

PROPOSED RULES

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

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

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.265

The Texas Higher Education Coordinating Board (Coordinating Board) proposes a new rule in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter M, §22.265, concerning Texas Educational Opportunity Grant Program. Specifically, the new rule will make non-substantive conforming changes based on the consensus reached by the negotiated rulemaking committee on Texas Educational Opportunity Grant Program (August 2, 2023). Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Rule 22.265 is added to make a non-substantive change regarding the placement of text within subchapter M. The text captured in this section, related to Disbursement of Funds to Institutions, is being removed from §22.262 and §22.264 and added in §22.265 verbatim to maintain consistency in the rule structure used in the subchapters of chapter 22. The rule explains the manner in which an institution may request its allocated funding through the Texas Educational Opportunity Grant Program and how unused allocations are handled.

Texas Education Code, §61.0331, requires negotiated rulemaking when adopting a rule related to the allocation or distribution of funding, including financial aid and other trustee funds. Texas Education Code, §61.07761, requires the Coordinating Board to establish and publish the allocation methodologies and to develop procedures to verify the accuracy of the application of those allocation methodologies by Coordinating Board staff.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the non-substantive conforming changes required to support the negotiated rulemaking activities to expand student eligibility and provide greater institutional flexibility for the Texas Educational Opportunity Grant Program. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

- (1) the rule will not create or eliminate a government program;
- (2) implementation of the rule will not require the creation or elimination of employee positions;
- (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will create a new rule;
- (6) the rule will not limit an existing rule;
- (7) the rule will not change the number of individuals subject to the rule; and
- (8) the rule will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rule is proposed under Texas Education Code, Section 61.0331, which provides the Coordinating Board with the authority to undertake negotiated rulemaking when adopting a rule relating to the allocation or distribution of funds, including financial aid or other trustee funds.

The proposed new rule affects Texas Education Code, Chapter 56, Subchapter P.

§22.265. Disbursement of Funds to Institutions.

As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from

their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.

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

Filed with the Office of the Secretary of State on October 20, 2023.

TRD-202303890

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: December 3, 2023

For further information, please call: (512) 427-6365



SUBCHAPTER N. TEXAS LEADERSHIP SCHOLARS PROGRAM

19 TAC §§22.285 - 22.297

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter N, §§22.285 - 22.297, concerning the establishment of the Texas Leadership Scholars Program, a merit-based scholarship and leadership opportunity program for high-achieving students with financial need. Specifically, this new subchapter provides information necessary for the implementation and administration of the Program.

Texas Education Code (TEC), Chapter 61, Subchapter T-3, requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for the amount and permissible uses of a scholarship awarded under the program. The legislation only specified student eligibility, conditions for continued participation, and authorization for institutional agreements. The new rules provide clarity and guidance to students, participating institutions, and Coordinating Board staff for the program's implementation.

Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, academic achievement support, leadership development opportunities, hardship provisions, scholarship amounts, allocation and disbursement of funds, which are necessary to administer the Texas Leadership Scholars Program.

Rule 22.285 indicates the specific sections of the TEC that provide the agency with authority to issue these rules, as well as the purpose of the Texas Leadership Scholars Program.

Rule 22.286 provides definitions for words and terms within Texas Leadership Scholars rules. The definitions provide clarity for words and terms that are integral to the understanding and administration of the Texas Leadership Scholars rules.

Rule 22.287 outlines the requirements institutions must fulfill to participate in the Texas Leadership Scholars program. The requirements are proposed to: (a) clarify the type of institution eligible to participate, and (b) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the Texas Leadership Scholars Program, such as the requirement that each participating institution enter into an agreement with the Coordinating Board. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.288 outlines the eligibility requirements students must meet to allow an institution to select a student as a scholar under the Texas Leadership Scholars Program. The requirements are proposed to: (a) gather in one place the statutory requirements for the Texas Leadership Scholars Program, including the requirements related to a student's financial need; (b) clarify aspects of the statutory requirements, including the requirements related to the student graduating with a distinguished level of achievement under the Foundation School Program, and qualified either for automatic admission, be nominated, or graduate with a Texas First Diploma; and (c) clarify aspects of the statutory requirements related to student's eligibility to continue in the program, such as making satisfactory academic progress and participation in programmatic requirements. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.289 outlines the satisfactory academic progress requirements related to a student's eligibility to continue in the program. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.290 outlines the guidelines for scholars to transfer to another eligible institution. The requirements are proposed to: (a) clarify that scholars are eligible to transfer once during the student's eligibility period; and (b) clarify that the Coordinating Board will make sure that the scholar will receive the scholarship funds during their eligibility period. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.291 outlines the process and the criteria in which institutions will select students to receive the Texas Leadership Scholars scholarship. The requirements are proposed to: (a) clarify that students will indicate interest through an application; and (b) that institutions will make selections based on a student's eligibility, evidence of leadership, service, and academic achievement. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rules 22.292 and 22.293 outline the requirements that institutions must fulfill to provide programmatic experiences for scholars in the program. The requirements are proposed to: (a) clarify the types of academic achievement and leadership development programmatic elements institutions must provide for scholars; and (b) clarify if the institution is unable to provide the listed programmatic elements, the process for approval for alternative programming. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.294 outlines the requirements that institutions must follow to determine when scholars are no longer eligible to participate in the Texas Leadership Scholars Program. The requirements are proposed to: (a) gather in one place the statutory requirements for the Texas Leadership Scholars Program, including the requirements related to a student's enrollment and the transfer policy; and (b) clarify the aspects of the statutory requirements, such as the student being enrolled in a baccalaureate degree and receiving the scholarship for no more than four years.

Rule 22.295 outlines the criteria for an institution to allow an eligible scholar a hardship provision under the Texas Leadership Scholars Program. This section provides institutions with the provisions for hardship consideration and defines the conditions the hardship may include such as severe illness. This section outlines the process in which the institution must document the circumstances of the hardship.

Rule 22.296 outlines the scholarship amounts and how the Coordinating Board will allocate the funds to institutions. The proposed rule provides the process in which the number of initial scholarships is determined, the number of scholarships for returning scholars, and the annual allocation formula for each institution.

Rule 22.297 establishes the mechanisms by which the Coordinating Board will disburse the funds to each participating institutions to support their participation in the Texas Leadership Scholars Program, as well as the institutions' participation in the process. The proposed rule provides the frequency of disbursements to each institution and the way the institutions will have the opportunity to review the calculation for accuracy. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the sections are in effect the rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Jennielle Strother has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the increase in number of high-achieving, economically disadvantaged students who pursue higher education opportunities they may not have been able to afford or access otherwise. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the Texas Leadership Scholars program is voluntary.

Government Growth Impact Statement

- (1) the rules will create a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 61.897, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Texas Leadership Scholars Program.

The proposed new sections affect Texas Education Code, Sections 61.891 - 61.897.

§22.285. Authority and Purpose.

(a) Authority for this subchapter is provided in Texas Education Code, chapter 61, subchapter T-3, §§61.891 - 61.897, Texas Leadership Scholars Program.

(b) The purpose of this program is to provide merit scholarships coupled with academic achievement support and leadership development to assist eligible students to enroll in and graduate from public institutions of higher education in this state.

§22.286. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Administrator--The institution of higher education contracted by the Texas Higher Education Coordinating Board to administer the Program.

(2) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(3) Commissioner--The Commissioner of Higher Education.

(4) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

(5) Eligible Institution--A general academic teaching institution as defined by section 61.003(3) of the Texas Education Code.

(6) Mentoring--A program in which a student is paired with or serves as a mentor.

(7) Program--The Texas Leadership Scholars Program.

(8) Scholar--An eligible student who applied and was selected to participate in the Texas Leadership Scholars Program by a participating institution.

(9) Scholarship--A scholarship awarded to a scholar under the Program.

§22.287. Eligible Institutions.

(a) Responsibilities. A participating eligible institution is required to:

(1) Abide by the General Provisions outlined in subchapter A of this chapter (relating to General Provisions);

(2) Create and comply with policies that prohibit discrimination against or deny participation in or the benefits of the Program described in this subchapter on the basis; of race, color, national origin, gender, religion, age, or disability;

(3) Comply with the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions or employment;

(4) Ensure each Scholar receives sufficient financial aid from federal, state, and institutional grants and scholarships other than the scholarship awarded under the program to cover full tuition and fees for 4 years at no cost to the Scholar so long as the Scholar maintains eligibility; and

(5) Provide all reports regarding the program to the Coordinating Board or Administrator.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner, prior to receiving reimbursement through the program.

(2) Approval Deadline.

(A) Each eligible institution must indicate an intent to participate in the program by emailing the Administrator by June 15 and enter into an agreement with the Coordinating Board by August 31 for qualified students enrolled in that institution to be eligible to receive scholarships in the following biennium.

(B) Notwithstanding subparagraph (A) of this paragraph, for the 2023-24 academic year, an eligible institution may indicate intent to participate in the program by the administrative deadline established by the Commissioner.

§22.288. Eligible Students.

(a) To receive an initial award through the Program, a student must:

(1) Submit an application for scholarship consideration through the Coordinating Board or Administrator;

(2) Have Texas resident status, as determined by chapter 21, subchapter B of this title (relating to Determination of Resident Status);

(3) Graduate from a Texas public high school, including an open-enrollment charter school;

(4) Be enrolled full-time in a baccalaureate degree program at a participating institution the fall semester immediately following high school graduation;

(5) Have applied for any available financial aid assistance;

(6) Be TEXAS Grant eligible, as determined by subchapter L, §22.228 of this chapter (relating to Eligible Students) and meet one of the following criteria under subparagraph (A) or (B) of this paragraph:

(A) Graduate with a distinguished level of achievement under the foundation high school program, and:

(i) Graduate in the top 10% of the student's high school graduating class; or

(ii) Submit with the application a nomination letter from the student's high school principal or counselor; or

(B) Be eligible to graduate with a Texas First Diploma as set out in chapter 21, subchapter D of this title (relating to Texas First Early High School Completion Program).

(b) To receive a continuation award through the Program, a scholar must:

(1) Have previously received an initial year award through this Program;

(2) Be enrolled full-time in a baccalaureate degree program where the scholar received initial award or at another participating eligible institution to which the student has transferred during the period of eligibility;

(3) Make satisfactory academic progress toward the baccalaureate degree at the eligible institution, as defined in §22.289 of this subchapter (relating to Satisfactory Academic Progress) unless the scholar is granted a hardship extension in accordance with §22.295 of this subchapter (relating to Hardship Provision);

(4) Have completed or is on target to complete programmatic requirements set forth in §22.291 and §22.292 of this subchapter (relating to Scholarship Selection Criteria and Academic Achievement Support, respectively) as reported by participating institution.

§22.289. Satisfactory Academic Progress.

To qualify for a scholarship, each recipient of the scholarship shall meet the satisfactory academic progress requirements as utilized by the financial aid office of the eligible institution to determine eligibility for federal financial aid programs.

§22.290. Transfer.

A Scholar may transfer to another eligible institution not more than once during the student's period of eligibility. The Coordinating Board shall ensure that a participating eligible institution who enrolls a Scholar receives the scholarship funds for that student's remaining period of eligibility.

§22.291. Scholarship Selection Criteria.

The Coordinating Board or Administrator will receive scholarship applications and will forward qualified applications to each participating eligible institution of interest and the participating eligible institutions shall make selections based on a student's:

(1) Scholarship interest through the application;

(2) Ranking of the participating eligible institution as a top choice;

(3) Eligibility criteria set forth in §22.288 of this subchapter (relating to Eligible Students);

(4) Evidence of leadership and service within their high school and community; and

(5) Demonstrated academic achievement and ability.

§22.292. Academic Achievement Support.

(a) Each participating eligible institution shall ensure that each Scholar's experience includes, at a minimum, the following academic programmatic elements:

(1) Program cohort learning communities;

(2) Mentoring, research, and internship opportunities;

(3) Networking with state government, business, and civic leaders; and

(4) Statewide cohort learning institutes or seminars.

(b) The Coordinating Board may enter into agreements with participating eligible institutions to provide research-based support for

scholars to make satisfactory academic progress and graduate on time at participating institutions.

(c) If a participating eligible institution is unable to include a scholar or scholars in subsection (a) of this section, academic programmatic elements, they must provide alternative programming that has been approved by the Commissioner to aid the scholar in making academic progress.

§22.293. Leadership Development.

(a) Each participating eligible institution must ensure that a Scholar's experience includes, at a minimum, the following cohort-based leadership development elements:

(1) Leadership development programming; and

(2) Scholar summer programming which may be met through participating in a leadership conference, study abroad, or internship opportunities.

(b) The Coordinating Board may enter into agreements with participating eligible institutions to provide leadership development opportunities for scholars.

(c) If a participating eligible institution is unable to include a scholar or scholars in subsection (a) of this section, leadership development requirements, they must provide alternative programming that has been approved by the Commissioner to meet similar outcomes.

§22.294. Discontinuation of Eligibility or Non-Eligibility.

(a) A student who has already earned a baccalaureate degree at any public or private post-secondary institution is ineligible to participate in the program.

(b) Unless granted a hardship postponement in accordance with §22.295 of this subchapter (relating to Hardship Provisions), a student's eligibility for a grant ends:

(1) Five years from the start of the semester in which the student enrolls in the baccalaureate degree program at the eligible institution;

(2) Once the student has earned a cumulative total of 150 credit hours, including transferred hours, as verified by the student's institution; or

(3) If a Scholar transfers to another institution, except as authorized under §22.290 of this subchapter (relating to Transfer).

(c) Except as provided in §22.295 of this subchapter, a student may not receive a scholarship more than four years from the start of the semester in which the student enrolls in the baccalaureate degree program at the participating eligible institution.

§22.295. Hardship Provisions.

(a) In the event of a hardship or for other good cause as determined by the eligible institution, the Program Officer at the institution may allow an otherwise eligible Scholar to receive a scholarship:

(1) While enrolled in fewer semester credit hours than required in §22.288 of this subchapter (relating to Eligible Students);

(2) If the Scholar fails to meet the satisfactory academic progress requirements of §22.288 of this subchapter; or

(3) If the scholar requires an extension of the limits found in §22.294(b) of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility) to complete his or her degree.

(b) Hardship conditions may include:

(1) Documentation of a serious health/condition that makes the Scholar unable to attend school or complete academic study;

(2) Documentation that the Scholar is responsible for the care of a child, spouse, or parent who has a serious health condition, sick, injured, or and that the scholar's provision of care may affect his or her academic performance;

(3) The birth of a child or placement of a child with the student for adoption or foster care; or

(4) Scholar needing fewer than twelve semester credit hours to complete Scholar's degree plan.

(c) A hardship under this section may extend for a period of no longer than one year.

(d) Documentation of the hardship circumstances approved for a Scholar to receive a scholarship must be kept in the Scholar's files, and the institution must identify Scholars approved for a scholarship based on a hardship to the Coordinating Board, so that it may appropriately monitor each Scholar's period of eligibility.

(e) Eligible institutions shall adopt a hardship policy under this section, share such policy with Scholars and have the policy available in the financial aid office for public review upon request.

§22.296. Scholarship Amounts and Allocation of Funds.

(a) Funding. The Coordinating Board may not award through this program an amount that exceeds the amount of state appropriations and other funds that are available for this use.

(b) Scholarship Amounts.

(1) The amount of the scholarship in an academic year shall be the average cost of housing and food at the participating institution as approved by the Coordinating Board; and

(2) An institution may not reduce the amount of a scholarship by any gift aid for which the Scholar receiving the scholarship is eligible unless the total amount of a Scholar's scholarship plus any gift aid received exceeds the Scholar's cost of attendance.

(c) Allocation of Funds.

(1) The Commissioner shall determine and announce the number of initial scholarships available to each participating institution by January 31 of the prior fiscal year set forth in §22.288(a) of this subchapter (relating to Eligible Students);

(2) The number of scholarships for returning scholars will be the number of scholars eligible to receive the scholarship set forth in §22.288(b) of this subchapter; and

(3) Each participating eligible institution will receive an annual allocation equal to the number of scholarships times the average housing and food approved by the Commissioner. This amount shall include the amount necessary to cover the scholarships of a Scholar who transferred to the institution as authorized under this subchapter.

§22.297. Disbursement of Funds.

Upon request by an institution throughout the academic year, the Coordinating Board shall forward to each participating eligible institution a portion of its allocation of funds for timely disbursement to Scholars. Each participating eligible institution shall have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, an institution may lose any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to Scholars. Funds released in this manner are deemed returned to the Coordinating Board.

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

Filed with the Office of the Secretary of State on October 20, 2023.

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General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: December 3, 2023

For further information, please call: (512) 427-6365



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

The Texas Education Agency (TEA) proposes the repeal of §61.1008 and new §61.1008, concerning the school safety allotment. The proposed repeal and new rule would reflect changes to the school safety allotment made by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, transferred many Foundation School Program formulas from Texas Education Code (TEC), Chapters 41 and 42, to Chapter 48. However, TEC, §42.168, which authorized the school safety allotment, remained in Chapter 42. Section 61.1008 was adopted to allow the school safety allotment authorized under TEC, §42.168, to be treated as an allotment under TEC, Chapter 48, Subchapter C. HB 1525, 87th Texas Legislature, Regular Session, 2021, transferred and redesignated TEC, §42.168, to §48.115, making the existing rule unnecessary.

HB 3, 88th Texas Legislature, Regular Session, 2023, amended TEC, §48.115(a)(2), to create a per-campus safety allotment in addition to the per-student funding districts and open-enrollment charter schools are currently provided by appropriation for each student in average daily attendance.

Proposed new §61.1008 would implement the school safety allotment authorized under TEC, §48.115.

Proposed new subsection (a) would clarify definitions applicable the school safety allotment.

Proposed new subsection (b) would clarify that eligibility for funding under TEC, §48.115(a)(2), is open to both school districts and open-enrollment charter schools based on qualifying campuses and that juvenile justice alternative education program (JJAEP) campuses or those campuses offering exclusively virtual instruction are not eligible for funding under §61.1008.

Proposed new subsection (c) would clarify the timeline for calculating the school safety allotment entitlement under TEC, §48.115(a)(2), using data from the Texas Student Data System Public Education Information Management System (TSDS PEIMS) summer submission.

Proposed new subsection (d) would clarify that school districts and open-enrollment charter schools will receive estimated funding for eligible campuses at the start of the school year based on the prior year's data from TSDS PEIMS. The final funding amount will be determined using current-year data from TSDS

PEIMS. Any discrepancies between the estimated and final funding will be resolved as part of the Foundation School Program settle-up process as outlined in TEC, §48.272.

FISCAL IMPACT: Mike Meyer, deputy commissioner of finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation to remove an unnecessary provision from rule. The proposed rulemaking would also create a new regulation to implement the school safety allotment authorized under TEC, §48.115.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to implement legislative changes that help school districts provide a safe and secure environment through the school safety allotment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins November 3, 2023, and ends December 4, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than fourteen calendar days after notice of the proposal has been published in the *Texas Register* on November 3, 2023. A form for

submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

19 TAC §61.1008

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §48.004, which requires the commissioner to adopt rules and take action, as necessary, to implement and administer the Foundation School Program; and TEC, §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes provisions for the school safety allotment.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §48.004 and §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

§61.1008. School Safety Allotment.

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

Filed with the Office of the Secretary of State on October 23, 2023.

TRD-202303892

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: December 3, 2023

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



19 TAC §61.1008

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.004, which requires the commissioner to adopt rules and take action, as necessary, to implement and administer the Foundation School Program; and TEC, §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes provisions for the school safety allotment.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.004 and §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

§61.1008. School Safety Allotment.

(a) Definitions. The following definitions apply to the school safety allotment (SSA) in accordance with Texas Education Code (TEC), §48.115.

(1) School district campus--a campus that:

(A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;

(B) receives federal, state, or local funds or any combination of the three as its primary support;

(C) provides instruction in the Texas Essential Knowledge and Skills;

(D) has one or more grade groups in the range from early education through Grade 12; and

(E) is not a program for students enrolled in another public school, does not provide only virtual instruction, and does not use only facilities not subject to the district's control.

(2) Instructional facility--a term that has the meaning defined by §61.1031(a)(3) of this title (relating to School Safety Requirements).

(b) Eligibility.

(1) Both school districts and open-enrollment charter schools are eligible for the SSA.

(2) Funding under TEC, §48.115(a)(2), will be calculated for campuses that qualify as a school district or an open-enrollment charter school campus and an instructional facility, as defined in subsection (a) of this section, used for teaching the curriculum required by TEC, Chapter 28.

(3) Juvenile justice alternative education program campuses or campuses that provide only virtual instruction are not eligible for funding under TEC, §48.115(a)(2).

(c) Entitlement. In the fall of each school year, as part of the settle-up process for the preceding school year, campus data reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) for eligible campuses with confirmed enrollment and average daily attendance from the TSDS PEIMS summer submission will be used to calculate the allotment provided by TEC, 48.115(a)(2).

(d) Estimates. School districts and open-enrollment charter schools will be provided with estimated funding during a school year for eligible campuses based on the prior year's summer TSDS PEIMS data using the same methodology described in subsection (c) of this section to calculate the entitlement. The final entitlement will be based on data from the current school year as provided for in subsection (c) of this section. Any difference from the estimated entitlement will be addressed as part of the Foundation School Program settle-up process according to the provisions of TEC, §48.272.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 62. COMMISSIONER'S RULES CONCERNING OPTIONS FOR LOCAL REVENUE LEVELS IN EXCESS OF ENTITLEMENT

19 TAC §62.1072

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §62.1072 are not included in the print version of the Texas Register. The figures are available in the on-line version of the November 3, 2023, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §62.1072, concerning options and procedures for local revenue in excess of entitlement. The proposed amendment would adopt as a part of the Texas Administrative Code (TAC) the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2023-2024 School Year* and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2024-2025 School Year*. The manuals contain the processes and procedures that TEA will use in the administration of the provisions of Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to TEC, Chapter 49, must meet.

BACKGROUND INFORMATION AND JUSTIFICATION: The procedures contained in each yearly manual for districts determined to have local revenue in excess of entitlement are proposed as part of the TAC. The intent is to biennially update §62.1072 to refer to the most recently published manuals for the current and upcoming school years. Manuals adopted for previous school years will remain in effect with respect to those school years.

The proposed amendment to §62.1072 would adopt in rule the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2023-2024 School Year* as Figure: 19 TAC §62.1072(a) and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2024-2025 School Year* as Figure: 19 TAC §62.1072(b). The section title would be updated to reflect the manuals adopted in the rule.

Each school year's options and procedures for districts determined to have local revenue in excess of entitlement explain how districts subject to excess local revenue are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The options and procedures also provide information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

The following significant changes are addressed in the updated publications.

In *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2023-2024 School Year*, dates would be changed throughout the manual, and a new date would be added to the calendar to reflect when the agency will provide official notification to districts with local revenue in excess of entitlement after review notification for the 2022-2023 school year in accordance with TEC, §49.0041. Non-substantive, technical edits would also be made.

In *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2024-2025 School Year*, information related to TEC, §48.278, Equalized Wealth Transition Grant, would be removed since the statute expires on September 1, 2024.

FISCAL IMPACT: Mike Meyer, deputy commissioner of finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government,

including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by removing references to TEC, §48.278, Equalized Wealth Transition Grant, in the publication that applies to the 2024-2025 school year since the statute expires on September 1, 2024. The proposed rulemaking would also expand an existing regulation by adopting new publications for the 2023-2024 and 2024-2025 school years.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to inform the public of the existence of annual publications specifying the processes, procedures, and requirements used in the manuals for school districts with local revenue in excess of entitlement that are established biennially by the commissioner of education and communicated to all school districts. There is no anticipated economic cost to persons who are required to comply with this proposal.

DATA AND REPORTING IMPACT: The proposal would place the specific procedures contained in the publications *Options and Procedures for Local Revenue in Excess of Entitlement 2023-2024 School Year* and *Options and Procedures for Local Revenue in Excess of Entitlement 2024-2025 School Year* in the TAC. TEA administers the options for local revenue in excess of entitlement of TEC, Chapter 49, according to the procedures specified in each yearly manual for districts with excess local revenue. Data reporting requirements are addressed primarily through the online FSP System.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not

require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins November 3, 2023, and ends December 4, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 3, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §49.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §49.006.

§62.1072. *Options and Procedures for Local Revenue in Excess of Entitlement, 2023-2024 [2021-2022] and 2024-2025 [2022-2023] School Years.*

(a) For the 2023-2024 [2021-2022] school year, the processes and procedures that the Texas Education Agency (TEA) will use in the administration of the provisions of the Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, must meet are described in the official TEA publication *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2023-2024 [2021-2022] School Year*; provided in this subsection.

Figure: 19 TAC §62.1072(a)

[Figure: 19 TAC §62.1072(a)]

(b) For the 2024-2025 [2022-2023] school year, the processes and procedures that the TEA will use in the administration of the provisions of the TEC, Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, must meet are described in the official TEA publication *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2024-2025 [2022-2023] School Year*; provided in this subsection.

Figure: 19 TAC §62.1072(b)

[Figure: 19 TAC §62.1072(b)]

(c) The specific processes, procedures, and requirements used in the manuals for districts with local revenue in excess of entitlement are established biennially by the commissioner of education and communicated to all school districts.

(d) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts with local revenue in excess of entitlement with respect to those years.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §§133.240, 133.250, 133.305, and 133.308, concerning medical disputes for workers' compensation claims. The amendments implement House Bill (HB) 90, 88th Legislature, Regular Session (2023).

EXPLANATION. HB 90 added Labor Code §§401.027, 501.027, 501.028, and 501.029; and amended Labor Code §501.001. The proposed amendments to §§133.240, 133.250, 133.305, and 133.308 are necessary to implement the changes in HB 90 by clarifying workers' compensation coverage for authorized travel by members of the Texas military forces, ensuring that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and ensuring that DWC expedites disputes about those claims. The proposed amendments also include an update to the agency's address and non-substantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Section 133.240. The amendments to §133.240 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §133.240 is necessary to ensure that the rule is consistent with HB 90.

Section 133.250. The amendments to §133.250 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §133.250 is necessary to ensure that the rule is consistent with HB 90.

Section 133.305. The amendments to §133.305 add references to the definitions in Government Code §437.001 for "state active duty," "state training and other duty," and "Texas military forces." The amendments also add the requirement from HB 90 that, for a claim under Labor Code §501.028, the travel of a member of the Texas military forces to or from the member's duty location is considered to be in the course and scope of the member's employment if the member is serving on state active duty and engaged in authorized duty under written orders, or is on state training and other duty. Amending §133.305 is necessary to ensure that the rule is consistent with HB 90.

Section 133.308. The amendments to §133.308 update the address for the Managed Care Quality Assurance (MCQA) Office at the Texas Department of Insurance. The amendments also add the requirement from HB 90 that DWC will accelerate and give priority to an appeal from a denial of a qualifying claim for medical benefits made by a member of the Texas military forces, as well as to actions involving all health care required to cure or relieve the effects naturally resulting from a compensable injury. The amendments add the requirement from HB 90 that the member must notify DWC and the independent review officer that the contested case hearing or appeal involves a member of the Texas military forces. Amending §133.308 is necessary to ensure that the rule contains the current MCQA office address and that it is consistent with HB 90.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that enforcing and administering the proposed amendments will have the public benefits of reducing administrative hurdles for members of the Texas military forces with compensable injuries, and ensuring that DWC's rules conform to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, as added and amended by HB 90, and are current and accurate, which promotes transparent and efficient regulation.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, as added and amended by HB 90, because they do not impose requirements beyond those in the statutes. HB 90 clarified workers' compensation coverage for authorized travel by members of the Texas military forces, required that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and required that DWC expedite disputes about those claims. Any cost associated with those requirements does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments implement the requirements in HB 90 and make editorial changes only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments are necessary to implement the changes in HB 90 that clarify workers' compensation coverage for authorized travel by members of the Texas military forces, ensure that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and ensure that DWC expedites disputes about those claims. The proposed amendments do not change the people the rules affect or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on December 4, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §133.240, §133.250

STATUTORY AUTHORITY. DWC proposes amendments to §§133.240 and 133.250 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of

the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. The amendments to §§133.240 and 133.250 implement the changes to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, enacted by HB 90, 88th Legislature, Regular Session (2023).

§133.240. Medical Payments and Denials.

(a) - (o) (No change.)

(p) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code [§] Chapter 4201 and Chapter 19 of this title.

(1) All [Additionally, all] utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other pro-

visions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in the course and scope of employment.

(2) In accordance with Labor Code §501.028(b), an insurance carrier must accelerate and give priority to a claim for medical benefits:

(A) by a member of the Texas military forces who,

(i) while on state active duty,

(ii) sustains a serious bodily injury, as defined by Penal Code §1.07;

(B) including all health care required to cure or relieve the effects naturally resulting from a compensable injury.

(q) (No change.)

§133.250. Reconsideration for Payment of Medical Bills.

(a) - (i) (No change.)

(j) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code [§] Chapter 4201 and Chapter 19 of this title.

(1) All [Additionally, all] utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in the course and scope of employment.

(2) In accordance with Labor Code §501.028(b), an insurance carrier must accelerate and give priority to a claim for medical benefits:

(A) by a member of the Texas military forces who,

(i) while on state active duty,

(ii) sustains a serious bodily injury, as defined by Penal Code §1.07;

(B) including all health care required to cure or relieve the effects naturally resulting from a compensable injury.

(k) (No change.)

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

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Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.305, §133.308

STATUTORY AUTHORITY. DWC proposes amendments to §§133.305 and 133.308 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. The amendments to §§133.305 and 133.308 implement the changes to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, enacted by HB 90, 88th Legislature, Regular Session (2023).

§133.305. *MDR--General.*

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

(1) - (11) (No change.)

(12) State active duty--As defined by §437.001, Government Code.

(13) State training and other duty--As defined by §437.001, Government Code.

(14) Texas military forces--As defined by §437.001, Government Code.

(b) - (e) (No change.)

(f) Texas Military Forces. For a claim under Labor Code §501.028, the travel of a member of the Texas military forces to or from the member's duty location is considered to be in the course and scope of the member's employment if the member is:

(1) serving on state active duty and engaged in authorized duty under written orders; or

(2) on state training and other duty.

§133.308. *MDR of Medical Necessity Disputes.*

(a) - (f) (No change.)

(g) Requests. A request for independent review must be filed in the form and manner prescribed by the department. The department's IRO request form may be obtained from:

(1) the department's website at <http://www.tdi.texas.gov/>;
or

(2) the Managed Care Quality Assurance Office, Mail Code LH-MCQA [103-6A], Texas Department of Insurance, P.O. Box 12030 [149104], Austin, Texas 78711-2030 [78714-9104].

(h) - (t) (No change.)

(u) First Responders. In accordance with Labor Code §504.055(d), an appeal regarding the denial of a claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable injury involving a first responder will be accelerated by the division and given priority. The party seeking to expedite the contested case hearing or appeal must [shalt] provide notice to the division and independent review organization that the contested case hearing or appeal involves a first responder.

(v) Texas Military Forces. In accordance with Labor Code §501.028, the division will accelerate and give priority to an appeal from a denial of a claim for medical benefits.

(1) This subsection applies to a claim for medical benefits made by a member of the Texas military forces who, while on state active duty, sustains a serious bodily injury, as defined by Penal Code §1.07.

(2) The division will accelerate and give priority to actions involving all health care required to cure or relieve the effects naturally resulting from a compensable injury.

(3) The member must notify the division and IRO that the CCH or appeal involves a member of the Texas military forces.

(w) [(+) Enforcement. The department or the division may initiate appropriate proceedings under Chapter 12 of this title or Labor Code, Title 5 and division rules against an independent review organization or a person conducting independent reviews.

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

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Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §134.600, concerning preauthorization, concurrent utilization review, and voluntary certification of health care. The amendments implement House Bill (HB) 90, 88th Legislature, Regular Session (2023).

EXPLANATION. HB 90 added Labor Code §§401.027, 501.027, 501.028, and 501.029; and amended Labor Code §501.001. The proposed amendments to §134.600 are necessary to implement the changes in HB 90 by ensuring that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, including all health care required for the compensable injury. The proposed amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Section 134.600. The amendments to §134.600 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §134.600 is necessary to ensure that the rule is consistent with HB 90.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Landrum

expects that enforcing and administering the proposed amendments will have the public benefits of reducing administrative hurdles for members of the Texas military forces with compensable injuries, and ensuring that DWC's rules conform to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, as added and amended by HB 90, and are current and accurate, which promotes transparent and efficient regulation.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, as added and amended by HB 90, because they do not impose requirements beyond those in the statutes. HB 90 clarified workers' compensation coverage for authorized travel by members of the Texas military forces, required that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and required that DWC expedite disputes about those claims. Any cost associated with those requirements does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments implement the requirements in HB 90 and make editorial changes only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments are necessary to implement the changes in HB 90 that ensure that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces. The proposed amendments do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to

property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on December 4, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes amendments to §134.600 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. The amendments to §134.600 implement the changes to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, enacted by HB 90, 88th Legislature, Regular Session (2023).

§134.600. Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care.

(a) - (t) (No change.)

(u) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code [;] Chapter 4201 and Chapter 19 of this title (relating to Licensing and Regulation of Insurance Professionals). [Agents' Licensing]. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.]

(1) All utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in the course and scope of employment.

(2) In accordance with Labor Code §501.028(b), an insurance carrier must accelerate and give priority to a claim for medical benefits:

(A) by a member of the Texas military forces who,

(i) while on state active duty,

(ii) sustains a serious bodily injury, as defined by Penal Code §1.07;

(B) including all health care required to cure or relieve the effects naturally resulting from a compensable injury.

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

Filed with the Office of the Secretary of State on October 23, 2023.

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