual reassessments, or RUG changes as a factor for in-person assessments and instead, the legislature expressly defers to MCOs. TAHP noted, and agrees with, the acknowledgement from the Texas Legislature that there are situations where virtual assessments are not appropriate but indicated that the legislation requires MCOs to make this determination based on an individual's request.

**Response:** HHSC respectfully disagrees with the comments and declines to make changes to the rules in response to these comments. HHSC is permitting flexibility within the adopted rules to the extent allowed by statute. Texas Government Code Section 533.039(b) directs HHSC to establish policies and procedures by rule that allow a Medicaid MCO to conduct assessments and provide care coordination services using telecommunications or IT to the extent permitted by federal law. In establishing these policies and procedures, Texas Government Code §533.039(b) requires HHSC to consider several factors and does not require HHSC to defer to MCOs to make this determination based on an individual's request. Factors include "whether the commission determines using the telecommunications or information technology is appropriate under the circumstances." In addition, it is an HHSC responsibility as the single state Medicaid agency to establish processes to determine eligibility for HCBS waivers, and assessments are a part of the eligibility determination. HHSC is also responsible for ensuring Medicaid members have access to appropriate services and meeting the health and

welfare assurances in 42 CFR §441.302. HHSC determined that it is not aligned with federal regulations, or appropriate to use telecommunications or IT to conduct an initial assessment or annual reassessment that determines waiver eligibility or a member's functional needs. Several components of the assessment tools require in-person observation, including observation of the member's home environment to document and address potential risks and member needs. Appropriate assessment requires an in-person view to fully see the details of the living space, condition and size of durable medical equipment, and other in-home supports, and to observe an individual's abilities for activities of daily living and instrumental activities of daily living, and other factors.

**Comment:** TAHP commented there is no federal law or CMS guidance provided to HHSC prohibiting the use of telehealth for assessments and service coordination.

**Response:** HHSC declines making changes in response to this comment. HHSC agrees that Title XIX of the Social Security Act does not expressly prohibit the use of telecommunications for assessments and care coordination services. However, CMS provided guidance to HHSC instructing the agency to determine if its assessment tools require in-person visual observations to assure health and welfare of waiver participants. This guidance is based on federal regulations at 42 CFR § 441.301 and §441.302 that implement Section 1915(c) of the Social Security Act regarding HCBS waivers. HHSC determined that the assessments tools require in-person visual observations.

**Comment:** TAHP and the TeHA said there is a lack of evidence that conducting these assessments and visits via telehealth jeopardizes the safety and welfare of Texas Medicaid recipients, and many members may be at greater risk if in-person visits are required. TAHP asserted that HHSC has an additional oversight tool to ensure member safety, because the HHSC Managed Care Long-term Services and Supports Utilization Review staff complete utilization reviews annually in STAR+PLUS HCBS and the STAR Kids Medically Dependent Children Program (MDCP) to determine if MCOs are appropriately assessing and enrolling members in services.

**Response:** HHSC respectfully disagrees with the commenters and declines to make changes in response to this comment. Prior to the COVID-19 public health emergency (PHE), all assessments and face-to-face service coordination were conducted in-person. The COVID-19 PHE accelerated widespread use of virtual assessments in a short period of time. There is a lack of studies comparing client outcomes between in-person assessments and virtual assessments. The HHSC Medicaid and CHIP Services Utilization Review (UR) team does not validate assessments. The UR team completes URs annually to determine if MCOs are utilizing the correct assessment forms, completing assessments in a timely manner, enrolling members in waiver services, and providing needed services. The UR team pulls a statistically valid sample to review, several months after the assessment was conducted.

**Comment:** TAHP stated that HHSC references certain questions in the assessment tools that require in-person assessments, including evaluating the current condition of durable medical equipment, determining the member's ability to hear and understand others, and assessing current wounds. TAHP further commented that it is unclear why audiology and wound care services can be provided via telemedicine and in fact, several physical, occupational, and speech therapy services can be a service approved for telemedicine under H.B. 4, but a member

cannot be assessed for non-clinical purposes using audio-visual capabilities.

Response: HHSC respectfully disagrees with the commenter and declines to make changes in response to this comment. HHSC does not allow remote delivery of audiology and wound care services in fee-for-service Medicaid, as detailed in the Texas Medicaid Provider Procedures Manual. The only physical, occupational, and speech therapy services that can be delivered remotely are those where the service can still be clinically effective if delivered remotely and in compliance with an individual provider's license. In addition, these services are not equivalent to the assessments required to establish Medicaid eligibility for waiver services.

Comment: TAHP and TeHA commented that HHSC did not allow flexibility provided by H.B. 4 for members or families to decide how they access care and recommended that members and their families should be able to make the decision whether assessments and service coordination are conducted in-person. An MCO employee commented that HHSC should allow families the option to choose telehealth delivery, and that this would support family choice to restrict visitors for medically fragile members.

Response: HHSC appreciates the comment and agrees that members should have a choice between in-person and audio-visual communication for service coordination and assessments that are appropriate for telehealth delivery, but HHSC declines to make changes in response to this comment. It is an HHSC responsibility as the single state Medicaid agency to establish processes to determine eligibility for HCBS waivers, to ensure people have access to appropriate services, and to meet the health and welfare assurances in 42 CFR §441.302, and this responsibility cannot be delegated to the member.

Comment: TAHP and TeHA commented that in-person requirements exacerbate the nursing workforce shortage. An MCO service coordinator commented that they are still able to meet members needs at home, and hope that HHSC will consider how their productivity has increased. TAHP noted that telehealth delivery reduces gaps in care, supports continuity of care, promotes the triple aim, and reduces the cost of health care. TeHA also noted that telehealth improves timeliness of assessment, and that in-person requirements increase costs for the state.

Response: HHSC acknowledges that remote delivery of all assessments may have the potential to reduce staff costs for some MCOs and alleviate nursing workforce challenges facing MCOs. However, this potential does not outweigh the responsibility for HHSC to ensure the delivery of appropriate assessments that comply with federal regulations and ensure members receive appropriate services. HHSC declines to make changes in response to this comment.

Comment: TAHCH requested that the language "without the presence of a member" in §353.1503(a)(5), (b)(4), and (c)(5) be clarified to mean the presence of the member must be in person.

Response: HHSC agrees with this request and revised §353.1503(a)(5), (b)(4), and (c)(5) by adding "in-person."

Comment: TAHP and an MCO employee expressed concern that some families do not want an in-person assessment and families who decline an in-person assessment will lose their services. Both commenters expressed a desire for members to be able to request an exception to the in-person requirement.

Response: Federal regulations require that assessments be conducted annually to determine a member's eligibility for

waiver programs such as STAR+PLUS HCBS and MDCP or services such as Community First Choice. Members cannot be determined eligible for these programs and services without an assessment. These rules require that the annual assessments be conducted in person. However, in response to the commenters' concerns HHSC revised §353.1503 to add paragraph (8) in subsection (a), paragraph (7) in subsection (b) and paragraph (8) in subsection (c) to establish a process to allow MCOs, for limited circumstances, to submit an exceptions policy for required in-person assessments for approval by HHSC.

Comment: TAHP commented the rules conflict with the Administrative Procedures Act when it "(1) contravenes specific statutory language; (2) runs counter to the general objectives of the underlying [statute]; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." TAHP continued that Texas Government Code §533.039(e) states that a Medicaid managed care organization shall, for a recipient of HCBS for which the commission requires in-person visits, conduct: (1) at least one in-person visit with the recipient to make an initial waiver eligibility determination; and (2) additional in-person visits with the recipient if necessary, as determined by the managed care organization." TAHP stated that if an MCO determines, pursuant to §533.039(e)(2), that an in-person visit is not necessary to conduct an assessment, then the requirements in these proposed rules would directly contravene the specific statutory language.

Response: HHSC respectfully disagrees with the commenter that the rules contravene Texas Government Code §533.039(e)(2) and declines to make changes in response to this comment. HHSC is furthering the objectives of this statute by allowing appropriate assessments and service coordination to be delivered remotely that were not allowed prior to the PHE and would have ended with the PHE if not for this legislation. Further, HHSC is permitting flexibility within the rules to the extent allowed by federal law and implementing regulations as directed by the statute.

Comment: TeHA and TAHP commented that the COVID-19 pandemic made it clear that telehealth is an effective and safe tool that can be used not only for medical care, but for service coordination and assessments in the Medicaid program. MCOs have learned that telehealth can reach vulnerable patient groups, and can improve access for patients with transportation, parking, or cost barriers. Telehealth can also expand access to care, reduce disease exposures, and reduce patient demand at facilities.

Response: HHSC appreciates the comment and agrees that there are many benefits to telehealth such as expanding access, reaching vulnerable groups, and reducing patient demand at facilities. However, using telehealth for clinical care that a member would have to travel to receive at a facility, such as physician visits, is different from using it to assess a member's eligibility for waiver and other long term services and supports using prescribed tools in the member's home. The COVID-19 PHE accelerated widespread use of virtual assessments in a short period of time. There is a lack of studies comparing client outcomes between in-person assessments and virtual assessments. Several components of the assessment tools require in-person observation, including observation of the member's home environment to document and address potential risks and member needs. HHSC declines to make changes in response to this comment.

Comment: TAHP suggested that HHSC adjust the definition of "covered services" in §353.1502(8) to include only those ser-

VICES that are medically necessary based on the federal requirement.

Response: HHSC respectfully disagrees and declines to make this change to the definition of "covered services" because the definition mirrors the definition currently found in 1 TAC §353.2 (relating to Definitions).

Comment: TAHCH commented that the rules should clarify that MCOs should document the member's verbal approval to use audio-visual communication in their own systems, as this is the least administratively burdensome method to capture member approvals and would not require the creation of new processes.

Response: HHSC agrees with the commenter but declines to make changes in response to this comment. Sections 353.1505 and 353.1506 already allow MCOs to use their discretion on how to document verbal consent, but the MCOs must be able to produce documentation of verbal consent for audit and compliance purposes.

Comment: An MCO service coordinator asked who will provide the personal protection equipment (PPE), citing costs and protection for nursing staff. Another service coordinator expressed concerns about communicable diseases such as COVID and gun violence with a return to in-person assessments.

Response: HHSC acknowledges the commenter's concerns but declines to make changes in response to this comment. It is the responsibility of the MCOs to address workplace safety concerns and provide PPE for their employees as appropriate.

Comment: TAHCH commented that overall, TAHCH supports the use of telecommunications when appropriate in Medicaid managed care for service coordination and assessments conducted by MCOs. However, conducting all assessments and service coordination activities via telecommunications for Medicaid members has not proved entirely valuable as recently implemented. TAHCH commented in support of in-person assessments for initial assessments and reassessments to ensure a more accurate assessment picture and improve the quality and accuracy of the patient's needs. TAHCH asserted that without in-person assessments, basic assessment techniques that include observation are missed, and providers report that clients are appealing decisions more than in the past.

Response: HHSC appreciates the comment.

Comment: TAHCH cited significant concerns related to §353.1504(a)(8) that requires MCOs to provide service coordination in accordance with §353.609 of this chapter (relating to Service Coordination). TAHCH supports the regulatory language in this rule regarding coordination of care between MCOs and providers. However, TAHCH cited concerns with MCO service coordination delivery, including an urgent need for improvement in communication between MCOs and providers. Other providers represented by TAHCH report working with good MCO service coordinators, but say they have an unreasonable client workload. In regard to administrative tasks, service coordinators may not contact the provider representative immediately, and often are unable to give a definitive answer to providers. TAHCH recommended requiring MCOs to conduct Interdisciplinary Team (IDT) meetings between the patient, provider, and MCO to drastically improve communication between MCOs and providers.

Response: HHSC appreciates the comment and agrees that IDT meetings help to improve communication and the coordination of a member's services. However, HHSC declines making

changes to address IDT meeting requirements because making these changes are outside the scope of this project and will require additional analysis.

Comment: TAHCH recommended that §353.1505(a) include Health Insurance Portability and Accountability Act (HIPAA)-compliant language.

Response: HHSC agrees with this recommendation and revised §353.1505(a) and §353.1506(a) by adding "HIPAA-compliant."

Comment: TAHCH asked that MCOs be required to invite the member's informal supports, attendant, and provider agency representative when performing assessments.

RESPONSE: HHSC agrees with the commenter but declines to make changes because it is outside the scope of this project. However, MCOs must allow informal supports, attendants, and providers to be present during the assessment, as specified in the person-centered planning requirements in 42 CFR §441.301 and §441.450, if that is the member's choice.

Comment: TAHCH submitted a comment from a provider stating the MCOs are asking providers to ensure members answer their phones and are terminating services when the MCO cannot reach the member by phone. At times, the MCOs are making no home visit attempts.

Response: HHSC declines to make changes in response to this comment. During the PHE, HHSC implemented flexibilities to allow telephone assessments if in-person and telehealth are not feasible. MCOs must return to conducting initial assessments and annual reassessments in person for MDCP and STAR+PLUS HCBS waiver under the rules. Providers can submit specific managed care complaints by emailing HHSC at [HPM\\_Complaints@hhsc.state.tx.us](mailto:HPM_Complaints@hhsc.state.tx.us).

Comment: TAHCH and Red River Health Care Systems commented there are no consequences to the MCOs when they do not follow the rules. TAHCH cited examples of complaints, including failure to comply with IDT rules, failure to give complete and accurate authorizations, and failure of the MCO case managers to return the client's phone calls timely.

Response: HHSC declines to make changes in response to this comment. Providers can submit specific managed care complaints by emailing [HPM\\_Complaints@hhsc.state.tx.us](mailto:HPM_Complaints@hhsc.state.tx.us).

Comment: TAHCH submitted a comment from a provider asking why HHSC is not implementing audio-visual allowances in the Community Attendant Services (CAS) Program and the Family Care (FC) Program rather than catering to the failures of the MCOs. Red River Health Care Systems, Inc. reiterated this point for the CAS, FC and Primary Home Care (PHC) Programs.

Response: HHSC declines making changes in response to this comment. These rules address the H.B. 4 requirement to develop rules for the use of telecommunications in Medicaid managed care service coordination and assessments. The CAS, FC, and PHC Programs are fee-for-service programs that are not offered through Medicaid managed care.

Comment: Videra Health recommended that virtual assessments be allowed where clinical evidence demonstrates that it is an effective substitute for an in-person visit. The commenter stated that while they agree there are some situations where an in-person visit is warranted, they cited the Patient Health Questionnaire-9 and General Anxiety Disorder-7 as assessment tools that can be administered through automated technology with clinical evidence backing the efficacy. The commenter

expressed concern that the rule would have a negative impact on patients and providers, would result in fewer patients being assessed, and would limit improved outcomes.

Response: HHSC respectfully disagrees and declines to make changes to the rule in response to this comment. The specific assessment tools referenced by the commenter are not the HHSC assessment tools that must be used to determine eligibility for HCBS waivers or functional needs.

Comment: Red River Health Care Systems, Inc. commented that all visits should be in person because MCOs are not sending representatives to see the member or meeting their needs. They commented that many clients have limited cell phone minutes, and that Medicaid clients are not being provided with equipment to conduct an appropriate assessment of the client's home surroundings and living conditions.

Response: HHSC appreciates the comment but respectfully declines to make changes to the rules in response to this comment. H.B. 4 requires HHSC to allow assessments and service coordination using telecommunications to the extent permitted by federal law. To protect the health and safety of members, the rules require in-person initial assessments, annual reassessments, and change in condition assessments affecting or potentially affecting the RUG level to be conducted in person. Under the rules, MCOs may offer members a choice of in-person or audio-visual communication for service coordination if no initial, annual reassessment, or change in condition assessment affecting or potentially affecting the RUG level is occurring. In addition, the rules allow MCOs to offer members a choice of audio-visual communication in place of an in-person change in condition assessment as long as the assessment does not require or potentially require a change in the RUG level. MCOs must ensure appropriate equipment and access are available at the remote location to enable a telehealth visit when authorized.

Comment: TAHCH provided a comment from a provider expressing that clients in rural communities have limited resources, live at the poverty level, and have only government issued phones with limited minutes. The provider asked if the MCO was going to reimburse the provider or provide a way for the client to use telecommunications. The provider further stated that their attendants do not have the resources to assist the client with the call. TAHCH provided a comment from another provider who stated that the MCOs will ask them to contact the client and let them know to answer a call from the MCO.

Response: HHSC acknowledges the commenters concerns but declines to make changes in response to this comment. MCOs will be required by contract to ensure that members have all resources needed for an effective audio-visual service coordination visit or assessment. For contractually required face-to-face service coordination, MCOs must give members a choice of in-person or audio-visual service coordination, unless an assessment is occurring during the visit in which case the visit must be done in person. Under the rules, most assessments, including waiver assessments and functional assessments, must be conducted in person.

Comment: One individual asked for clarification if a face-to-face visit is required for all "level 1, 2, and 3 members" once per year regardless of assessment type.

Response: All STAR Kids members must have at least one in-person assessment per year because the STAR Kids Screening and Assessment Instrument must be administered annually for all STAR Kids members regardless of service coordination

level. STAR+PLUS Level 1 and 2 members must have at least one in-person service coordination visit per year, even if the member needs no assessments (e.g., Medical Necessity/Level of Care and functional assessments) during the year. Level 3 STAR+PLUS members are required by contract to receive two telephonic service coordination visits annually, and the adopted rules clarify at §353.1505(i) that when telephonic service coordination visits are authorized by contract, these visits may continue to be provided by telephonic communication. HHSC declines to make changes in response to this comment.

HHSC revised §353.1501 to establish July 1, 2023, as the date Medicaid MCOs must be fully compliant with the rules contained in Subchapter R. The revision allows MCOs sufficient time to implement the rules.

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to act as the single state agency designated to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Government Code §533.039(b) which directs HHSC, by rule, to establish policies and procedures allowing managed care organizations to conduct assessments and care coordination services using telecommunications or information technology.

#### §353.1501. Purpose.

This subchapter establishes requirements for the use of telecommunications in Medicaid managed care for service coordination and assessments conducted by managed care organizations (MCOs) contracted with the Texas Health and Human Services Commission. Medicaid MCOs must be fully compliant with the rules contained in this subchapter no later than July 1, 2023.

#### §353.1503. Use of Telecommunications in Assessments.

##### (a) STAR+PLUS.

(1) STAR+PLUS managed care organizations (MCOs) must conduct initial assessments and annual reassessments using HHSC-developed tools for STAR+PLUS HCBS Program eligibility in-person.

(2) STAR+PLUS MCOs must conduct all initial and annual assessments using HHSC-developed tools for functionally necessary covered services such as personal assistance services, Community First Choice services, and day activity and health services, in-person.

(3) Change in condition assessments that require or potentially require a change in the Resource Utilization Group (RUG) level must be conducted in-person.

(4) MCOs may offer to STAR+PLUS members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(5) A STAR+PLUS MCO may not conduct an initial assessment, annual reassessment, or change in condition assessment without the in-person presence of the member.

(6) During a declared state of disaster, HHSC may issue direction to STAR+PLUS MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR+PLUS members who reside in the area subject to the declared state of disaster.

(7) STAR+PLUS MCOs must adhere to §353.1153 of this chapter (relating to STAR+PLUS Home and Community Based Services (HCBS) Program) for STAR+PLUS assessments and service planning, and §353.1(c) of this chapter (relating to Purpose) regarding compliance with all terms of the contract with HHSC.

(8) For limited circumstances, STAR+PLUS MCOs may submit, in a manner and format prescribed by HHSC, an exceptions policy for required in-person assessments for approval by HHSC. The policy must be developed by the MCO's clinical staff, such as the Chief Medical Director or the Director's designee.

(b) STAR Kids.

(1) The STAR Kids MCO must administer the initial assessment and annual reassessments using the HHSC-developed STAR Kids assessment tool in-person.

(2) Change in condition assessments that require or potentially require a change in the RUG level must be conducted in-person.

(3) MCOs may offer STAR Kids members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(4) A STAR Kids MCO may not conduct an assessment without the in-person presence of the member.

(5) During a declared state of disaster, HHSC may issue direction to STAR Kids MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR Kids members who reside in the area subject to the declared state of disaster.

(6) STAR Kids MCOs must adhere to §353.1155 of this chapter (relating to Medically Dependent Children Program) for assessments and service planning, and §353.1(c) of this chapter regarding compliance with all terms of the contract with HHSC.

(7) For limited circumstances, STAR Kids MCOs may submit, in a manner and format prescribed by HHSC, an exceptions policy for required in-person assessments for approval by HHSC. The policy must be developed by the MCO's clinical staff, such as the Chief Medical Director or the Director's designee.

(c) STAR Health.

(1) The STAR Health MCO must administer the HHSC-developed assessment tool for initial Medically Dependent Children Program (MDCP) eligibility and annual reassessments in -person.

(2) The STAR Health MCO must conduct all initial and annual reassessments using HHSC-developed tools for functionally necessary covered services such as personal assistance services, personal care services, and Community First Choice services, in -person.

(3) Change in condition assessments that require or potentially require a change in the RUG level must be conducted in-person.

(4) MCOs may offer STAR Health members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(5) A STAR Health MCO may not conduct an assessment without the in-person presence of the member.

(6) During a declared state of disaster, HHSC may issue direction to STAR Health MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR Health members who reside in the area subject to the declared state of disaster.

(7) A STAR Health MCO must adhere to §353.1155 of this chapter for MDCP assessments and service planning, and §353.1(c) of this chapter regarding compliance with all terms of the contract with HHSC.

(8) For limited circumstances, a STAR Health MCO may submit, in a manner and format prescribed by HHSC, an exceptions

policy for required in-person assessments for approval by HHSC. The policy must be developed by the MCO's clinical staff, such as the Chief Medical Director or the Director's designee.

*§353.1505. Additional Requirements for Assessments and Service Coordination in STAR+PLUS and STAR Kids.*

(a) Information technology, including HIPAA-compliant text or email, may supplement audio-visual communication or in-person assessments, but may not be used as the sole means of conducting an assessment or service coordination visit.

(b) When a managed care organization (MCO) conducts an assessment or service coordination visit using telecommunications, the MCO must:

(1) monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse;

(2) determine whether additional social services or supports are needed;

(3) document verbal consent to use telecommunications; and

(4) adhere to HIPAA, including the use of a HIPAA-compliant audio-visual communication product.

(c) HHSC may, on a case-by-case basis, require an MCO to discontinue telecommunications for the delivery of service coordination or assessments if HHSC determines that the discontinuation is in the best interest of the member.

(d) An MCO may conduct additional in-person visits with members, as determined by the MCO.

(e) MCOs must have a means to document verbal consent to the use of telecommunications for the delivery of assessments or service coordination.

(f) Where HHSC contractually requires face-to-face service coordination, the MCOs may conduct these visits in-person or using audio-visual means. Audio-visual may not be used if an assessment is being conducted during the service coordination visit, unless HHSC issues direction allowing audio-visual assessments during a declared state of disaster.

(g) MCOs may not leave blank fields in assessment tools, including tools to evaluate home and community-based service needs, nursing needs, and functional needs. Audio-visual is not an appropriate means of assessing a member if it results in blank fields.

(h) MCOs must explain to the member or the member's LAR what verbal consent means, and what the member or member's LAR is consenting to.

(1) The verbal consent for audio-visual communication in place of an in-person visit applies only to that visit.

(2) Verbal consent must be obtained for each service coordination visit conducted using audio-visual communication in place of an in-person visit.

(i) When telephonic service coordination visits are authorized by contract, these visits may continue to be provided by telephonic communication.

(j) An MCO must honor a member's request to receive service coordination or assessments in-person. Only when HHSC issues direction to MCOs during a declared state of disaster that service coordination or assessments must be conducted using audio-visual or audio-only communication due to the specific nature of a governor declared disaster, may an MCO deny a member's request for an in-person visit.

(k) MCOs may use their discretion on how to document verbal consent in a HIPAA-compliant manner. However, MCOs must be able to produce the documentation of verbal consent for audit and compliance purposes.

*§353.1506. Additional Requirements for Assessments and Service Management in STAR Health.*

(a) Information technology, including HIPAA-compliant text or email, may supplement audio-visual or in-person assessments, but may not be used as the sole means of conducting an assessment or service management visit.

(b) When a managed care organization (MCO) conducts an assessment or service management visit using telecommunications, the MCO must:

(1) monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse;

(2) determine whether additional social services or supports are needed;

(3) document verbal consent to use telecommunications; and

(4) adhere to HIPAA, including the use of a HIPAA-compliant audio-visual communication product.

(c) HHSC may, on a case-by-case basis, require an MCO to discontinue telecommunications for the delivery of service management or assessments if HHSC determines that the discontinuation is in the best interest of the member.

(d) An MCO may conduct additional in-person visits with members, as determined by the MCO.

(e) MCOs must have a means to document verbal consent to the use of telecommunications for the delivery of assessments or service management.

(f) Audio-visual may not be used if an initial or annual assessment for the Medically Dependent Children Program or functionally necessary covered services is being conducted, unless HHSC issues direction allowing audio-visual assessments during a declared state of disaster.

(g) MCOs may not leave blank fields in assessment tools, including tools to evaluate home and community-based service needs, nursing needs, and functional needs. Audio-visual is not an appropriate means of assessing a member if it results in blank fields.

(h) MCOs must explain to the member or medical center what verbal consent means, and what the member or medical center is consenting to.

(1) The verbal consent for an audio-visual in place of an in-person visit applies only to that visit.

(2) Verbal consent must be obtained for each audio-visual service coordination visit conducted in place of an in-person visit.

(i) When telephonic screenings or service management visits are authorized by contract, these visits may continue to be provided by telephonic communication.

(j) An MCO must honor a member's request to receive service management or assessment in person. Only when HHSC issues direction to MCOs during a declared state of disaster that service management or assessments must be conducted using audio-visual or audio-only communication due to the specific nature of a governor declared disaster, may an MCO deny a member's request for in-person contact.

(k) MCOs may use their discretion on how to document verbal consent in a HIPAA-compliant manner. However, MCOs must be able to produce the documentation of verbal consent for audit and compliance purposes.

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

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

##### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

###### 19 TAC §109.1001

The Texas Education Agency (TEA) adopts an amendment to §109.1001, concerning financial accountability ratings. The amendment is adopted with changes to the proposed text as published in the February 10, 2023 issue of the *Texas Register* (48 TexReg 607) and will be republished. The adopted amendment updates financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools, including adjustments required under Texas Education Code (TEC), §39.087, as added by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021. The adopted amendment also addresses adjustments for scores and ratings upon appeal for the indicator for the timely submission of a complete annual financial report.

**REASONED JUSTIFICATION:** Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The adopted amendment clarifies the financial accountability rating indicators terminology used to determine each school district's and charter school's rating for the 2022-2023 rating year and subsequent years. The adopted amendment also includes some pandemic-related adjustments to the Financial Integrity Rating System of Texas (FIRST) based on TEC, §39.082(b) and (d), which require that the FIRST system include uniform indicators that measure the financial management performance and future financial solvency of a school district or open-enrollment

charter school and that the commissioner evaluate indicators at least once every three years. Consequently, all school districts will pass Indicator 5 and be awarded the maximum points for Indicators 10 and 15 for School FIRST; all charter schools will be awarded the maximum points for Indicators 10 and 16 under Charter FIRST; and certain federal funds will be added to the administrative cost ratio calculation for Indicator 13 for School FIRST and Indicator 14 for Charter FIRST. At adoption, a change was made to specify that all school districts will be awarded the maximum points for Indicator 14 under School FIRST and that all charter schools will be awarded the maximum points for Indicator 15 under Charter FIRST.

Adopted new subsection (e)(7) has been added, including new Figure: 19 TAC §109.1001(e)(7) that clarifies terminology and calculations for School FIRST indicators for years subsequent to the 2021-2022 rating year.

Adopted new subsection (f)(7) has been added, including new Figure: 19 TAC §109.1001(f)(7) that clarifies terminology and calculations for Charter FIRST indicators for years subsequent to the 2021-2022 rating year.

The worksheets, dated June 2023, differ from the current worksheets, dated October 2021, as follows.

###### *Figure: 19 TAC §109.1001(e)(7)*

The calculation for Indicator 5 has been revised to use total net position instead of unrestricted net position in the calculation, and the scoring for Indicator 5 has changed from a critical pass or fail indicator with a ceiling for passing only the second part of the indicator to a ceiling indicator for both parts. In response to public comment, Indicator 5 was modified at adoption to allow school districts with a numeric growth indicator of 1,000 students in membership over five years to pass the indicator.

The statement that Indicator 10 will not be utilized for the 2021-2022 rating year has been deleted.

In response to public comment, Indicator 11 was modified at adoption to allow school districts with a numeric growth indicator of 1,000 students in membership over five years to pass the indicator.

In response to public comment, clarification has been added to Indicator 12 to specify that the interest and sinking value will be used as the assessed property value in the calculation for Indicator 12, and the wording for Indicator 12 has been revised to read, "What is the correlation between future debt requirements and the district's assessed property value?"

The calculation for Indicator 13 has been revised to include funds 266, 281, 282, and 283 in the calculation for the administrative cost ratio.

The statement that Indicator 15 will not be utilized for the 2021-2022 rating year has been deleted.

Indicator 17 has been revised to include the auditor's disclosure of substantial doubt about the school district's ability to continue as a going concern. The wording for Indicator 17 has been revised to read, "Did the external independent auditor report that the AFR was free of any instance(s) of material weakness in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the school district's ability to continue as a going concern? (The AICPA defines material weakness.) (If the school district fails Indicator 17, the maximum points and highest rating that the school

district may receive is 79 points, C = Meets Standard Achievement.)"

Indicator 20 has been revised to read, "Did the school district's administration and school board members discuss any changes and/or impact to local, state, and federal funding at a board meeting within 120 days before the district adopted its budget?"

*Figure: 19 TAC §109.1001(f)(7)*

The statement that Indicator 10 will not be utilized for the 2021-2022 rating year has been deleted.

The calculation for Indicator 14 has been revised to add funds 266, 281, 282, and 283 in the calculation for the administrative cost ratio.

The statement that Indicator 16 will not be utilized for the 2021-2022 rating year has been deleted.

Indicator 18 has been revised to include the auditor's disclosure of substantial doubt about the charter school's ability to continue as a going concern. The wording for Indicator 18 has been revised to read, "Did the external independent auditor report that the AFR was free of any instance(s) of material weakness in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the charter school's ability to continue as a going concern? (The AICPA defines material weakness.) (If the charter school fails Indicator 18, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.)"

Indicator 21 has been removed as an indicator for Charter FIRST.

Adopted new §109.1001(n)(9)(A) and (B) has been added to describe adjustments for scores and ratings upon appeal for the indicator for the timely submission of a complete annual financial report, which is currently Indicator 1 for School FIRST and Charter FIRST.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:**  
The public comment period on the proposal began February 10, 2023, and ended March 13, 2023. Following is a summary of public comments received and corresponding agency responses.

#### *School FIRST Indicator 5*

**Comment:** Concerning proposed Figure: 19 TAC §109.1001(e)(7), the Texas Association of School Business Officials (TASBO) recommended that the agency amend the definition for fast-growing districts by adding a numeric growth indicator in addition to the current percentage-based calculation. Specifically, TASBO recommended that the agency revise Indicator 5 to recognize the growth of districts that either increase by 7% (students in membership) or that grow by at least 1,500 students over a five-year period.

**Response:** The agency agrees that a numeric growth indicator should be added to Indicator 5 as an alternative to pass the indicator. Instead of a 1,500 student growth indicator, however, the agency added a numeric growth indicator of 1,000 students in membership over five years to Indicator 5 to allow school districts to pass the indicator.

#### *School FIRST Indicator 7*

**Comment:** Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator and the Texas

Association of School Administrators (TASA) proposed that the agency consider making the cash/investment reserve scoring uniform among school districts and charter schools.

**Response:** The agency disagrees that the number of days of cash on hand required to receive 10 points for Indicator 7 should be adjusted to align with the number of days of cash on hand required for charter schools to receive 10 points. This indicator measures the number of days of expenses that could be paid from existing cash and cash equivalents. Charter schools have a lower cash threshold because they generally receive cash monthly in near equal amounts whereas school districts may not receive cash for several months, depending on their payment schedule, so they need to have larger cash reserves to ensure cash is available to meet expenses. Although charter schools may receive 10 points in Charter FIRST for having 60 or more days of cash on hand, only a range of 66% to 82% of charter schools over the past five rating years have had 60 or more days of cash on hand as compared to a range of 90% to 97% of school districts over the same period of time. Additionally, 80% to 93% of school districts have had 90 or more days of cash on hand over the past five rating years and received 10 points. The agency has maintained language as proposed concerning Indicator 7.

#### *School FIRST Indicator 8*

**Comment:** Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator and TASA proposed that the agency consider making the current ratio scoring uniform among school districts and charter schools. The administrator also stated that using a lower liquidity threshold for charter schools may provide stakeholders with a false sense of financial stability. TASA stated that independent school districts are held to a higher standard under FIRST when measuring assets to liabilities to cover short-term debt.

**Response:** The agency disagrees that the current assets to current liabilities ratio required to receive 10 points for Indicator 8 should be adjusted to align with the ratio required for charter schools to receive 10 points. Charter schools have a lower ratio requirement because they generally receive cash monthly in near equal amounts whereas school districts may not receive cash for several months, depending on their payment schedule, so they need to have a greater amount of current assets to ensure their short-term obligations can be met. About 80% of school districts have had a current assets to current liabilities ratio of 3.0 or greater over the past five rating years and received the maximum points of 10 for the indicator. Charter schools may receive the maximum points of 10 points in Charter FIRST for having a current assets to current liabilities ratio of 2.0 or greater and a comparable range of 77% to 89% of charter schools have met that ratio over the past five rating years. The agency has maintained language as proposed concerning Indicator 8.

#### *School FIRST Indicator 9*

**Comment:** Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator proposed that the agency consider making the days of cash on hand threshold uniform among school districts and charter schools. The administrator stated that Indicator 9 holds school districts to a higher standard than charter schools. The administrator stated that school districts that do not meet the initial measurement (revenues exceed expenditures) for Indicator 9 pass the indicator if the days of cash on hand is 60 or more while charter

schools that do not meet the initial measurement pass the indicator if the days of cash on hand is 40 days or more.

Response: The agency disagrees that if the initial measure for Indicator 9 is not met and that the number of days of cash on hand required to receive the maximum points of 10 should be adjusted to align with the number of days of cash on hand required for charter schools to receive the maximum points of 5 points for Indicator 9 in Charter FIRST. Charter schools have a lower cash threshold because they generally receive cash monthly in near equal amounts whereas school districts may not receive cash for several months, depending on their payment schedule, so they need to have larger cash reserves to ensure cash is available to meet expenses. Additionally, almost all school districts, about 98%, receive the maximum points for Indicator 9 year after year. The agency has maintained language as proposed concerning Indicator 9.

#### *School FIRST Indicator 10*

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator commented that Indicator 10 will not result in an accurate depiction of districts' financial integrity because of dramatic changes to both district budgets and enrollments due to the coronavirus disease (COVID-19) beginning with school year 2019-2020 and extending through school year 2021-2022. The administrator stated that hold harmless was awarded to districts in all three years used to calculate the grade for the 2022-2023 FIRST rating. The administrator further stated that TEA suspended Indicator 10 in the current grading period due to challenges that student attendance projections and hold harmless state funding presented as a result of COVID-19 and that it makes sense to suspend it again for the FIRST grading year that will include all three COVID-19 years (2019-2020, 2020-2021, and 2021-2022).

Response: The agency agrees that Indicator 10 should not be evaluated for School FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 10; however, all school districts will receive the maximum of 10 points for Indicator 10 for rating year 2022-2023.

#### *School FIRST Indicator 11*

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), TASBO recommended that the agency amend the definition for fast-growing districts by adding a numeric growth indicator in addition to the current percentage-based calculation. A school district administrator commented that fast-growing school districts receive a scoring reprieve, but using a percentage increase of students in membership does not accurately reflect the different circumstances of growing school districts. The administrator further commented that a school district's ability to rely on Interest and Sinking (I&S) tax revenues, likely from a growing tax base, to service new debt is not considered when scoring this indicator.

Response: The agency disagrees that Indicator 11 should be replaced with the ratio of debt to assessed value but agrees that a numeric growth indicator should be added as an alternative to pass the indicator. Instead of a 700 student growth indicator, however, the agency added a numeric growth indicator of 1,000 students in membership over five years to Indicator 11 to allow school districts to pass the indicator.

#### *School FIRST Indicator 12*

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), TASBO recommended that the agency use the I&S property value in the calculation for Indicator 12 for districts with Chapter 313 agreements, which will be higher than the Maintenance & Operations value and which TASBO believes is a better reflection of the district's ability to pay. TASBO also recommended Indicator 12 be reworded because the current wording implies that districts that lose points on this indicator may be at risk of debt default. Additionally, TASBO recommended that enrollment growth be factored into the calculation for Indicator 12 with different ranges of points for districts that are growing rapidly as compared to other districts.

Response: The agency disagrees that enrollment growth should be factored into the calculation for Indicator 12 with different ranges of points but agrees that the I&S property value should be used in the calculation. The agency modified Figure: 19 TAC §109.1001(e)(7) at adoption to specify the I&S value as the assessed property value that is used in the calculation for Indicator 12 for all school districts. Additionally, the agency reworded Indicator 12 to read, "What is the correlation between future debt requirements and the district's assessed property value?"

#### *School FIRST Indicator 13*

Comment: Two administrators and TASA commented that the administrative cost ratio scoring criteria is unfair and should be uniform among school districts and charter schools.

Response: The agency disagrees that administrative cost ratio scoring should be uniform between school districts and charter schools primarily because of economies of scale that are generally experienced by school districts having a greater number of students. The agency has maintained language as proposed concerning Indicator 13.

#### *School FIRST Indicator 15*

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator commented that Indicator 15 will not result in an accurate depiction of districts' financial integrity because of dramatic changes to enrollments due to COVID-19 beginning with school year 2019-2020 and extending through school year 2021-2022. The administrator proposed that Indicator 15 be suspended for the 2022-2023 rating year.

Response: The agency agrees that Indicator 15 should not be evaluated for School FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 15; however, all school districts will receive the maximum of 5 points for this indicator for rating year 2022-2023.

#### *School FIRST Indicator 20*

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), TASA commented that under the proposed changes, independent school district (ISD) administrators and trustees would be required to discuss any changes and/or impact to local, state, and federal funding at a publicly held school board meeting within 120 days prior to the district adopting its budget to receive points under FIRST and that there is no corresponding requirement for charter schools. TASA stated that charter school boards should be accountable to all taxpayers who fund their schools and hold public meetings in the same manner and circumstances as community-based ISDs, including when their FIRST rating changes.

Response: The agency agrees that charter schools should be accountable to the public but disagrees that changes should be made to School FIRST Indicator 20 or that an additional indicator should be added to Charter FIRST for the 2022-2023 rating year. Section 109.1001(q)(3)(A)(ii) requires charter schools to report their financial management performance under each FIRST indicator for the current and previous year's financial accountability ratings. Charter schools report their attendance every six weeks and generally receive cash monthly in near equal amounts; so, settle-ups may not have an impact as significant as that for school districts who may not receive cash for several months, depending on their payment schedule. Additionally, House Bill 3, 86th Texas Legislature, 2019, amended the TEC to fund school districts based on current property values as compared to previous year values. Therefore, a discussion regarding funding for school districts is vital prior to adopting the budget. The agency has maintained language as proposed concerning Indicator 20.

#### *Charter FIRST Indicator 1*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), Texas Public Charter Schools Association (TPCSA) and a governmental charter school administrator commented that Indicator 1 should be a ceiling indicator and not a critical indicator. TPCSA also suggested that the appeal process allow an appeal for any reason on Indicator 1 so TEA can consider additional information about the failure for timely annual financial and compliance report (AFR) submission. TPCSA also recommended adding language that would assign points based on when the charter holder submits the AFR.

Response: The agency disagrees that Indicator 1 should be a ceiling indicator. The agency has maintained language as proposed concerning Indicator 1. The agency, however, has added language in §109.1001(n)(9) that allows the commissioner to adjust the overall score and rating to a passing score and rating upon appeal of Indicator 1 if the certificate of the board and the audit opinion letter from the external auditor for the charter school's AFR were signed on or before the due date of the AFR as required in TEC, §44.008.

#### *Charter FIRST Indicator 2*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator and TPCSA commented that Indicator 2 should be a ceiling indicator and not a critical indicator. TPCSA also recommended adding language that would assign points based on the number of a charter holder's modified opinions and modifications.

Response: The agency disagrees that Indicator 2 should be a ceiling indicator based on a number of issues identified by an auditor. A modified opinion reported in an audit report indicates that the auditor concluded, based on the audit evidence obtained, that the financial statements as a whole are materially misstated or that the auditor was unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement. The auditor, however, does not report the number of misstatements in the audit report. The agency has maintained language as proposed concerning Indicator 2.

#### *Charter FIRST Indicator 3*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator and TPCSA commented that Indicator 3 should be a ceiling

indicator and not a critical indicator. TPCSA also recommended adding language that would assign points based on compliance with the terms of a debt agreement and whether an appeal to TEA is granted.

Response: The agency disagrees that Indicator 3 should be a ceiling indicator for the 2022-2023 rating year and not a critical indicator. Compliance with payment terms of debt agreements is critical to a charter school's financial health and can help mitigate financial risk by ensuring that it has a manageable debt service burden. Additionally, non-compliance with debt agreements can trigger various penalties and fees and make it more expensive and harder for a charter school to borrow in the future. The agency has maintained language as proposed concerning Indicator 3.

#### *Charter FIRST Indicator 4*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA requested that Indicator 4 no longer be a critical indicator and recommended that it be a ceiling indicator. TPCSA also stated that Indicator 4 should be amended to provide 30 days from when the public charter school receives official notice of a warrant hold and recommended adding language that would assign points based on when the charter holder rectifies a warrant hold.

Response: The agency disagrees that scoring for Indicator 4 should be amended to ceilings for four different conditions. The indicator already allows a charter school to pass the indicator with a ceiling of 95 points for the overall score if the charter school had a warrant hold that was cleared within 30 days. The agency has maintained language as proposed concerning Indicator 4.

#### *Charter FIRST Indicator 5*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA and a governmental charter school administrator commented that Indicator 5 should be revised to exclude the effect of any deferred inflows or outflows of resources related to pension plans on the total net asset balance. TPCSA requested that Indicator 5 no longer be a critical indicator and recommended that it be a ceiling indicator.

Response: The agency disagrees that the calculation for Indicator 5 for governmental charter schools should exclude the effect of deferred inflows and outflows of resources related to pension plans. The calculation includes the addition of pension expense, other post-employment benefits (OPEB), and net pension liabilities (NPL) to total net position to exclude their effect in the calculation for Indicator 5; however, deferred outflows and deferred inflows of resources related to pensions are the portions of the effects not recognized in pension expense. The agency also disagrees that Indicator 5 should no longer be a critical indicator. Although Indicator 5 for School FIRST was changed from a critical indicator to a ceiling indicator, the agency disagrees that Indicator 5 for Charter FIRST should no longer be a critical indicator. The implementation of Governmental Accounting Standards Board (GASB) 68 and 75 had a significant impact on school districts' net position balance, but nonprofit charter schools are not subject to GASB. Additionally, 99% of charter schools met the requirements to pass Indicator 5 for the 2021-2022 Charter FIRST ratings by having a positive total net assets balance or at least a 7% growth in student membership over five years or year or year for new charter schools. The agency has maintained language as proposed concerning Indicator 5.

### *Charter FIRST Indicator 6*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA and a governmental charter school administrator commented that Indicator 6 should be revised to exclude the effect of OPEB, NPL, and deferred inflows or outflows of resources related to pension plans on total net assets.

Response: The agency disagrees that the calculation for Indicator 6 should exclude the effect of OPEB, NPL, and deferred inflows and outflows of resources related to pension plans on total net assets. Indicator 6 is a calculation of the average change in total net assets over three years, not a single year, so the impact of OPEB, NPL, and deferred inflows or outflows of resources related to pension plans are comparable per year. The agency has maintained language as proposed concerning Indicator 6.

### *Charter FIRST Indicator 10*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator commented that Indicator 10 should be revised to allow a 15% variance (instead of a 10% variance) when comparing budgeted revenues to actual revenues for the last three fiscal years. TPCSA commented that many public charter schools have less than 1,000 enrolled students and small changes in average daily attendance (ADA) can adversely impact the public charter school's budget. Additionally, TPCSA stated that any unexpected revenue source, including a grant from TEA or the federal government, can change a public charter school's budget and that Charter FIRST indicators should not discourage a public charter school from applying for TEA grants. TPCSA also added that new public charter schools in their first year of operation experience significant budget changes and should not be penalized for experiencing budget volatility or receiving grants from TEA. TPCSA proposed tiering the points for Indicator 10 and stating that TEA may only use this calculation if the charter holder has been in operation for two years and that the charter holder's first year of operations shall be excluded if it causes the charter holder to lose points.

Response: The agency agrees that there may be challenges with budgeting revenues for certain charter schools with student enrollment that is based on circumstances outside of the control of the charter school. Indicator 10 will not be evaluated for Charter FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 10; however, all charter schools will receive the maximum of 10 points for Indicator 10 for rating year 2022-2023.

### *Charter FIRST Indicator 13*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator commented that Indicator 13 appears to measure the impact of long-term debt on a school's operations and that the indicator should be revised to divide long-term indebtedness (bonds and loans), excluding OPEB and NPL, by total assets to determine a ratio. Additionally, the administrator provided a point scale for the ratio and added that a charter school should automatically pass Indicator 13 if the charter school's change of students in membership over five years is 7% or more. The administrator also commented that Indicator 11 for independent school districts uses the ratio of long-term liabilities to total assets to determine long-term solvency and that by making the revision, Indicator 13 would be comparable to the one independent school districts use to measure the impact of long-term

borrowings on long-term solvency. TPCSA commented that for government charter schools, OPEB and NPL should be excluded from the calculation for Indicator 13.

Response: The agency disagrees that Indicator 13 should be revised to divide long-term indebtedness, excluding OPEB and NPL, by total assets. The calculation for Indicator 11 for Charter FIRST already determines the long-term liabilities to total assets ratio with the point scale that was suggested by the administrator as well as allows a charter school to automatically pass the indicator if the charter school's change of students in membership over five years is 7% or more. The agency has maintained language as proposed concerning Indicator 13.

### *Charter FIRST Indicator 14*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA commented that since COVID-19, TEA has encouraged and even required Texas school systems to hire administrative staff, including staff to manage TEA COVID-19 and safety-related grants and HB 4545 tutoring requirements. TPCSA recommended that the calculation for Indicator 14 be a three-year average to account for uncontrollable volatility. TPCSA further stated that Indicator 15 and other indicators include a three-year average.

Response: The agency agrees that some schools hired additional staff to support positions funded by grants in response to the COVID-19 pandemic but disagrees that the administrative cost ratio calculation should be averaged over three years. A high administrative cost ratio may suggest that a charter school needs to adjust its administrative processes to reduce costs and improve efficiency. The agency, however, made a modification to Figure 19 TAC §109.1001(f)(7) for Indicator 14 to include Elementary and Secondary School Emergency Relief I, II, III, and supplemental funds in the calculation for the administrative cost ratio.

### *Charter FIRST Indicator 15*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA commented that many public charter schools have less than 1,000 enrolled students and have experienced, and are still experiencing, unanticipated declines in student enrollment due to COVID-19. TPCSA also stated that since COVID-19, TEA has encouraged and even required Texas school systems to hire staff, including staff to manage TEA COVID-19 and safety-related grants and HB 4545 tutoring requirements. TPCSA stated that regardless of declines in student enrollment, mid-year rapid personnel changes are not possible because of these TEA grant requirements. TPCSA recommended tiering the points for the Indicator 15.

Response: The agency agrees that some schools hired additional staff to support positions funded by grants in response to the COVID-19 pandemic. Therefore, Indicator 15 will not be evaluated for Charter FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 15; however, all charter schools will receive the maximum of 10 points for Indicator 15 for rating year 2022-2023.

### *Charter FIRST Indicator 16*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator commented that Indicator 16 should be revised to allow for wider fluctuations in enrollment and attendance impacting schools with smaller numbers of students. The administrator provided a point scale and stated that the revised indicator

would be more comparable to School FIRST Indicator 15 to measure actual average daily attendance (ADA) compared to estimated ADA. The administrator also stated that charter schools serving students in residential correctional facilities and residential treatment centers experience fluctuations in daily enrollment that can be greater than 10%. TPCSA commented that many public charter schools have less than 1,000 enrolled students and have experienced, and are still experiencing, unanticipated declines in student enrollment due to COVID-19. TPCSA also stated that minor changes in student populations can have an outsized impact on ADA. For Indicator 16, TPCSA recommended a three-year average to account for uncontrollable ADA volatility, much more variance for smaller charter holders, and a revision to allow for wider fluctuations in ADA for schools with smaller numbers of students. Additionally, TPCSA stated that provisions should be made for public charter schools serving students in residential correctional facilities and residential treatment centers that experience changes in daily enrollment that can be greater than 10% and who do not have control over the number of students enrolling in their school.

Response: The agency agrees that there may be challenges with estimating ADA for certain charter schools with student enrollment that is based on circumstances outside of the control of the charter school but disagrees that ADA should be averaged over three years. Indicator 16 will not be evaluated for Charter FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 16; however, all charter schools will receive the maximum of five points for Indicator 16 for rating year 2022-2023.

#### *Charter FIRST Indicator 17*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA and a governmental charter school administrator commented that Indicator 17 should be clarified to state that the data in the Public Education Information Management System should be within 3% of all expenses in the financial audit report reported in the Statement of Revenues, Expenditures, and Changes in Fund Balance for governmental charter schools. TPCSA added that government charter schools should be on a modified accrual basis and a three-year average for Indicator 17.

Response: The agency agrees that the source of data used in the calculation for Indicator 17 for governmental charter schools should be clarified but disagrees that the calculation should be averaged over three years. The agency has maintained language as proposed concerning Indicator 17. Although the expenses reported in the Statement of Revenues, Expenditures, and Changes in Fund Balances are used in the calculation for Indicator 17 for governmental charter schools, clarification on the sources of data used for governmental charter schools will be provided in a different manner.

#### *Charter FIRST Indicator 19*

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA stated that a 10-point loss for Indicator 19 is excessive and recommended partial credit for the indicator. TPCSA suggested that a charter school should receive five points if the charter holder has one instance of material noncompliance and receive zero points if the charter holder has two or more instances of noncompliance.

Response: The agency disagrees that the point scale for Indicator 19 should be modified to zero, five, or ten points based on

the number of instances of material noncompliance. Depending on the severity of the noncompliance, one instance of material noncompliance can have a significant impact on the financial statements or the overall financial position of a charter school. The agency has maintained language as proposed concerning Indicator 19

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability and special investigations under TEC, Chapter 39, Subchapters A, B, C, D, F, G, and J, and TEC, Chapter 39A; TEC, §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; TEC, §39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adjust the financial accountability rating system under TEC, §39.082, to account for the impact of financial practices necessary as a response to the coronavirus disease (COVID-19) pandemic, including adjustments required to account for federal funding and funding adjustments under TEC, Chapter 48, Subchapter F; and TEC, §39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a process by which a school district or an open-enrollment charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39, including a determination of consecutive school years of unacceptable performance ratings. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to school districts and open-enrollment charter schools.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; 39.082; 39.083; 39.085; 39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021; and 39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021.

#### *§109.1001. Financial Accountability Ratings.*

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

(1) Annual Financial Report (AFR)--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) Ceiling indicator--An upper limit (the maximum score) at which a score from a standard limit of a specific indicator will result regardless of overall points.

(3) Debt--An amount of money owed to a person, bank, company, or other organization.

(4) Electronic submission--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(5) Financial Integrity Rating System of Texas (FIRST)--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools and charter schools operated by a public institution of higher education under TEC, Chapter 12, Subchapters D and E (Charter FIRST).

(6) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(8) Open-enrollment charter school--A charter school authorized by the commissioner of education under TEC, Chapter 12, Subchapter D.

(9) Public institution of higher education (IHE)--A public college or university eligible to operate a school district; an open-enrollment charter school; or a TEC, Chapter 12, Subchapter E, charter school authorized by the commissioner.

(10) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(11) Texas Student Data System Public Education Information Management System (TSDS PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(12) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district, open-enrollment charter school, and charter school operated by a public IHE under TEC, Chapter 12, Subchapters D and E, as required by the TEC, §39.082.

(c) The commissioner will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(1) AFR. For each school district, open-enrollment charter school, and charter school operated by a public IHE, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission through the TEA website, must

include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide).

(2) TSDS PEIMS. The TEA will use TSDS PEIMS data submitted by the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(e)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016." Figure: 19 TAC §109.1001(e)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated December 2016 for rating year 2016-2017." Figure: 19 TAC §109.1001(e)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated April 2020 for rating years 2017-2018 through 2019-2020." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(7)

(8) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."

Figure: 19 TAC §109.1001(f)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."

Figure: 19 TAC §109.1001(f)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017."

Figure: 19 TAC §109.1001(f)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated April 2020 for rating year 2017-2018." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(7)

(8) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The TEA will base the financial accountability rating of a charter school operated by a public IHE on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating years 2016-2017 through 2019-2020." The financial accountability rating indicators for rating years 2016-2017 through 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(2) (No change.)

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(i) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 49, Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(j) The types of financial accountability ratings that charter schools operated by public IHEs may receive for the rating year 2016-2017 and all subsequent rating years are as follows.

(1) P for pass. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(k) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39 or 39A, or change a financial accountability rating in cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(l) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(m) The TEA will issue a preliminary financial accountability rating to a school district, an open-enrollment charter school, or a charter school operated by a public IHE on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district, an open-enrollment charter school, or a charter school operated by a public IHE fails to meet the statutory

deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district, open-enrollment charter school, or charter school operated by a public IHE will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (n) of this section, the TEA will issue a final rating to the school district, open-enrollment charter school, or charter school operated by a public IHE no later than 60 days after the deadline for submitting appeals.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (n) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(n) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the position of the school district, open-enrollment charter school, or charter school operated by a public IHE. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal any other adverse issue it identifies in the preliminary rating.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district, open-enrollment charter school, or charter school operated by a public IHE to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(A) The commissioner may adjust a score for an indicator or the overall score upon appeal of the indicator(s) by the school district, open-enrollment charter school, or charter school operated by a public IHE.

(B) Upon appeal of the indicator for the timely submission of a complete AFR, the commissioner may adjust the overall score and rating as described in clauses (i)-(iii) of this subparagraph if the certificate of the board and the audit opinion letter from the external auditor for the school district's or charter school's AFR were signed on or before the due date of the AFR as required in TEC, §44.008.

(i) For a school district or charter school that has a failed preliminary FIRST rating with 85 to 100 points, deduct 15 points from the total points for an overall passing score if no other critical indicators were failed.

(ii) For a school district or charter school that has a failed preliminary FIRST rating with 70 to 84 points, adjust the overall score to 70 points for an overall passing score if no other critical indicators were failed.

(iii) For a school district or charter school that has a failed preliminary FIRST rating with total points less than the threshold for an overall passing score and/or the school district or charter school failed any other critical indicators, no adjustment to the points will be made for the overall score.

(o) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(p) A financial accountability rating by a voluntary association is a local option of the school district, open-enrollment charter school, or charter school operated by a public IHE, but it does not substitute for a financial accountability rating by the TEA.

(q) Each school district, open-enrollment charter school, and charter school operated by a public IHE is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district, open-enrollment charter school, and charter school operated by a public IHE must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district, open-enrollment charter school, and charter school operated by a public IHE must provide the public with an opportunity to comment on the report at a public hearing.

(3) The annual financial management report for a school district, an open-enrollment charter school, or a charter school operated by a public IHE must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the financial management performance of the school district, open-enrollment charter school, or charter school operated by a public IHE under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district, open-enrollment charter school, or charter school operated by a public IHE may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) of the school district, open-enrollment charter

school, or charter school operated by a public IHE to cover expenses incurred by the superintendent and each board member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district, open-enrollment charter school, or charter school operated by a public IHE;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district, open-enrollment charter school, charter school operated by a public IHE, or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of \$250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) of the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) from an outside entity that received payments from the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than \$250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district, open-enrollment charter school, or charter school operated by a public IHE determines to be useful.

(4) The board of trustees of each school district, open-enrollment charter school, or charter school operated by a public IHE must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the facilities of the school district, open-enrollment charter school, or charter school operated by a public IHE. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district, open-enrollment charter school, or charter school operated by a public IHE and to parents of school district, open-enrollment charter school, or charter school operated by a public IHE students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district, each campus of an open-enrollment charter school, or each campus of a charter school operated by a public IHE in one posting prior to holding the public meeting, providing the time and place of the hearing. The notice in the newspaper may not be earlier than 30 days or later than 10 days before the date of the hearing. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus or campus of a charter school operated by a public IHE, then the board must publish the notice in the county nearest to the county seat of the county in which the district's central administration office is located or in which the campus of the open-enrollment charter school or the campus of a charter school operated by a public IHE is located; and

(B) through electronic mail to the mass communication media serving the school district, open-enrollment charter school, or charter school operated by a public IHE, including, but not limited to, radio and television.

(5) At the hearing, the school district, open-enrollment charter school, or charter school operated by a public IHE must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district, open-enrollment charter school, or charter school operated by a public IHE must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district, open-enrollment charter school, or charter school operated by a public IHE that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the public hearing of the school district, open-enrollment charter school, or charter school operated by a public IHE. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to the F rating for a school district, open-enrollment charter school, or charter school operated by a public IHE.

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

Filed with the Office of the Secretary of State on May 17, 2023.

TRD-202301814

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 73. CONTINUING EDUCATION

##### 22 TAC §73.2

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to 22 TAC §73.2 (Failure to Meet Continuing Edu-

cation Requirements) without changes to the text as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1400), and thus will not be republished. The amendment simply clarifies that the Board will determine a licensee is out of compliance of the licensee's continuing education requirements by means of a 10% random audit by the Board. This change from a 100% audit of licensees' continuing education hours to a random audit was recommended by the Sunset Commission.

The Board received one comment concerning the amendment from the Texas Medical Association (TMA). TMA expressed concern that the amendment arguably could somehow be read as possibly precluding the Board from enforcing its continuing education requirements by any means other than through a random compliance audit.

While the Board appreciates TMA's recommendation to rewrite the rule, the Board respectfully declines. Texas Occupations Code §201.501 (Disciplinary Powers of the Board) gives the Board the authority to discipline a licensee for any violation of Occupations Code Chapter 201 or rule adopted by the Board, which includes the Board's continuing education rules in 22 TAC Chapter 73. This rule amendment does not alter that in the slightest.

The amended rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.356, which authorizes the Board to adopt rules relating to licensee continuing education requirements.

No other statutes or rules are affected by this adopted amended rule.

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

Filed with the Office of the Secretary of State on May 19, 2023.

TRD-202301833

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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Proposal publication date: March 10, 2023

For further information, please call: (512) 305-6700

## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

The commissioner of the Texas Department of Insurance (TDI) adopts amendments to 28 TAC §§1.208 - 1.210, 1.601, 1.602, 1.705, 1.804, and 1.2803, concerning administrative procedures. The commissioner adopts §§1.208 - 1.210, 1.601, and 1.602 with changes to the proposed text published in the January 13, 2023, issue of the *Texas Register* (48 TexReg 102). These sections will be republished. Changes to §§1.208 - 1.210 and §1.602 are nonsubstantive and revised for consistency with agency drafting style, and §1.601 is revised in response to

public comment. The commissioner adopts §§1.705, 1.804, and 1.2803 without changes to the proposed text. These sections will not be republished.

**REASONED JUSTIFICATION.** The adopted amendments are necessary to update TDI's mailing address and physical address where they are listed in Chapter 1 to reflect TDI's move from its previous location in the William P. Hobby Building at 333 Guadalupe Street in Austin, Texas 78701, to the Barbara Jordan State Office Building at 1601 Congress Avenue in Austin, Texas 78701. Adopted amendments also revise email addresses and other contact information, where appropriate, to ensure that the rules have TDI's current information. The amendments also update rule language for consistency with current TDI plain language preferences and drafting practices. While the amendments relating to consumer notices build in time for compliance, nothing prevents a regulated person from providing TDI's updated contact information to consumers immediately.

The adopted amendments to the sections are described in the following paragraphs.

**Section 1.208. Applicability.** The adopted amendments remove "Purpose and" in the section title and remove rule text from §1.208(a), which describes the purpose of the section, because it is no longer necessary to include in the rule. The amendments also redesignate the remaining subsections to reflect the removal of §1.208(a) and update implementation dates, where necessary. Documents provided to consumers or the public that include TDI contact information must be updated by July 1, 2023, though the section allows use of documents printed before January 1, 2023, until September 1, 2023. In addition, amendments revise references to sections, remove "(HMO)," and replace "chapter" with "title" to conform with current agency drafting style and plain language preferences.

The text of §1.208 as proposed has been changed to add the titles to the citations of §1.209 and §1.210 to reflect current agency drafting style.

**Section 1.209. Telephone, Fax, Email Address, Website Address, and Department Addresses in Rules, Forms.** Section 1.209 clarifies that current addresses and contact information for TDI should be used as a substitute when text in a TDI rule references outdated TDI contact information. The adopted amendments add 333 Guadalupe Street, Austin, Texas 78701 as an old address for TDI and provide the updated Congress Avenue address as the substitute. The amendments also add TDI's outdated mailing address to rule text and provide the agency's new mailing address for use as the substitute.

The amendments restructure the section by deleting the subsection (a) designation and replacing subsection (b) with paragraph (3) to reflect the new section structure. The amendments revise the figure citation to "Figure: 28 TAC §1.209(2)" to reflect the adopted rule structure. The amendments also delete §1.209(c), which references a chart listing rules and forms affected by the rule on TDI's rule website. The chart will, however, remain on TDI's website as a reference for rules containing phone numbers that changed in 2014.

The amendments make nonsubstantive changes to replace the word "facsimile" with the word "fax" as it appears in the section title and in the text of the section for consistency with Figure: 28 TAC §1.209(2). The amendments replace "street address" with "department addresses" as it appears in the section title to reflect the inclusion of mailing addresses in the section. The amendments also update internal citations and replace the word

"chapter" with "title" and "HMO" with "health maintenance organizations (HMOs)" to reflect current agency plain language preferences and drafting style.

The text of §1.209 as proposed has been changed to add the title of §1.208 in a citation to the section and to amend the font used in Figure: 28 TAC §1.209(2) to reflect current agency drafting style.

**Section 1.210. Notice to Customers.** Section 1.210 requires insurers and HMOs that issued policies that do not expire but are currently in effect to provide customers with an "Important Notice" in §1.601 and §1.602 by a specific date. The adopted amendments replace the reference to the "Important Notice" with "notice forms required" for accuracy with the current rule language in §1.601. The amendments also update the date that regulated entities must comply with the rule to September 1, 2023.

Nonsubstantive changes include replacing "chapter" with "title" and "HMOs" with "health maintenance organizations" to reflect current agency plain language preferences and drafting style.

The text of §1.210 as proposed has been changed to add the titles to the citations of §1.601 and §1.602 to reflect current agency drafting style.

**Section 1.601. Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures.** Section 1.601 includes notices insurers and HMOs must provide to consumers that contain TDI contact information. The adopted amendments update TDI's mailing and email address in these notices, which are in Figure: 28 TAC §1.601(a)(2)(B) and Figure: 28 TAC §1.601(a)(2)(C). The adopted amendments also revise §1.601(e) to require that insurers and HMOs begin providing the updated notice forms in information to policyholders by July 1, 2023.

The adopted amendments also make nonsubstantive changes to remove the statement "the following information" and replace the word "font" with "type" to conform with current agency drafting style.

The contents of Figure: 28 TAC §1.601(a)(2)(C) have been changed from the version included in the proposal in response to comment by updating an email address where policyholders who have an unresolved problem with their premium may request assistance.

**Section 1.602. Notice of Website.** Section 1.602 specifies contact information for TDI that insurers identified in the section must provide to consumers. The adopted amendments update TDI's mailing address in Figure: 28 TAC §1.602(b)(1)(C), and the amended text in §1.602(b)(1)(C) requires that insurers begin providing the updated notice of website form to policyholders by July 1, 2023.

The amendments also clarify which implementation date applies to Figure: 28 TAC §1.602(b)(1)(C) and Figure: 28 TAC §1.602(b)(2) and that insurers must include the language in subparagraphs (A) and (B) of §1.602(b)(1) in the notice required under §1.601(a)(2) with each policy specified.

The amendments remove reference to the word "internet" in the section title and the word "and" in §1.602(b)(1)(A). Amendments also replace the word "font" with "type," "who" with "that," "Helpinsure.com" with "HelpInsure.com" and the statement "top 25" with "top-25" to conform with current agency drafting style and plain language preferences.

The contents of Figure: 28 TAC §1.602(b)(1)(C) have been changed from the version included in the proposal to correct punctuation by replacing a parenthesis with a bracket.

Section 1.705. Review. Section 1.705 provides the process for a person affected by an action taken by an associate or deputy commissioner under 28 TAC Chapter 1, Subchapter F, to petition the commissioner for review of the action. The adopted amendments update the mailing address and add the Chief Clerk email address where any affected person may file a petition.

The amendments also revise capitalization, replace the statement "pursuant to" with "under," and replace the word "shall" with either "must" or "will" as appropriate, to reflect agency drafting style and plain language preferences.

Section 1.804. Manner of Notice. Section 1.804 identifies locations where TDI and State Fire Marshal's Office (SFMO) previously posted notices. The adopted amendments remove existing §1.804(a) because TDI and SFMO no longer post hard copy notices at the agency's physical location. Because §1.804(a) is removed, the designation "(b)" is also removed. Amendments also clarify how notice under §1.804 will be delivered to applicants and provide, as an example, delivery of the notice through a designated email address.

Section 1.2803. Notice About Certain Information Laws and Practices. Section 1.2803 contains a notice regarding information TDI collects. The adopted amendments update the contact information provided in Figure: 28 TAC §1.2803(a) to remove the specific TDI division to contact. Instead, the amendments provide the dedicated email address where individuals requesting record corrections may submit their request; update a reference to TDI's website address; and, to promote clarity and prevent consumer confusion, remove a reference to an outdated title of the website where procedures for making corrections can be found. Finally, the amendments replace the word "subchapter" with "section" to incorporate the notice under §1.2803 on the new effective date for the section. Amendments also replace the word "shall" with "will" and the words "Internet site" and "web page" with "website" to conform with current agency drafting style and plain language preferences.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenter: TDI received one comment from the National Council on Compensation Insurance (NCCI). The commenter was in support of the proposal with changes.

Comment on §1.601.

Comment. A commenter requests that TDI amend two instances of the NCCI complaint email provided in Figure: 28 TAC §1.601(a)(2)(C) from "regulatoryoperations@ncci.com" to [disputeresolution@ncci.com](mailto:disputeresolution@ncci.com).

Agency Response. TDI agrees and has changed the NCCI email provided in the toll-free notice form.

## SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

### DIVISION 2. RULE MAKING PROCEDURES

#### 28 TAC §§1.208 - 1.210

STATUTORY AUTHORITY. The commissioner adopts amendments to 28 TAC §§1.208 - 1.210 under Insurance Code §521.005(a)(2) and §36.001.

Insurance Code §521.005(a)(2) provides that each insurance policy delivered or issued for delivery in this state must include a brief written notice that includes TDI's name and address.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

#### §1.208. *Applicability.*

(a) This section and §1.209 of this title (relating to Telephone, Fax, Email Address, Website Address, and Department Addresses in Rules, Forms) and §1.210 of this title (relating to Notice to Customers) apply to all documents or information provided to consumers or the public that include TDI contact information, including contracts, policies, evidences of coverage, bonds, certificates of insurance, and notices delivered, issued for delivery, or renewed in this state, and subject to regulation under the Insurance Code, except as specified in §1.210 of this title.

(b) Documents and information described in subsection (a) of this section and issued on or after July 1, 2023, must reflect the current TDI contact information described in §1.209 of this title, except as provided by subsection (c) of this section and §1.210 of this title.

(c) Notwithstanding subsection (b) of this section, insurers, health maintenance organizations, and other regulated persons may continue to use and issue documents and information described in subsection (a) of this section until September 1, 2023, if the documents or information were printed before January 1, 2023.

(d) Documents and information described in subsection (a) of this section that were approved or filed, whichever is applicable, before January 1, 2023, may be delivered or issued for delivery without refileing.

#### §1.209. *Telephone, Fax, Email Address, Website Address, and Department Addresses in Rules, Forms.*

The purpose of this section is to update TDI rules and to require insurers, health maintenance organizations (HMOs), and other regulated persons to update old references to TDI telephone numbers, fax numbers, email addresses, the website address, and TDI mailing addresses with the new contact information as follows.

(1) Where a section in Title 28, Part 1 references the domain name "tdi.state.tx.us" in a website or email address, this section substitutes "tdi.texas.gov" as the new domain name. Insurers, HMOs, and other regulated persons must update all their documents and information described in §1.208(a) of this title (relating to Applicability) to reflect the current domain name.

(2) Where a section in Title 28, Part 1 references any of the following telephone or fax numbers, this section substitutes the new number as referenced in Figure: 28 TAC §1.209(2). Insurers, HMOs, and other regulated persons must update all their documents and information described in §1.208(a) of this title to reflect the current telephone and fax numbers.  
Figure: 28 TAC §1.209(2)

(3) Where a section in Title 28, Part 1 references the address at 1110 San Jacinto Boulevard, Austin, Texas 78701 or 333 Guadalupe Street, Austin, Texas 78701, this section substitutes 1601 Congress Avenue, Austin, Texas, 78701. Where a section in Title 28, Part 1 references the Texas Department of Insurance mailing address as P.O. Box 149104, Austin, Texas 78714-9104, this section substitutes P.O. Box 12030, Austin, Texas 78711-2030. Insurers, HMOs, and other regulated persons must update all their documents and information described in §1.208(a) to reflect the new address.

*§1.210. Notice to Customers.*

For contracts, plans, or policies that are in effect but do not expire, insurers and health maintenance organizations must notify their customers by providing the applicable updated notice forms required in §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) and §1.602 of this title (relating to Notice of Website), not later than September 1, 2023. This section does not apply to title insurance agents or title insurance companies.

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

Filed with the Office of the Secretary of State on May 18, 2023.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587



## SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS

### 28 TAC §1.601, §1.602

Insurance Code §32.104(b) provides that the commissioner adopt appropriate wording for the notice of the internet website required by Insurance Code Chapter 32, Subchapter D.

Insurance Code §521.005(a)(2) provides that each insurance policy delivered or issued for delivery in this state must include a brief written notice that includes TDI's name and address.

Insurance Code §521.005(b) provides that the commissioner adopt appropriate wording for the notice required by the section.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

*§1.601. Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures.*

(a) Purpose and applicability.

(1) The purpose of this section is to provide the means for insurers and health maintenance organizations (HMOs) to comply with the notice requirements of Insurance Code §521.103, concerning Information Included in Evidence of Coverage or Policy; §521.005, concerning Notice to Accompany Policy; and §521.056, concerning Information Bulletin to Accompany Policy. Compliance with this section is deemed compliance with these notice requirements.

(2) The notice must be provided at the time of delivery with all policies, bonds, annuity contracts, certificates, or evidences of coverage that are delivered, issued for delivery, or renewed in Texas by insurers or HMOs. When insurers add a certificate holder, annuitant, or enrollee to a group policy or group plan, insurers must also provide the notice when the certificate, annuity contract, or evidence of coverage is delivered.

(A) The notice must appear on a full, separate page with no text other than that provided in this section. The notice must be prominently placed in any package of documents it is delivered with, and it must be the first, second, or third page of the set of documents.

(B) The form of the notice must be consistent with Figure: 28 TAC §1.601(a)(2)(B) and the requirements of subsection (b) of this section. The form of notice is not required to be filed with the department.

Figure: 28 TAC §1.601(a)(2)(B)

(C) The form of the notice for workers' compensation must be consistent with Figure: 28 TAC §1.601(a)(2)(C) and the requirements of subsection (b) of this section. The form of notice is not required to be filed with the department.

Figure: 28 TAC §1.601(a)(2)(C)

(b) Notice requirements. The text may be single spaced, but it must include at least one blank line between each paragraph. The Spanish portion of the notice is required for personal automobile, homeowners, life, accident, and health policies, certificates, and evidences of coverage. The notice may include the letterhead of the insurer or HMO and any automated form identification numbers.

(1) The notice must include a title and telephone number for the insurer or HMO. At its option, the insurer or HMO may provide the name and telephone number of an agent, third-party administrator, managing general agent, or employee benefits coordinator. The telephone number must be in bold type and be preceded and followed by one blank line. The insurer or HMO must provide a toll-free telephone number, unless one of the exemptions in subparagraphs (A) - (C) of this paragraph applies. For purposes of this section, a toll-free telephone number is one that any covered person can use to get information or make a complaint without incurring long-distance calling expenses. An insurer or HMO is exempt from providing a toll-free number:

(A) when the insurer's or HMO's gross initial premium receipts collected in Texas are less than \$2 million a year;

(B) with respect to fidelity, surety, or guaranty bonds;

(C) if it is a surplus lines insurer.

(2) The notice must include a mailing address and email address for the insurer or HMO. The notice may include a company's URL address.

(3) The notice must be in a type size no smaller than 10 point.

(c) Exceptions to maintenance of toll-free number. Any exception claimed under subsection (b)(1)(A) of this section must be based on gross initial premium receipts collected in Texas during the previous calendar year. This information and any other data that the company relied on to determine if it was entitled to an exception is subject to examination by the department. Failure by any insurer or HMO to maintain the information required in this paragraph, or failure to provide information to the department on request, constitutes grounds for enforcement action that may result in the cancellation, revocation, or suspension of the insurer's or HMO's certificate of authority. Any insurer or HMO claiming an exception must retain and provide to the department on request:

(1) the statutory basis for the exception; and

(2) the amount of gross initial premium receipts collected in Texas for the calendar year immediately preceding the year for which an exception is claimed. The gross initial premium receipts collected may be documented either by:

(A) the annual statement submitted by the insurer or HMO; or

(B) records maintained for each new policy written during a calendar year that include the policy number, the effective date of the policy, and the amount of initial premium received, including any membership fees, assessments, dues, and any other considerations for that insurance.

(d) Providing notice. Insurers and HMOs will not need to refile previously approved policies, bonds, annuity contracts, certificates, or evidences of coverage, but they must provide the notice in the manner required by this section.

(e) Implementation date. Insurers and HMOs must begin using the notice form described in subsection (a)(2) of this section no later than July 1, 2023. Insurers and HMOs may continue using the previous notice form until that time.

*§1.602. Notice of Website.*

(a) Purpose and applicability.

(1) The purpose of this section is to establish the form and content of the notice required under Insurance Code §32.104(b), concerning Duties of Insurer.

(2) This section applies to insurers that comprise the top-25 insurance groups in the national market and that issue residential property insurance or personal automobile insurance policies in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, a county mutual insurance company, a farm mutual insurance company, the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association.

(3) This section applies to all residential property insurance and personal automobile insurance policies that are delivered, issued for delivery, or renewed in this state on or after January 1, 2008.

(b) Notice requirements. Insurers must comply with either subsection (b)(1) or (b)(2) of this section or may opt to comply with both.

(1) Notwithstanding the requirements in §1.601(a)(2) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures), the insurer must include the text in subparagraphs (A) and (B) of this paragraph in the notice required under §1.601(a)(2) of this title with each policy specified. The text must be in a type size no smaller than 10 point. The heading "To compare policies and prices" must be in bold type. The website address "HelpInsure.com" must be in bold type and must be preceded by one blank line.

(A) "To compare policies and prices: Visit HelpInsure.com to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel" in the English portion.

(B) "Para comparar pólizas y precios: Visite HelpInsure.com para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés)" in the Spanish portion.

(C) Insurers must begin using the notice form described in this paragraph no later than July 1, 2023. Insurers may continue using the previous notice form until that time.

Figure: 28 TAC §1.602(b)(1)(C)

(2) The insurer must provide the following notice in a conspicuous manner with each policy. The notice must be printed in type

size that is at least as large as the type used for the main body of the policy, and it must be preceded and followed by at least one blank line. "Insurance Website Notice" and "Aviso del Sitio Web de Seguros" must be in all capital letters and bold type and "HelpInsure.com" must be in bold type. Insurers must begin using the notice described in this paragraph no later than May 1, 2020. Insurers may continue using the previous notice until that time.

Figure: 28 TAC §1.602(b)(2) (No change.)

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587



## SUBCHAPTER F. SUMMARY PROCEDURES FOR ROUTINE MATTERS

### 28 TAC §1.705

Insurance Code §36.103(d) provides that the commissioner may adopt rules relating to an application for review under Insurance Code §36.103 and consideration of the application.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587



## SUBCHAPTER G. NOTICE AND PROCESSING PERIODS FOR PERMIT APPLICATIONS

### 28 TAC §1.804

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587



## SUBCHAPTER BB. FORMS PRIVACY NOTICE

### 28 TAC §1.2803

Government Code §559.004 requires each state governmental body to establish a reasonable procedure through which an individual is entitled to have the state governmental body correct information about the individual the state possesses that is incorrect.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 25. MEMBERSHIP CREDIT

The Teacher Retirement System of Texas (TRS) adopts amendments to the following rules in Chapter 25 (relating to Membership Credit) in Part 3 of Title 34 of the Texas Administrative Code: §25.4 and §25.6 under Subchapter A (relating to General Provisions and Procedures); §§25.25, 25.31, 25.35, and 25.36 under Subchapter B (relating to Compensation); §25.113 of Subchapter H (relating to Joint Service with Employees Retirement System); §25.123 of Subchapter I (relating to Verification of Service or Compensation); §25.131 of Subchapter J (relating to Creditable Time and School Year); §25.152 of Subchapter K (relating to Developmental Leave); and §25.172 of Subchapter M (relating to Optional Retirement Program). The amendments are adopted without changes to the proposed text as originally published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1429), and the rules will not be republished.

#### REASONED JUSTIFICATION

TRS adopts these amendments to eleven rules in Chapter 25 of TRS rules to, in part, conform with changes made to the laws relating to service credit transfers between the Employees Retirement System of Texas (ERS) and TRS. TRS also adopts these amendments to implement the determinations made by the TRS Board of Trustees in TRS's recently adopted rule review (47 TexReg 4859).

First, TRS amends §25.113 (relating to Transfer of Credit between TRS and ERS) in order to ensure the rule conforms with recent legislative changes to the plan terms of the ERS retirement plan that impact TRS members who wish to transfer ERS service credit to TRS or TRS service credit to ERS. Senate Bill 321, which was passed last year during the 87th legislative session, created a mandatory cash-balance plan under Chapter 820, Government Code for ERS members who begin their membership on or after September 1, 2022. Importantly, ERS members who participate in this cash balance plan are no longer eligible to transfer their ERS service to TRS or their TRS service to ERS. In addition, TRS members who have not maintained an ERS membership established prior to September 1, 2022 will no longer be able to reinstate withdrawn service for the purpose of transfer to TRS. For these reasons, TRS amends §25.113, which governs transfers of service credit between the TRS and ERS retirement plans, so that the rule conforms to these limits on the ability of ERS cash-balance members to transfer credit to TRS or to ERS and to reinstate ERS service credit.

In addition to these amendments to §25.113, TRS also amends ten other rules, which were all recommended for amendment during TRS's recently completed rule review process. The amendments to these rules are primarily reference and terminology updates, deletions of outdated provisions, and other nonsubstantive and/or conforming changes. A detailed rule-by-rule description of the amendments is provided below.

#### SECTION-BY-SECTION SUMMARY

Amended §25.4 (relating to Substitutes) clarifies that the deadlines for verifying substitute service are the same as the deadlines to verify unreported service. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.6 (relating to Part-time or Temporary Employment) deletes the former standard for part-time and temporary employment, in particular how part-time employment can be combined to qualify as eligible TRS employment. This standard changed in 2015, and the former standard no longer needs to be in the rule. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.25 (relating to Required Deposits) deletes the reference to specific member contribution rates in the rule and replaces the reference with a reference to all applicable rates for member contributions under Section 825.402, Government Code so as to incorporate any future changes to member contribution rates under that section. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.31 (relating to Percentage Limits on Compensation Increases) deletes outdated provisions regarding documentation of compensation increases and exceptions for compensation increases that no longer apply to current school years. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.35 (relating to Employer Payments for New Members) updates the reference to the deadline under Government

Code § 830.102 for electing to participate in the Optional Retirement Program. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.36 (relating to Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program) changes its title as this contribution type now applies to all public schools, except institutions of higher education, and regional education service centers, not only employers that do not participate in the federal Old-Age, Survivors, and Disability Insurance Program. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.113 provides that members of the ERS cash balance benefit plan are not eligible to transfer TRS service credit to ERS or ERS service credit to TRS. In addition, amended §25.113 provides that TRS members cannot reinstate withdrawn ERS service credit for the purposes of transfer to TRS unless the members are current ERS members and their membership began prior to September 1, 2022.

Amended §25.123 (relating to Certification) deletes the notarization requirement from this certification in anticipation of possibly moving this requirement to online submission forms. In addition, amended §25.123 updates a reference to a Texas Education Agency rule. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.131 (relating to Required Service) updates the reference to the process for verifying substitute service to conform with the clarifying changes made to TRS Rule § 25.4 as described above. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.152 (relating to Eligibility, Cost, and Payment for Developmental Leave Credit) deletes reference to the process of purchasing developmental leave credit at the prior cost before actuarial cost was implemented in 2011. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.172 (relating to ORP and TRS) updates terminology and procedures relating to certain optional retirement program (ORP) requirements for consistency with Chapter 830, Government Code and the rules of the Texas Higher Education Coordinating Board, including when an individual who has elected to participate in ORP must return to membership in TRS or may remain in ORP. This is a rule that was identified for amendment during TRS's recently adopted rule review.

#### COMMENTS

No comments on the proposed adoption of the amendments were received.

### SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

#### 34 TAC §§25.4, 25.6

##### STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §822.001, which provides standards for membership in the TRS retirement system; Government Code §823.201, which authorizes the board of trustees to adopt rules for the granting of membership service credit; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

##### CROSS-REFERENCE TO STATUTE

The amended rules affect the following statutes: Government Code §822.001, which relates to membership requirements; and Government Code §825.403, relating to collection of member's contributions.

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

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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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### SUBCHAPTER B. COMPENSATION

#### 34 TAC §§25.25, 25.31, 25.35, 25.36

##### STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §825.110, which authorizes TRS to adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment; Government Code §825.402, which provides the rates for member contributions; Government Code §825.4035, which relates to employer contributions for certain employed members; Government Code §825.4041, which provides for employer contributions due during the first 90 days of a new members employment; Government Code §830.102, which provides the deadline to elect to participate in ORP; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

##### CROSS-REFERENCE TO STATUTE

The amended rules affect the following statutes: Government Code §825.110, which authorizes TRS to adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment; Government Code §825.402, which provides the rates for member contributions; Government Code §825.4035, which relates to employer contributions for certain employed members; Government Code §825.4041, which provides for employer contributions due during the first 90 days of a new members employment; and Government Code §830.102, relating to the option to participate in ORP.

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

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## SUBCHAPTER H. JOINT SERVICE WITH EMPLOYEES RETIREMENT SYSTEM

### 34 TAC §25.113

#### STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §805.0015, which provides that credit transfers between ERS and TRS does not apply to ERS members subject to the cash-balance benefit plan provided under Chapter 820, Government Code; Government Code §805.009, which provides that TRS may adopt rules relating to the administration of Chapter 805, Government Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

#### CROSS-REFERENCE TO STATUTE

The amended rules affect the following statutes: Government Code §805.0015, relating to the applicability of credit transfers between ERS and TRS for ERS members subject to the cash-balance benefit plan under Chapter 820, Government Code; and Government Code § 825.002, which relates to eligibility to transfer credit between ERS and TRS and the eligibility for TRS members to reinstate withdrawn ERS service credit for the purpose of transfer to TRS.

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

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## SUBCHAPTER I. VERIFICATION OF SERVICE OR COMPENSATION

### 34 TAC §25.123

#### STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §825.403, which relates to the collection of member contributions and the proof of service that must be provided to TRS for TRS to grant credit for member contributions that were previously required but not paid; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

#### CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §825.403, relating to the collection of member contributions.

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

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## SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

### 34 TAC §25.131

#### STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §822.001, which provides standards for membership in the TRS retirement system; Government Code §823.201, which authorizes the board of trustees to adopt rules for the granting of membership service credit; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

#### CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §822.001, which relates to membership requirements; and Government Code §825.403, relating to collection of member's contributions.

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

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## SUBCHAPTER K. DEVELOPMENTAL LEAVE

### 34 TAC §25.152

#### STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §822.001, which provides standards for membership in the TRS retirement system; Government Code §823.201, which authorizes the board of trustees to adopt rules for the granting of

membership service credit; Government Code §823.402, which relates to the eligibility of a TRS member to purchase service credit for certain developmental leave at actuarial cost; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

#### CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §822.001, which relates to membership requirements; Government Code §823.403, relating to developmental leave; and Government Code §825.403, relating to collection of member's contributions.

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

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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6506



## SUBCHAPTER M. OPTIONAL RETIREMENT PROGRAM

### 34 TAC §25.172

#### STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §822.002, which provides that an employee of the public school system who elects to participate in ORP is not permitted to be a member of the TRS retirement system; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

#### CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §822.002, relating to exceptions to TRS membership requirement; Government Code §830.101, relating to the eligibility to participate in ORP; and Government Code §830.106, relating to resumption of TRS membership after electing to participate in ORP.

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

Filed with the Office of the Secretary of State on May 19, 2023.

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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 9. TEXAS COMMISSION ON JAIL STANDARDS

#### CHAPTER 281. FOOD SERVICE

##### 37 TAC §281.5

The Commission on Jail Standards adopts 37 TAC §281.5 concerning Staff Supervision as proposed in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1439) without changes. The rule will not be republished.

The adopted amendment will correct a reference to Texas Food Establishment Rules §228.33, which was repealed and moved during the 87th Legislative Session in 2021.

This change will help jailers to identify within the minimum jail standards the correct reference to the Food Establishment Rules. In a letter to the agency written October 26, 2022, Collin County Sheriff Jim Skinner brought to the agency's attention the need for this change.

No comments were received.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails. This proposed change does not affect other rules or statutes.

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

Filed with the Office of the Secretary of State on May 16, 2023.

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Brandon Wood

Executive Director

Texas Commission on Jail Standards

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For further information, please call: (512) 463-5505

