PROPOSED RULES

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

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

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.1

The Texas Optometry Board proposes amendments to 22 TAC Title 14 Chapter 279, §279.1 - Contact Lens Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.1 as currently in effect are necessary to clarify the statute.

Overview and Explanation of the Proposed Rule. This section of the Board's rules clarifies Texas Optometry Act §351.353 which requires ten specific findings to be made and recorded during an initial examination of a patient in which an ophthalmic contact lens prescription is to be made. As outlined in statute, these ten findings are to ensure the adequate examination of a patient. The rule does not set guidance for medical or routine refraction visits between a patient and an optometrist - only the initial visit for a prescription for contacts. The rule as currently written sets out that three of the ten findings during an initial visit must be performed by the licensed optometrist while the other seven findings may be delegated to an assistant with oversight by the licensed optometrist. Additionally, Texas Optometry Act §351.453 states "an optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

On November 3, 2023, the Board proposed clarifications to the rules as follows:

- The proposal will clarify that the optometrist or therapeutic optometrist is to "examine in-person" instead of "personally make" three of the ten findings during an initial visit for a contact lens prescription. The other seven required findings may continue to be delegated to an assistant.

- It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings. This language is affirmed in a recent decision from the State Office of Administrative Hearings.

- It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

- Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Government Growth Impact Statement. The rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, for the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Small Business, Micro-Business, and Rural Community Impact Statement. Ms. McCoy has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. The proposed rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, Ms. McCoy has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Takings Impact Assessment. Ms. McCoy has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Local Employment Impact Statement. Ms. McCoy has determined that the proposed rule will have no impact on local employment or a local economy as the amendment is a clarification of the Board's long-standing interpretation of statute. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.024 of the Tex. Gov't Code.

Public Benefit. Ms. McCoy has determined for the first five-year period the proposed rule is in effect there will be a benefit to the general public because the proposed rule will provide greater clarity, consistency, and efficiency in how licensed optometrists and therapeutic optometrists fully comply with §351.353 of the Act during an initial patient visit for a contact lens prescription. The Board determined it was necessary to update the rule to clarify the existing Board interpretation that personally means the three tests during the initial patient visit are done in person by the optometrist. According to the Board, this interpretation furthers its mission to protect the public health and safety by ensuring that the eyes of Texas patients during an initial visit are being examined by licensed optometrists and not by unlicensed staff.

Fiscal Note. Janice McCoy, Executive Director of the Board, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Ms. McCoy has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Even without the clarifying amendment, long-standing Board actions and policy assumes compliance with Tex. Occ. Code §351.353 that all initial patient visits must contain the ten findings and with Tex. Occ. Code §351.453 that states "An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register.* The Board requests that if you have previously submitted comments on similar rules that have been withdrawn to resubmit your comments.

Statutory Authority. The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Tex. Occ. Code.

The Board also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Board proposes this rule pursuant to Texas Occupations Code §351.353 and §351.453.

No other sections are affected by the amendments.

§279.1. Contact Lens Examination.

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom contact lenses are prescribed:

(1) Examine in-person [~~Personally make~~] and record, unless prohibited by the patient's unique condition [~~if possible~~], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [~~,~~] far point and near point;

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [~~,~~] to right and to left; [~~.~~]

(3) The optometrist or therapeutic optometrist shall personally [~~Personally~~] notate in the patient's record the reasons why it is not possible to make and record the findings required in subsection (a) of this section;

(4) When a follow-up visit is medically indicated, schedule the follow-up visit within 30 days of the contact lens fitting, and inform the patient on the initial visit regarding the necessity for the follow-up care; and

(5) Personally or authorize an assistant to instruct the patient in the proper care of lenses.

(b) The optometrist or therapeutic optometrist and assistants shall observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions, running water in the office where contact lenses are dispensed, and proper sterilization of diagnostic lenses and instruments.

(c) The fitting of contact lenses may be performed only by a licensed physician, optometrist, or therapeutic optometrist. Ophthalmic dispensers may make mechanical adjustments to contact lenses and dispense contact lenses only after receipt of a fully written contact lens prescription from a licensed optometrist, therapeutic optometrist, or a licensed physician. An ophthalmic dispenser shall make no measurement of the eye or the cornea or evaluate the physical fit of the contact lenses, by any means whatever, subject solely and only to the exception contained in the §351.005 of the Act.

(d) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [~~board~~] to constitute prima facie evidence that the licensee is unfit or

incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule [was not complied with]. After the Board [board] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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

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

TRD-202304877
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 305-8500

22 TAC §279.3

The Texas Optometry Board proposes amendments to 22 TAC Title 14 Chapter 279, §279.3 - Spectacle Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.3 as currently in effect are necessary to clarify the statute.

Overview and Explanation of the Proposed Rule. This section of the Board's rules clarifies Texas Optometry Act §351.353 which requires ten specific findings to be made and recorded during an initial examination of a patient in which an ophthalmic spectacle prescription is to be made. As outlined in statute, these ten findings are to ensure the adequate examination of a patient. The rule does not set guidance for medical or routine refraction visits between a patient and an optometrist - only the initial visit for a prescription for spectacles (glasses). The rule as currently written sets out that three of the ten findings during an initial visit must be performed by the licensed optometrist while the other seven findings may be delegated to an assistant with oversight by the licensed optometrist. Additionally, Texas Optometry Act §351.453 states "an optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

On November 3, 2023, the Board proposed changes to the rules as follows:

- The proposal will clarify that the optometrist or therapeutic optometrist is to "examine in-person" instead of "personally make" three of the ten findings during an initial visit for a spectacle prescription. The other seven required findings may continue to be delegated to an assistant.

- It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings. This language is affirmed in a recent decision from the State Office of Administrative Hearings.

- It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

- Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Government Growth Impact Statement. The rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, for the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Small Business, Micro-Business, and Rural Community Impact Statement. Ms. McCoy has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. The proposed rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, Ms. McCoy has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Takings Impact Assessment. Ms. McCoy has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Local Employment Impact Statement. Ms. McCoy has determined that the proposed rule will have no impact on local employment or a local economy as the amendment is a clarification of the Board's long-standing interpretation of statute. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.024 of the Tex. Gov't Code.

Public Benefit. Ms. McCoy has determined for the first five-year period the proposed rule is in effect there will be a benefit to the general public because the proposed rule will provide greater clarity, consistency, and efficiency in how licensed optometrists and therapeutic optometrists fully comply with §351.353 of the

Act during an initial patient visit for a spectacles (glasses) prescription. The Board determined it was necessary to update the rule to clarify the existing Board interpretation that personally means the three tests during the initial patient visit are done in person by the optometrist. According to the Board, this interpretation furthers its mission to protect the public health and safety by ensuring that the eyes of Texas patients during an initial visit are being examined by licensed optometrists and not by unlicensed staff.

Fiscal Note. Janice McCoy, Executive Director of the Board, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Ms. McCoy has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Even without the clarifying amendment, long-standing Board actions and policy assumes compliance with Tex. Occ. Code §351.353 that all initial patient visits must contain the ten findings and with Tex. Occ. Code §351.453 that states "An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register.* The Board requests that if you have previously submitted comments on similar rules that have been withdrawn to resubmit your comments.

Statutory Authority. The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Tex. Occ. Code.

The Board also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Board proposes this rule pursuant to Texas Occupations Code §351.353 and §351.453.

No other sections are affected by the amendments.

§279.3. Spectacle Examination.

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom ophthalmic lenses are prescribed:

(1) Examine in-person [~~Personally make~~] and record, unless prohibited by the patient's unique condition [~~if possible~~], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [~~,~~] far point and near point; [~~.~~]

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [~~,~~] to right and to left; and [~~.~~]

(3) The optometrist or therapeutic optometrist shall personally [~~Personally~~] notate in the patient's record the reasons why it is not possible to make and record the findings required in this section.

(b) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [~~board~~] to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that optometrist or therapeutic optometrist did not comply with the rule [~~was not complied with~~]. After the Board [~~board~~] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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

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

TRD-202304878
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 305-8500

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER K. ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

34 TAC §§9.4251 - 9.4266

The Comptroller of Public Accounts proposes the repeal of §9.4251, concerning definitions; §9.4252, concerning request for arbitration; §9.4253, concerning agent representation in arbitration; §9.4254, concerning appraisal district responsibility for request; §9.4255, concerning comptroller processing of request, online arbitration system, and 45 calendar-day settlement period; §9.4256, concerning comptroller appointment of arbitrators; §9.4257, concerning application for inclusion in comptroller's registry of arbitrators; §9.4258, concerning qualifications for inclusion in the comptroller's registry of arbitrators; §9.4259, concerning arbitrator eligibility for a particular appointment; §9.4260, concerning arbitrator duties; §9.4261, concerning provision of arbitration services; §9.4262, concerning removal of arbitrator from the registry of arbitrators; §9.4263, concerning arbitration determination and award; §9.4264, concerning payment of arbitrator fee, refund of property owner deposit, and correction of appraisal roll; §9.4265, concerning prohibited communications regarding pending arbitration; and §9.4266, concerning forms. The legislation enacted within the last four years that provides the statutory authority for the repeals is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

The comptroller proposes to repeal all sections included in Subchapter K (Arbitration of Appraisal Review Board Determinations). New sections concerning arbitration of appraisal review board determinations will be proposed in a separate rulemaking to add rules concerning limited binding arbitration and to update the current rules concerning regular binding arbitration and the comptroller's registry of arbitrators.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed rules repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed rules repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rules repeal would benefit the public by conforming the rules to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed rules repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The repeals implement Tax Code, Chapter 41A.

§9.4251. Definitions.
§9.4252. Request for Arbitration.
§9.4253. Agent Representation in Arbitration.
§9.4254. Appraisal District Responsibility for Request.
§9.4255. Comptroller Processing of Request, Online Arbitration System, and 45 Calendar-Day Settlement Period.
§9.4256. Comptroller Appointment of Arbitrators.
§9.4257. Application for Inclusion in Comptroller's Registry of Arbitrators.
§9.4258. Qualifications for Inclusion in the Comptroller's Registry of Arbitrators.
§9.4259. Arbitrator Eligibility for a Particular Appointment.
§9.4260. Arbitrator Duties.
§9.4261. Provision of Arbitration Services.
§9.4262. Removal of Arbitrator from the Registry of Arbitrators.
§9.4263. Arbitration Determination and Award.
§9.4264. Payment of Arbitrator Fee, Refund of Property Owner Deposit, and Correction of Appraisal Roll.
§9.4265. Prohibited Communications Regarding Pending Arbitrations.
§9.4266. Forms.

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

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304938
Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 475-2220

DIVISION 1. GENERAL RULES

34 TAC §§9.4201 - 9.4213

The Comptroller of Public Accounts proposes new §9.4201, concerning scope and construction of rules; computation of time; §9.4202, concerning definitions; §9.4203, concerning prohibited communications regarding pending arbitrations; §9.4204, concerning filing requests for binding arbitration and deposit payments; §9.4205, concerning agent representation in binding arbitration; §9.4206, concerning appraisal district responsibility for processing request; §9.4207, concerning comptroller processing of request; §9.4208, concerning withdrawing a request; §9.4209, concerning refund and arbitrator fee processing; §9.4210, concerning forms; §9.4211, concerning communication with property owner, property owner's agent,

ARB, appraisal district, and arbitrator; §9.4212, concerning arbitration proceedings; and §9.4213, concerning substitution of arbitrator assigned to arbitration hearing. The new sections will be located in Subchapter K, in new Division 1 (General Rules). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish rules concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015, and update current rules concerning regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01, and current rules concerning the comptroller's registry of arbitrators. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4201 describes the scope and construction of the rules and the computation of time.

Section 9.4202 provides definitions.

Section 9.4203 prohibits parties to an arbitration and arbitrators assigned to an arbitration from seeking the comptroller's advice or direction on a matter relating to a pending arbitration.

Section 9.4204 details the requirements for the filing of requests for binding arbitration and deposit payments using electronic filing or paper-based filing, and the requirements for refund recipients.

Section 9.4205 addresses the qualifications, certifications, responsibilities, and appointment of an agent authorized to represent a party in a binding arbitration. This section also addresses the duration and verification of an agent's appointment.

Section 9.4206 sets forth the appraisal district's responsibility for processing requests for binding arbitration.

Section 9.4207 addresses the comptroller's responsibility for processing requests for binding arbitration.

Section 9.4208 describes the requirements for withdrawing a request for binding arbitration.

Section 9.4209 explains the process for deposit refunds and the payment of administrative fees and arbitrator fees.

Section 9.4210 lists the forms that are adopted by reference and provides that the comptroller may revise other forms at the comptroller's discretion and may prescribe additional forms for the administration of binding arbitration.

Section 9.4211 sets forth the methods by which the property owner, property owner's agent, appraisal review board, appraisal district, and arbitrator may communicate with one another.

Section 9.4212 addresses the process and requirements for conducting arbitration proceedings.

Section 9.4213 discusses the process of removing an arbitrator assigned to an arbitration hearing and substituting another arbitrator to replace the initial arbitrator.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rules to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed new rules would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4201. Scope and Construction of Rules; Computation of Time.

(a) Scope of rules. The rules in this subchapter shall govern:

(1) the procedures concerning regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01;

(2) the procedures concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015; and

(3) the comptroller's registry of arbitrators.

(b) Construction of rules. Unless otherwise provided, this subchapter shall be construed in accordance with the Code Construction Act, Government Code, Chapter 311.

(c) Computation of time. Computation of time shall be consistent with the Code Construction Act, Government Code, §311.014, and Tax Code, §1.06.

§9.4202. Definitions.

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

(1) Agent--An individual, authorized under Tax Code, §41A.08(b) or §41A.015(h), and §9.4205 of this title, as applicable, to represent a party in arbitration.

(2) Appraisal district--A political subdivision established in each county responsible for appraising property in the county for ad valorem tax purposes for each taxing unit that imposes such taxes on property in the county.

(3) Appraisal review board (ARB)--The board established in a county's appraisal district pursuant to Tax Code, §6.41, authorized to hear and resolve disputes between property owners and the appraisal district.

(4) Appraised value--The value of property determined under the appraisal methods and requirements of Tax Code, Chapter 23.

(5) Arbitration--A form of conflict resolution in which all parties agree that an arbitrator will consider the evidence and render a binding decision. This term includes the two types of arbitration governed by this subchapter: regular binding arbitration and limited binding arbitration. The terms "arbitration," "binding arbitration," and "arbitration proceeding" are synonymous as used in this subchapter and include the term "arbitration hearing," the specific event at which evidence is presented to an arbitrator.

(6) ARB order--An ARB's written decision regarding a property owner's protest.

(7) Authorized individual--An individual with the legal authority to act on behalf of the property owner, a legal guardian, or one who holds a valid power of attorney. Where the property owner is a business entity, this term includes the designated employee of that entity. This term does not include an individual appointed as an agent for binding arbitration under §9.4205 of this title or under Tax Code, §1.111.

(8) Chief Appraiser--the chief administrator of the appraisal district.

(9) Comptroller--The Texas Comptroller of Public Accounts and employees and designees of the comptroller.

(10) Division director--The director of the Property Tax Assistance Division of the Texas Comptroller of Public Accounts or the division director's designee.

(11) Individual--A single human being.

(12) Limited Binding Arbitration (LBA)--A process that allows a property owner through binding arbitration to request an arbitrator to compel the ARB or the chief appraiser to take certain actions under Tax Code, §41A.015.

(13) LBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an LBA case.

(14) Market value--Has the meaning assigned by Tax Code, §1.04(7).

(15) Online arbitration system--A web-based software application designed to electronically administer the binding arbitration program consistent with this subchapter.

(16) Party--The property owner, property owner's agent, ARB, or appraisal district.

(17) Property owner--The authorized individual or a person having legal title to property. The term does not include lessees who have the right to protest property valuations before ARBs.

(18) Regular Binding Arbitration (RBA)--A process under Tax Code, §41A.01, that allows a property owner to contest an ARB order determining a protest through binding arbitration.

(19) RBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an RBA case.

§9.4203. Prohibited Communications Regarding Pending Arbitrations.

(a) Prohibited communications. Parties to an arbitration and arbitrators assigned to an arbitration shall not seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A.

(b) Pending arbitration. An arbitration is pending from the date a request for binding arbitration is filed until the date of delivery of the LBA or RBA award pursuant to Tax Code, §41A.09.

(c) Exception. The prohibition in subsection (a) of this section shall not apply to the comptroller's processing and curing of requests for binding arbitration and deposits or other administrative matters.

§9.4204. Filing Requests for Binding Arbitration and Deposit Payments.

(a) Electronic filing.

(1) This subsection applies to requests for binding arbitration filed on or after the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available for the administration of the binding arbitration program. Requests for binding arbitration filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, must use paper-based filing under subsection (b) of this section.

(2) Arbitrators, appraisal districts, ARBs, agents, and property owners who are working with an agent are required to register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter.

(3) A property owner who does not appoint an agent may:

(A) register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter; or

(B) use the paper-based filing method described in subsection (b) of this section.

(4) Use of an email address or other information to access the online arbitration system is a voluntary disclosure constituting consent to the collection and disclosure of the information for the purposes for which it was requested. This information may be subject to disclosure under the Texas Public Information Act.

(b) Paper-based filing. The following parties must mail the applicable request form pursuant to the instructions provided on the form and include a check or money order for the required arbitration deposit payable to the comptroller:

(1) a property owner or property owner's agent, if the request for binding arbitration is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available; and

(2) a property owner who does not appoint an agent and who chooses not to use the online arbitration system.

(c) Deposit payments. A request for binding arbitration is not officially submitted until the required deposit is paid. If the request is filed using electronic filing under subsection (a) of this section, the deposit must be paid through the online arbitration system. If the request is filed using paper-based filing under subsection (b) of this section, the deposit must be paid by including a check or money order with the request for binding arbitration form.

(d) Requirements for refund recipient.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the property owner shall designate the refund recipient on the request for binding arbitration.

(2) If the property owner appoints an agent under §9.4205 of this title, the agent may designate the refund recipient on the request for binding arbitration by designating the refund recipient that the property owner designated in the appointment of agent for binding arbitration form.

(3) The refund recipient's name, mailing address, phone number, and one of the following Internal Revenue Service identification numbers for the refund recipient, must be provided on the request for binding arbitration:

(A) Social Security Number (SSN);

(B) Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service to individuals not eligible to obtain an SSN; or

(C) Federal Employer Identification Number (FEIN).

(4) To protect the confidentiality of the refund recipient's identification number, the comptroller shall assign a Texas Identification Number (TIN) to serve as the payee account number on any warrants issued by the comptroller.

§9.4205. Agent Representation in Binding Arbitration.

(a) Professional qualifications. Property owners may represent themselves or choose to be represented by an agent. An agent must hold a current and active license, certification, or registration in one of the following fields:

(1) an attorney licensed to practice in Texas;

(2) a real estate broker or sales agent licensed under Occupations Code, Chapter 1101;

(3) a real estate appraiser licensed under Occupations Code, Chapter 1103;

(4) a property tax consultant registered under Occupations Code, Chapter 1152; or

(5) a certified public accountant licensed under Occupations Code, Chapter 901.

(b) Required documentation.

(1) The property owner must complete and sign the appointment of agent for binding arbitration form. No other agent appointment, authorization form, or document will be accepted.

(2) Neither the individual being appointed as an agent under this subsection, nor an agent appointed under Tax Code, §1.111, may sign the form described in paragraph (1) of this subsection on behalf of the property owner.

(3) For requests for binding arbitration filed with the comptroller on or after January 1, 2024, the agent shall retain the form and shall produce the form immediately upon request from the property owner, appraisal district, ARB, arbitrator assigned to the arbitration, or comptroller under Tax Code, §41A.08(d).

(4) Failure of the agent to produce the form immediately upon request as required by Tax Code, §41A.08(d), or production of an invalid form, shall result in dismissal of the request for binding arbitration and may result in loss of the arbitration deposit.

(c) Agent responsibilities. Authorized agents may take the following actions in an arbitration on a property owner's behalf:

(1) file online requests for binding arbitration and pay the required arbitration deposit through the online arbitration system;

(2) receive a potential refund of an arbitration deposit, if the agent is designated as a refund recipient under §9.4204(d) of this title;

(3) send and receive communications regarding the arbitration;

(4) negotiate with the appraisal district to try to settle the case before the arbitration hearing;

(5) execute a settlement agreement with the appraisal district to resolve the case;

(6) withdraw a request for binding arbitration; and

(7) appear and represent the property owner at the arbitration hearing.

(d) Designation of specific individual.

(1) The property owner must identify on the appointment of agent for binding arbitration form a specific individual to act as an agent and provide the agent's license number for the specific type of license, certification, or registration that qualifies the individual to act as an agent under subsection (a) of this section.

(2) The property owner may also appoint an alternate agent on the appointment of agent for binding arbitration form. Unless the alternate agent is with the same organization as the first agent, the alternate agent shall not be authorized to act on a property owner's behalf unless the alternate agent provides written notice to the appraisal district and the appointed arbitrator that the first agent is not available. For LBA, a copy of the notice must also be provided to the ARB.

(3) A company or business entity does not qualify to act as an agent.

(e) Agent representation at arbitration hearing. Only the individual(s) identified on the appointment of agent for binding arbitration form may undertake representation of the property owner in the arbitration for which the request for binding arbitration was submitted. No other individual, including a licensed attorney, may act on the property owner's behalf in that proceeding unless another subsequently executed appointment of agent for binding arbitration form is completed and signed.

(f) Agents for non-individual property owners. The property owner's name, current mailing address, phone number, and email address, if available, must be provided on the appointment of agent for binding arbitration form. If the property owner is not an individual, an authorized individual shall complete and sign the form on behalf of the property owner. The authorized individual's name and contact information must be provided on the form, as well as the basis for the authorized individual's authority.

(g) Duration of agent appointment. The appointment of agent for binding arbitration form is valid for three years from the date of execution, unless revoked. The property owner may revoke the appointment of an agent or alternate agent at any time by delivery of written notice to the agent, and all alternate agents, if any are appointed, to the address provided on the form or the agent's last known address. A copy of the revocation notice must also be provided to the comptroller, appraisal district, and the arbitrator assigned to the case, if an arbitrator is assigned. For LBA, a copy of the revocation notice must also be provided to the ARB.

(h) Agent certifications. In undertaking representation of the property owner pursuant to Tax Code, §41A.08(b), each agent must certify that:

(1) they are acting as a fiduciary on behalf of the property owner in the specific arbitration proceeding for which the request for binding arbitration was filed and agree to undertake the responsibilities specified in subsection (c) of this section; and

(2) the property owner knowingly authorized the agent's filing of the request for binding arbitration and the agent's representation of the property owner in the arbitration.

§9.4206. Appraisal District Responsibility for Processing Request.

(a) Appraisal district responsibilities.

(1) If a request for RBA is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, within 10 calendar days of receipt of each request for binding arbitration under Tax Code, §41A, the appraisal district shall:

(A) assign a unique arbitration number to each request for RBA;

(B) complete and sign that portion of the request for RBA form applicable to the appraisal district, based on examination of the documentation submitted;

(C) deliver each request for RBA form, the accompanying deposit, the ARB order (as well as the appointment of agent for binding arbitration form, if provided), and supporting documentation for any items not checked in the appraisal district portion of the request for RBA form, if applicable, to the comptroller's office by certified first-class mail, and simultaneously deliver a copy of the submission to the property owner or property owner's agent, as appropriate, by regular first-class mail or email; and

(D) provide promptly any additional information the comptroller's office requests to process the request for binding arbitration submission.

(2) If a request for RBA or LBA is filed on or after the later of January 1, 2024, or the first day the comptroller makes the online system available, within 10 calendar days of receipt of each request for binding arbitration under Tax Code, §41A, the appraisal district shall, using the online arbitration system:

(A) review each request for binding arbitration;

(B) verify property account details;

(C) assign an appraisal district representative for the arbitration hearing;

(D) enter the contact information for an ARB representative for LBA cases;

(E) indicate any potential defects, including any discrepancies or jurisdictional issues, that affect the deposit amount or the eligibility of a property to be included on the request for binding arbitration; and

(F) upload supporting documentation for any potential defects, including any discrepancies or jurisdictional issues, identified in the review process.

(b) Comptroller's request for additional information. The appraisal district shall provide to the comptroller any additional information the comptroller requests to process the request for binding arbitration within 15 calendar days of the comptroller's request.

(c) Notification if new ARB hearing is mandated. Where an LBA award mandates a new ARB hearing associated with a pending request for RBA, the appraisal district shall promptly notify the comptroller.

§9.4207. Comptroller Processing of Request.

(a) No defects identified. If no defects are identified by the comptroller or by the appraisal district under §9.4206(a)(2)(E) of this title, the comptroller shall notify the appraisal district and the property owner or the property owner's agent that the request for binding arbitration has been processed and provide the arbitration number assigned by the comptroller. For LBA, a copy of the notice must also be provided to the ARB.

(b) Defects identified. If the appraisal district or the comptroller identifies defects on the request for binding arbitration that affect the deposit or property eligibility, the comptroller shall review the request to determine whether it can be processed or requires a cure under subsection (d) of this section.

(c) Deposit not honored or insufficient. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check that is not honored, the property owner shall submit to the comptroller a check issued and guaranteed by a banking institution (i.e., a cashier's or teller's check) or money order. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check or money order that is for less than the required deposit amount under §9.4221 or §9.4241 of this title, the property owner shall submit to the comptroller a supplemental check or money order sufficient to pay the full deposit. If a property owner or the property owner's agent using the online arbitration system pays the deposit with a credit card or electronic funds transfer (eCheck) that is not honored, the property owner or the property owner's agent shall submit another electronic payment to the comptroller. Such payments must be received no later than 15 calendar days after the notice of the defect is delivered under subsection (d) of this section.

(d) Cure period. If a request for binding arbitration is defective, the comptroller shall notify the property owner or the property owner's agent of the defect, the process to file a cure for the defect, and the date the cure is due. Mailed notices are deemed delivered when deposited in the mail. If notified by email or on the online arbitration system, the notification is deemed delivered on the date the comptroller transmits the email or notice.

(e) Cure resolution. If the property owner or the property owner's agent provides documentation, payment, or information that cures the defect within 15 calendar days of the comptroller's notice, the comptroller shall process the request for binding arbitration and notify the appraisal district and property owner or the property owner's agent. For LBA, a copy of the notice must also be provided to the ARB.

(f) Failure to cure. If the property owner or the property owner's agent fails to cure any defect that the comptroller determines to be curable within 15 calendar days of the comptroller's notice, the request for binding arbitration shall not be processed any further and shall be closed, the comptroller shall notify the parties of the comptroller's action, and the comptroller shall refund the deposit pursuant to §9.4209 of this title.

(g) Processing is not certification of requirements. The comptroller's processing of a request does not certify that the request meets all statutory requirements and requests may still be dismissed by an arbitrator for lack of jurisdiction.

(h) Dispute. If there is a dispute regarding whether there is jurisdiction for an arbitration under §9.4223 or §9.4244 of this title, the request for binding arbitration shall be forwarded to the arbitrator and the arbitrator shall render a determination on jurisdiction. Arbitrators shall determine whether a request meets all statutory criteria and shall dismiss the request if it satisfies the criteria for dismissal under §9.4223 or §9.4244 of this title. Dismissal of the request may result in the loss of the requestor's deposit.

§9.4208. Withdrawing a Request.

(a) Notice of withdrawal. A property owner or the property owner's agent using the online arbitration system under §9.4204(a) of this title must withdraw a request for binding arbitration using the online arbitration system. A property owner or the property owner's agent using paper-based filing under §9.4204(b) of this title must deliver a written notice of the withdrawal to all parties and the comptroller.

(b) Timely withdrawal. If the comptroller receives the notice of withdrawal before an arbitrator accepts the case, the notice is considered timely, and the deposit will be refunded pursuant to §9.4209 of this title.

(c) Untimely withdrawal. If the comptroller receives the notice of withdrawal after an arbitrator accepts the case, the notice is considered untimely and the arbitrator is entitled to charge a fee, up to the amount allowed in §9.4226 or §9.4247 of this title, as applicable, out of the deposit.

§9.4209. Refund and Arbitrator Fee Processing.

(a) Administrative costs. The comptroller shall retain $50 of every arbitration deposit to cover the comptroller's administrative costs.

(b) Refund recipients. Any deposit refunds will be issued to the refund recipient designated on the request for binding arbitration.

(c) Refund amounts.

(1) A deposit refund shall be issued to the property owner or property owner's agent in the amount of the deposit less the $50 comptroller administrative fee if:

(A) the request for binding arbitration is closed due to a defect that could not be cured or due to a defect that was not cured;

(B) the request for binding arbitration is timely withdrawn;

(C) the arbitration is dismissed in its entirety due to delinquent property taxes;

(D) the LBA award found a procedural violation in accordance with §9.4226 of this title; or

(E) the RBA award is in favor of the property owner in accordance with §9.4247(b) of this title.

(2) A deposit refund, if any, shall be issued in the amount of the deposit less the arbitrator's fee and the $50 comptroller administrative fee if:

(A) the request for binding arbitration is not timely withdrawn;

(B) the arbitration is dismissed in its entirety for lack of jurisdiction under §9.4223(a)(2)-(9) or §9.4244(a)(2)-(8) of this title;

(C) the LBA award did not find a procedural violation in accordance with §9.4226 of this title; or

(D) the RBA award is not in favor of the property owner in accordance with §9.4247(b) of this title.

§9.4210. Forms.

(a) Adoption by reference. The comptroller adopts by reference:

(1) the request for RBA form; and

(2) the RBA award form.

(b) Revision and addition of forms. Except as provided by subsection (a) of this section, all comptroller forms regarding binding arbitration under Tax Code, Chapter 41A, may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration.

§9.4211. Communication with Property Owner, Property Owner's Agent, ARB, Appraisal District, and Arbitrator.

Except as otherwise provided in Tax Code, §41A.015(b)(1) or §41A.015(i), these rules, or other law, as applicable, the property owner, property owner's agent, ARB, appraisal district, and arbitrator, as applicable, may provide written communications, notifications, and materials to each other using email, first-class mail, or any other method acceptable to the intended recipient of the communication, notification, or materials. Any written communications, notifications, and materials provided to the arbitrator shall also be provided to all other parties to the arbitration.

§9.4212. Arbitration Proceedings.

(a) Necessary Parties. Necessary parties to LBA under Tax Code, §41A.015, include the property owner or the property owner's agent, the chief appraiser, and the ARB. Necessary parties to RBA under Tax Code, §41A.01, include the property owner or the property owner's agent and the appraisal district.

(b) Requirements. An arbitrator who accepts an appointment shall conduct each arbitration proceeding pursuant to the terms of Tax Code, Chapter 41A, and this subchapter, and for a fee that is not more than the applicable amount stated in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable.

(c) Arbitrator professionalism. The arbitrator shall determine the level of formality or informality of arbitration proceedings; however, the arbitrator must behave professionally while rendering arbitration services. The arbitrator shall not engage in conduct that creates a conflict of interest.

(d) Arbitration hearing types. Arbitrations may be conducted in person or by telephone or video conference call. The arbitrator may decide the manner of the arbitration hearing unless the property owner or the property owner's agent selects a specific format on the request for binding arbitration.

(e) In-person arbitration hearing requirements. Unless all necessary parties agree otherwise, if the arbitration is conducted in person, the arbitrator and all necessary parties shall appear in person for the arbitration hearing. If the arbitration is in person, the arbitration hearing must be held in the county where the subject property is located, unless all necessary parties agree to another location. The selected location must be in an office-like setting generally open to the public or to the arbitrator. The arbitrator is responsible for identifying and reserving the arbitration hearing location and is responsible for any location costs incurred. Neither the property owner, the appraisal district, nor the ARB, may be charged an additional fee or requested to provide additional monies to participate in an in-person arbitration.

(f) Arbitrator initiation of arbitration hearing. Promptly upon acceptance of an appointment, the arbitrator shall contact all necessary parties by telephone or email to notify the parties of the arbitrator's appointment, propose one or more dates for the arbitration hearing, and request alternate arbitration hearing dates from the parties if the date(s) proposed is not acceptable. The arbitrator should cooperate with all necessary parties in scheduling the arbitration hearing.

(g) Notice of arbitration hearing. The arbitrator shall set the arbitration hearing date and serve written notice of the arbitration hearing under subsection (h) of this section as follows:

(1) where the arbitrator received written agreement from all necessary parties on an arbitration hearing date, the arbitrator shall serve the written notice of arbitration hearing to all necessary parties in the method acceptable to each party; or

(2) where written agreement from all necessary parties is not obtained after 14 calendar days of the arbitrator's initial contact attempt under subsection (f) of this section, the arbitrator shall set the arbitration hearing date, providing a minimum of 21 calendar days' notice before the arbitration hearing, and shall serve the notice of arbitration hearing by:

(A) serving a copy of the notice to all necessary parties by email, if available; and

(B) providing a paper copy of the notice to the property owner through the U.S. Postal Service or a private third-party service such as FedEx or United Parcel Service (UPS) as long as proof of delivery is provided.

(h) Contents of arbitration hearing notice. The arbitrator shall include the following information in the written notice of arbitration hearing:

(1) the arbitration number;

(2) the date and time of the arbitration hearing;

(3) the physical address of the arbitration hearing location if the arbitration hearing is in person, or instructions concerning how to participate in the arbitration hearing if the hearing is by telephone or video conference call;

(4) the date by which the parties must exchange evidence before the arbitration hearing;

(5) the arbitrator's contact information, including email address, phone number, and mailing address, as well as a fax number, if available;

(6) a copy of the arbitrator's written procedures for the arbitration hearing;

(7) the methods by which the parties are to communicate and exchange materials, including email, U.S. first-class mail, or overnight or personal delivery; and

(8) any other matter about which the arbitrator wishes to advise the parties before the arbitration hearing.

(i) Continuance. The arbitrator may continue an arbitration hearing:

(1) for reasonable cause; or

(2) if all necessary parties agree to the continuance.

(j) Failure to appear and waiver of defective notice. The arbitrator may hear and determine the controversy on the evidence produced at the arbitration hearing as long as notice was provided pursuant to subsection (g) of this section. Appearance at the arbitration hearing waives any defect in the notice.

(k) Evidence. Each party at the arbitration hearing is entitled to be heard, present evidence material to the controversy, and cross-examine witnesses. The arbitrator shall ask each witness testifying to swear or affirm that the testimony they are about to give shall be the truth, the whole truth, and nothing but the truth. The arbitrator's decision is required to be based solely on the evidence provided at the arbitration hearing.

(l) Availability of arbitration hearing procedures. The arbitrator shall have a written copy of the arbitrator's hearing procedures available at the arbitration hearing.

(m) Recording proceedings. The parties shall be allowed to record audio of the proceedings. Video recordings require the consent of the arbitrator.

(n) Confidentiality. The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to confidential information provided to arbitrators. The information may not be disclosed except as provided by law.

(o) Ex parte communications. The arbitrator shall not initiate, permit, or consider an ex parte communication made to the arbitrator by a party outside the presence of the other parties at any time before the LBA or RBA award is issued, concerning specific evidence, argument, facts, or the merits of the arbitration. Such ex parte communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(p) Processing time. The arbitrator must complete an arbitration proceeding in a timely manner and must make every effort to complete the proceeding within 120 calendar days after the arbitrator's acceptance of the appointment. Failure to timely complete arbitration proceedings may constitute good cause for removal from the comptroller's registry of arbitrators.

§9.4213. Substitution of Arbitrator Assigned to Arbitration Hearing.

(a) Substitution prior to arbitration hearing. The comptroller shall remove an arbitrator from an arbitration and substitute a different arbitrator prior to the arbitration hearing taking place if the division director determines by clear and convincing evidence there is good cause for such removal.

(b) Substitution prior to award. After an arbitration hearing is held and prior to issuance of the award, an arbitrator may be removed from an arbitration and a substitute arbitrator appointed where a disaster or emergency, as defined by Government Code, §418.004 or §433.001, impacts the arbitrator's ability to complete the arbitration in compliance with this subchapter. Substitution may also take place if, as determined by the division director in the exercise of the division director's discretion, the arbitrator experiences a personal emergency, rendering them incapable of completing the arbitration in compliance with this subchapter.

(c) Good cause for substitution. Good cause for substitution under subsection (a) of this section includes the following:

(1) the individual is not eligible or becomes ineligible under the terms of §9.4260 or §9.4263 of this title, as applicable;

(2) the individual violates one or more provisions of this subchapter;

(3) there is a pending request for the arbitrator's removal from the registry of arbitrators and the division director, in the exercise of the division director's discretion, believes the request could impact the arbitrator's ability to conduct a fair and impartial arbitration hearing; or

(4) the division director determines, in the exercise of the division director's discretion, that substitution is in the interests of providing for a fair, impartial arbitration hearing.

(d) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations.

(e) Filing of substitution request. A party to an arbitration may request the substitution of an arbitrator by filing a written request with the division director. Requests must be received with sufficient time to process and investigate the request prior to the arbitration hearing if filed under subsection (a) of this section or prior to the award being issued if filed under subsection (b) of this section. If the arbitration hearing is held prior to resolution of a request under subsection (a) of this section, or an award is issued prior to resolution of a request under subsection (b) of this section, the request will be dismissed. All requests must contain the following:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitration, arbitrator, and the grounds for substitution under subsection (b) or (c) of this section; and

(2) copies of all available communications exchanged between the arbitrator and the parties, as applicable, that support the request.

(f) Confidentiality. The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information reviewed or submitted under this section and may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(g) Dismissals. Requests for substitution shall be dismissed if:

(1) the conduct complained of does not meet the requirements of subsection (b) or (c) of this section; or

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (e) of this section.

(h) Processing time. The comptroller shall examine the request for substitution in a timely manner.

(i) Cure period. If good cause for substitution is found, the arbitrator shall be notified by the comptroller and, where applicable, given the chance to cure the violation by the deadline established in the comptroller's notice. If the arbitrator does not cure the violation by the deadline established in the comptroller's notice, the arbitrator shall be removed and a new arbitrator substituted. The comptroller shall keep a record of any removals under subsection (a) of this section in the arbitrator's file.

(j) No appeal. The determination of a request for substitution, including dismissal of the request, or the removal of an arbitrator under this section is final and may not be appealed.

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

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304939
Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 475-2220

DIVISION 2. LIMITED BINDING ARBITRATION FOR PROCEDURAL VIOLATIONS

34 TAC §§9.4220 - 9.4226

The Comptroller of Public Accounts proposes new §9.4220, concerning request for LBA; §9.4221, concerning LBA deposit; §9.4222, concerning comptroller appointment of arbitrators for LBA; §9.4223, concerning dismissal for lack of jurisdiction; §9.4224, concerning LBA award; §9.4225, concerning correction of procedure violations; and §9.4226, concerning payment of arbitrator fees. The new sections will be located in Subchapter K, in new Division 2 (Limited Binding Arbitration for Procedural Violations). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish procedures concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4220 describes the process for requesting LBA to compel the appraisal review board (ARB) or the chief appraiser to take certain actions under Tax Code, §41A.015.

Section 9.4221 requires a deposit to be submitted with each LBA and details the amount of deposit that must be submitted.

Section 9.4222 describes the comptroller's process for appointing arbitrators for LBA.

Section 9.4223 addresses the reasons for which an arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction, and the effect of a dismissal on the deposit submitted for the LBA.

Section 9.4224 provides the process and requirements for the issuance of an LBA award by an arbitrator.

Section 9.4225 sets forth the process of correcting procedural violations committed by the chief appraiser or ARB following the issuance of an LBA award.

Section 9.4226 describes the payment and processing of arbitrator fees in an LBA.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed new rules would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4220. Request for LBA.

(a) Actions reviewable in LBA. A property owner who has filed a notice of protest under Tax Code, Chapter 41, may file a re-

quest for LBA to compel the ARB or the chief appraiser to take certain actions under Tax Code, §41A.015(a).

(b) Waiver of right to seek LBA. A property owner waives their right to seek LBA under Tax Code, §41A.015, if:

(1) under Tax Code, §41A.015(a)(5), there was no request that the ARB hearing be postponed, or the property owner or the property owner's agent was offered a postponement and chose to proceed with the ARB protest; or

(2) under Tax Code, §41A.015(a)(7), there was an offer to postpone the ARB hearing upon the objected-to evidence being provided and the property owner or the property owner's agent chose to proceed with the ARB protest.

(c) Requirements for processing. A request for LBA that meets the following terms and conditions will be processed by the comptroller:

(1) The request was submitted in accordance with Tax Code, §41A.015, §9.4204 of this title, and this section.

(2) The request includes a deposit that meets the requirements of §9.4204 and §9.4221 of this title.

(d) Multiple alleged violations or properties. LBA requests are confined to a single tax year and a single property owner. The property owner may file for multiple alleged procedural violations for a single property or for multiple properties owned by a single property owner. If the request involves multiple alleged procedural violations or multiple properties, each individual allegation and property must separately meet the requirements of this section, except that a single deposit is required.

§9.4221. LBA Deposit.

(a) Deposit amount. A deposit shall be submitted with each request for LBA in the following amount, as applicable:

(1) $450 if the property qualifies as the property owner's residence homestead under Tax Code, §11.13, and the appraised or market value, as applicable, is $500,000 or less as determined by the appraisal district for the most recent tax year.

(2) $550 for all property not subject to paragraph (1) of this subsection.

(b) Multiple properties. Where the property owner has appealed multiple properties, with one or more qualifying under subsection (a)(1) of this section and one or more qualifying under subsection (a)(2) of this section; the deposit must be made in the amount of subsection (a)(2) of this section.

§9.4222. Comptroller Appointment of Arbitrators for LBA.

(a) Qualifications. The comptroller shall appoint to a pending request for LBA an individual who meets the requirements of Tax Code, §41A.015(p) and is included in the registry of arbitrators under §9.4260 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the registry of arbitrators.

§9.4223. Dismissal for Lack of Jurisdiction.

(a) Reasons for dismissal. The arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) no notice of protest under Tax Code, Chapter 41, was filed prior to the request for LBA being filed under Tax Code, §41A.015(a);

(3) the requestor seeks to compel the ARB or chief appraiser to take an action that is not authorized by Tax Code, §41A.015(a);

(4) the requestor failed to timely provide written notice to the chair of the ARB, the chief appraiser, and the taxpayer liaison officer for the applicable appraisal district by certified mail, return receipt requested, of the procedural requirement(s) with which the property owner alleges the ARB or chief appraiser was required to comply under Tax Code, §41A.015(b)(1);

(5) the requestor failed to timely file the request for LBA under Tax Code, §41A.015(d), which requires filing it no earlier than the 11th day and no later than the 30th day after the date the property owner delivered the notice required by Tax Code, §41A.015(b)(1);

(6) the chief appraiser or ARB chair delivered a written statement to the property owner on or before the 10th day after the notice described by Tax Code, §41A.015(b)(1), was delivered confirming that the ARB or chief appraiser would comply with the requirement or cure a failure to comply with the requirement;

(7) a lawsuit was filed in district court regarding the same issues, for the same properties, and for the same tax year for which the request was filed;

(8) the property owner or the property owner's agent and the appraisal district have executed a written agreement resolving the matter; or

(9) the request for LBA was filed by an agent who does not have proper authority to act as an agent for the property owner under Tax Code, §41A.08 and §9.4205 of this title.

(b) An arbitrator shall dismiss any individual properties for which subsection (a) of this section applies and the case will move forward with only the remaining properties.

§9.4224. LBA Award.

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall render a determination on whether there was a violation of the procedural requirements submitted for review. A separate determination must be made for each individual alleged procedural violation and each individual property. If a violation is found, the arbitrator shall direct the ARB or chief appraiser, as applicable, to either comply with the procedural requirement or, if the ARB determination has been issued, to rescind the ARB order and hold a new ARB hearing that complies with the procedural requirements.

(c) Arbitrator's award. Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall render and issue an LBA award in the online arbitration system. The arbitrator shall deliver a copy of the LBA award by first class mail to any property owner not participating in the online arbitration system.

(d) No appeal of LBA award. An LBA award is final and may not be appealed.

§9.4225. Correction of Procedural Violations.

Upon receipt of the LBA award, the chief appraiser or ARB, as applicable, shall:

(1) Take any action required to comply with the requirements of the LBA award;

(2) Rescind the ARB order and schedule and conduct a new ARB hearing, as applicable; and

(3) Notify the comptroller if there is a pending request for RBA under Tax Code, §41A.01, involving the same tax year, property owner, and properties.

§9.4226. Payment of Arbitrator Fees.

(a) Amount of arbitrator fee. The arbitrator fee for LBA shall not exceed the applicable amount specified in Tax Code, §41A.015(p)(2).

(b) Multiple properties. Where the property owner has appealed multiple properties, some qualifying under Tax Code, §41A.015(p)(2)(A) and some qualifying under Tax Code, §41A.015(p)(2)(B), the fee shall not exceed the amount specified in Tax Code, §41A.015(p)(2)(B).

(c) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with Tax Code, §41A.015(k) and (l), and §9.4209 of this title.

(d) Multiple ARB hearing procedural violations. Where the property owner alleges more than one ARB hearing procedural violation or alleges the same violation on more than one property, the arbitrator fee shall be paid in accordance with Tax Code, §41A.015(k), unless the arbitrator found no violations of any of the ARB hearing procedural requirements submitted for review.

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

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304940
Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 475-2220

DIVISION 3. REGULAR BINDING ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

34 TAC §§9.4240 - 9.4247

The Comptroller of Public Accounts proposes new §9.4240, concerning request for RBA; §9.4241, concerning RBA deposit; §9.4242, concerning RBA 45-day settlement period; §9.4243, concerning comptroller appointment of arbitrators for RBA; §9.4244, concerning dismissals for lack of jurisdiction; §9.4245, concerning RBA award; §9.4246, concerning correction of appraisal roll; and §9.4247 concerning payment of arbitrator fees. The new sections will be located in Subchapter K, in new Division 3 (Regular Binding Arbitration of Appraisal Review Board Determinations). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning RBA to appeal values determined by local appraisal review boards under Tax Code, §41A.01. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4240 explains the process for requesting RBA to contest an appraisal review board (ARB) order determining a protest under Tax Code, §41A.01.

Section 9.4241 requires a deposit to be submitted with each RBA and describes the amount of deposit that must be submitted.

Section 9.4242 describes the 45-day settlement period that allows the parties to try to settle the RBA case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. It also sets forth the requirements for waiving the 45-day settlement period.

Section 9.4243 provides the comptroller's process for appointing arbitrators for an RBA.

Section 9.4244 details the reasons for which an arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction, and the effect of a dismissal on the deposit submitted for the RBA.

Section 9.4245 describes the process and requirements for the issuance of an RBA award by an arbitrator.

Section 9.4246 requires the chief appraiser to correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect an RBA award only where the arbitrator's value is lower than the value determined by the ARB.

Section 9.4247 describes the payment and processing of arbitrator fees in an RBA.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rules to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed new rules would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under Tax Code, §Sec. 41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4240. Request for RBA.

(a) Right of appeal in RBA. A property owner or the property owner's agent may appeal an ARB order determining a protest of property value through RBA under the terms and conditions of this section. A single ARB order may be appealed to RBA by only one property owner, even if multiple property owners are listed.

(b) Requirements for processing. A request for RBA will be processed for arbitration under Tax Code, §41A.01, if:

(1) The request for RBA concerns a property with an appraised or market value of $5 million or less as determined by the ARB order, or the property qualifies as the property owner's residence homestead under Tax Code, §11.13;

(2) The only matter in dispute is the determination of a protest filed under either Tax Code, §41.41(a)(1), concerning the property's appraised or market value, or under Tax Code, §41.41(a)(2) concerning unequal appraisal of the property;

(3) The deposit meets the requirements of Tax Code, §41A.03(a)(2), and §9.4204 and §9.4241 of this title;

(4) Except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are not delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(5) No lawsuit has been filed in district court regarding the property for the same issue for the same tax year; and

(6) The request for RBA is timely filed pursuant to Tax Code, §41A.03, using the comptroller-prescribed form.

(c) Contiguous tracts. If the request for RBA involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each tract of land and ARB order must separately meet the requirements of subsection (b) of this section, except that a single arbitration deposit is required. The combined total value of all ARB orders appealed may exceed the $5 million threshold requirement in subsection (b)(1) of this section as long as each individual tract is valued at $5 million or less or has a residence homestead exemption. If the appraisal district indicates two or more tracts are not contiguous during its review of the property accounts subject to the request, the property owner may select the single or contiguous tracts that will be arbitrated during the 45-day settlement period. Otherwise, the arbitrator that accepts the appointment will move forward with the single or contiguous tracts that contain the property with the highest appraised or market value.

(d) Requests for in-county or out-of-county arbitrators. A property owner or the property owner's agent may request that the comptroller appoint an arbitrator for RBA who resides in the county in which the property that is the subject of the appeal is located or an arbitrator who resides outside that county. In appointing an initial arbitrator, the comptroller shall comply with the request of the property owner unless there is not an available arbitrator who resides in the county in which the property that is the subject of the request is located. In appointing a substitute arbitrator, the comptroller shall consider but is not required to comply with the request. This does not authorize a property owner to request the appointment of a specific individual as an arbitrator.

(e) Impact of LBA award on RBA request. If a property owner is granted a new ARB hearing as a result of an LBA award and the property owner has a pending request for RBA based on the same ARB proceedings that were at issue in the LBA, the property owner and appraisal district shall promptly notify the comptroller. The pending request for RBA will be considered withdrawn or dismissed for lack of jurisdiction, depending on its current status. The deposit shall be either paid to the arbitrator or refunded according to §9.4209 or §9.4244 of this title. This shall not impact the property owner's ability to file a new request for RBA based on a subsequent ARB order.

§9.4241. RBA Deposit.

(a) Amount of deposit. A deposit shall be submitted with each request for RBA in the applicable amount specified in Tax Code, §41A.03(a)(2).

(b) Deposit amount for contiguous tracts. The deposit amount required for arbitration of contiguous tracts of land must correspond with the tract on which subsection (a) of this section would require the largest deposit, if filed separately.

§9.4242. RBA 45-Day Settlement Period.

(a) Notice of processing. The parties shall have 45 calendar days after the date that the comptroller provides notice that the request for RBA has been processed under §9.4207 of this title in which to try to settle the case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. A notice of withdrawal must be provided in accordance with §9.4208 of this title.

(b) Waiver of settlement period. A property owner or the property owner's agent may request to waive the 45-day settlement period. If the appraisal district agrees to the waiver, the comptroller shall appoint an arbitrator to the request for RBA pursuant to §9.4243 of this title.

§9.4243. Comptroller Appointment of Arbitrators for RBA.

(a) Appointment of arbitrator. After the conclusion of the 45-calendar day settlement period or waiver of the settlement period, the comptroller shall appoint an individual included in the comptroller's registry of arbitrators who is both qualified and eligible for the particular appointment under §§9.4240(d), 9.4260, and 9.4263 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the comptroller's registry of arbitrators.

§9.4244. Dismissals for Lack of Jurisdiction.

(a) Reasons for dismissal. For requests for RBA filed under Tax Code, §41A.01, the arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) the ARB order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value, or Tax Code, §41.41(a)(2), concerning unequal appraisal of the property;

(3) the appraised or market value of the property as determined in the ARB order was either more than $5 million or the property did not qualify as the property owner's residence homestead under Tax Code, §11.13;

(4) the request for RBA was filed after the deadline established in Tax Code, §41A.03, which requires submission by not later than the 60th calendar day after the date the property owner or the property owner's agent receives the ARB order determining the protest;

(5) the property owner or the property owner's agent filed an appeal with the district court under Tax Code, Chapter 42, concern-

ing the value of the same property in the same tax year that is at issue in the pending RBA;

(6) the property owner or the property owner's agent and appraisal district have executed a written agreement resolving the matter;

(7) the request for RBA was filed by an agent without proper authority as described by Tax Code, §41A.08; or

(8) an LBA award rescinded the ARB order(s) under Tax Code, §41A.015(j)(2)(B).

(b) Contiguous tracts. When an RBA proceeding is brought pursuant to Tax Code, §41A.03(a-1), involving two or more contiguous tracts of land, the arbitrator shall dismiss from the proceeding any tract of land for which subsection (a) of this section applies. If, after dismissal, two or more tracts are not contiguous, the property owner may select the single or contiguous tracts that will be arbitrated. Otherwise, the arbitrator will determine the single or contiguous tracts that contain the property with the highest appraised or market value.

§9.4245. RBA Award.

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall determine the appraised or market value of the property that is the subject of the RBA.

(c) Special appraisal. If the arbitrator determines the property qualifies for special appraisal under Tax Code, Chapter 23, Subchapter B, C, D, E, or H, the statutory provisions regarding special appraisal, and the comptroller's rules and policies, including the comptroller's special appraisal manuals, must be followed in making the appraised value determination.

(d) Determination of value of residential homestead. If the arbitrator determines that a residence homestead's appraised value is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(1) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23 was incorrectly applied, and the change correctly applies the formula;

(2) the calculation of the appraised value of the property reflected in the ARB order includes an amount attributable to new improvements, and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(3) the arbitrator determines that the market value of the property is less than the appraised value indicated on the ARB order, and the change reduces the appraised value to the market value determined by the arbitrator.

(e) Arbitrator's award. Within 20 calendar days after the conclusion of the arbitration hearing, the arbitrator shall render a determination and issue the RBA award on the online arbitration system. The arbitrator shall deliver a copy of the RBA award by regular first-class mail to any property owner not participating in the online arbitration system.

(f) No appeal of RBA award. An RBA award is final and may not be appealed except as permitted under Civil Practice and Remedies Code, §171.088, and may be enforced in the manner provided by Civil Practice and Remedies Code, Chapter 171, Subchapter D.

§9.4246. Correction of Appraisal Roll.

The chief appraiser shall correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect the RBA award only where the arbitrator's value is lower than the value determined by the ARB.

§9.4247. Payment of Arbitrator Fees.

(a) Amount of arbitrator fee. The arbitrator fee for RBA shall not exceed the applicable amount specified in Tax Code, §41A.06(b)(4).

(b) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with §9.4209 of this title and as follows:

(1) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall refund the property owner's arbitration deposit. In this case, the appraisal district, on receipt of a copy of the RBA award, shall pay the arbitrator fee.

(2) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall pay the arbitrator fee out of the property owner's deposit.

(3) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is exactly one-half of the difference in value between the property owner's opinion of value of the property as stated in the request for RBA and the ARB order, the comptroller shall process payment of the arbitrator fee and arbitration deposit pursuant to paragraph (2) of this subsection.

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

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304941
Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 475-2220

DIVISION 4. COMPTROLLER'S REGISTRY OF ARBITRATORS

34 TAC §§9.4260 - 9.4265

The Comptroller of Public Accounts proposes new §9.4260, concerning qualification for inclusion in comptroller's registry of arbitrators; §9.4261, concerning application requirements; §9.4262, concerning renewal requirements; §9.4263, concerning arbitrator eligibility for appointment; §9.4264, concerning arbitrator responsibility for registry profile; and §9.4265 concerning disciplinary action. The new sections will be located in Subchapter K, in new Division 4 (Comptroller's Registry of Arbitrators). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning the comptroller's registry of arbitrators for regular binding arbitration to appeal values determined by local appraisal review boards under

Tax Code, §41A.01, and limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4260 sets forth the requirements for an individual to be included in the comptroller's registry of arbitrators.

Section 9.4261 details the process and requirements for applying to be included in the comptroller's registry of arbitrators.

Section 9.4262 addresses the requirements for an arbitrator to continue to qualify for inclusion in the comptroller's registry of arbitrators.

Section 9.4263 sets forth eligibility requirements for appointment as an arbitrator to a particular arbitration proceeding.

Section 9.4264 requires arbitrators to update their registry profile on the online arbitration system and provide additional information required by the comptroller. It also addresses the effect of updated information that causes the arbitrator to become ineligible to serve as an arbitrator or to be removed from the comptroller's registry of arbitrators.

Section 9.4265 authorizes the comptroller to remove an arbitrator from the comptroller's registry of arbitrators or to render lesser disciplinary actions, and describes the process and requirements for taking such an action.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rules to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed new rules would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4260. Qualification for Inclusion in Comptroller's Registry of Arbitrators.

(a) Inclusion in the registry. To qualify for inclusion in the registry of arbitrators and continue to be included in the registry, an individual must meet the requirements of this section.

(b) Residency requirement.

(1) An individual must reside in the state of Texas. An individual who has been granted a residence homestead exemption on property they own and occupy in Texas satisfies the residency requirement.

(2) An individual does not qualify for inclusion in the registry of arbitrators if the individual has been granted a residence homestead exemption in another state or has been granted more than one such exemption.

(3) If an individual owns no property for which a residence homestead exemption has been granted in any state, the individual's residence will be considered the state of Texas if the individual lives in a residential property in Texas more than 50 percent of the individual's time.

(4) Falsely claiming to reside in Texas will result in the immediate removal of the individual from the registry and the reporting of this misconduct to the individual's professional licensing or certification board or regulatory authority.

(c) Professional qualifications. To qualify to serve as an arbitrator, an individual must meet the requirements described in Tax Code, §41A.06(b), including the following requirements:

(1) The individual must have completed the comptroller's courses for training and education of ARB members established under Tax Code, §5.041(a) and (e-1), and for the training and education of arbitrators established under Tax Code, §5.043, and be issued a certificate indicating completion of each course prior to applying to the registry.

(2) Individuals in any one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), must:

(A) have completed at least 30 hours of training described in Tax Code, §41A.06(B)(i), of which no more than three hours may be self-study or homework; and

(B) hold a current and continually active license in one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), during the five years preceding the application submission date.

(d) Disqualifying Employment. An individual does not qualify for inclusion in the registry of arbitrators during any period in which the individual holds any one of the following positions in this state:

(1) member of a board of directors of any appraisal district;

(2) member of any appraisal review board;

(3) employee, contractor, or officer of any appraisal district;

(4) employee of the comptroller; or

(5) member of a governing body, officer, or supervisory or managerial employee of any taxing unit.

§9.4261. Application Requirements.

(a) Application submission. Individuals who wish to be included in the registry of arbitrators shall submit their applications through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the application form to the address specified by the comptroller.

(b) Attestation. By submitting the application and documentation required, the applicant attests that the applicant:

(1) principally resides in the state of Texas in the county identified;

(2) meets all of the qualifications required under §9.4260 of this title;

(3) has read and understands the provisions of this subchapter and Tax Code, Title 1 (Property Tax Code);

(4) will conduct all arbitrations under the terms of Tax Code, Chapter 41A, and this subchapter, as applicable;

(5) will perform these arbitration services for the applicable fee specified in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable; and

(6) will update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any change in the arbitrator's registry profile, including any change in qualifications, eligibility, contact information, or any material change regarding information provided in the application, within 10 calendar days of the change.

(c) Denial of application. The comptroller shall deny an application if the applicant does not meet all of the requirements of §9.4260 of this title or if the division director, in the exercise of the division director's discretion, determines inclusion of the applicant in the registry would not be in the interest of impartial arbitration proceedings.

(d) Approval of application. If the application is approved, the applicant's name, county of residence in Texas, and other pertinent information will be added to the registry.

(e) Notification to applicant. The comptroller must notify the applicant of the approval or denial of the application as soon as practicable and, for a denial, must provide a brief explanation of the reason(s) for the denial.

(f) Update of registry. The registry will be updated within 30 calendar days of the date the comptroller approves and processes the application.

(g) Registry disclaimers. Inclusion of an arbitrator in the registry is not and shall not be construed as a representation by the comptroller that all information provided by the applicant is true and correct and shall not be construed or represented as a professional endorsement.

§9.4262. Renewal Requirements.

For an arbitrator to continue to qualify for inclusion in the registry, the arbitrator must:

(1) complete and submit the renewal form through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the renewal form to the address specified by the comptroller, on or before:

(A) each renewal date of the applicant's license or certification under which the applicant was qualified previously under §9.4260 of this title; or

(B) the second anniversary of the date the arbitrator was initially added to the registry or the arbitrator's listing on the registry was renewed;

(2) continue to meet the requirements in §9.4260 of this title;

(3) have no history of failure to comply with this subchapter;

(4) have completed during the preceding two years at least eight hours of continuing education in arbitration and alternative dispute resolution procedures offered by a university, college, or legal or real estate trade association. This continuing education requirement may be satisfied by submission of documentation that the arbitrator attended or taught personally at least eight hours of one or more training courses that meet the requirements of this paragraph;

(5) complete a revised comptroller training program on property tax law for the training and education of arbitrators established under Tax Code, §5.043, not later than the 120th day after the date the program is available to be taken if the comptroller:

(A) revises the program after the individual is included in the registry; and

(B) determines that the program is substantially revised.

§9.4263. Arbitrator Eligibility for Appointment.

(a) Eligibility for appointment. To be eligible for appointment as an arbitrator to a particular arbitration proceeding, an arbitrator must satisfy the requirements of this section.

(b) Engaging in activities in county's appraisal district. An arbitrator is ineligible for and shall not accept any appointment in a county in which the property that is the subject of the arbitration is located, if at any time during the two years preceding the appointment at issue, the arbitrator has engaged in the following activities in that county's appraisal district:

(1) represented any person or entity for compensation, or served as an officer or employee of any firm, company, or other organization that has represented another person or entity for compensation, in any proceeding under Tax Code, Title 1 (Property Tax Code);

(2) served as an officer or employee of the appraisal district; or

(3) served as a member of the appraisal review board for the appraisal district.

(c) Duration of proceeding. For purposes of subsection (b)(1) of this section, a proceeding under Tax Code, Title 1 (Property Tax Code), begins with the filing of a notice of protest and includes communications with appraisal district employees regarding a matter under protest, protest settlement negotiations, any appearance at an ARB hearing, any involvement in a binding arbitration under Tax Code, Chapter 41A, and any involvement at either the district court or appellate court level of an appeal pursued under Tax Code, Chapter 42.

(d) Family relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator is related by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573, to any of the following individuals:

(1) the property owner or the property owner's agent;

(2) an officer, employee, or contractor of the appraisal district responsible for appraising the property at issue;

(3) a member of the board of directors of the appraisal district responsible for appraising the property at issue; or

(4) a member of the ARB in the area in which the property at issue is located.

(e) Business relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator currently or during the previous two years has had a business relationship with the property owner, the property owner's agent, the ARB, or the appraisal district involved in that particular arbitration.

(f) Other conflicts of interest. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitra-

tor knows of any other conflict of interest that has not been previously described above.

§9.4264. Arbitrator Responsibility for Registry Profile.

(a) Registry profile updates. Each arbitrator included in the registry of arbitrators is required to update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any changes in contact information, including address, phone number, and email address, and any material change in the information provided in the arbitrator's application, qualifications, or eligibility for appointment, within 10 calendar days of the change. A material change includes loss of required licensure, incapacity, ineligibility, a change in county of residence. or other conditions that would prevent the individual from lawfully and professionally performing the arbitrator's arbitration duties. Once the arbitrator has submitted registry profile updates, the arbitrator will be notified that, pending review, the arbitrator will not be able to modify active cases on the online arbitration system or receive new appointments.

(b) Eligible to resume active status. If the information provided in the profile updates do not cause the arbitrator to be disqualified, the comptroller will return the arbitrator to active status, and the arbitrator will be able to access arbitration functions in the online arbitration system and receive new appointments.

(c) Ineligible to complete active cases. If any of the information provided in profile updates causes the arbitrator to be ineligible to act as an arbitrator in one or more of the arbitrator's active cases, the comptroller will reassign affected cases to an eligible arbitrator.

(d) Request for additional information. If the comptroller requires additional information, the comptroller shall notify the arbitrator of the information needed. Once the arbitrator submits the information needed, the comptroller will complete the review.

(e) Removal of arbitrator. Failure of the arbitrator to report a material change in the arbitrator's registry profile, or information provided in profile updates that cause the arbitrator to be disqualified, may result in the removal of the arbitrator from the registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this section shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

§9.4265. Disciplinary Action.

(a) Disciplinary action generally. The comptroller is authorized to remove an arbitrator from the registry or, in the comptroller's discretion, to render lesser disciplinary actions including warnings, restriction of arbitrator eligibility for certain counties, or removal from individual arbitrations.

(b) Disciplinary history. The determination to discipline may be based solely on the information or complaint at issue or on a combination of the information or complaint and the arbitrator's disciplinary history.

(c) Good cause for removal. Good cause for removal includes the following grounds:

(1) the individual engaged in repeated instances of bias or misconduct while acting as an arbitrator;

(2) the individual engaged in fraudulent conduct;

(3) the individual is disqualified or becomes disqualified under §9.4260 of this title;

(4) the individual accepts a case in violation of §9.4263 of this title;

(5) the individual violates of §9.4212 or §9.4264 of this title while acting as an arbitrator;

(6) the individual fails or declines to renew the agreement to serve as an arbitrator in the manner required under §9.4262 of this title; or

(7) the comptroller finds that inclusion of the applicant in the arbitration registry would not be in the interest of impartial arbitration proceedings.

(d) Disciplinary discretion. The comptroller may take appropriate disciplinary action where the comptroller finds clear and convincing evidence of a violation, even if that violation does not rise to the level of good cause to justify removal under subsection (c) of this section. In determining the level of discipline, the comptroller may consider not only the complaint at issue, but any disciplinary history in the arbitrator's file. Good cause for disciplinary action includes the following grounds:

(1) the individual is disqualified or becomes disqualified under §9.4262 of this title;

(2) the individual fails to respond to or refuses to comply with communications and requests for information from the comptroller's office by the deadline established in the communication; or

(3) the individual has violated one or more provisions of this subchapter.

(e) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations regarding the arbitrator.

(f) Filing a complaint. An individual may file a complaint concerning an arbitrator with the comptroller within 60 calendar days of the last incident giving rise to the complaint. The complaint must contain the following items:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitrator complained of and the alleged grounds for removal or discipline;

(2) for grounds for removal under subsection (c) of this section, at least one affidavit or unsworn declaration meeting the requirements of Civil Practice and Remedies Code, §132.001, from an individual with first-hand knowledge of the alleged conduct that supports the complaint; and

(3) as applicable, copies of all available communications exchanged between the arbitrator and the parties, including emails, documents, and any other materials, such as video or audio recordings, that support the complaint.

(g) Confidentiality. The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information reviewed under this section and may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(h) Dismissal. Complaints shall be dismissed under the following conditions:

(1) the conduct complained of does not meet the requirements of this section;

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (f) of this section; or

(3) the complaint is based on one or more substantive arbitration issues, including evidentiary considerations and the resulting award.

(i) Initial review of complaints. Within 30 calendar days after submission of a complaint under this section, the comptroller shall notify the complainant whether the complaint is under review or dismissed. The dismissal of a complaint is final and may not be appealed. If the complaint is under review, all materials the complainant submitted will be forwarded electronically, by U.S. Postal Service, or by a private third-party service such as FedEx or United Parcel Service (UPS), as long as proof of delivery is provided, to the arbitrator who is the subject of the complaint for a response.

(j) Arbitrator response. The arbitrator has 30 calendar days from delivery of the materials to respond to the comptroller, explaining why a finding of good cause should not be made.

(k) Post-response review and determination. Within 30 calendar days after receipt of the arbitrator's response, the comptroller shall determine whether clear and convincing evidence supports a finding of good cause for removal of the arbitrator from the registry or disciplinary action. The comptroller shall promptly notify the complainant and the arbitrator of the comptroller's determination.

(l) Removal or disciplinary action. If good cause for removal of the arbitrator from the registry under subsection (c) of this section is found, the arbitrator shall be removed from the registry for a period of two years from the date of the determination. If, in the comptroller's discretion, clear and convincing evidence of a violation is established, however, after reviewing the violation and the arbitrator's file, the comptroller does not find it rises to the level of good cause for removal, the comptroller may issue disciplinary action. Prior disciplinary action may be considered in future complaints. If there is neither good cause for removal nor clear and convincing evidence of a violation, no disciplinary action will be taken.

(m) No appeal. The comptroller's determination and a removal or disciplinary action is final and may not be appealed. An arbitrator removed from the registry under subsection (c) of this section may reapply for inclusion in the registry two years after the date of the removal determination. The circumstances giving rise to the removal under this section may be considered in evaluating the reapplication.

(n) No effect on determinations and awards. Any disciplinary action taken shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

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

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304942
Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 475-2220

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §801.1

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 801, relating to Local Workforce Development Boards:

Subchapter A. General Provisions, §801.1

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 801 rule change is to address changes in Texas Government Code §2308.256(a) and (g) because of the passage of House Bill (HB) 1615 by the 88th Texas Legislature, Regular Session (2023). Regarding Local Workforce Development Board (Board) composition, the bill removes the requirement that a Board member must have expertise in child care or early childhood education and adds the requirement that a Board must have representatives from the child care workforce.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§801.1. Requirements for Formation of Local Workforce Development Boards

Section 801.1 is amended by amended Texas Government Code §2308.256(a) to add that a Board must include a representative from the child care workforce and subsection §2308.256(g) subsequently removes the requirement that at least one Board member shall have expertise in child care or early childhood education by amending §801.1 as follows:

--Section 801.1(g)(2)(C)(vi) is removed because of the amended Texas Government Code §2308.256(a) requirement. The subsequent clause is renumbered.

--Section 801.1(g)(2)(D)(i) and (ii) are also removed and the language in §801.1(g)(2)(D)(ii) is merged into §801.1(g)(2)(D).

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to address changes in Texas Government Code §2308.256(a) and (g) as a result of the passage of HB 1615 by the 88th Texas Legislature, Regular Session (2023). Regarding Board composition, the bill adds the requirement that a Board must have at least one representative from the child-care workforce.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

-- will not create or eliminate a government program;

-- will not require the creation or elimination of employee positions;

-- will not require an increase or decrease in future legislative appropriations to TWC;

-- will not require an increase or decrease in fees paid to TWC;

-- will not create a new regulation;

-- will not expand, limit, or eliminate an existing regulation;

-- will not change the number of individuals subject to the rules; and

-- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to expand Board membership to ensure that Boards have adequate representation from the child care workforce and that such child care representatives are able to influence local policymaking.

PART IV. COORDINATION ACTIVITIES

During the Workforce Call on July 21, 2023, Board executive directors and Board staff were informed of the upcoming changes to the rule. The call was made at the beginning of the rulemaking process and an additional Workforce Call was made prior to the Commission approving the rule for public comment.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than January 5, 2024.

PART VI. STATUTORY AUTHORITY

The rule is proposed under the specific authority of House Bill 1615, 88th Texas Legislature, Regular Session (2023), which amended Texas Government Code §2308.256 to require that Boards include a representative of the child care workforce.

The rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Texas Government Code Chapter 2308.

§801.1. Requirements for Formation of Local Workforce Development Boards.

(a) Purpose of Rule.

(1) Upon application by the chief elected officials (CEOs) and approval of the Commission, the Commission shall forward an application to form a Local Workforce Development Board (Board) to the Governor.

(2) Before an application may be submitted to the Governor, all requirements of this section shall be met.

(b) State Law. The formation of Boards is governed by Texas Government Code[,] Chapter 2308.

(c) Chief Elected Official Agreement. Creation of a Board requires agreement by at least three-fourths of the CEOs in the local workforce development area (workforce area) who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board

shall represent at least 75 percent of the population of the workforce area.

(d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards:

(1) Mayors.

(A) The mayor of each city with a population of at least 100,000;

(B) or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;

(C) or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area.

(D) For purposes of this section, municipal population will be determined by the figure last reported by the Texas Demographic Center at the time of submission of the application to the Commission.

(2) All county judges included in a workforce area as designated by the Governor.

(e) Time of Application. CEOs in a workforce area may not establish a Board until the Governor has designated that area as a workforce area as provided in Texas Government Code[,] Chapter 2308.

(f) Applications shall meet all Governor-approved criteria for the establishment of Boards.

(g) Procedures for Formation of a Board. The CEOs shall comply with the following procedures to form a Board.

(1) Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board, they shall conduct a public process, including at least one public meeting, to consider the views of all affected organizations before making a final decision to form a Board. This public process may include, but is not limited to, notices published in various media and surveys for public comment.

(2) Application procedure.

(A) The CEOs shall submit an application to the Commission. This application shall include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each CEO who is in agreement regarding the formation of a Board, shall execute the following documents:

(i) An interlocal agreement delineating:

(I) the purpose of the agreement;

(II) the process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;

(III) the procedure that will be followed to keep those CEOs informed regarding Board activities;

(IV) the initial size of the Board;

(V) how resources allocated to the workforce area will be shared among the parties to the agreement;

(VI) the process to be used to appoint the Board members, which shall be consistent with applicable federal and state laws; and

(VII) the terms of office of the members of the Board.

(ii) An acknowledgment in the following form: We, the chief elected officials of the Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of the Board:

(I) The Board will assume the responsibilities for the following committees and councils that will be replaced by the Board unless otherwise provided in Texas Government Code[,] Chapter 2308: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee;

(II) At least one Workforce Solutions Office shall be established within 180 days of Board certification;

(III) The Board shall have its own independent staff and not be a provider of workforce services, unless the Board secures a waiver of these provisions;

(IV) The CEOs shall enter into a partnership agreement with the Board to designate a grant recipient to receive, be accountable for, and be liable for any misuse of block grant funds;

(V) The partnership agreement shall also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;

(VI) The partnership agreement shall define the process through which the Boards and CEOs will develop the strategic and operational plans, including the training plan required under the Workforce Innovation and Opportunity Act; and

(VII) The strategic plan shall be reviewed by both the Commission and the Texas Workforce Investment Council and approved by the Governor before block grants will be available to the workforce area.

(B) The application shall include evidence that any affected existing Board has been notified and agrees that its functions and responsibilities will be assumed by the proposed Board upon the proposed Board's final certification by the Governor.

(C) The application shall include the names and affiliations of individuals recommended for Board membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Texas Government Code[,] §2308.255 and §2308.256.

(i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51 percent of an individual's annual income shall be from private sector sources.

(ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs shall develop a profile of the workforce area's major industries using locally obtained information and state-published data. The Agency shall provide relevant labor market information, including data that identifies employment trends, emerging high-growth, high-demand industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the

application shall show how the regional employer profile is reflected in the Board membership.

(iii) Board membership shall include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, [and] adult basic and continuing education organizations, and the child care workforce as required by law.

(iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.

(v) Board nominees shall be actively engaged in the organization, enterprise, or field that they are nominated to represent. Board nominees shall have an existing relationship with the workforce area through residence or employment within the workforce area.

[*(vi)* At least one of the members of a Board appointed under Texas Government Code, §2308.256(a) shall, in addition to the qualifications required for the members under that subsection, have expertise in child care or early childhood education.]

(vi) [(vii)] At least one of the members of a Board appointed under Texas Government Code[,] §2308.256(a) shall, in addition to the qualifications required for the members under that subsection:

(I) be a veteran as defined in Texas Government Code[,] §2308.251(2); and

(II) have an understanding of the needs of the local veterans' population and willingness to represent the interests and concerns of veterans in the workforce area.

(D) No individual member shall be a representative of more than one sector or category described in this section, except as statutorily permitted for one or more members having the qualifications set forth in subparagraph (C)(vi) of this paragraph.[:]

[*(i)* expertise in child care or early childhood education; or]

[*(ii)* the qualifications set forth in subparagraph (C)(vii) of this paragraph.]

(E) The application shall include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.

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

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

TRD-202304894
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356

♦ ♦ ♦

CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind:

Subchapter A. Independent Living Services for Older Individuals Who Are Blind, §§853.1 - 853.6

Subchapter B. Services, §853.10

Subchapter C. Customer Financial Participation, §853.21

Subchapter D. Case Documentation, §853.30

Subchapter E. Customer's Rights, §853.40

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 853 rule change is to amend eligibility for the OIB program, clarify language for consistency purposes, and complete its four-year review.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 853, Independent Living Services for Older Individuals Who Are Blind, and any changes are described in Part II of this preamble.

SUBCHAPTER A. Independent Living Services for Older Individuals Who Are Blind

TWC proposes amendments to Subchapter A, as follows:

§853.1. Definitions

Section 853.1 is amended to remove references to Independent Living Services (ILS) and add definitions for "Older Individuals Who are Blind (OIB)" and "significant visual impairment." Subsequent paragraphs are renumbered.

§853.2. Referral

Section 853.2 is amended to remove a reference to ILS, add additional referral sources, and to more clearly describe the referral process.

§853.3. Accessible Communication

Section 853.3 is amended to remove references to ILS.

§853.4. Application

Section 853.4 is amended to more clearly describe the application process.

§853.5. Eligibility

Section 853.5 is amended to remove a reference to ILS and add "significant visual impairment" to the eligibility criteria.

§853.6. Ineligibility Determination

Section 853.6 is amended to clarify language.

SUBCHAPTER B. Services

TWC proposes amendments to Subchapter B, as follows:

§853.10. Independent Living Plan

Section 853.10 is amended to clarify the time frame for developing an ILP and to update the form number.

SUBCHAPTER C. Customer Financial Participation

TWC proposes amendments to Subchapter C, as follows:

§853.21. Customer Participation in the Cost of Services

Section 853.21 is amended to clarify language relating to customer participation in cost of service and to remove a reference to ILS.

SUBCHAPTER D. Case Documentation

TWC proposes amendments to Subchapter D, as follows:

§853.30. Case Closure

Section 853.30 is amended to add language regarding minimal services closures and remove a subsection about post-closure services. The removed subsection included obsolete terminology that was later replaced but is no longer applicable to OIB.

SUBCHAPTER E. Customer's Rights

TWC proposes amendments to Subchapter E, as follows:

§853.40. Rights of Customers

Section 853.40 is amended to remove references to ILS and add receiving a diagnosis of significant visual impairment as one of the requirements to receive OIB services.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5) "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend eligibility for the OIB program, clarify language for consistency purposes, and complete its four-year review, as required by Texas Government Code §2001.039.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to clarify program rules and increase efficiency of program operations.

PART IV. COORDINATION ACTIVITIES

The proposed rule amendments update Chapter 853 to match current OIB terminology, more accurately describe the referral, application, and case closure process, eligibility criteria, and the time frame for developing an independent living plan.

Because the proposed changes do not add new requirements but only align the rules with current policy and practices, TWC assesses that additional stakeholder engagement is not required for the development of these proposed rules. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than February 25, 2024.

SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

40 TAC §§853.1 - 853.6

PART VI. STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

§853.1. Definitions.

In addition to the definitions contained in Texas Labor Code §352.001, 34 CFR §361.5, and §856.3 of the Agency's Division for Rehabilitation Services rules, the following words and terms, when used in this chapter, shall have the following meanings:

(1) Act--The Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).

(2) Adjusted income--The dollar amount that is equal to a household's annual gross income, minus allowable deductions.

(3) Applicant--An individual who applies for [~~Independent Living Services for~~] Older Individuals Who Are Blind (OIB) [~~(ILS-OIB)~~] services.

(4) Attendant care--A personal assistance service provided to an individual with significant disabilities to aid in performing essential personal tasks, such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(5) Blind--An individual having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(6) Center for Independent Living (CIL)--Has the meaning assigned by §702 of the Act (29 USC §796a).

(7) Client Assistance Program (CAP)--A federally funded program under 34 CFR Part 370 that provides information, assistance, and advocacy for individuals with disabilities who are seeking or receiving services from programs funded under the Act. In Texas, the designated agency is Disability Rights Texas (DRTx).

(8) Comparable services or benefits--Services and benefits that are provided or paid for, in whole or part, by other federal, state, or local public programs, or by health insurance, third-party payers, or other private sources.

(9) Customer--An individual who is eligible for and receiving OIB [~~ILS-OIB~~] services under this chapter.

(10) Customer participation system--The system for determining and collecting the financial contribution that a customer may be required to pay for receiving OIB [~~ILS-OIB~~] services.

(11) Customer representative--Any individual chosen by a customer, including the customer's parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative, that individual is the customer's representative.

(12) Federal Poverty Guidelines--The poverty guidelines updated periodically in the *Federal Register* by the US Department of Health and Human Services under the authority of 42 USC §9902(2), found at https://aspe.hhs.gov/poverty-guidelines.

(13) Independent Living Plan (ILP)--A written plan in which the customer and OIB staff have collaboratively identified the services that the customer needs to achieve the goal of living independently.

(14) Low vision--A condition of having a visual acuity not more than 20/70 in the better eye with correcting lenses, or visual acuity greater than 20/70 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 30 degrees, or having a combination of both.

(15) Older Individuals Who Are Blind (OIB)--The independent living services program that serves individuals ages 55 and over who are blind or visually impaired.

(16) [~~(15)~~] Significant disability--A significant physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community.

(17) Significant visual impairment--A disease or condition of the eye that does not meet the definitions of Blind or Low Vision but does create a significant impediment to independent living and cannot be corrected with glasses or contact lenses.

(18) [~~(16)~~] Transition services--Services that:

(A) facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services; and

(B) provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community.

§853.2. Referral.

(a) An individual may be referred for OIB [~~ILS-OIB~~] services in [~~by~~] a variety of ways [~~organizations~~], including, but not limited to:

(1) a physician's office;

(2) a community organization;

(3) the Center for Independent Living (CIL);

(4) a senior community organization; [~~or~~]

(5) family, customer representative, and friends;[.]

(6) contract providers; or

(7) online self-referral portal.

(b) A referral shall include the name of the individual seeking services, the address where the individual resides, and an email [e-mail] address and telephone number, if available.

(c) During the referral process, OIB staff may determine the level of services needed by the customer, provide minimal services, or [shall] verify the customer's eligibility criteria. Minimal services may[, determine the level of services needed by the customer, and provide minimal services, which can] include information and referral [guide], a guide to independent living, bump dots for kitchen appliances, and low-cost magnifiers. If minimal services are all that a customer requires, the case may [can] be closed as a referral only.

(d) For service delivery to begin, an individual shall submit a complete application and document that all eligibility requirements are met.

§853.3. Accessible Communication.

(a) The Agency shall provide all members of the public with disabilities who are seeking information or other services from the Agency access to and use of electronic and information resources comparable to the access and use provided to members of the public without disabilities, unless compliance with this section imposes a significant difficulty or expense to the Agency under Texas Government Code §2054.460.

(b) The Agency may use alternate methods or formats to provide timely access by individuals with disabilities to Agency electronic and information resources.

(c) The Agency shall ensure that OIB [ILS-OIB] applicants and customers are given the opportunity to request and receive communication from the Agency in an alternate format or by alternate methods.

§853.4. Application.

An individual is considered to have completed the [submitted an] application process when [the individual or the individual's representative, as appropriate]:

(1) the individual or the individual's representative has completed and signed the OIB application form and an OIB staff member has entered the[--including entry of] electronic PIN into the case management system[--the ILS-OIB application form];

(2) the individual or the individual's representative has provided the information necessary to initiate an assessment to determine eligibility and service delivery; and

(3) the individual or the individual's representative is available to complete the assessment process to determine eligibility.

§853.5. Eligibility.

(a) To be eligible for OIB [ILS-OIB], a customer must:

(1) be age 55 or older;

(2) be blind or have low vision or a significant visual impairment, as defined in §853.1, relating to Definitions;

(3) be an individual for whom independent living goals are feasible; and

(4) be present in Texas.

(b) Eligibility for blindness, [or] low vision, or a significant visual impairment is determined by OIB staff based on the documented diagnosis of a licensed practitioner.

(c) Individuals shall establish eligibility through existing data and information, including, but not limited to, medical records and information used by the Social Security Administration. The information may be obtained from the applicant, the applicant's family members, or the applicant's representative. OIB staff may assist in locating or obtaining existing documentation.

(d) The Agency shall substantively evaluate the documentation and application to determine whether eligibility requirements are met.

(e) OIB staff shall endeavor to make an eligibility determination within 60 days from the time a completed and signed application for services has been received. The eligibility determination is conditional on the applicant's availability to complete the assessment process, as set forth in §853.4(3) of this subchapter. When an applicant is unavailable to complete such assessment process in a timely manner due to unforeseen circumstances, which may include, but are not limited to, medical conditions or hospitalizations, the 60-day period shall be abated until the applicant is available to complete the necessary assessment process to determine eligibility.

(f) Eligibility cannot be established unless and until all required elements under subsection (a) of this section have been completed and documented, including any assessment to establish eligibility.

(g) Eligibility requirements are applied without regard to an individual's age, color, creed, gender, national origin, race, religion, or length of time present in Texas.

§853.6. Ineligibility Determination.

(a) A determination of ineligibility shall be based only on a substantive evaluation of an applicant's completed and signed application, including all documentation required to establish eligibility under §853.5(a) of this subchapter.

(b) Before making a determination of ineligibility, OIB staff shall provide the applicant or the applicant's representative, as appropriate, an opportunity to consult with OIB staff. OIB staff shall notify the applicant, or the applicant's representative, as appropriate, of an ineligibility determination. Notice shall be provided in accessible format and through accessible methods and in compliance with[, as required under] Texas Government Code §2054.460, if applicable. The notice shall include the following:

(1) A brief statement of the ineligibility determination, with reference to the requirements under this chapter and any deficiencies;

(2) The mailing date of the determination;

(3) An explanation of the individual's right to an appeal;

(4) The procedures for filing an appeal with the Agency, including applicable time frames;

(5) The right to have a hearing representative, including legal counsel;

(6) How to contact the Texas CAP, which is DRTx; and

(7) The contact information [address or fax number] to which the appeal must be sent.

(c) When appropriate, OIB staff may refer the applicant to other agencies and facilities.

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

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

TRD-202304896
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356

SUBCHAPTER B. SERVICES

40 TAC §853.10

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.10. Independent Living Plan.

(a) Once an individual is determined eligible, the ILP is developed [and agreed to] within 90 days of the eligibility date. If the ILP cannot be completed within 90 days, then OIB staff must document the reason for the delay in a case note. [from the date of notification of eligibility, unless an alternate date is agreed to by the customer or the customer's representative, as appropriate].

(b) OIB staff must jointly develop the ILP and all subsequent amendments in writing, through consultation with the customer or the customer's representative, as appropriate.

(c) A customer may waive receipt of the written plan by signing the Agency Waiver of Independent Living Plan (VR 5154 [DARS 5154]).

(d) Through consultation, OIB staff and the customer, or the customer's representative, as appropriate, determine how services shall be delivered and document service delivery methods in the electronic record of the ILP, which OIB staff must maintain.

(e) The Agency shall ensure that the customer or the customer's representative, as appropriate, is advised of procedures and requirements affecting the development and review of the ILP.

(f) To receive a copy of the ILP and its amendments in a medium other than print, the customer must inform OIB staff of the preferred medium.

(g) OIB staff shall review the ILP at least annually with the customer or the customer's representative, as appropriate, to assess the customer's progress in meeting the objectives identified in the ILP.

(h) OIB staff shall incorporate any revisions to the ILP that are necessary to reflect changes in the customer's goals, intermediate objectives, or needs.

(i) The customer must inform the Agency in a timely manner of changes that will affect the provision of services, including, but not limited to, the customer's unavailability to receive services.

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

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

TRD-202304897
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356

SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

40 TAC §853.21

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.21. Customer Participation in the Cost of Services.

(a) Some [The following] independent living services, as set forth [defined] in §853.11, relating to Scope of Services, may be [are] subject to customer participation in cost of service as defined in OIB policy.[:]

[(1) Transportation, excluding transportation for diagnostic services; and]

[(2) Adaptive aids or appliances that cost more than $50.]

(b) OIB staff shall administer the customer participation system in accordance with the rules in this chapter, the OIB [ILS-OIB] policy manual, and 34 CFR §367.67(b)(1).

(c) OIB staff shall provide those independent living services [defined as] not requiring customer participation in cost of services as set forth in §853.11 of this chapter at no cost to the customer.

(d) OIB staff shall determine the customer's adjusted gross income and the percentage of the Federal Poverty Guidelines at https://aspe.hhs.gov/poverty-guidelines for that income, based on documentation provided by the customer.

(e) OIB staff is required to apply the Federal Poverty Guidelines at https://aspe.hhs.gov/poverty-guidelines to determine customer participation.

(f) The customer or customer's representative shall sign an ILP [a customer participation agreement] acknowledging [the amount of] the customer's contribution [fee] for services and providing written agreement that:

(1) the information provided by the customer or the customer's representative about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits is true and accurate; or

(2) the customer or the customer's representative chooses not to provide information about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits.

(g) If the customer or the customer's representative, as appropriate, chooses not to provide information on the customer's household size, annual gross income, allowable deductions, and comparable services or benefits, the customer shall pay the entire cost of applicable services.

(h) The customer shall report to OIB staff as soon as possible all changes to household size, annual gross income, allowable deductions, and comparable services or benefits and sign an amended ILP [~~a new customer participation agreement~~].

(i) When the customer amends the ILP [~~signs a new participation agreement~~], the new [~~amount of the~~] customer's contribution [~~fee~~] for services [~~service~~] takes effect the beginning of the following month. The new contribution [~~amount~~] shall not be applied retroactively.

(j) OIB staff shall develop a process to reconsider and adjust the customer's contribution [~~fee~~] for services based on circumstances that are both extraordinary and documented. This may include assessing the customer's ability to pay the customer's participation amount. Extraordinary circumstances include:

(1) an increase or decrease in income;

(2) unexpected medical expenses;

(3) unanticipated disability-related expenses;

(4) a change in family size;

(5) catastrophic loss, such as fire, flood, or tornado;

(6) short-term financial hardship, such as a major repair to the customer's home or personally owned vehicle; or

(7) other extenuating circumstances for which the customer makes a request and provides supporting documentation.

(k) The customer's contribution [~~calculated fee~~] for services remains in effect during the reconsideration and adjustment process.

(l) OIB staff shall:

(1) use program income that is received from the customer [~~participation system~~] only to provide services outlined in §853.11 of this chapter; and

(2) report fees collected as program income.

(m) The Agency may not use program income received from the customer [~~participation system~~] to supplant any other fund sources.

(n) The Agency may not pay any portion of the customer's contribution [~~participation fee~~].

(o) The customer's ILP [~~participation agreement~~] and all financial information collected by OIB staff are subject to subpoena.

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

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

TRD-202304898
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356

SUBCHAPTER D. CASE DOCUMENTATION

40 TAC §853.30

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.30. Case Closure.

(a) The Agency closes a case when minimal services have been provided enhancing the applicant's independence and the applicant does not need the full array of OIB services, or when the customer's ILP has been completed, typically within 18 months of plan development. The case will be closed sooner without completion of services if:

(1) the customer does not meet eligibility criteria;

(2) the customer is unavailable, for an extended period of time, to complete an assessment of independent living needs and staff has made repeated efforts to contact and encourage the applicant to participate;

(3) the customer has refused services or further services;

(4) the customer is no longer present in Texas;

(5) the customer's whereabouts are unknown;

(6) the customer's medical condition is rapidly progressive or terminal;

(7) the customer has refused to cooperate with the Agency; or

(8) the customer's case has been transferred to another agency.

(b) A customer or the customer's representative, as appropriate, shall be notified of any case closure except when the customer's whereabouts are unknown.

[~~(c) Post-closure services shall not normally exceed six months.~~]

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

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

TRD-202304899

Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356

SUBCHAPTER E. CUSTOMER'S RIGHTS

40 TAC §853.40

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.40. Rights of Customers.

(a) In accordance with applicable legal provisions, the Agency does not, directly or through contractual or other arrangements, exclude, deny benefits to, limit the participation of, or otherwise discriminate against any individual on the basis of age, color, disability, national origin, political belief, race, religion, sex, or sexual orientation. For the purposes of receiving OIB [~~ILS-OIB~~] services, the customer must be blind or have a low vision diagnosis or a significant visual impairment as defined in §853.1; however, that requirement is not considered discrimination against any individual on the basis of disability.

(b) OIB staff shall ensure the customer or the customer's representative, as appropriate, is notified in an accessible format about the rights included in subsection (a) of this section, and §853.21, relating to Customer Participation in the Cost of Services, when:

(1) the customer applies for services;

(2) OIB staff determines that a customer is ineligible for services; and

(3) OIB staff intends to terminate services.

(c) Filing a complaint with DRTx:

(1) A customer has the right to appeal a determination to the state's CAP. The CAP in Texas is implemented by DRTx.

(2) DRTx advocates are not employees of the Agency. There are no fees for CAP services, which are provided by advocates and attorneys when necessary. Services are confidential.

(3) A customer who is enrolled in OIB services [~~ILS-OIB~~], or the customer's representative, may file a complaint with DRTx alleging that a requirement of OIB [~~ILS-OIB~~] was violated. The complaint does not need to be filed with OIB [~~ILS-OIB~~].

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

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

TRD-202304900
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356