ADOPTED RULES

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

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.21 (Requirements for Military Spouses), without changes as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6991). The repeal will not be republished. The Board will adopt a new §72.21 in a separate rulemaking action.

The Board received no public comments on this rulemaking.

This repeal is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this repeal.

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

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: December 1, 2023
For further information, please call: (512) 305-6700

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22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.21 (Requirements for Military Spouses), with changes to the text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6992). Changes include corrections to title, paragraph, and subparagraph reference locations. The rule will be republished. The current §72.21 is being repealed in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which the spouse of an active duty military member may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. The adopted new §72.21 reflects those changes and delineates the four methods.

In general, the requirements are: First, a military spouse who is licensed in good standing in another jurisdiction may obtain a Board license within 30 days by providing written notice to the Board along with proof of residency.

Second, a military spouse who previously held a now-expired Texas license but currently has a license from another jurisdiction may be issued a new license by following the application requirements of 22 TAC §77.2 (License Application).

Third, a military spouse who has never held a license in Texas or in any other jurisdiction may nonetheless be issued a license if the spouse can demonstrate professional competency through other means that are satisfactory to the Board's executive director; the spouse will still be required to pass professional examinations.

And fourth, a military spouse may practice chiropractic in Texas without obtaining a Board license if the spouse holds a license in good standing in another jurisdiction, notifies the Board, provides proof of residency, and submits a copy of the military member's military identification card.

The new rule also provides an administrative process for appealing a denial of a license or authority to practice under these four methods and for waiving of Board application fees.

The Board received no public comment on this rule.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this new rule.

§72.21. Requirements for Military Spouses.

(a) This section applies to an individual who is the spouse of an active duty member of the United States armed forces (military member).

(b) This section states licensing requirements established under Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses); this section does not modify any rights provided under federal law.

(c) The spouse of a military member may obtain a Texas license from the Board by other than the process required by §72.2 of this title (relating to License Application) or have a license from another jurisdiction recognized by the Board in one of four ways:

(1) The spouse of a military member may be issued a license to practice chiropractic in Texas if the spouse is currently licensed in good standing in a jurisdiction with licensing requirements substantially similar to Texas Occupations Code Chapter 201.

(A) Before issuing a license to practice chiropractic under paragraph (1) of this subsection, the spouse of a military member shall provide to the Board:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the military member's permanent change of duty station orders.

(B) Not later than the 10th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall verify if the spouse is licensed in good standing in another jurisdiction.

(C) Not later than the 30th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall issue a license if the information satisfies the Board.

(D) If the Board approves a license under subparagraph (A) of this paragraph, the license shall be valid for a period the same as any biennial license or 12 months from the date of issuance, whichever is longer.

(2) The Board may issue a license to the spouse of a military member who previously held a Texas license that expired while the spouse and the military member lived in another state within the five years preceding the new application date, and who currently holds a license in good standing in a jurisdiction with substantially similar licensing requirements to Texas Occupations Code Chapter 201. The spouse of a military member seeking a license under this subsection shall comply with the application requirements of §77.2.

(3) The spouse of a military member who has never held a license in Texas or any other jurisdiction may apply for a license by showing professional competency by other means (other than examination results), to the satisfaction of the executive director, through verified military service, training, or education.

(4) The spouse of a military member may practice chiropractic in Texas without obtaining a license from the Board if the spouse currently holds a license in good standing from another jurisdiction with licensing requirements substantially similar to those in Texas Occupations Code Chapter 201.

(A) The spouse of a military member seeking to practice chiropractic in Texas under paragraph (4) of this subsection shall provide the Board with:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the military member's permanent change of duty station orders; and

(iii) a copy of the military member's current military identification card.

(B) Not later than the 30th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall notify the spouse of the spouse's authority to practice chiropractic in Texas.

(C) The spouse of a military member who practices chiropractic under subparagraph (A) of this paragraph may do so only for the time the military member is permanently stationed in Texas but not to exceed three years.

(D) In the event of a divorce or a similar event, the spouse may continue to practice chiropractic in Texas under subparagraph (A) of this paragraph until the third anniversary of the date the spouse received the confirmation described in subparagraph (B) of this paragraph.

(d) The Board shall notify in writing all holders of licenses issued under this section of the requirements to renew the license with the Board.

(e) The spouse of a military member practicing in Texas under this section shall comply with all statutes and Board rules relating to chiropractic practice and are subject to disciplinary action by the Board.

(f) The Board shall exempt the spouse of a military member eligible for a license or the authority to practice under this section from application and exam fees.

(g) The spouse of a military member seeking a license or the authority to practice under this section shall undergo a criminal history background check.

(h) The Board shall maintain and update a list of jurisdictions with substantially similar licensing requirements as Texas Occupations Code Chapter 201.

(i) If the Board administratively denies an application for a license or the authority to practice under this section, an applicant may appeal the decision to the full Board.

(j) If the full Board denies an application for a license or the authority to practice under this section, the applicant may request a hearing at the State Office of Administrative Hearings.

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

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Christopher Burnett
General Counsel
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For further information, please call: (512) 305-6700

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22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.22 (Requirements for Military Members and Veterans), without changes as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6994). The repeal will not be republished. The Board will adopt a new §72.22 in a separate rulemaking action.

The Board received no public comment on this rulemaking.

The repeal is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this repeal.

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

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Christopher Burnett
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22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.22 (Requirements for Military Members and Veterans), with changes to the text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6994). Changes include corrections to the location reference for an outside section. The rule will be republished. The current §72.22 is being repealed in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which an active duty military member or veteran may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. This adopted new §72.22 reflects those changes and delineates the four methods.

In general, the requirements are: First, a military member or veteran who is licensed in good standing in another jurisdiction may obtain a Board license within 30 days by providing written notice to the Board along with proof of residency.

Second, a military member or veteran who previously held a now-expired Texas license but currently has a license from another jurisdiction may be issued a new license by following the application requirements of 22 TAC §77.2 (License Application).

Third, a military member or veteran spouse who has never held a license in Texas or in any other jurisdiction may nonetheless be issued a license if the military member or veteran spouse can demonstrate professional competency through other means that are satisfactory to the Board's executive director; the military member or veteran will still be required to pass professional examinations.

And fourth, a military member only may practice chiropractic in Texas without obtaining a Board license if the military member holds a license in good standing in another jurisdiction, notifies the Board, provides proof of residency, and submits a copy of the military member's military identification card.

The new rule also provides an administrative process for appealing a denial of a license or authority to practice under these four methods, and for waiving of Board application fees.

The Board received no public comment about this rulemaking.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed rule.

§72.22. Requirements for Military Members and Veterans.

(a) This section applies to an individual who is an active duty member of the United States armed forces (military member) or a veteran.

(b) This section states licensing requirements established under Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses); this section does not modify any rights provided under federal law.

(c) A military member may obtain a Texas license from the Board by other than the process required by §72.2 of this title (relating to License Application) or have a license from another jurisdiction recognized by the Board in one of four ways.

(1) A military member or veteran may be issued a license to practice chiropractic in Texas if the military member or veteran is currently licensed in good standing in a jurisdiction with licensing requirements substantially similar to Texas Occupations Code Chapter 201.

(A) Before practicing chiropractic under paragraph (1) of this subsection, a military member or veteran shall provide to the Board:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the member's permanent change of duty station orders.

(B) Not later than the 10th day after a military member or veteran provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall verify if the military member or veteran is licensed in good standing in another jurisdiction.

(C) Not later than the 30th day after a military member or veteran provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall issue a license if the information satisfies the Board.

(D) If the Board approves a license under subsection (c) of this section, the license shall be valid for a period the same as any biennial license or 12 months from the date of issuance, whichever is longer.

(2) The Board may issue a license to a military member or veteran who previously held a Texas license that expired while the military member or veteran lived in another state for at least six months within the five years preceding the application date and the military. A military member or veteran seeking a license under this subsection shall comply with the application requirements of §77.2.

(3) A military member or veteran who has never held a license in Texas or any other jurisdiction may apply for a license by showing professional competency by other means (other than examination results), to the satisfaction of the executive director, through verified military service, training, or education.

(4) A military member only may practice chiropractic in Texas without obtaining a license from the Board if the military member currently holds a license in good standing from another jurisdiction with licensing requirements substantially similar to those in Texas Occupations Code Chapter 201.

(A) A military member seeking the authority to practice chiropractic in Texas under paragraph (4) of this subsection shall provide the Board with:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the member's permanent change of duty station orders; and

(iii) a copy of the military member's current active duty military identification card.

(B) Not later than the 30th day after a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall notify the military member that the member has the authority to practice chiropractic in Texas.

(d) The Board shall notify in writing all holders of licenses issued under this section of the requirements to renew the license with the Board.

(e) The Board shall maintain and update a list of jurisdictions with substantially similar licensing requirements as Texas Occupations Code Chapter 201.

(f) The Board shall exempt a military member or veteran eligible for a license under this section from application and exam fees.

(g) The Board shall exempt a military member or veteran from any fee or penalty for failing to timely renew a license if the failure was due to active duty military service.

(h) A military member or veteran seeking a license or authority to practice under this section shall undergo a criminal history background check.

(i) A military member or veteran practicing in Texas under this section shall comply with all statutes and Board rules relating to chiropractic practice and is subject to disciplinary action by the Board.

(j) If the Board administratively denies an application for a license under subsection (c) of this section, an applicant may appeal the decision to the full Board.

(k) If the full Board denies an application for a license under subsection (c) of this section, the applicant may request a hearing at the State Office of Administrative Hearings.

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

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Christopher Burnett
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Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.36, §213.37

Introduction. The Texas Board of Nursing (Board) adopts new 22 Texas Administrative Code §213.36 and §213.37. The Board simultaneously proposed both new sections in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7740). The adopted rule text of 22 Texas Administrative Code §213.36 contains a change that will result in the republication of this section. There are no changes to the proposed text of 22 Texas Administrative Code §213.37, which will not be republished.

Reasoned Justification. During the 88th Legislative Session, the Texas Legislature enacted SB 1343 which requires that complaints alleging a standard-of-care violation by an Advanced Practice Registered Nurse (APRN) be reviewed by an expert reviewer, appointed by the Board, who is an APRN practicing in the same advanced practice role and with the same population focus as the APRN who is the subject of the complaint. The bill further requires that the appointed expert reviewer determine whether the APRN violated the standard-of-care applicable to the circumstances of the allegation, record the expert reviewer's conclusions in a report, and submit the report to the Board. Before initiating informal proceedings involving the APRN, the Board must provide notice of the proceedings along with a deidentified copy of the expert reviewer's report. These new sections are adopted under the authority of the Occupations Code § 301.151 and are necessary for compliance with the statutory mandates found in Texas Occupations Code §§ 301.457, 301.4575, and 301.464.

Section by Section Overview. 22 Texas Administrative Code §213.36 sets forth the process the Board must follow when investigating an alleged standard of care violation by an APRN. 22 Texas Administrative Code §213.36(a) implements Texas Occupations Code § 301.457(h) by establishing that the Board shall appoint an APRN reviewer to assist in the investigation in the same practice role with the same population focus if the Board determines that an act of the APRN likely falls below an applicable standard of care. 22 Texas Administrative Code §213.36(b) implements Texas Occupations Code § 301.457(i), mirroring the statutory language regarding when the Board may not refer a complaint to against an APRN to an APRN reviewer. 22 Texas Administrative Code §213.36(c) implements Texas Occupations Code § 301.4575(1)&(2), mirroring the statutory language regarding the procedures for an advanced practice registered nurse review. 22 Texas Administrative Code §213.36(d) implements Texas Occupations Code § 301.4575 by providing guidance as to the contents of the preliminary report to be submitted by the reviewer.

22 Texas Administrative Code §213.37 sets forth the procedure for the disclosure of the expert reviewer's report. This new section implements Texas Occupations Code § 301.464(b) by providing that the notice of any informal proceeding include a copy of the expert report with any identifying information other than the role and population focus of the expert reviewer redacted.

Summary of Comments and Agency Response

Summary of Comment 1: The Board received a comment from the APRN Alliance. This organization is a partnership of Advanced Practice Registered Nurse organizations, including the Consortium of Texas Certified Nurse-Midwives (CTCNM), Texas Association of Nurse Anesthetists (TxANA), Texas Clinical Nurse Specialists (TxCNS), Texas Nurse Practitioners (TNP), and the Texas Nurses Association (TNA). The APRN Alliance commented in support of the language as drafted.

Agency Response: The Board appreciates the comment from the APRN Alliance in support of the proposed language.

Summary of Comment 2: The Board received a comment from the Texas Medical Association (TMA). TMA is a private, voluntary, non-profit association of more than 57,000 physicians and medical student members. TMA expressed concerns that the use of the term "medical care" in the proposed rule could be interpreted either to expand the scope of the rule to include physicians or to expand the scope of practice for advanced practice registered nurses (APRNs).

Agency Response: The Board agrees that due to the various definitions in existing law of the term "medical care," as cited in the comment, the term "nursing care" is the more appropriate term in this rule section. The intention of the Board is to ensure that the expert report includes all relevant facts related to the APRN's care, including the medical aspects of care that are performed by APRNs. As TMA acknowledges, and the Board agrees, the existing statutory framework allows certain medical acts to be performed by an APRN under physician delegation. The Board further agrees that these medical aspects of care, when performed by an APRN, constitute the practice of nursing. As such, the Board agrees that the language of the rule should be adopted with the term "nursing care" substituted for the term "medical care."

Statutory Authority. The amendments are adopted under the authority of the Occupations Code, §301.151. Texas Occupations Code § 301.151 addresses the general rulemaking authority of the Board to adopt and enforce rules consistent with Chapter 301 to perform its duties and conduct proceedings before the Board, regulate the practice of professional nursing and vocational nursing, establish standards of professional conduct for license holders under Chapter 301, and determine whether an act constitutes the act of professional nursing or vocational nursing. Further, the adoption of these sections is necessary to comply with rulemaking requirements in Texas Occupations Code §§ 301.457, 301.4575, and 301.464.

§213.36. Alleged Standard of Care Violations by Advanced Practice Registered Nurses.

(a) If, during the course of investigating a complaint made against an APRN, the board determines that an act of the APRN likely falls below an acceptable standard of care, the board shall appoint another APRN as an expert reviewer to assist in the investigation. An APRN appointed as an expert reviewer under this section must practice in the same advanced practice role with the same population focus as the APRN who is the subject of the complaint.

(b) The board may not refer a complaint against an APRN to an expert reviewer appointed under this section if the act alleged is:

(1) within the scope of practice applicable to a nurse who is not an advanced practice registered nurse; or

(2) considered unprofessional conduct, as described by Occupations Code, § 301.452(b)(10).

(c) An expert reviewer appointed under this section to review allegations against an APRN shall:

(1) determine whether the APRN violated the standard of care applicable to the circumstances of the allegation; and

(2) issue to the board a preliminary written report of the expert reviewer's conclusions.

(d) A report issued by an expert reviewer under this section must include:

(1) relevant facts concerning the nursing care rendered;

(2) the applicable standard of care;

(3) application of the standard of care to the relevant facts;

(4) a determination of whether the standard of care has been violated; and

(5) a summation of the expert reviewer's opinion.

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

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For further information, please call: (512) 305-6879

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CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.14

Introduction. The Texas Board of Nursing (Board) adopts new 22 Texas Administrative Code §214.14, relating to Standardized Examination Prepared by Private Entity, without changes to the proposed text published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7742) and will not be republished.

Reasoned Justification. During the 88th Legislative Session, the Texas Legislature enacted S.B. 1429, which required the Board to adopt rules related to the use of a standardized examination prepared by a private entity. The rules must be applicable to all schools of nursing regulated by the Board. S.B. 1429 requires that the rules prohibit the use of a standardized examination as a graduation requirement or to deny students an affidavit of graduation. The required rules authorize the use of standardized examination only to familiarize students with computerized testing and for the enumerated and limited purposes in Texas Occupations Code § 301.1571(a)(2)&(3). S.B. 1429 further requires that a standardized examination, prepared by a private entity, may not account for more than ten (10) percent of a course grade. Additionally, S.B. 1429 requires that the adopted rules prohibit the regulated school from requiring a student to attend a course offered by the private entity which provides the standardized examination. The rules adopted by the Board are necessary to implement this legislation.

Section by Section Overview. 22 Texas Administrative Code §214.14(a) prohibits a vocational nursing education program from using a student's score on a standardized examination as a graduation requirement; or as the basis for denying the student an affidavit of graduation.

22 Texas Administrative Code §214.14(b) prohibits the vocational nursing education program from using a student's score to account for more than 10 (ten) percent of the student's final grade in any course provided under the program.

22 Texas Administrative Code §214.14(c) lists the only permissible manner in which vocational nursing education programs

may use a standardized examination prepared by a private entity. These include letting students familiarize themselves with computerized testing, using scores as a component of program admissions criteria, evaluating a student's strengths and weaknesses for remediation purposes; and identifying students who are experiencing academic difficulties and require early remediation. The rule also allows use of standardized test scores in assessing the effectiveness of the program by providing trend data, comparisons with nationwide averages, assessment of student knowledge of program content, assessment of success in curriculum revisions or changes, and as a measure of student mastery of program content.

22 Texas Administrative Code §214.14(d) prohibits the vocational nursing education program from requiring the student, based on the student's score, to attend any course offered by the private entity that created the standardize exam.

22 Texas Administrative Code §214.14(e) clarifies that failure to comply with the requirements of this section will subject a vocational nursing education program to board disciplinary action, including a change in the program's approval status.

Public Comment. The Board did not receive any written comments on the proposal's rule language. However, Staff of the Board met with Career Colleges and Schools of Texas (CCST) informally regarding the wording of the preamble published in the *Texas Register,* relating to whether this section applies to all nursing programs in Texas. The Board takes this opportunity to clarify that the rule language applies to all nursing programs regulated by the Board of Nursing in Texas.

Statutory Authority. This new section is adopted under the authority of the Occupations Code §§ 301.151, 301.157, and 301.1571. Texas Occupations Code § 301.151 addresses the general rulemaking authority of the Board to adopt and enforce rules consistent with Chapter 301 to perform its duties and conduct proceedings before the Board, regulate the practice of professional nursing and vocational nursing, establish standards of professional conduct for license holders under Chapter 301, and determine whether an act constitutes the act of professional nursing or vocational nursing. Texas Occupations Code § 301.157 authorizes the Board to prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses and to prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses. Texas Occupations Code § 301.1571 requires the Board to adopt rules related to the use of standardized examinations prepared by a private entity.

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

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James W. Johnston
General Counsel
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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.14

Introduction. The Texas Board of Nursing (Board) adopts new 22 Texas Administrative Code §215.14, relating to Standardized Examination Prepared by Private Entity, without changes to the proposed text published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7743) and will not be republished.

Reasoned Justification. During the 88th Legislative Session, the Texas Legislature enacted S.B. 1429, which required the Board to adopt rules related to the use of a standardized examination prepared by a private entity. The rules must be applicable to all schools of nursing regulated by the Board. S.B. 1429 requires that the rules prohibit the use of a standardized examination as a graduation requirement or to deny students an affidavit of graduation. The required rules authorize the use of standardized examination only to familiarize students with computerized testing and for the enumerated and limited purposes in Texas Occupations Code § 301.1571(a)(2)&(3). S.B. 1429 further requires that a standardized examination, prepared by a private entity, may not account for more than ten (10) percent of a course grade. Additionally, S.B. 1429 requires that the adopted rules prohibit the regulated school from requiring a student to attend a course offered by the private entity which provides the standardized examination. The rules adopted by the Board are necessary to implement this legislation.

Section by Section Overview. 22 Texas Administrative Code §215.14(a) prohibits a professional nursing education program from using a student's score on a standardized examination as a graduation requirement or as the basis for denying the student an affidavit of graduation.

22 Texas Administrative Code §215.14(b) prohibits the professional nursing education program from using a student's score to account for more than ten (10) percent of the student's final grade in any course provided under the program.

22 Texas Administrative Code §215.14(c) lists the only permissible ways professional nursing education programs may use a standardized examination prepared by a private entity. These include letting students familiarize themselves with computerized testing, using scores as a component of program admissions criteria, evaluating a student's strengths and weaknesses for remediation purposes; and identifying students who are experiencing academic difficulties and require early remediation. The rule also allows use of standardized test scores in assessing the effectiveness of the program by providing trend data, comparisons with nationwide averages, assessment of student knowledge of program content, assessment of success in curriculum revisions or changes, and as a measure of student mastery of program content.

22 Texas Administrative Code §215.14(d) prohibits the professional nursing education program from requiring the student, based on the student's score, to attend any course offered by the private entity that created the standardized exam.

22 Texas Administrative Code §215.14(e) clarifies that failure to comply with the requirements of this section will subject a professional nursing education program to board disciplinary action, including a change in the program's approval status.

Public Comment. The Board did not receive any written comments on the proposal's rule language. However, Staff of the

Board met with Career Colleges and Schools of Texas (CCST) informally regarding the wording of the preamble published in the *Texas Register,* relating to whether this section applies to all nursing programs in Texas. The Board takes this opportunity to clarify that the rule language applies to all nursing programs regulated by the Board of Nursing in Texas.

Statutory Authority. This new section is adopted under the authority of the Occupations Code §§ 301.151, 301.157, and 301.1571. Texas Occupations Code § 301.151 addresses the general rulemaking authority of the Board to adopt and enforce rules consistent with Chapter 301 to perform its duties and conduct proceedings before the Board, regulate the practice of professional nursing and vocational nursing, establish standards of professional conduct for license holders under Chapter 301, and determine whether an act constitutes the act of professional nursing or vocational nursing. Texas Occupations Code § 301.157 authorizes the Board to prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses and to prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses. Texas Occupations Code § 301.1571 requires the Board to adopt rules related to the use of standardized examinations prepared by a private entity.

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

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CHAPTER 217. LICENSURE, PEER ASSISTANCE, AND PRACTICE

22 TAC §217.5

Introduction. The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §217.5, relating to Temporary License and Endorsement, with changes to the proposed text published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7286). The rule will be republished.

Reasoned Justification. In 2019, the Texas Legislature enacted S.B. 1200 which created Texas Occupations Code § 55.0041, to recognize out-of-state occupational licenses for a spouse of a military service member. This allows the portability of a license for the spouse of a service member, so the spouse does not have to redo any curriculum and testing from one state to another when the service member changes duty station. In 2021, during the 87th Regular Legislative Session, the Legislature enacted H.B. 139 that further amended Texas Occupations Code § 55.0041, requiring a state agency that issues a license with a residency requirement for license eligibility to adopt rules regarding the documentation necessary for a military spouse applicant to establish residency; allowing the provision to the agency a copy of the permanent change of station order for the military service member to whom the spouse is married.

During the 88th Legislative Session, S.B. 422 was enacted, which amending Texas Occupations Code § 55.0041 extending this occupational licensing reciprocity to military members themselves who often must station in states outside of their original license was issued, but who still wish to provide valuable services, such as nursing, that are experiencing workforce shortages. Under the new bill, a state agency that issues business or occupational license must determine within a thirty-day period whether the original jurisdiction of licensure for a military service member or military spouse is in good standing. Upon confirmation, a military service member can retain the Texas license for three years. The revised law also provides that a military spouse licensed pursuant to Texas Occupations Code § 55.0041, may retain the license for the full three-year period notwithstanding a divorce or similar event affecting the license holder's status as a spouse. The adopted amendments are necessary to comply with these statutory changes.

Section by Section Overview. 22 Texas Administrative Code §217.5(h) relates to out-of-state licensure of military spouse applicants. The proposed amendment to §217.5(h) adds "service member" as an eligible applicant along with the previously covered military spouse. Further, 22 Texas Administrative Code §217.5(h) is amended to add provisions that a license application under this rule will not be charged a fee, a licensure determination will be made within 30 days upon showing of residency and licensure in good standing in the out of state jurisdiction, and that a license issued under Texas Occupations Code § 54.0041 may continue until the third anniversary of issuance regardless of divorce or similar event.

Public Comment. The Board received a comment from the APRN Alliance. This organization is a partnership of Advanced Practice Registered Nurse organizations, including the Consortium of Texas Certified Nurse-Midwives (CTCNM), Texas Association of Nurse Anesthetists (TxANA), Texas Clinical Nurse Specialists (TxCNS), Texas Nurse Practitioners (TNP), and the Texas Nurses Association (TNA).

First, the commenter states that in subdivision (h)(4)(B) of the proposal, the Texas Board of Nursing would be required to determine if the service member or spouse is licensed and in good standing in another state within 30 days of receipt of an application. They note however that S.B. 422 requires the license to be issued within 30 days of "receipt." They state that it appears that the proposed rule is applying the standards for reciprocity in S.B. 422, at Texas Occupations Code § 55.0041(e)(2), rather than the standards for applications, at Texas Occupations Code § 55.005(a). The commenter believes that the agency would issue a license within 30 days regardless of the rule. The commenter stated that they wanted the Board to clarify these sections of the rule to ensure the proposal is consistent with statute.

Second, the organization comments that, throughout proposed Subsection (h), the Board is adding language to the rule to read "military service member or military spouse, but the title stem in Subsection (h) was not amended to include reference to "military service member." The organization suggests the title be amended to read "Out-of-State Licensure of Military Service Member or Military Spouse" to provide clarity.

Agency Response: The Board declines to amend the proposed rule language to include the thirty (30) day deadline in Texas Occupations Code § 55.005(a) as this change is unnecessary

for consistency with the statute. Texas Occupations Code § 55.005(a), which relates to expedited license procedure for military service members, military veterans, and military spouses, addresses the timeline for an agency to process an application and issue a license to an applicant who qualifies for licensure under Texas Occupations Code § 55.004. Unlike Texas Occupations Code § 55.0041, which this adoption implements, there is no rulemaking directive associated with this § 55.005. Given the lack of any rulemaking directive and the explicit requirements of the section, the Board finds that there is no rulemaking necessary to implement this legislation. Any rulemaking action related to this section would be superfluous in that it would simply restate the existing law. The Board affirms the commenter's stated belief that the agency would comply with all statutory deadlines after the filing of a complete, qualifying application.

The Board agrees with the commenter's recommendation to amend the title of 22 Texas Administrative Code §217.5(h), which currently reads "Out-of-State Licensure of Military Spouse." The commenter recommends amending the title of the subsection to "Out-of-State Licensure of Military Service Member or Military Spouse" to provide clarity. The Board agrees that the title shall be amended to "Out-of-State Licensure of Military Service Member or Military Spouse" in the adopted rule.

Statutory Authority. This new section is adopted under the authority of the Texas Occupations Code § 301.151. Texas Occupations Code § 301.151 addresses the general rulemaking authority of the Board to adopt and enforce rules consistent with Chapter 301 to perform its duties and conduct proceedings before the Board, regulate the practice of professional nursing and vocational nursing, establish standards of professional conduct for license holders under Chapter 301, and determine whether an act constitutes the act of professional nursing or vocational nursing. These amendments are necessary for compliance with rulemaking requirements found in Texas Occupations Code § 55.0041.

§217.5. Temporary License and Endorsement.

(a) A nurse who has practiced nursing in another state within the four years immediately preceding a request for temporary licensure and/or permanent licensure by endorsement may obtain a non-renewable temporary license, which is valid for 120 days, and/or a permanent license for endorsement by meeting the following requirements:

(1) Graduation from an approved Texas nursing education program or a program with substantially equivalent education standards to a Texas approved nursing program as defined below.

(A) A professional nursing education program operated in another state may be determined to have substantially equivalent education standards to a Texas approved nursing program if:

(i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure professional nursing program of study that awards a nursing diploma or degree upon completion;

(ii) the program includes general education courses providing a sound foundation for nursing education for the level of preparation;

(iii) the program's nursing courses include didactic content and supervised clinical learning experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span; and

(iv) for baccalaureate degree nursing programs, nursing courses must also include didactic content and supervised clinical learning experiences, as appropriate, in community, research, and leadership.

(B) A vocational nursing education program operated in another state may be determined to have substantially equivalent education standards to a Texas approved nursing program if:

(i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure vocational/practical nursing program of study that awards a vocational/practical nursing certificate, diploma, or degree upon completion;

(ii) the program's nursing courses include didactic and supervised clinical learning experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span; and

(iii) the program includes support courses providing a sound foundation for nursing education for the level of preparation.

(C) A clinical competency assessment program shall be deemed substantially equivalent to a Texas approved nursing program while compliant with Tex. Occ. Code §301.157(d-8) and (d-9). A clinical competency assessment program will be deemed to not be substantially equivalent to a Texas approved nursing program if the program fails to meet applicable requirements of Tex. Occ. Code §301.157(d-11) and (d-12).

(D) If an applicant does not have substantially equivalent education under subparagraph (A) or (B), the applicant may become eligible for licensure if the applicant enrolls in an approved Texas program and completes the necessary educational requirements.

(E) If an applicant for licensure as a registered nurse has completed a clinical competency assessment program which is deemed not to be substantially equivalent to Board standards for Texas programs under subparagraph (C), the Board may issue a provisional license to the applicant once the applicant has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination). The applicant will be eligible for full licensure if the applicant completes the requirements of clause (i) or (ii) of this subparagraph:

(i) The applicant completes 500 hours of clinical practice under the direct supervision of an approved preceptor. The applicant, prior to beginning practice, must submit the name and license number of a potential preceptor for Board approval. After completion of 500 hours of clinical practice under direct supervision of the approved preceptor and the preceptor's signature that the applicant is competent and safe to practice nursing, the applicant may be eligible for full licensure.

(ii) The applicant completes an educational program at an approved Texas program which is designed to assess and improve clinical skills for applicants who have not completed supervised clinical experiences in their prior educational program. The applicant must seek and receive the Board's approval prior to entering into the program to ensure that the program will allow the applicant may be eligible for full licensure. The applicant must provide the Board evidence of completion of the approved program.

(F) If an applicant for licensure as a registered nurse has completed a clinical competency assessment program which is deemed not to be substantially equivalent to Board standards for Texas programs under subparagraph (C), in lieu of completing the requirements

of subparagraph (E), an applicant may be eligible for full licensure by submitting proof, for Board review and approval, of at least 500 hours of clinical practice as a nurse in a single employment setting that is verified by a licensed nursing supervisor. The licensed nursing supervisor's signature shall evidence that the applicant is competent and safe to practice nursing;

(2) Satisfactory completion of the licensure examination according to Board established minimum passing scores:

(A) Vocational Nurse Licensure Examination:

(i) Prior to April 1982--a score of 350 on the SBTPE;

(ii) Beginning October 1982 to September 1988--a score of 350 on the NCLEX-PN; and

(iii) October 1988 and after, must have achieved a passing report on the NCLEX-PN; and

(B) Registered Nurse Licensure Examination:

(i) Prior to July 1982--a score of 350 on each of the five parts of the SBTPE;

(ii) Prior to February 1989--a minimum score of 1600 on the NCLEX-RN;

(iii) February 1989 and after, must have achieved a passing report on the NCLEX-RN; and

(iv) January 2015 and after, for applicants taking the Canadian NCLEX-RN, must have achieved a passing report on the Canadian NCLEX-RN;

(3) Licensure by another U.S. jurisdiction or licensure from a Canadian province by NCLEX-RN;

(4) For an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions--verification of LVN licensure as required in §217.4(a)(1) of this chapter or verification of RN licensure must be submitted from the country of education or as evidenced in a credential evaluation service full education course by course report from a credential evaluation service approved by the Board, as well as meeting all other requirements in paragraphs (2) and (3) of this subsection;

(5) Filing a completed "Application for Temporary License/Endorsement" containing:

(A) personal identification and verification of required information in paragraphs (1) - (3) of this subsection; and

(B) attestation that the applicant meets current Texas licensure requirements and has never had disciplinary action taken by any licensing authority or jurisdiction in which the applicant holds, or has held licensure and attestation that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading;

(6) the required application processing licensure fee, which is not refundable;

(7) submitting fingerprints for a complete criminal background check; and

(8) a passing score on the jurisprudence exam approved by the Board, effective September 1, 2008.

(b) Credential evaluation service (CES).

(1) A CES wishing to be approved by the Board must meet the following requirements:

(A) The CES must be a member of a national credentialing organization that sets performance standards for the industry. The CES must adhere to the prevailing standards for the industry.

(B) The CES must specialize in the evaluation of international nursing education and licensure.

(C) The CES must be able to demonstrate its ability to accurately analyze academic and licensure credentials for purposes of United States comparison, with course-by-course analysis of nursing academic records.

(D) The CES must be able to manage the translation of original documents into English.

(E) The CES must inform the Board in the event applicant documents are found to be fraudulent.

(F) The CES must have been in the business of evaluating nursing education for a minimum of five years.

(G) The CES must cite all references used in its evaluation in its credentials report.

(H) The CES report must identify the language of nursing instruction and the language of textbooks for nursing education.

(I) The CES must use only original source documentation in evaluating nursing education.

(J) The CES report must describe the comparability of the foreign education to United States standards.

(K) The CES report must detail course clock hours for theory and clinical components of nursing education.

(L) The CES must be able to issue an evaluation report within a reasonable time period, not to exceed six weeks.

(M) The CES must have an efficient and accessible process for answering customer queries.

(N) The CES must be able to provide client references/reviews upon request.

(O) The CES must have an established record retention policy.

(P) The CES must be able to provide testimony for Board hearings, if required.

(2) The CES must complete the form(s) and affidavit required by the Board, submit all required documentation, and receive approval from the Board before providing a report for Board consideration. The Board will maintain a list of approved CES providers.

(c) A nurse who has not practiced nursing in another state within the four years immediately preceding a request for temporary licensure and/or permanent licensure by endorsement will be required to:

(1) complete a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The nurse must submit an Application for Six Month Temporary Permit (RN) or an Application for Six Month Temporary Permit (LVN), as applicable, to the Board for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or a nursing program of study;

(2) submit to the Board evidence of the successful completion of the requirements of paragraph (1) of this subsection;

(3) after completing the requirements of paragraphs (1) - (2) of this subsection, submit to the Board verification of the completion of the requirements of subsection (a)(1) - (8) of this section.

(d) The Board adopts by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by this section, and which are available at http://www.bon.state.tx.us/olv/forms.html:

(1) Application for Six Month Temporary Permit (RN); and

(2) Application for Six Month Temporary Permit (LVN).

(e) A nurse who has had disciplinary action at any time by any licensing authority is not eligible for temporary licensure until completion of the eligibility determination.

(f) Upon initial licensure by endorsement, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

(g) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

(h) Out-of-State Licensure of Military Service Member or Military Spouse.

(1) Pursuant to Texas Occupations Code §55.0041, a military service member or military spouse is eligible to practice nursing in Texas if the member or spouse:

(A) holds an active, current license to practice nursing in another state or territory:

(i) that has licensing requirements, including education requirements, that are determined by the Board to be substantially equivalent to the requirements for nursing licensure in Texas; and

(ii) is not subject to any current restriction, eligibility order, disciplinary order, probation, suspension, or other encumbrance;

(B) submits a copy of the member's or spouse's military identification card;

(C) notifies the Board of the member's or spouse's intent to practice nursing in Texas on a form prescribed by the Board; and

(D) meets the Board's fitness to practice and eligibility criteria set forth in §213.27 (relating to Good Professional Character), §213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice) of this title.

(2) If a military service member or military spouse meets the criteria set forth in this subsection, the Board will issue a license to the member or spouse to practice nursing in Texas. The member or spouse will not be charged a fee for the issuance of the license. A license issued under this subsection is valid through the third anniversary of the date of the issuance of the license; thereafter, the license is subject to the Board's standard renewal cycle.

(3) A military service member or military spouse who is unable to meet the criteria set forth in this subsection remains eligible to seek licensure in Texas, as set forth in §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), §221.3 (relating to APRN Education Requirements for Licensure), §221.4 (relating to Licensure as an APRN), §213.30 (relating to Declaratory Order of Eligibility for Licensure), or the other remaining subsections of this section.

(4) For a military service member or military spouse applying for licensure under this subsection, the Board will:

(A) determine whether the jurisdiction in which the member or spouse is licensed has licensure requirements substantially equivalent to the requirements for the type of license in this state; and

(B) not later than 30 days after the date the member or spouse provides notice of intent to practice in this state and a copy of the military identification card, verify whether the member or spouse is licensed in good standing in the jurisdiction in which the member or spouse is licensed.

(5) While practicing nursing in Texas, the military service member or spouse must comply with all laws and regulations applicable to the practice of nursing in Texas.

(6) A military spouse issued a license under this section may continue to practice under the license until the third anniversary of its issuance regardless of the occurrence before that date of divorce or a similar event affecting the license holder's status as a military spouse.

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

Filed with the Office of the Secretary of State on March 1, 2024.

TRD-202400919
James W. Johnston
General Counsel
Texas Board of Nursing
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Proposal publication date: December 15, 2023
For further information, please call: (512) 305-6879

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

25 TAC §§417.47, 417.49, 417.50

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §417.47, concerning Training Requirements for State Mental Health Facilities; §417.49, concerning References; and §417.50, concerning Distribution.

The repeal of §§417.47, 417.49, and 417.50 is adopted without changes to the proposed text as published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7122). These repeals will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeals is to reflect the move of the Department of State Health Services state hospital rules in Texas Administrative Code (TAC) Title 25, Chapter 417, Subchapter A to HHSC in 26 TAC Chapter 926. The new rules are adopted simultaneously elsewhere in this issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended January 8, 2024.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §552.052, which requires HHSC to provide certain training for employees of State Hospitals and requires the Executive Commissioner to adopt rules to require State Hospitals to provide refresher training courses to employees.

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

Filed with the Office of the Secretary of State on February 29, 2024.

TRD-202400912
Karen Ray
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Effective date: March 20, 2024
Proposal publication date: December 8, 2023
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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 926. TRAINING FOR FACILITY STAFF

26 TAC §§926.1 - 926.6

The Texas Health and Human Services Commission (HHSC) adopts new §926.1, concerning Application; §926.2, concerning Definitions; §926.3, concerning Training for New Employees; §926.4, concerning Additional Training for Employees who Provide Direct Care to Individuals; §926.5, concerning State Hospital Refresher Training; and §926.6, concerning State Supported Living Center (SSLC) Refresher Training.

Sections 926.1 - 926.6 are adopted without changes to the proposed text as published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7127). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections reflect the move of the state hospitals from the Department of State Health Services and the SSLCs from the Department of Aging and Disability Services to HHSC. In this rulemaking, HHSC moved certain state hospital rules from Title 25 of the Texas Administrative Code (TAC), Chapter 417, Subchapter A and SSLC rules from 40 TAC Chapter 3, Subchapter D, Training, to 26 TAC and consolidated state hospital and SSLC rules under 26 TAC Chapter 926. The rules update agency information, provide uniform training topics and timeframes, and remove text regarding expedited training due to the COVID-19 disaster declaration. The repeal of certain rules from 25 TAC Chapter 417, Subchapter A and 40 TAC Chapter 3, Subchapter D is adopted simultaneously elsewhere in this issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended January 8, 2024.

During this period, HHSC received comments regarding the proposed rules from Disability Rights Texas (DRTx). A summary of comments relating to the rules and HHSC's responses follows.

Comment: DRTx supports the requirement that the training be competency-based.

Response: HHSC appreciates the comment. No changes are necessary in response to this comment.

Comment: DRTx recommends HHSC modify the rules to allow for staff to test out of refresher training if staff are following the training materials.

Response: HHSC declines to make this amendment. Texas Health and Safety Code Section 552.052(e) requires refresher training for state hospital employees at least annually, unless there is good reason for a particular employee to be allowed an exception. Section 555.024(d) requires refresher training for SSLC direct care employees on a regular basis, without exception.

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §552.052, which requires HHSC to provide certain training to State Hospital employees, and for the Executive Commissioner to adopt rules regarding refresher trainings for employees, and Health and Safety Code §555.024, which requires HHSC to provide certain training to SSLC employees, and for the Executive Commissioner to adopt rules regarding refresher trainings for employees.

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

Filed with the Office of the Secretary of State on February 29, 2024.

TRD-202400913

Karen Ray
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2819

The commissioner of insurance adopts amendments to 28 TAC §21.2819, concerning extensions of time frame requirements for providers and health plans regarding claim submissions and payments in Insurance Code §§843.337, 843.342, 1301.102, and 1301.137--prompt payment deadlines--due to a catastrophic event. The amendments to §21.2819 implement Senate Bill 1286, 88th Legislature, 2023. The amendments are adopted with changes to the proposed text published in the October 6, 2023 issue of the *Texas Register* (48 TexReg 5819). Section 21.2819 was revised in response to public comments. The adoption also includes nonsubstantive changes to correct drafting errors in the existing rule and to clarify meanings. The section will be republished.

REASONED JUSTIFICATION. Amendments to 28 TAC §21.2819 are necessary to implement SB 1286, which allows an entity--an HMO, a preferred provider carrier, an exclusive provider carrier, a physician, or a provider--to qualify for an extension of prompt payment deadlines after a catastrophic event. The Texas Department of Insurance (TDI) has discretion to extend prompt payment deadlines after a catastrophic event by publishing a notice or by approving an entity's request for an extension.

SB 1286 adopted a TDI biennial recommendation. During the COVID-19 pandemic, TDI issued bulletins about extensions of various deadlines. There were questions about processes for these extensions indicating necessary clarifications, and so TDI made a recommendation to the Legislature in its 2022 Biennial Report. TDI's goals for the biennial recommendation were to clarify (1) the standards for entities requesting extensions to prompt pay deadlines; (2) the duration of the extensions; and (3) TDI's authority to approve, limit, or disapprove requests. The adopted rule clarifies the process for requesting and receiving prompt payment deadline extensions.

Section 21.2819 provides the process for an entity to submit a request to TDI for an extension of prompt payment deadlines due to the effects of a catastrophic event on its normal business operations.

An amendment to subsection (a) clarifies the date range within which an entity must notify TDI following a catastrophic event and request to toll the applicable claims submission and payment deadlines. The amendment specifies that the five-day period begins on the date the event began substantially interfering with the entity's normal business operations, or as specified in a notice published by the commissioner. In response to comment, TDI has changed the proposed text by replacing the term "notification" with "request" in the second sentence of subsection (a).

One amendment to subsection (b) clarifies how entities will electronically communicate with TDI regarding an extension request, and what information they need to provide. Rather than notifying TDI a second time at the end of the business interruption, entities will be required to provide all necessary information in their initial request. Another amendment to subsection (b) eliminates the need for the notification to be a sworn affidavit, as that is an unnecessary additional expense to entities that are experiencing administrative challenges. In response to comment, TDI changed the proposed text by replacing "notification" with "request" in two places.

The adoption also amends the required elements in the paragraphs in subsection (b) to better track extension requests; for example, a physician's or provider's national provider identification number or a managed care carrier's NAIC number will be required. The amendments to subsection (b)(5) further require a statement that there is a substantial interference to normal business operations due to the catastrophic event to ensure that the statutory requirements are met. In response to comment, TDI has changed the text as proposed to replace "that" with "how" in subsection (b)(5) to ensure that entities provide sufficient information to document the need for an extension of applicable claim deadlines. Some entities contract with third parties or delegees to administer their payment requirements. In that instance, the entity may notify TDI that a catastrophic event interrupted the business operations of the third party and that the interruption is also affecting the entity's business operations. TDI will take this business arrangement into consideration in its review of a request.

The amendments to subsection (b) also require an entity to provide the initial date the catastrophic event caused an interruption in claims submission or processing activities, the expected date of resumption of normal business operations, and information needed to identify entities and locations that are affected by an event. In response to comment, the proposed text has been changed to add the word "reasonably" to subsection (b)(4) to clarify TDI's expectation that entities limit their extension requests to reasonable time frames.

Amendments to subsection (c) clarify the time frame of an extension. The proposed amendments have been changed in response to comment. As adopted, the text provides that the applicable deadlines in 28 TAC §§21.2804, 21.2806 - 21.2809, and 21.2815 will be tolled until the earlier of any date specified in a commissioner notice, the date listed in TDI's approval of a request, or the date the entity is able to resume normal business operations. If the extension is related to a notice from the commissioner, the notice may provide additional information about the duration of the extension. This adopted text reflects changes TDI made to the proposed text in response to comment, including changes to replace "notification" with "request," to add "the earlier of" to clarify the duration of the extension, and to replace "the date TDI disapproves a request" with "the date the entity is able to resume normal business operations." These changes to the proposed text ensure that an entity does not obtain a temporary extension for a request that TDI ultimately disapproves and clarify that if an entity is able to resume normal business operations sooner than expected, the extension does not continue in effect.

In addition, in new subsection (d) the adopted text sets out a process for requesting an extension request should an entity require more time than a commissioner notice or TDI approval previously allowed. The entity must submit this request at least three business days before the existing extension's expiration explaining why it needs additional time. Since an entity must submit a subsequent extension request in advance, TDI has changed the proposed text to replace "continues" with "is expected to continue." Also, in response to comment, TDI changed the proposed text to replace "notification" with "request," and "substantially impair" with "substantially interfere with" to align with the statutory language. Finally, in response to comment, TDI has changed the proposed text to add a requirement to subsection (d) that an entity notify TDI within three business days of resumption of normal business operations if the resumption occurs sooner than the expiration of an extension.

The amendments add subsection (e) to address the possibility that TDI may need additional information when determining whether to approve a request for an extension. The new subsection also specifies that TDI may disapprove a request if the nature of the event does not meet the definition of a catastrophic event that substantially interferes with an entity's normal business operations or may limit a requested extension if the duration of interruption to normal business operations is not proportional to the nature of the catastrophic event. The proposed text has been changed by adding "for any request received" to the end of the first sentence in the subsection.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on November 6, 2023.

Commenters: TDI received comments from two commenters. Commenters in support of the proposal with changes were the Texas Association of Health Plans and the Texas Medical Association.

Comments on §21.2819

Comment. One commenter asks TDI to clarify whether the five-day period under §21.2819(a), within which an entity must file a request for an extension in prompt payment deadlines, refers to business days or calendar days.

Agency Response. The five-day period refers to calendar days except that, consistent with 28 TAC §1.7, if the last day is a Saturday, Sunday, or a legal holiday, the period runs until the next day that is neither a Saturday, Sunday, nor a legal holiday.

Comment. One commenter recommends that TDI differentiate between the process for an entity to obtain an extension related to a notice published by TDI and an extension that is requested but is not related to a notice published by TDI. The commenter states that this approach would more closely track the statutory provisions relating to extensions, as amended by SB 1286, and suggests additional language in subsections (a) - (d), along with two additional subsections that would separately address extensions related to a TDI notice and extension requests not related to a TDI notice. The commenter also points out that "notification" and "request" are not synonymous.

Agency Response. TDI disagrees that the statute requires a substantive difference in the process for an extension, depending on whether TDI publishes a notice recognizing a catastrophic event has occurred, and declines to make the suggested changes to create a bifurcated process. The proposed rule creates a single process because in both cases, the same information is needed to verify the entity's need for an extension and allow TDI to share information with the public related to extensions. TDI expects the process set forth in this rule to sufficiently address most catastrophic events; however, there is a wide range of potential catastrophic events.

As amended by SB 1286, the statute gives TDI flexibility to respond to such events on a case-by-case basis by issuing a notice. If needed, TDI can include specific instructions within a catastrophic event bulletin. In the past (for example, in response to the COVID-19 pandemic in 2020), TDI has issued bulletins to health care providers, insurers, and HMOs in conjunction with a disaster declaration issued by the governor or commissioner. Bulletins are a practical, scalable mechanism for TDI to dynamically meet the needs of affected entities following a catastrophic event.

TDI agrees with the commenter that "notification" and "request" have different meanings. To reflect the process more accurately, TDI has changed the text as proposed to replace each use of the term "notification" in §21.2819 with the term "request."

Comment. One commenter recommends that, because the statute refers to TDI approving an extension due to a catastrophic event that "substantially interferes" with the entity's "normal business operations," such interference must impact both claims submission or processing activities and other business operations that are not related to claims submission or processing activities. The commenter asserts that this interpretation is appropriate because the definition of catastrophic event in rule already includes the condition that the event "causes an interruption in the claims submission or processing activities of an entity for more than two consecutive business days."

Agency Response. TDI disagrees that the statutory text, as amended by SB 1286, expanded the type of business operations that must be impacted by a catastrophic event to include operations both related and unrelated to claims submission or processing. The statutory text cited was not newly added but rather reorganized by SB 1286.

Comment. One commenter expresses concerns about the proposed five-day notice period being tied to the date the event began substantially interfering with normal business operations, rather than being tied to the catastrophic event itself. The commenter states that this change could make it more difficult for TDI to assess whether a notice has been filed according to the timing required by the rule.

Agency Response. TDI believes that basing the time frame on the date the catastrophic event began substantially interfering with normal business operations is appropriate. There are various types of catastrophic events that could impact different entities in different ways and at different times. Even when TDI publishes a notice or bulletin to address a particular catastrophic event, there is not necessarily a single date that applies to all entities. The definition of catastrophic event in §21.2802(5), which TDI did not propose to amend, requires that the event cause an interruption in the entity's claims submission or processing activities for more than two consecutive business days. There is no incentive for an entity to delay submitting a request to TDI. The applicable deadlines are tolled starting with the date identified in §21.2819(b)(3), which may not be more than five days from the date the notification is submitted.

Comment. One commenter asks TDI to clarify that, even in instances of TDI's publication of a notice, TDI will provide reason-

able and prompt timelines for when a notification must be submitted by an entity.

Agency Response. TDI declines to make the requested clarification. Section 21.2819(a) requires an entity to send notice of an extension request to TDI within five days of the date the catastrophic event began substantially interfering with the normal business operations of the entity, or as specified in a notice published by the commissioner regarding the catastrophic event.

Comment. One commenter opposed the proposed removal of the requirement in subsection (b)(1) that entities submit extension notifications in the form of a sworn affidavit. The commenter suggests that the absence of a sworn affidavit would provide less recourse if an entity submits false information, and could make it more likely for entities to submit inappropriate extension requests in order to toll prompt payment deadlines. The commenter said that the removal of the affidavit requirement could cause TDI to incur a larger and unavoidable administrative burden to timely reject or disapprove repeated bad faith requests, and would result in delays in payments by managed care carriers to providers, which would ultimately undermine patient care.

Agency Response. TDI disagrees with the commenter and declines to make a change. Requiring a sworn affidavit creates unnecessary administrative costs and barriers for entities affected by catastrophic events. While the financial cost of a notarization in itself may be minimal, the potential burden on entities in obtaining a notarization following a catastrophic event may be significant. Moreover, there are existing mechanisms in the Insurance Code to ensure accountability by providing TDI with recourse for false submissions to TDI. For example, Insurance Code §841.704 and §843.464(a)(2) establish criminal penalties for submitting a required statement or report to the commissioner that is false. TDI has no less recourse to pursue that fraud than it would if the fraud was contained in a sworn affidavit. In addition, an insurer may be subject to a penalty for unfair claim settlement practices for not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim under Insurance Code §542.003(b)(4). Also, insurers that do not comply with the prompt payment provisions of Insurance Code Chapter 542, Subchapter B, concerning prompt payment of claims, could be liable for damages, including interest penalties. Furthermore, TDI is unaware of any evidence to support the claim that removing the affidavit requirement will result in an increase in wrongful requests to extend prompt payment deadlines. As previously stated, statutory mechanisms exist to ensure accountability in the submission of extension requests. Entities are encouraged to notify TDI if they suspect that another entity has abused this process.

Comment. A commenter recommends that TDI amend subsection (b)(2) to require an entity requesting an extension of prompt payment deadlines following TDI's publication of a notice allowing an extension after a catastrophic event to provide certain additional information. Specifically, the commenter recommends that the request demonstrate that (1) the event impacting the entity is the same one specified in the notice published by the commissioner, and (2) the entity falls within the scope of the commissioner's notice.

Agency Response. TDI declines to make the requested change. The rule already requires in subsection (b)(2) that the entity identify the specific nature of the catastrophic event. TDI does change the text as proposed for subsection (b)(5) to replace "that" with "how" to strengthen the requirement for the entity to state *how* the catastrophic event is substantially interfering with the entity's normal business operations.

Comment. A commenter expresses concern that the requirement in proposed §21.2819(b)(4) for entities to identify the date they expect to resume operations might encourage entities to overstate the expected time frame to avoid the statute's prompt payment timelines. The commenter suggests deleting the requirement that an entity identify the date it expects to resume normal business operations and adding a new paragraph to subsection (b) to require an entity to identify the date the entity reasonably expects the claims interruption to cease. The commenter also recommends adding a new requirement that entities inform TDI within five days of the interruption to claims submission or processing activities ceasing to exist.

Agency Response. TDI agrees in part with the commenter and has changed the text as proposed to add the term "reasonably" to subsection (b)(4). TDI has also added a new provision in subsection (d) requiring an entity to notify TDI within three business days of the date the entity resumed normal business operations if they are able to do so before the date the extension would otherwise expire.

Comment. One commenter suggests expanding §21.2819(b) to require entities to attest that they will take reasonable steps to mitigate the effects of the catastrophic event.

Agency Response. TDI declines to add the suggested text. Entities already have sufficient incentive to mitigate business interruptions, and TDI encourages entities to take steps to mitigate the effects of a catastrophic event.

Comment. One commenter recommends adding language to require that, for requests for an extension in prompt payment deadlines that are not related to a TDI notice, the entity state if and how the catastrophic event is interfering with its normal business operations that are not related to claims submission or processing activities.

Agency Response. TDI declines to add the suggested text. SB 1286 conditions TDI's approval of an extension request on a catastrophic event substantially interfering with an entity's normal business operations. The change to the text as proposed in §21.2819(b)(5) to require an entity to state "how" (rather than "that," as in the proposed rule) the catastrophic event is substantially interfering with the entity's normal business operations addresses the need for entities to explain the impact of the catastrophic event.

Comment. One commenter recommends adding a new paragraph to subsection (b) requiring an entity to inform TDI (if an extension is in place) when the entity either ceased having a claims interruption or no longer experienced substantial interference in normal business operations as a result of the catastrophic event. The commenter recommends that the deadline extension automatically terminate as of the earlier of those dates (even if a longer time frame was approved by the TDI request).

Agency Response. TDI declines to make the requested changes. TDI believes that the requirement in subsection (b)(4) that an entity identify the date it reasonably expects to resume normal operations establishes an appropriate safeguard in the effective use of the deadline-extension process following a catastrophic event. Entities are encouraged to notify TDI if they suspect that another entity has abused this process.

Comment. One commenter expresses concern that §21.2819(c) allows a deadline to be tolled before TDI has affirmatively disap-

proved a request and argues that this is not consistent with the statute. The commenter notes that there is no incentive for TDI to timely process requests, and if TDI fails to act, the deadlines could be tolled indefinitely. The commenter suggests changes to subsection (c) to clarify that the end date for counting the days for tolling must be framed as "the earlier of" the date the interruption in claims submission or processing activities ceased; the date listed in the TDI notice or in TDI's approval; or, for extensions based on requests from entities, the date the catastrophic event ceased substantially interfering with the entity's normal business operations. The commenter also states that the statutory language clearly requires TDI to approve an entity's request before any extension or tolling is allowed.

Agency Response. TDI agrees with the commenter and has changed the text of subsection (c) as proposed to add "the earlier of" and to add "or the date the entity is able to resume normal business operations" in place of "the date TDI disapproves a request." TDI is normally able to process extension requests within a few business days. Based on experience to date, TDI staff believes the vast majority of extension requests will be valid, and it will be rare that TDI needs to limit or disapprove an extension. By deleting "the date TDI disapproves a request," the rule will not allow any exemption without TDI's approval.

Comment. One commenter recommends that, if TDI does not add language to conform to the commenter's recommendation that the rule differentiate between extension requests and extension notifications, TDI use consistent language within subsection (d) and not conflate the two terms.

Agency Response. TDI agrees with the comment and has changed the text as proposed to replace six instances of the term "notification" in §21.2819(a) - (d) with the term "request."

Comment. One commenter notes that TDI uses the term "substantially impair" in lieu of "substantially interfere" in subsection (d) with regard to requests for additional extensions in prompt payment deadlines. The commenter recommends that, for consistency, TDI use the term "substantially interfere with" rather than "substantially impair" normal business operations with regard to requests for additional extensions in prompt payment deadlines.

Agency Response. TDI agrees and has made the requested change to the text as proposed in subsection (d).

Comment. One commenter recommends that TDI revise subsection (e) to conform with the commenter's other recommended changes to the rule. The commenter recommends adding "or any notification or request received" at the end of the first sentence of subsection (e) in reference to the requirement that TDI contact an entity requesting an extension in prompt payment deadlines if TDI needs more information from the entity. The commenter also recommends that the rule contain separate conditions that must be met for TDI's disapproval of an extension request: (1) failure to meet the definition of catastrophic event; or (2) a determination of no substantial interference with the entity's normal business operations, including claims submission or processing activities. The proposed rule establishes a disapproval process based on the failure of an event to meet the definition of a catastrophic event that substantially interferes with the entity's normal business operations. The commenter also recommends that TDI delete the requirement in subsection (e) that the limitation be based on a lack of proportionality between the duration of the interruption to normal business operations and the nature of the catastrophic event. The commenter's suggested language would replace the duration of interruption to normal business operations with the duration of substantial interference with normal business operations.

Agency Response. As previously stated, TDI has made a number of changes to the text as proposed in response to the comments received, including replacing instances of the term "notification" in §21.2819(a) - (d) with the term "request." TDI agrees in part with the request to change in the first sentence of subsection (e), regarding additional information, by adding "for any request received." TDI declines to adopt the commenter's request to include the term "notification." Using only the term "request" is in keeping with TDI's intent to create a single process for extension requests. As addressed previously, TDI declines to create a bifurcated process. Separate standards for disapproving or limiting an extension request, whether or not the request relates to a TDI notice, are not needed; in either case, the request must meet the definition of a catastrophic event.

Comment. One commenter suggests adding new subsection (f) to address the process related to TDI disapproving or limiting an extension request. The commenter suggests that TDI should provide the entity with a detailed explanation of the rationale for the disapproval or limitation and provide an appeals process. The commenter states that an appeals process is crucial to avoid claims that TDI's review of an entity's extension request occurs without the entity's having recourse as to the impact of a certain event on the entity's ability to do business.

Agency Response. TDI declines to add the requested new subsection. Catastrophic events inevitably create significant burdens on communities. Recognizing this, TDI historically has issued bulletins to provide those affected--including providers, insurers, HMOs, and others--with information to help them address the challenges that ensue. Bulletins provide straightforward information that is designed to address entities' most pressing challenges following a catastrophic event. If entities have concerns about a disapproval or limitation following an extension request that they submitted to TDI, they are encouraged to contact TDI to discuss their concerns.

Comment. One commenter recommended conforming changes to the quarterly claims submission reporting requirements in §21.2821(c)(17), to replace "certifications" of catastrophic events with "notifications and requests."

Agency Response. TDI declines to make the requested change because §21.2821 is outside the current rulemaking.

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.2819 under Insurance Code §§843.151, 843.337, 1301.007, 1301.102, and 36.001.

Insurance Code §843.151 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 843.

Insurance Code §843.337 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician's or provider's request for an extension of claim submission deadlines due to a catastrophic event that substantially interferes with normal business operations.

Insurance Code §1301.007 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 1301.

Insurance Code §1301.102 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician's or provider's request for an extension of claim submission

deadlines due to a catastrophic event that substantially interferes with normal business operations.

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

§21.2819. Catastrophic Event.

(a) An MCC, a physician, or a provider must notify the Texas Department of Insurance (TDI) if, due to a catastrophic event, it is unable to meet the deadlines in §21.2804 of this title (relating to Requests for Additional Information from Treating Preferred Provider), §21.2806 of this title (relating to Claims Filing Deadline), §21.2807 of this title (relating to Effect of Filing a Clean Claim), §21.2808 of this title (relating to Effect of Filing Deficient Claim), §21.2809 of this title (relating to Audit Procedures), and §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period), as applicable. The entity must send a request required under this section to TDI within five days of the date the catastrophic event began substantially interfering with the normal business operations of the entity, or as specified in a notice published by the commissioner regarding the catastrophic event.

(b) An entity must send the request required under this section to TDI by email to PromptPay@tdi.texas.gov, unless an alternative electronic method is provided by TDI for a specified event. The request must:

(1) be from:

(A) if for a physician or a provider, the physician, provider, office manager, administrator, or their designee; or

(B) if for an MCC, a corporate officer or a corporate officer's designee;

(2) identify the specific nature of the catastrophic event;

(3) identify the first date the catastrophic event caused an interruption in the claims submission or processing activities of the physician, provider, or MCC;

(4) identify the date the physician, provider, or MCC reasonably expects to resume normal business operations;

(5) state how the catastrophic event is substantially interfering with the entity's normal business operations;

(6) include the contact information for the physician, provider, or MCC, including each entity's name, email address, phone number, and:

(A) if for a physician or provider, the national provider identification number; or

(B) if for an MCC, the entity's NAIC number; and

(7) include the physical address of each business or practice location affected by the catastrophic event.

(c) A request under this section tolls the applicable deadlines in §§21.2804, 21.2806, 21.2807, 21.2808, 21.2809, and 21.2815 of this title for the number of days between the date identified in subsection (b)(3) of this section and the earlier of any date specified in a notice published by the commissioner or listed in TDI's approval of a request, or the date the entity is able to resume normal business operations.

(d) If a catastrophic event is expected to continue to substantially interfere with an entity's normal business operations past the date in a notice published by the commissioner or in TDI's approval of an extension request, then the entity must send an additional request meeting the requirements of this section to TDI at least three business days before the expiration of the existing extension. The new request must explain why an additional extension is needed. If an entity resumes normal business operations sooner than the date the extension would otherwise expire, the entity must send a notification to TDI of the date the entity resumed normal business operations, no later than three business days after that date.

(e) TDI will contact the physician, provider, or MCC if more information is needed for any request received. TDI may disapprove a request if the nature of the event does not meet the definition of a catastrophic event that substantially interferes with the entity's normal business operations. TDI may limit a requested extension if the identified duration of interruption to normal business operations is not proportional to the nature of the catastrophic event.

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

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Texas Department of Insurance
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For further information, please call: (512) 676-6555

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 25, 2024 adopted an amendment to 31 TAC §57.981, concerning Bag, Possession, and Length Limits, and the repeal of §57.983, concerning Spotted Seatrout - Special Provisions. The amendment to §57.981 is adopted with changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7866). This rule will be republished. The repeal is adopted without change and will not be republished.

The change to §57.981 alters subsection (c)(5)(O)(iv) to allow the retention of one spotted seatrout greater than 30 inches in length (the so-called "oversized fish") per day, rather than the 25-inch limit as proposed. The commission determined that the size of the one oversized fish allowed to be retained could be increased, adding greater protection for the resource and not altering the overall purpose of the rule.

In February of 2021, Winter Storm Uri caused a die-off of more than 3.8 million fish on the Texas Coast, with spotted seatrout mortality the highest reported among recreational game fish. An estimated 160,000 spotted seatrout were lost coastwide, with highest losses on the lower coast. On April 1, 2021, the department adopted an emergency rule (46 TexReg 2527) to protect seatrout populations by reducing harvest pressure, which had the additional benefit of accelerating recovery of spotted seatrout in the Laguna Madre system. The emergency rule expired on September 27, 2021. After post-freeze data analysis identified significant impacts in other coastal areas, the commission adopted new §57.983 (47 TexReg 1290) in January of 2022, which mirrored the provisions of the emergency rule (a three-fish daily bag limit, a minimum length limit of 17", and a maximum length limit of 23 inches, with no provision for the retention of oversize fish) but expanded its geographical extent. The new rule was intended to be temporary in nature; thus, it contained an expiration date of August 31, 2023.

Section 57.983 was intended to increase spotted seatrout spawning stock biomass and recruitment to the fishery as a means of recovery following the freeze event. Modeling data based on spotted seatrout life history suggested that the full benefit of the rule would take approximately seven years to be realized. Departmental data show continued impact to adult spotted seatrout populations since 2021. Coastwide spring gillnet data shows that the spotted seatrout population remains below the ten-year mean (a decline from recent historical average) and lower coastwide following the freeze event. Despite this, coastwide bag seine data shows increasing recruitment since 2021 to pre-freeze levels. While the recruitment trends are increasing, the department continues to be concerned over the long-term sustainability of the fishery; thus, the rule as adopted provides greater protection of the resource with a more restrictive bag and length limits as compared to the rule which took effect September 1, 2023.

The department received 1,797 comments opposing adoption of the rule as proposed. Of those comments, 1,648 expressed a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because some comments addressed more than one concern, the total number of comments being addressed by categorized reason for disagreement will not match the total number of commenters opposing adoption.

The department received 403 comments opposing adoption because the rule contained no provision for retention of "oversize" fish (fish exceeding the maximum size limit that are legal to retain) under a tagging system similar to that currently in effect for red drum. The department disagrees with the comments and responds that although the rule as proposed was published to seek public comment with respect to prospective bag and possession limits for spotted seatrout, it neither contemplated nor contained any provisions regarding the creation of a tag for oversized trout or a fee associated with such a tag. The adoption of a tag requirement and the imposition of a fee as part of this rulemaking are therefore impossible because such provisions were not part of the proposal and the public did not have the opportunity to comment upon them. Though a tag and associated fee are beyond the scope of this rulemaking, the department notes that staff has been directed to publish proposed rules for public comment as soon as possible to create a tag and an associated fee for the retention of oversized spotted seatrout. No changes were made as a result of the comments.

The department received 212 comments opposing adoption of any provision allowing the retention of "oversize" fish. The department disagrees with the comments and responds that there is no evidence, according to department data, to suggest that allowing the retention of one fish of a specified length as part of a daily bag limit would frustrate the goal of the rule to restore spawning stock biomass. No changes were made as a result of the comments.

The department received 175 comments opposing adoption on the basis that the current harvest regulation in effect (daily bag of five fish between 15 inches and 25 inches, which may include one fish greater than 25 inches) should be maintained. The department disagrees with the comments and responds that the analyses of the rule as proposed were calculated to accelerate recovery of the fishery while still providing significant angling opportunity. The protection of the fishery's spawning stock biomass will lead to increased recruitment and faster population recovery. No changes were made as a result of the comments.

The department received 174 comments opposing adoption on the basis that the rules do not include provisions to regulate the impact of fishing guides on the fishery such as: provisions to increase fishing guide license fees, limitations on the number of guides, and fishing guide license requirement changes. The department disagrees with comments and responds that anglers fishing with fishing guides and landing fish are appropriately licensed and allowed to do so like all anglers. Harvest associated with guided fishing trips is no different from harvest associated with anglers on a private vessel. The department notes that several commenters seemed to conflate the terms "commercial fishing" and "fishing guide." A fishing guide license does not allow commercial fishing (i.e., the harvest and sale of aquatic products). No changes were made as a result of the comments.

One-hundred and seventy-two commenters opposed adoption and stated that the rules as proposed would prevent low-income persons from fishing or otherwise cause fishing to become too expensive to participate in. The department disagrees with the comments and responds that the rule as adopted applies to all licensees, neither favors nor discriminates against any individual or class of individuals and does not impose negative economic impacts on anyone. The department further responds that the rule as adopted is necessary to ensure the sustainability of the fishery and is intended to provide effective and timely recovery measures while also providing significant fishing opportunity. Finally, the department notes that there are many other species of fish other than spotted seatrout that may be taken under a recreational fishing license. No changes were made as a result of the comments.

The department received 148 comments opposing adoption on the basis that rules are government overreach or over-regulation. The department disagrees and responds that the rule as adopted is within the commission's statutory authority to adopt and was promulgated in compliance with all applicable statutory requirements. The department further responds that the rule as adopted is necessary to ensure the sustainability of the fishery and is intended to provide effective and timely recovery measures while also providing significant fishing opportunity. No changes were made as a result of the comments.

One-hundred and forty-two commenters opposed adoption and stated that the rule will negatively impact coastal sport fishing. The department disagrees and responds that it has a statutory duty to protect and conserve coastal resources and provide for the long-term sustainability of the fishery. The department further

responds that the rule as adopted is necessary to ensure the sustainability of the fishery and is intended to provide effective and timely recovery measures while also providing significant fishing opportunity. No changes were made as a result of the comments.

The department received 141 comments opposing adoption because the rule would prevent anglers from being able to feed their families. The department disagrees with the comment and responds that it has a statutory duty to protect and conserve aquatic resources and to equitably distribute the opportunity to the public for enjoyment of the resource, which takes the form of personal bag and possession limits for various species of fish in the context of sound management of populations. Licensees are free to use their opportunity to obtain food via fishing activity, but recreational fishing opportunity is not intended to be and should not be construed as primary food supply for a subsistence fishery. No changes were made as a result of the comments.

One hundred commenters opposed adoption and stated that the rule should allow the retention of one spotted seatrout of greater than 25 inches in length. The department disagrees with the comment and responds that the rule as adopted, which allows a spotted seatrout greater than 30 inches in length, is consistent with biological assessments that indicate that by increasing the size limit there is greater overall conservation benefits for the long-term health and sustainability of the fishery. No changes were made as a result of the comments.

Ninety-eight commenters opposed adoption of the rule on the basis that the slot limit (the range between the minimum and maximum length limits in which fish are legal to retain) will lead to higher release rates and, consequently, higher mortality. The department disagrees with the comments and responds that changes in relative abundance were evaluated in the context of environmental conditions and interannual variability. Peer-reviewed studies have found that release mortality is not associated with fish size (Stunz and McKee 2011). In fact, reducing the bag limit might result in reduced release mortality if anglers after reaching the reduced bag limit switch their fish targeting behavior to other species. No changes were made as a result of the comments.

The department received 95 comments opposing adoption on the basis that natural events will restore the seatrout population. The department disagrees and responds that there is clear and convincing scientific evidence of fishing regulations supporting or increasing fishery populations. Prompt and effective action is necessary to stabilize and reverse negative population trends as quickly as possible, as not acting will either slow recovery or exacerbate population declines. Regulatory management of spotted seatrout harvest is a controllable mechanism to assist recovery, especially in response to natural episodic events such as freezes. No changes were made as a result of the comments.

Ninety commenters opposed adoption and stated that the rule will result in negative impacts to large female trout, which are the most productive breeders. The department disagrees with the comment and responds that biological data from department gillnet surveys show that a reduction in the slot size would increase spawning stock biomass by ensuring that a greater number of breeding-age female fish remain in the water, thereby increasing the recovery rate and potential of the fishery. No changes were made as a result of the comments.

Eighty-five commenters opposed adoption and stated that the rule should include a sunset date or be implemented in alternating years. The department disagrees with the comments and responds that the rule as adopted provides the most efficient, effective, and quickest way to stabilize and reverse population decline with the least amount of confusion and disruption to the regulated community. The department will also continue to monitor the fishery and will make any changes as necessary to the current regulations. No changes were made as a result of the comments.

The department received 82 comments opposing adoption on the basis that the data used for the regulation was insufficient, misrepresented, or based on flawed sampling design. The department disagrees with the comments and responds that the fishery-independent and human dimension data used to guide the department's management decisions are collected according to acknowledged and scientifically validated protocols. Gillnet catch data provide a relative measure of spotted seatrout abundance. These data are analyzed by the department in addition to other data, such as environmental factors and angler behavior, and management decisions are formulated accordingly. Numerous peer-reviewed studies, management decisions, and reports based on these same data are part of the literature and are accepted as viable management tools. The department stresses that anecdotal observations are certainly not preferred for use as a sole source of data as they may be inconsistent with results obtained with a study design that has both scientific method and rigor. Anecdotal observations are in no way equivalent to or a substitute for the spatial and temporal values yielded by the robust biological sampling conducted by the department, nor are they controlled by a sampling design. A subset of commenters also expressed distrust for survey designs, alleging they are biased. The department disagrees and responds that the angler survey utilized unbiased and standardized methodology that is scientifically sound and valid. No changes were made as a result of the comments.

Sixty-seven commenters stated that spotted seatrout populations should be managed on a regional basis because spotted seatrout populations vary along the coast. The department disagrees with the comment and responds that regional management would not be more effective in restoring overall spawning biomass as quickly as a coastwide harvest regulation. The current regulations are expected to increase overall spawning biomass and abundance in all bays systems to accelerate recovery and to be more resilient against other episodic mortality events and increasing fishing pressure.

Sixty-seven commenters opposed adoption and stated that croaker should be declared a gamefish or prohibited as bait. The department disagrees with the comments and responds that bag and possession limits are predicated on population and harvest trends and are designed to provide for sustainable harvest irrespective of types of fishing practices used by anglers. In any case, the department notes that although croaker (and other species like pinfish and pigfish) are effective bait for spotted seatrout, the data indicate that more spotted seatrout are caught on live shrimp than any other bait. The department further notes that designation as a game fish is not necessary, as croaker are abundant and their populations are stable. No changes were made as a result of the comments.

Fifty-six commenters opposed adoption and stated that commercial activity, including commercial fishing, dredging, silting, and barges, debilitates habitat quality and contributes to spotted seatrout declines. Though regulation of the activities identified in the comment is beyond the scope of this rulemaking, the de-

partment has limited authority to regulate matters other than the recreational and commercial harvest of marine species, which does not include the authority to regulate dredging or barge traffic. A subset of commenters specifically mentioned the impact of commercial shrimp harvest on the spotted seatrout fishery. The department disagrees with the comment and notes that inshore shrimping licenses have been reduced significantly through the license buyback program and shrimp fishing effort has been reduced. No changes were made as a result of the comments.

Forty-eight commenters opposed adoption and stated that ecosystem health and pollution should be addressed instead of harvest restrictions. The department disagrees with the comments and responds that although there are a variety of long-term factors affecting all coastal resources, in this case the sudden, significant negative impacts to spotted seatrout populations caused by the severe freeze event necessitated swift reaction to stabilize and restore spawning biomass. This rule-making is a continuation of that effort for longer-term recovery and sustainability which simply cannot be achieved in the short-term via habitat improvement or environmental regulation. No changes were made as a result of the comments.

Forty-seven commenters opposed adoption and stated a preference for a larger minimum length limit for the retention of oversize fish. The department agrees with the comments and changes were made to the proposal as the commission deliberated and then directed the imposition of a 30-inch minimum length for oversize fish that may be retained.

Forty-five commenters opposed adoption and stated that the rule was inappropriately influenced by outside entities. The department disagrees with the comments and responds that the rule is the result of scientific investigation in the discharge of the department's statutory duty to protect and conserve aquatic resources and is not the result of inappropriate direction from, intervention by, or in response to the wishes of any external entity. The department further responds that the public may submit comments on a proposed rule under the Administrative Procedure Act, and the department fully considers the public comments prior to adoption of a rule. No changes were made as a result of the comments.

The department received 41 comments opposing adoption because the rule affects recreational anglers but not fishing tournaments. The department disagrees with the comments and responds that although regulation of fishing tournaments is beyond the scope of this rulemaking and that anglers fishing as tournament participants are, in fact, licensed recreational anglers who must comply with size, bag, and possession limits. Thus tournament anglers are being impacted as well. No changes were made as a result of the comments.

Thirty-six commenters opposed adoption and stated that redfish regulations should be revised to alleviate the harvest pressure on spotted seatrout. The department disagrees with the comment and responds that harvest rules for redfish are beyond the scope of this rulemaking. There is evidence that suggests a shift in targeting behavior by anglers immediately after the freeze. That change in targeting behavior can still occur with the current red drum and spotted seatrout regulations. No changes were made as a result of the comments.

Thirty-three commenters opposed adoption and stated that spotted seatrout regulations should mirror those in other states. The commenters also either implied or stated that the fishing opportunities are better in other states. The department disagrees with the comments and responds that harvest regulations in the waters of other states are of limited value with respect to rules necessary to manage spotted seatrout in Texas, which are the result of harvest and population data and the conditions in Texas waters. No changes were made as a result of the comments.

Thirty-one commenters opposed adoption and stated that instead of altering harvest rules the department should stock more fish to cope with spotted seatrout declines. The department disagrees with the comment and responds that fish stocking cannot restore spawning stock biomass in the absence of effective harvest regulations. The department has released over 25 million spotted seatrout fingerlings coastwide since 2021 and will continue supplementing the fishery while implementing sustainable management though harvest regulation. No changes were made as a result of the comments.

Twenty-eight commenters opposed adoption and stated that instead of altering recreational harvest rules, the department should more vigorously pursue unlawful harvest activity. The department disagrees with the comments and responds that department vigilantly detects, cites, and prosecutes violators; however, law enforcement personnel cannot be everywhere at all times. The department believes that the overwhelming majority of anglers obey the law, which is supported by creel survey data indicating high compliance rates for spotted seatrout bag and size limits. Additionally, there is no evidence to suggest that unlawful take is a significant factor in current population status. Finally, the department encourages all persons with knowledge of conservation crimes to contact the department directly or via the Operation Game Thief Hotline, which pays cash rewards for information leading to the conviction of violators and keeps the identities of sources anonymous. No changes were made as a result of the comments.

Twenty-eight commenters opposed adoption and stated that public comments are not considered by the commission because their minds are already made up. The department disagrees with the comments and responds that a summary of public comment is provided to and considered by the commission prior to deliberations. The department notes that the commission in this rulemaking considered public comment and adopted the rule with changes to the proposed text, which refutes assertions to the contrary. No changes were made as a result of the comments.

The department received 25 comments opposing adoption because Louisiana and other Gulf states are not pursuing similar conservation measures. The department disagrees with the comments and responds that the commission has no authority to regulate the waters of other states; however, the department does work cooperatively with other states to the greatest extent possible to develop appropriate management strategies. No comments were made as a result of the comments.

Twenty-four commenters opposed adoption and stated that it would be difficult to reach the daily bag limit under the proposed slot limits. The department disagrees with the comment and responds that the slot and bag limits are, in effect, the equitable distribution of fishing opportunity, which is the totality of sustainable harvest spread across the number of participants under expected levels of effort, given the abundance of the resource. It is axiomatic that as populations decline, harvest regulations must be altered to prevent overfishing. The purpose of the "slot" is to protect certain size and age classes to maximize reproductive potential and recover the population as quickly as possible while

still providing angling opportunity. No changes were made as a result of the comments.

Twenty-four commenters opposed adoption and stated that natural predators are the cause of the spotted seatrout decline and rather than altering harvest rules, the department should instead reduce populations of fish that prey on spotted seatrout. The department disagrees with the comments and responds that predation occurs in any natural system, and there is no data to suggest that it is a major factor affecting spotted seatrout populations. Some predator species, specifically dolphins, are protected under federal law and the commission's regulatory authority does not extend to the management of those species. No changes were made as a result of the comments.

Twenty commenters opposed adoption and stated a preference for seasonal, episodic, or cyclical closures of the entire fishery rather than the harvest rule as proposed. The department disagrees with the comments and responds that a continuous standard not only is the easiest and most efficient pathway to restoring the fishery, it is easier to understand and comply with. No changes were made as a result of the comments.

The department received 19 comments that opposed adoption and stated that instead of altering harvest rules, the department should regulate the number of anglers and/or boats to alleviate fishing pressure. The department disagrees with the comment and responds that under the Texas Constitution, every person has a right to lawfully fish (if not otherwise prohibited by law from doing so). Additionally, there is no effective, efficient, equitable, or economically viable way to differentiate boats being used to catch seatrout from boats used for any other purpose, rendering such an approach inefficacious, problematic, and difficult to enforce. No changes were made as a result of the comments.

Seventeen commenters opposed adoption and stated that the cost of fishing licenses should be lowered if bag limits are lowered. The department disagrees and responds that license fees are not regressively related to angler opportunity, they are imposed to recover the cost to the department for the performance of its statutory duty to manage and conserve fisheries, which is a continuous process independent of population status of any species. No changes were made as a result of the comments.

Fifteen commenters opposed adoption and stated that anglers should be allowed to keep ten fish daily. The department disagrees and responds that at current rates of exploitation, allowing the retention of ten fish would have negative impacts to seatrout population and limit future angling opportunities. The department also notes that landings data show that few anglers reach the current daily bag limit of five fish. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the implementation of the regulations should be delayed for one year. The department disagrees with the comment and responds that acting quickly is the most effective way to restore spawning stock biomass and stabilize the population in a timely manner. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that various bait and hook types should be restricted rather than altering harvest rules. The department disagrees and responds that bag and possession limits by themselves are a sufficient mechanism for effectively restoring spawning stock biomass and that gear and bait restrictions, although beyond the scope of this rulemaking, are ineffective or unnecessary in this context. Additionally, the literature suggests that hooking location and angler skill level are significant predictors of post-release survival, and that gear type does not appear to be related to unintentional release mortality (Stunz and McKee 2011). No changes were made as a result of the comments.

Two commenters opposed adoption and stated that there should be exceptions to the new regulations for seniors and or military members. The department disagrees with the comments and does not believe that the rules as adopted impose a burden for or create an obstacle of any kind to seniors or members of the armed services, and in any case, such a change is beyond the scope of the rulemaking. No changes were made as a result of the comments.

One commenter opposed adoption and stated that increasing water temperatures are going to kill spotted seatrout anyway; thus, anglers should be allowed to harvest spotted seatrout without restrictions because their demise is imminent. The department disagrees with the comment and responds that there is no indication that the fishery is in danger of collapse any time soon as a result of increasing water temperatures and that current management efforts are more than sufficient to ensure a stable population for the foreseeable future. No changes were made as a result of the comments.

The department received 1,028 comments supporting adoption of the proposed rule. Both the Coastal Conservation Organization and Costal Resources Advisory Committee supported the rule change.

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§57.981. Bag, Possession, and Length Limits.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's residence and is finally processed.

(b) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game and non-game fish except as otherwise provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document (WRD) from the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed WRD document shall accompany the wildlife resource until it reaches the possessor's residence and is finally processed. The WRD must contain the following information:

(A) the name, signature, address, and fishing license number, as required of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts); and

(D) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 38 inches.

(iii) Maximum length limit: No limit.

(B) Bass:

(i) The daily bag limit for largemouth, smallmouth, spotted, Alabama, and Guadalupe is 5, in any combination.

(ii) Alabama, Guadalupe, and spotted.

(I) No minimum length limit.

(II) No maximum length limit.

(iii) Largemouth and smallmouth.

(I) Minimum length limit: 14 inches.

(II) No maximum length limit.

(iv) Striped and their hybrids.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(v) White.

(I) Daily bag limit: 25.

(II) Minimum length limit: 10 inches.

(IIII) No maximum length limit.

(C) Catfish:

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) No minimum length limit.

(III) No maximum length limit.

(IV) It is unlawful to retain more than 10 channel and blue catfish, in the aggregate, of 20 inches or greater in length.

(ii) flathead.

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(iii) gafftopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(D) Cobia.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(E) Crappie, black and white (including hybrids and subspecies).

(i) Daily bag limit: 25.

(ii) Minimum length limit: 10 inches.

(iii) No maximum length limit.

(F) Drum, black.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(iv) One black drum over 52 inches may be retained per day as part of the five-fish bag limit.

(G) Drum, red.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20 inches.

(iii) Maximum length limit: 28 inches.

(iv) During a license year, one red drum exceeding the maximum length limit established by this subparagraph may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Angler Red Drum Tag, or with a properly executed Duplicate Exempt Red Drum Tag, and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Angler Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as provided in this section.

(v) A person who lawfully takes a red drum under a digital license issued under the provisions of §53.3(a)(12) this title (relating to Super Combination Hunting and Fishing License Packages) or under a lifetime license with the digital tagging option provided by §53.4(a)(1) of this title (relating to Lifetime Licenses) that exceeds the maximum length limit established by this subparagraph is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of license tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report re-

quired by this subparagraph, the person who took the red drum is responsible for ensuring that the report required by this subparagraph is uploaded to the department immediately upon the availability of network connectivity.

(vi) It is an offense for any person to possess a red drum exceeding the maximum length established by this subparagraph under a digital license or digital tagging option without being in immediate physical possession of an electronic device that is:

(I) loaded with the mobile or web application designated by the department for harvest reporting under this subsection; and

(II) capable of uploading the harvest report required by this subsection.

(vii) A person who is fishing under a license identified in §53.4(a)(1) of this title and selected the fulfilment of physical tags must comply with the tagging requirements of this chapter that are applicable to the tagging of red drum under a license that is not a digital license.

(H) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means. On September 1, 2021, the provisions of this clause cease effect.

(v) Beginning September 1, 2021, the season for flounder is closed from November 1 through December 14 every year.

(I) Gar, alligator.

(i) Daily bag limit: 1.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(v) Any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section, except for persons selected for opportunity as provided in §57.972(j) of this title (relating to General Provisions).

(vii) Except for persons selected for opportunity as provided in §57.972(j) of this title, no person in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(J) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(K) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(L) Marlin.

(i) Blue.

(I) No daily bag limit.

(II) Minimum length limit: 131 inches.

(III) No maximum length limit.

(ii) White.

(I) No daily bag limit.

(II) Minimum length limit: 86 inches.

(III) No maximum length limit.

(M) Mullet: all species (including hybrids and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(N) Sailfish.

(i) No daily bag limit.

(ii) Minimum length limit: 84 inches.

(iii) No maximum length limit.

(O) Seatrout, spotted.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 15 inches.

(iii) Maximum length limit: 20 inches.

(iv) Only one spotted seatrout greater than 30 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

(P) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Shortfin mako;

(XVIII) Silky;

(XIX) Sixgill;

(XX) Smalltail;

(XXI) Whale; and

(XXII) White.

(v) Except for the species listed in clauses (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(Q) Sheepshead.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(R) Snapper.

(i) Lane.

(I) Daily bag limit: None.

(II) Minimum length limit: 8 inches.

(III) No maximum length limit.

(ii) Red.

(I) Daily bag limit: 4.

(II) Minimum length limit: 15 inches.

(III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(V) During the period of time when the federal waters in the Exclusive Economic Zone (EEZ) are open for the recreational take of red snapper:

(-a-) the bag limit for red snapper caught in the EEZ is two, and the minimum length limit is 16 inches; and

(-b-) red snapper caught in the EEZ shall count as part of the bag limit established in subclause (I) of this clause.

(iii) Vermilion.

(I) Daily bag limit: None.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(S) Snook.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 24 inches.

(iii) Maximum length limit: 28 inches.

(T) Tarpon.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 85 inches.

(iii) No maximum length limit.

(U) Triggerfish, gray.

(i) Daily bag limit: 20.

(ii) Minimum length limit: 16 inches.

(iii) No maximum length limit.

(V) Tripletail.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 17 inches.

(iii) No maximum length limit.

(W) Trout (rainbow and brown trout, including their hybrids and subspecies).

(i) Daily bag limit: 5 (in any combination).

(ii) No minimum length limit.

(iii) No maximum length limit.

(X) Walleye and Saugeye.

(i) Daily bag limit: 5.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) Two walleye or saugeye of less than 16 inches may be retained.

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.

(A) Bass: largemouth, smallmouth, spotted, and Guadalupe (including their hybrids and subspecies). Devils River (Val Verde County) from State Highway 163 bridge crossing (Bakers Crossing) to the confluence with Big Satan Creek including all tributaries within these boundaries and all waters in the Lost Maples State Natural Area (Bandera County).

(i) Daily bag limit: 0.

(ii) No minimum length limit.

(iii) Catch and release only.

(B) Bass: largemouth and spotted.

(i) Caddo Lake (Marion and Harrison counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.

(ii) Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(iii) Sabine River (Newton and Orange counties) from Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point.

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 12 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(C) Bass: largemouth

(i) Chambers, Hardin, Galveston, Jefferson, Liberty (south of U.S. Highway 90), Newton (excluding Toledo Bend Reservoir), and Orange counties including any public waters that form boundaries with adjacent counties.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 inches.

(ii) Lake Conroe (Montgomery and Walker counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 inches.

(iii) Lakes Bellwood (Smith County), Bois d'Arc (Fannin County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Moss (Cooke), Nacogdoches (Nacogdoches County), Naconiche (Nacogdoches County), Purtis Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).

(I) Daily bag limit: 5.

(II) Maximum length limit: 16 inches.

(III) It is unlawful to retain largemouth bass of greater than 16 inches in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

(iv) Lakes Casa Blanca (Webb County), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Pflugerville (Travis County), and Welsh (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(v) Generations Park (Tarrant County), Buck Lake (Kimble County), Lake Forest Park (Denton County), Lake Kyle (Hays County), and Nelson Park Lake (Taylor County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release only.

(vi) Lakes Alan Henry (Garza County), Grapevine (Denton and Tarrant counties), Jacksonville (Cherokee County), and O.H. Ivie Reservoir (Coleman, Concho, and Runnels counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) It is unlawful to retain more than two bass of less than 18 inches in length.

(vii) Lakes Athens (Henderson County), Bastrop (Bastrop County), Houston County (Houston County), Joe Pool (Dallas, Ellis, and Tarrant counties), Lady Bird (Travis County), Murvaul (Panola County), Pinkston (Shelby County), Timpson (Shelby County), Walter E. Long (Travis County), and Wheeler Branch (Somervell County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 21 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.

(viii) Lakes Fayette County (Fayette County), Fork (Wood Rains and Hopkins counties), and Monticello (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 - 24 inch slot limit.

(III) It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

(D) Bass: striped and their hybrids.

(i) Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) No more than 2 striped bass 30 inches or greater in length may be retained each day.

(ii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.

(iii) Red River (Grayson County) from Denison Dam downstream to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(III) Striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released.

(iv) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 2 (in any combination).

(II) Minimum length limit: 18 inches.

(E) Bass: white. Lakes Caddo (Harrison and Marion counties), Texoma (Cooke and Grayson counties), and Toledo Bend (Newton Sabine and Shelby counties) and Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge.

(i) Daily bag limit: 25.

(ii) Minimum length limit: No limit.

(F) Carp: common. Lady Bird Lake (Travis County).

(i) Daily bag limit: No limit.

(ii) Minimum length limit: No limit.

(iii) It is unlawful to retain more than one common carp of 33 inches or longer per day.

(G) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) Lake Kyle (Hays County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release and only.

(ii) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

(iii) Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties), and Toledo Bend (Newton, Sabine and Shelby counties) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 30 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(iv) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than one blue catfish 30 inches or greater in length may be retained each day.

(v) Lakes Belton (Bell and Coryell counties), Bob Sandlin (Camp, Franklin, and Titus counties), Conroe (Montgomery and Walker counties), Hubbard Creek (Stephens County), Kirby (Taylor County), Lavon (Collin County), Lewisville (Denton County), Palestine (Cherokee, Anderson, Henderson, and Smith counties), Ray Hubbard (Collin, Dallas, Kaufman, and Rockwall counties), Richland-Chambers (Freestone and Navarro counties), Tawakoni (Hunt, Rains, and Van Zandt counties), and Waco (McClennan).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five blue or channel catfish 20 inches or greater may be retained each day, and of these, no more than one can be 30 inches or greater in length.

(vi) Lakes Abilene (Taylor County), Braunig (Bexar County), Calaveras (Bexar County), Choke Canyon (Live Oak and McMullen counties), Fayette County (Fayette County), Proctor (Comanche County), Raven (Walker County), and Sheldon (Harris County).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: 14 inches.

(H) Catfish: flathead.

(i) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(ii) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton, Sabine, and Shelby) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 10.

(II) Minimum length limit: 18 inches.

(III) Possession limit: 10.

(I) Crappie: black and white crappie their hybrids and subspecies.

(i) Caddo Lake (Harrison and Marion counties), Toledo Bend Reservoir (Newton Sabine and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(ii) Lake Fork (Wood, Rains, and Hopkins counties) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 10 inches.

(III) From December 1 through the last day in February there is no minimum length limit. All crappie caught during this period must be retained.

(iii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 37 (in any combination).

(II) Minimum length limit: 10 inches.

(III) Possession limit is 50.

(iv) Lake Nasworthy (Tom Green County).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) Possession limit is 50.

(J) Drum, red. Lakes Braunig and Calaveras (Bexar County).

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20.

(iii) No maximum length limit.

(K) Gar, alligator.

(i) Falcon International Reservoir (Starr and Zapata counties).

(I) Daily bag limit: 5.

(II) No minimum length limit.

(III) No maximum length limit.

(ii) On the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches, except for persons selected by a department-administered drawing authorizing the take of a gar in excess of 48 inches in length.

(iii) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(L) Shad gizzard and threadfin. Trinity River below Lake Livingston (Polk and San Jacinto counties).

(i) Daily bag limit: 500 (in any combination).

(ii) No minimum length limit.

(iii) Possession limit: 1000 (in any combination).

(M) Sunfish: all species. Lake Kyle (Hays County).

(i) Daily bag limit: 0.

(ii) Minimum length limit: No limit.

(iii) Catch and release and only.

(N) Trout: rainbow and brown trout (including hybrids and subspecies).

(i) Guadalupe River (Comal County) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. 306.

(I) Daily bag limit: 1.

(II) Minimum length limit: 18 inches.

(ii) Guadalupe River (Comal County) from the easternmost bridge crossing on F.M. 306 upstream to 800 yards below the Canyon Lake dam.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 - 18 inch slot limit.

(III) It is unlawful to retain trout between 12 and 18 inches in length. No more than one trout 18 inches or greater in length may be retained each day.

(2) Except as specifically provided elsewhere in this subchapter, the daily bag limit on the waterbodies enumerated in this paragraph is 5 fish (all species combined), to include not more than 1 black bass (Micropterus spp.) of 14 inches or greater in length.

(A) All CFLs;

(B) Brushy Creek (Williamson County) from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line;

(C) Canyon Lake Project #6 (Lubbock County);

(D) Deputy Darren Goforth Park Lake (Harris County);

(E) Elm (Brazos Bend State Park in Fort Bend County);

(F) Pilant (Brazos Bend State Park in Fort Bend County);

(G) Tucker Lake (Stephens and Palo Pinto counties);

(H) North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(I) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) Saltwater species. There are no exceptions to the provisions established in subsection (c)(5) of this section.

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

Filed with the Office of the Secretary of State on March 4, 2024.

TRD-202400937
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 24, 2024
Proposal publication date: December 22, 2023
For further information, please call: (512) 389-4775

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31 TAC §57.983

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

34 TAC §16.222

The Comptroller of Public Accounts adopts the repeal of §16.222, concerning references, as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8179), because this section is no longer needed. The repeal will not be republished.

This section, which specifies which statutes apply to the statewide opioid settlement agreement, was included in this subchapter because the statutes relating to the statewide opioid settlement agreement and the statutes relating to infrastructure and broadband funding originally used some of the same section numbers and were contained in subchapters that were both entitled "Subchapter R." However, in 2023, the legislature cleared up this issue by renumbering the statutes relating to infrastructure and broadband funding and placing them in new Subchapter S, while keeping the statutes relating to the statewide opioid settlement agreement in Subchapter R.

The comptroller did not received comments regarding adoption of the repeal.

The repeal is adopted under Government Code, §403.511, which authorizes the comptroller to adopt rules necessary to implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

The repeal implements Government Code, Chapter 403, Subchapter R.

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

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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Proposal publication date: December 29, 2023
For further information, please call: (512) 475-2220

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34 TAC §16.222

The Comptroller of Public Accounts adopts new §16.222, concerning hospital district allocations, with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8180). The rule will be republished.

The new section governs the Texas Opioid Abatement Council's allocation and distribution of money received from statewide opioid settlement agreements to all hospital districts in Texas under Government Code, §403.508(a)(2), as enacted by Senate Bill 1827, 87th Legislature, R.S., 2021.

Subsection (a) requires the council to make periodic distributions of money allocated to hospital districts.

Subsection (b) describes when money will be distributed to hospital districts by the council.

Subsection (c) provides that the total amount of each distribution of money to hospital districts will be determined by the council.

Subsection (d) explains how the initial distribution of money will be allocated to hospital districts.

Subsection (e) describes how subsequent distributions of money will be allocated to hospital districts.

Subsection (f) lists the specific hospital districts that will be distributed money only from the initial distribution by the council and the amount of money each of the listed hospital districts will receive from the initial distribution.

Subsection (g) lists the specific hospital districts that will be distributed money during the initial and subsequent distributions by the council and the percentage that will be used to calculate the distribution to each of the listed hospital districts.

Subsection (h) allows the council to round amounts of money allocated to individual hospital districts down to the nearest whole dollar. It also requires the council to retain any remaining money caused by rounding for future allocation to hospital districts.

Subsection (i) sets forth the requirements for hospital districts to receive a distribution of money from the council.

Subsection (j) requires money received by a hospital district to be used by the hospital district to remediate the opioid crisis, including providing assistance in one or more of the categories described in §16.201(b) of this subchapter (treatment and coordination of care, prevention and public safety; recovery support services; or workforce development and training); or if a court order or settlement agreement requires the money to be used for one or more specific purposes, for a permissible use provided by that court order or settlement agreement.

Subsection (k) allows the council to cancel a distribution of money to a hospital district and retain the money for future allocation to hospital districts if the hospital district does not satisfy the requirements to receive a distribution of money from the council under subsection (i).

Subsection (l) requires a hospital district that receives a distribution of money from the council to submit periodic reports to the council's director to ensure compliance with the permitted uses of the money distributed. It also allows the council's director to determine the frequency, format, and requirements of the reports.

Subsection (m) allows the council to monitor a hospital district that receives money under this section to ensure compliance with the permissible uses of the money distributed.

Subsection (n) describes the actions the council may take if the council finds that a hospital district has failed to comply with the requirements of subsection (j).

Subsection (o) requires money refunded to the council under subsection (n) to be retained by the council for future allocation to hospital districts under this section.

Subsection (p) provides that, except as otherwise provided in this section, this section and §16.200 of this subchapter are the only provisions in this subchapter that apply to the allocation of money to hospital districts under Government Code, §403.508(a)(2). The comptroller corrected a typographical error in this subsection by changing "§16.200 of subchapter title" to "§16.200 of this subchapter."

The comptroller received comments regarding adoption of the amendment from Bethany (no last name given); the Texas Organization of Rural & County Hospitals (TORCH); and the Teaching Hospitals of Texas (THOT).

Bethany states that, based on her years of experience, "hospitals are not the places to handle the opioid epidemic" because "they are grossly under educated about the patients, the medications, the details of what truly happens to the medically dependent on opioids population and the medically ignored addict population." She believes that this money would be better used "to build the type of education, facility or system to help those at the mercy of this monopolized medicine" and that grants should be made to the family members "who cared, nurtured and gave much more than their time to their loved ones, dependent, or addicted to opioids." The council thanks Bethany for submitting these comments; however, the council is required by law to allocate this money to hospital districts in Texas under Government Code, §403.508(a)(2). Since the council has no authority to change this statutory requirement, no changes to this section are necessary in response to these comments.

TORCH expresses "support for the rule as it relates to hospital district allocations." TORCH adds that they "received nothing but supportive feedback" regarding the rule from their network of rural hospital leaders. The council thanks TORCH for submitting these comments. No changes to this section are necessary in response to these comments.

THOT expresses their appreciation for the work of the council, and staff "in thoughtfully developing these rules" and working with associations such as THOT and TORCH "to create the proposed approach for distributing funding to Texas' hospital districts."

In addition, THOT presents three recommendations. First, THOT "recommends amending §16.222 (i)(1)(B)(i) to allow for funding to offset documented past opioid related costs or make it clear that funding can be used to support existing programs designed to address the opioid crisis, both directly and indirectly." THOT believes this amendment should be made because "the statutory 15% allocation to hospital districts is for past harm caused by the opioid crisis... to be distributed based on the allocation determined by the {c}ouncil" and because creating new remediation programs would be "extremely challenging from an operational perspective" since "the frequency and amount of funding being allocated to hospital districts are unknown." The council declines to make this recommended change because the section already authorizes the use of funds for opioid abatement programs, regardless of when the program was created. This section complies with the Texas constitutional requirement that public funds be used for a public purpose. It is consistent with the Government Code, §403.503 directive for the council to ensure that funds are allocated fairly and spent to remediate the opioid crisis in this state by using efficient and cost-effective methods that are directed to regions of this state experiencing opioid-related harms.

Second, THOT "recommends amending §16.222(k)-(n) to provide explicit criteria and processes for any funding recoupments related to new or existing programs to remediate the opioid crisis." THOT states that, although they "understand and support ensuring fiduciary responsibility and flexibility in use of funds as provided in the proposed rule," "flexibility becomes a liability" if an ability to cure or correct concerns identified with use of funds is not articulated. In response to this comment, the council agrees to make changes to subsection (n) to more fully describe procedures to ensure compliance, including a process for the council to provide written notice to the hospital district of any allegations of noncompliance and a process to provide the hospital district with an opportunity to respond to the allegations before

the council determines whether the hospital district has failed to comply with the requirements of subsection (j). The council notes that the statute and this section do not impose a deadline for expending the funds to remediate the opioid crisis. Further, the council is aware that hospital districts in Texas incur significant costs for opioid abatement and will not find it difficult to spend the funds for opioid abatement in the areas of treatment and coordination of care, prevention and public safety, recovery and support services or workforce development and training. In addition. the council declines to amend subsection (m) to require an audit because that subsection authorizes monitoring, which may include an audit, and a new audit specific to this purpose might not be needed in all circumstances.

Third, "THOT supports the {c}omptroller's development, with hospital district input, and use of templates to clarify and consolidate the data and information needed" in subsection (h)(1) concerning resolutions, subsection (i)(2) concerning the authorized official's and hospital district's information, and subsection (l) concerning reports. Although no changes to this section are necessary in response to this comment, the council intends to continue to work with hospital districts to simplify and clarify the allocation process.

The council thanks THOT for submitting these comments.

The new section is adopted under Government Code, §403.511, which authorizes the comptroller to adopt rules necessary to implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

The new section implements Government Code, Chapter 403, Subchapter R.

§16.222. Hospital District Allocations.

(a) The council shall make periodic distributions of money allocated to hospital districts under Government Code, §403.508(a)(2).

(b) The council shall distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, the smallest amount of the money that would be allocated to an individual hospital district equals at least $1,000. Additionally, the council may, at the council's discretion, distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, an individual hospital district would receive less than $1000.

(c) The total amount of each distribution of money under subsection (a) of this section shall be determined by the council.

(d) The initial distribution of money under subsection (a) of this section shall be allocated as follows:

(1) to the hospital districts listed in subsection (f) of this section in the dollar amounts listed in that subsection; and

(2) the remainder to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the remaining amount to be distributed.

(e) Any subsequent distributions of money under subsection (a) of this section shall be allocated to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the amount to be distributed.

(f) Group One:
Figure: 34 TAC §16.222(f)

(g) Group Two:
Figure: 34 TAC §16.222(g)

(h) Amounts allocated under subsections (d)(2) and (e) of this section may be rounded down to the nearest whole dollar. Any remaining money caused by rounding shall be retained for future allocation to hospital districts under this section.

(i) Prior to, and as a condition of, receiving a distribution of money under subsection (a) of this section, a hospital district listed in subsection (f) or (g) of this section must, for each distribution:

(1) submit to the director a resolution from the hospital district's governing body that:

(A) designates, by name and title, an authorized official who has the authority to act on behalf of the hospital district in all matters related to the distribution, including the authority to sign all official documents related to the distribution;

(B) affirms that the hospital district will use all money received by the hospital district under this section:

(i) to remediate the opioid crisis, including providing assistance in one or more of the categories described in §16.201(b) of this subchapter; or

(ii) if a court order or settlement agreement requires the money to be used for one or more specific purposes, for a permissible use provided by that court order or settlement agreement; and

(C) affirms that, in the event of loss or misuse of grant funds, the hospital district shall return all funds to the council;

(2) submit to the director in a form acceptable to the director:

(A) the authorized official's title, mailing address, telephone number, and email address;

(B) the hospital district's physical address; and

(C) any other documents or information required by the director, including any documents or information required for the secure transfer of money to the hospital district or required by a court order or settlement agreement that applies to all or a portion of the money being distributed;

(3) if there is a change of authorized official, submit to the director a new resolution from the hospital district's governing body that contains the information required under paragraph (1) of this subsection;

(4) notify the director as soon as practicable of any change in the information provided under paragraph (2) of this subsection;

(5) be in compliance with subsection (j) of this section for any prior distributions; and

(6) be in compliance with the reporting requirements in subsection (l) of this section for any prior distributions.

(j) Money received by a hospital district under this section must be used by the hospital district for the purposes described in subsection (i)(1)(B) of this section.

(k) If a hospital district does not satisfy the requirements to receive a distribution under subsection (i) of this section, the distribution to that hospital district may be cancelled and, if cancelled, the money shall be retained by the council for future allocation to hospital districts under this section.

(l) A hospital district that receives a distribution of money under this section must submit periodic reports to the director to ensure that the hospital district complies with subsection (j) of this section.

The frequency, format, and requirements of the reports shall be determined at the discretion of the director.

(m) The council may monitor a hospital district that receives money under this section to ensure that the hospital district complies with subsection (j) of this section.

(n) If the council finds that a hospital district has failed to comply with the requirements of subsection (j) of this section, the council may do one or more of the following:

(1) instruct the director to provide the hospital district written notice of the alleged failure to comply;

(2) provide the hospital district with an opportunity to respond;

(3) require the hospital district to cure the failure to comply to the satisfaction of the council;

(4) require the hospital district to refund to the council all or a portion of the money received by the hospital district under this section; and

(5) exercise any other legal remedies available at law.

(o) Money refunded to the council under subsection (n) of this section shall be retained by the council for future allocation to hospital districts under this section.

(p) Except as otherwise provided in this section, this section and §16.200 of this subchapter are the only provisions in this subchapter that apply to the allocation of money to hospital districts under Government Code, §403.508(a)(2).

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

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER D. TRAINING

40 TAC §§3.401 - 3.404

The Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, and all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with now repealed Texas Government Code §531.0201 and §531.02011. Pursuant to §531.0011, references to DADS regarding functions transferred under now repealed §531.0201 and §531.02011 are now references to HHSC. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts the repeal of §3.401, concerning Training for New Employees; §3.402, concerning Additional Training for Direct Support Professionals; §3.403, concerning Refresher Training; and §3.404, concerning Specialized Training for of a Forensic Facility Employee.

The repeal of §§3.401 - 3.404 is adopted without changes to the proposed text as published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7164). These repeals will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals reflect the move of the Department of Aging and Disability Services state supported living center rules in Texas Administrative Code (TAC) Title 40, Chapter 3, Subchapter D to HHSC under 26 TAC Chapter 926. The new rules are adopted simultaneously elsewhere in this issue of the *Texas Register*.

COMMENTS

The 31-day comment period ended January 8, 2024.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §555.024, which requires HHSC to provide certain training for employees of SSLCs and requires the Executive Commissioner to adopt rules for SSLCs to provide refresher trainings to direct care employees.

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

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Karen Ray
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