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 7. STATE BOARD FOR EDUCATOR CERTIFICATION
CHAPTER 235. CLASSROOM TEACHER CERTIFICATION STANDARDS
SUBCHAPTER F. SUPPLEMENTAL CERTIFICATE STANDARDS
19 TAC §235.115
The State Board for Educator Certification (SBEC) proposes new §235.115, concerning supplemental certificate standards. The proposed new rule would specify the certification standards for the English as Second Language (ESL) Supplemental Certificate.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC is statutorily authorized to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse population of this state. The SBEC is also statutorily required to appoint advisory committee members to recommend standards for each class of certificate. The standards are the basis for the certification examinations and set the requirements for educator preparation program (EPP) curriculum and delivery. The development committees include practicing educators, school district personnel, experts, and EPP faculty. These individuals collaborate to draft or review existing educator standards to ensure that the educator standards reflect best practices, align with the commissioner's educator standards, and where applicable, align with the current versions of the Texas Essential Knowledge and Skills that are adopted by the State Board of Education.

English as a Second Language Standards
§235.115. English as a Second Language Standards.

The proposed educator standards for the classroom teacher class would update the standards for ESL. Given the student demographics of our state and the duedness of the current ESL exam, Texas Education Agency (TEA) staff have engaged in a process with stakeholders to draft educator standards for ESL. TEA staff provided a summary of the process and list of committee members to the SBEC. The standards would be a part of proposed new Subchapter F, which is where all rules for supplemental certificate standards will be codified. The appropriate placement for the ESL standards would be in the supplemental certificate standards to best match the certificate name found in §230.21(e).

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed new section is in effect, there is no additional fiscal impact on state or local governments and that there are no additional costs to entities 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 (TGC), §2001.002.

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 TGC, §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 TGC, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: The 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 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 expand, limit, or 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: The public benefit anticipated as a result of the proposed standards would be more rigorous, relevant, and reliable requirements for the preparation, certification, and testing of classroom teachers upon entry into the profession and retention of these qualified professionals for years to come. There is no anticipated cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff 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 March 15, 2019 and ends April 15, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposed new section at the April 26, 2019 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the Texas Register on March 15, 2019.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state;

TEC, §21.040(4), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board;

TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§21.003(a), 21.031, 21.040(4), and 21.041(b)(1), (2), and (4).

§235.115. English as a Second Language Standards.

(a) English as a Second Language (ESL) standards. The standards identified in this section are targeted for classroom teachers of English learners (ELs). The standards address the discipline associated with the theory and practice of teaching students who have a primary language other than English. The standards inform appropriate teaching techniques, methods, and teacher actions, judgments, and decisions by taking into consideration theories and research of language acquisition, second language learning, understandings of the needs and strengths of ELs, and the backgrounds and interests of individual students.

(b) Foundations of Language Acquisition. ESL teachers know, understand, and use the major theories and research related to the structure and language acquisition process to help ELs develop language and literacy and achieve in the content areas. The ESL teacher must:

(1) demonstrate and apply basic linguistic concepts, such as structure, patterns, and conventions of written and spoken English, that relate to instruction for ELs as they acquire the English language and literacy to achieve in the content areas;

(2) apply a conscious knowledge of language as a system to develop and accommodate instructional materials and to build understanding of the foundations of English needed for content-based instruction fostered through the English Language Proficiency Standards (ELPS) in §74.4 of Part II of this title (relating to English Language Proficiency Standards);

(3) use knowledge of interrelated aspects of listening, speaking, reading, and writing as they support ELs' acquisition of language and content knowledge;

(4) understand the ways in which languages are similar and different by identifying linguistic structures that distinguish written and spoken language forms as well as those representing social and academic uses of language;

(5) build on similarities between English and the students' primary language (L1) and anticipate common challenges that ELs may have with English language concepts;

(6) apply knowledge of sociolinguistic concepts (e.g., dialect diversity in English; factors affecting language variation, register, and style; language change);

(7) understand and apply theories, concepts, and research in language acquisition in L1 and secondary language (L2) to support ELs' language, literacy, and content area development;

(8) recognize and apply knowledge of the interrelatedness of L1 and L2 acquisition, including similarities and differences between L1 and L2 acquisition and L1 influence on L2;

(9) apply understanding of characteristics of various stages of first- and second-language acquisition to select effective and appropriate instructional methods that promote English language development at various stages of language proficiency;

(10) apply understandings of cognitive processes involved in internalizing language rules and learning vocabulary in a second language (e.g., generalization, categorization, metacognition);

(11) apply understanding of the ELPS Proficiency Level Descriptors (PLDs) and the relationship of the ELPS PLDs to the stages of second language acquisition; and

(12) apply understanding of the interconnected development of linguistic, cognitive, and academic processes through the interdependence on social and cultural processes (affective variables).

(c) Culturally Responsive Teaching. ESL teachers know, understand, and use major concepts, principles, theories, and research related to the nature and role of culture and cultural groups to construct mutually adaptive learning environments for ELs. The ESL teacher must:

(1) use knowledge of major theories and research related to the nature and role of culture to design and select instructional materials, methods, and delivery techniques that facilitate learning for a multicultural, linguistically diverse classroom;

(2) build upon ELs' prior knowledge, experiences, and academic background to connect new learning through effective culturally responsive techniques;
(3) seek to understand and to value the surface and deep aspects of culture, including values, beliefs, customs, and traditions;

(4) use knowledge of the stages of acculturation to create a mutually adaptive learning environment;

(5) recognize that language and culture interact in the formation of the students' cultural identities;

(6) apply the understanding that academic achievement is positively impacted by valuing the cultural assets that ELs bring to the classroom and integrating the students' cultural aspects into classroom materials;

(7) recognize factors that contribute to cultural bias (e.g., stereotyping, prejudice, ethnocentrism), demonstrate sensitivity to students' diverse cultural and socioeconomic backgrounds, and apply this knowledge to create a culturally responsive learning environment;

(8) understand that cultural and linguistic diversity are not the only factors that may affect students' learning of academic content (e.g., age, developmental characteristics, academic strengths and needs, preferred learning styles, personality, sociocultural factors, home environment, motivation, exceptionalities); and

(9) create an effective learning environment that addresses the affective, linguistic, and cognitive needs of ELs through second language acquisition methods.

(d) Effective Instruction and Assessment Across All Content Areas and Disciplines. ESL teachers know, understand, and use evidence-based practices and strategies related to planning and implementing all content and language instruction. ESL teachers are skilled in instructional methods for developing and integrating language skills. ESL teachers purposefully and appropriately select, integrate, and utilize technology and resources for their ELs. The ESL teacher must:

(1) use knowledge of the required Texas Essential Knowledge and Skills (TEKS) and the ELPS as the foundational curriculum;

(2) design and implement instruction that addresses all language domains (listening, speaking, reading, and writing) through authentic, meaningful practice with content material;

(3) know, adjust, and implement research-validated instructional methods for ELs that make the content comprehensible while supporting English language development (e.g., sheltered instruction, content-based instruction);

(4) choose, adapt, and use a wide range of instructional materials, resources, and technologies for the diverse needs of ELs to support language and content knowledge acquisition while maintaining rigor;

(5) integrate and foster critical thinking by providing scaffolds needed for ELs to demonstrate their higher-order thinking skills in English;

(6) establish safe, positive, supportive, interactive, and empowering learning environments for ELs;

(7) implement effective classroom management methods that support a culturally and linguistically diverse classroom;

(8) address the needs of ELs at all English language proficiency levels as described in the ELPS PLDs through targeted language instruction within content material;

(9) create multiple opportunities for authentic, meaningful use of social and academic language;

(10) recognize the background factors that can affect literacy development, such as students with interrupted formal education (SIFE);

(11) understand and apply the interrelatedness of language domains (listening, speaking, reading, and writing) for oral language and literacy development;

(12) utilize a communicative approach that focuses on meaning and communicative practice over error correction;

(13) recognize and apply the transfer of oral language and literacy skills from L1 to L2;

(14) recognize the individual factors that require focused, targeted, systematic language instruction in accordance with the ELPS for ELs in Grade 3 and higher at beginning and intermediate levels of English language proficiency, including recognizing the specific needs and assets of newcomer ELs at various levels of English language proficiency;

(15) provide appropriate feedback for ELs at all English language proficiency levels;

(16) recognize and address the various factors that affect reading comprehension and implement applicable methods of reading instruction;

(17) utilize content-based instruction that is linguistically accommodated using sheltered methods that are communicated, sequenced, and scaffolded;

(18) ensure access to full content curriculum for all ELs through the use of comprehensive input techniques and research-validated learning strategies across content areas;

(19) recognize the individual factors that affect cognitive academic language development (e.g., developmental characteristics, cultural and linguistic background, academic strengths, learning styles);

(20) promote receptive and expressive language acquisition by embedding content-related opportunities for ELs to interact using social and academic vocabulary;

(21) embed language teaching through content instructional materials and academic text features;

(22) use ongoing quantitative and qualitative data to demonstrate content and language development, inform planning, and adjust instruction;

(23) understand the different purposes of assessment (e.g., pre-assessment, formal, informal) and limitations of each type in order to select, develop, and adapt assessments for specific purposes of language and content;

(24) utilize and adapt assessments to allow students flexibility in demonstrating content knowledge through varied outputs;

(25) know and use a variety of performance-based assessment tools with appropriate rubrics to inform and guide instruction in the classroom;

(26) understand the interdependent relationship between teaching and assessment and develop instructional tasks and assessment tools that promote and measure student growth in language and content;

(27) develop classroom assessments using a variety of item types and elicitation and response formats to assess ELs’ receptive (listening and reading) and expressive (speaking and writing) language skills; and
(28) understand and apply the uses and limitations of formal and informal assessments for ELs.

(e) Language Proficiency Assessment, Program Placement, and Reclassification. ESL teachers demonstrate understanding of how to use language proficiency assessments in their role in the identification, placement, and reclassification of English learners. The ESL teacher must:

(1) understand federal- and state-mandated policies and statute related to ELs, including Language Proficiency Assessment Committee (LPAC) guidelines for identification and classification as English Learner in Texas;

(2) use state-approved identification assessments for ELs in Texas and understand how to interpret the results;

(3) understand the value and use of primary language assessments;

(4) use knowledge of the connection between the ELPS in §74.4 of Part II of this title and the Texas English Language Proficiency Assessment System (TELPAS) to evaluate and monitor the progress of ELs in English language proficiency;

(5) understand federal- and state-mandated policies and statute related to programs for ELs, including LPAC guidelines for program placement, reclassification, and monitoring in Texas;

(6) understand the similarities and differences between state-approved ESL and bilingual program models in Texas;

(7) apply the state-mandated requirements for English learners with parental denial, including assessment, monitoring, and usage of the ELPS in all content instruction;

(8) understand and apply the similarities and differences of linguistic accommodations for instructional purposes and allowable accommodations for served ELs on state assessments;

(9) apply the appropriate state-mandated criteria and LPAC procedures for reclassification, monitoring, and exit; and

(10) understand the role of the LPAC in coordinating with other special programs (e.g., special education, Section 504, dyslexia, gifted and talented) as applicable.

(f) Professional Learning, Partnerships, and Advocacy. ESL teachers keep current with new instructional techniques, research, advances in the ESL field, and education policy issues related to ELs and demonstrate knowledge of the history of programs and services for ELs. ESL teachers work collaboratively with school staff, parents, and the community to improve the learning environment, provide support, and advocate for ELs and their families. The ESL teacher must:

(1) demonstrate knowledge of theory, research, and current practice and methodologies in the field of bilingual and ESL programming to inform teaching and learning;

(2) understand the history of programming and services for ELs, including key court cases, legal mandates, and federal and state policies that impact current bilingual and ESL programs;

(3) know and understand public issues and educational policy that impact effective programming and equitable opportunities related to the education of ELs;

(4) take advantage of and actively participate in professional growth opportunities to create equitable learning environments;

(5) demonstrate reflective practices through the process of setting and revisiting specific goals for professional learning related to culturally and linguistically diverse student populations and developing a personal philosophy of ESL education;

(6) be accountable to goals for growth in supporting ELs through self-reflection, peer evaluation, and coordinated leadership monitoring of implementation;

(7) advocate for appropriate instruction and assessment by sharing their knowledge of ELs with their general-education and content-area colleagues and the school community;

(8) promote EL success by playing an active role in the campus LPAC, including coordination of services for ELs in other special programs for which they qualify;

(9) actively advocate and serve as a resource for ELs and their families through partnerships with colleagues and the community by enlisting the support and involvement of community partners and resources that enhance the education of ELs;

(10) consider ESL families as vital partners who enrich the classroom and school environment and facilitate parent/guardian involvement in their child(ren)'s linguistic, academic, and personal development;

(11) provide effective communication that is accessible, consistent, and targeted to the needs of ELs and their parents/families in a variety of educational and social contexts; and

(12) apply knowledge of effective strategies for advocating educational and social equity for ELs by staying current on public issues regarding ELs (e.g., participating in LPAC meetings; serving on Site-Based Decision Making (SBDM) committees; participating in Admission, Review, and Dismissal (ARD) committee meetings as appropriate; serving as a resource for teachers).

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

Filed with the Office of the Secretary of State on March 1, 2019.

TRD-2019000720
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: April 14, 2019
For further information, please call: (512) 475-1497

CHAPTER 241. CERTIFICATION AS PRINCIPAL

SUBCHAPTER B. PRINCIPAL CERTIFICATE

19 TAC §241.41

The State Board for Educator Certification (SBEC) proposes an amendment to §241.41, concerning general provisions of the Principal certificate. The proposed amendment would provide a deadline for candidates to qualify and apply for the current principal certification and to take the corresponding certification examination, after which time the Principal as Instructional Leader certificate will become the only principal certification available to candidates.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC is statutorily authorized to regulate and oversee all aspects of the certification of public school educators. The SBEC
is also statutorily authorized to ensure that all candidates for
certification or renewal of certification demonstrate the know-
ledge and skills necessary to improve the performance of the
diverse population of this state.

The SBEC rules in 19 Texas Administrative Code (TAC) Chapter
241, Certification as Principal, establish all of the requirements
for certification and EPP minimum standards for issuance of a
principal certificate.

At the April 2016 SBEC meeting, the SBEC adopted new prin-
cipal standards that better align with contemporary principal prac-
tices, principal appraisal, and professional development stan-
dards. With the adoption of new standards that reflect the know-
ledge and skills necessary for today's principal, there was careful
consideration of the changes to the essential role of a principal to
schools, students, communities, and teachers from 2002 (when
the standards began to be used for assessment purposes) to the
current role in 2018, as illustrated below.

Figure: 19 TAC Chapter 241 - Preamble

At the March 2018 SBEC meeting, Texas Education Agency
(TEA) staff presented the SBEC with a comprehensive approach
to a principal certification redesign that includes 1) a new certifi-
 cate name that better reflects current reality along with a new
principal certification assessment; 2) an optional tiered process
for obtaining standard certification; and 3) an endorsement for
currently certified principals and assistant principals.

At the October 5, 2018 SBEC meeting, the SBEC adopted the
new principal certificate program. The proposed amendment to
§241.41(e) would formally end issuance of the Principal certifi-
cate on October 30, 2019. This date has been communicated
to the field consistently since Fall 2017. This amendment would
allow sufficient time for current candidates to finish out their ap-
plications, while ensuring that the transition to the Principal as In-
stuctional Leader certification is complete by November 1, 2019.

To insure programs are aligned to the new standards and
assessments, programs had to provide evidence of alignment
with key knowledge, skills, and mindsets to the Principal as In-
structional Leader (268) required standards that were organi-
 zed around nine pillars for principal preparation, including: (1)
Communication with Stakeholders, (2) Curriculum Alignment,
(3) Diversity and Equity, (4) Data-Driven Instruction, (5) Hiring,
Selection, and Retention, (6) Observation and Feedback, (7)
Professional Development, (8) School Vision and Culture, and
(9) Strategic Problem-Solving.

Sixty-five EPPs that offer principal preparation have applied for
the new certification, and currently there are 52 EPPs that have
been approved.

FISCAL NOTE. Ryan Franklin, associate commissioner for ed-
cuatorship leadership and quality, has determined that for the first
five-year period the proposed amendment is in effect, there is
no additional fiscal impact on state or local governments and
that there are no additional costs to entities required to comply
with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on
local economy; therefore, no local employment impact statement

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMU-
NITY IMPACT: The proposal has no direct adverse economic im-
pact for small businesses, microbusinesses, or rural communi-
ties; therefore, no regulatory flexibility analysis, specified in TGC,
§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 TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not im-
pose a burden on private real property and, therefore, does not
constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: The TEA staff prepared a
Government Growth Impact Statement assessment for this pro-
posed rulemaking. During the first five years the proposed rule-
making would be in effect, it would not create or eliminate a
government program; would not require the creation of new em-
ployee 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 expand, limit, or repeal an existing regula-
tion; 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: The public ben-
efit anticipated as a result of the proposal is that clarity would be
provided for candidates and programs regarding the final date
for candidates to complete their program and be recommended
for their principal certificate. There is no anticipated cost to per-
sons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would not re-
quire a written report or other paperwork to be completed by a
principal or classroom teacher.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK RE-
QUIREMENTS: The TEA staff has determined that the proposal
would not require a written report or other paperwork to be com-
pleted by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the
proposal begins March 15, 2019 and ends April 15, 2019.
A form for submitting public comments is available on the TEA
website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SE-
BEC_Rules_(TAC)/Proposed_State_Board_for_Educa-
tor_Certification_Rules/. The SBEC will take registered oral
and written comments on the proposed amendment at the April 26,
2019 meeting in accordance with the SBEC board operating
policies and procedures. All requests for a public hearing on
the proposed amendments submitted under the Administrative
Procedure Act must be received by the Department of Educator
Leadership and Quality, Texas Education Agency, 1701 North
Congress Avenue, Austin, Texas 78701. Attention: Mr. Ryan
Franklin, associate commissioner for educator leadership and
quality, not more than 14 calendar days after notice of the
proposal has been published in the Texas Register on March
15, 2019.

STATUTORY AUTHORITY. The amendment is proposed under
the Texas Education Code (TEC), §21.003(a), which states that
a person may not be employed as a teacher, teacher intern or
teacher trainee, librarian, educational aide, administrator, edu-
cational diagnostician, or school counselor by a school district
unless the person holds an appropriate certificate or permit
issued as provided by the TEC, Chapter 21, Subchapter B;
TEC, §21.040(4), which states that the State Board for Educator

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Certification (SBEC) shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the SBEC; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.046(d), which states that the SBEC shall consider competencies developed by relevant national organizations and the State Board of Education; and TEC, §21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017, which require the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators’ continuing education requirements, including particular continuing education requirements for principals.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.040(4), 21.041(b)(1)-(4), 21.046(b)-(d), and 21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017.


(a) Due to the critical role the principal plays in campus effectiveness and student achievement, and consistent with the Texas Education Code (TEC), §21.046(c), the rules adopted by the State Board for Educator Certification ensure that each candidate for the Principal Certificate is of the highest caliber and possesses the knowledge and skills necessary for success.

(b) As required by the TEC, §21.046(b)(1)-(6), the standards identified in §241.55 of this title (relating to Standards Required for the Principal Certificate) emphasize instructional leadership; administration, supervision, and communication skills; curriculum and instruction management; performance evaluation; organization; and fiscal management.

(c) An individual serving as a principal or assistant principal is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(d) The holder of the Principal Certificate issued under the provisions of this chapter may serve as a principal or assistant principal in a Texas public school.

(e) A candidate must meet the requirements for the Principal Certificate by August 31, 2019. All applications must be complete and received by the Texas Education Agency by October 30, 2019.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
HHSC has determined that during the first five years that the repeals will be in effect:

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

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

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no requirement to alter current business practices.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these repeals because the repeals are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT

Enrique Marquez, HHSC Chief Program and Services Officer, has determined that for each year of the first five years the repeals are in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the Texas Administrative Code.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247 or 4900 North Lamar Boulevard, Austin, Texas 78751-2316, or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 25R019" in the subject line.

STATUTORY AUTHORITY

The repealed rules are authorized by Texas Government Code, §531.0055, which requires the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services; Texas Human Resources Code, §32.021(c), which requires HHSC’s Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program; and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner to adopt rules necessary for the administration of Chapter 1001.

The repealed rules affect Texas Government Code, §§531.0055; Texas Human Resources Code, §32.021(c); and Texas Health and Safety Code, §1001.075.

§416.51. Purpose and Application.
§416.52. Definitions.
§416.53. Eligibility Criteria.
§416.54. Co-payments.
§416.55. Uniform Assessment.
§416.56. Individual Recovery Plan.
§416.57. Provider Qualifications and Contracting.
§416.58. Fair Hearings and Appeal Processes.

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 February 28, 2019.

TRD-201900712
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: April 14, 2019
For further information, please call: (512) 838-4367

TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307. MENTAL HEALTH COMMUNITY-BASED SERVICES

SUBCHAPTER B. HOME AND COMMUNITY-BASED SERVICES--ADULT MENTAL HEALTH PROGRAM

26 TAC §§307.51 - 307.57

BACKGROUND AND PURPOSE
HHSC proposes these new rules in Chapter 307 to replace rules in Title 25, Chapter 416, Subchapter B, concerning Home and Community-Based Services--Adult Mental Health Program. The rules in Chapter 416 are proposed for repeal elsewhere in this issue of the Texas Register. The purpose of repealing and replacing these rules is to ensure continued operation of the HCBS-AMH program established by applicable state legislative direction in the 2016-2017 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Department of State Health Services, Rider 61). The state legislative direction ensures access to services for individuals meeting established eligibility criteria who are eligible for or currently receiving Medicaid to incorporate legislatively directed broadened populations of individuals served by the program.

These proposed new rules describe the Home and Community-Based Services--Adult Mental Health (HCBS-AMH) program designed to support the recovery of adults with serious mental illness who are eligible for or currently receiving Medicaid through the provision of home and community-based services. The proposed rules also define and designate "HHSC" as the agency responsible for administering the HCBS-AMH program.

SECTION-BY-SECTION SUMMARY
The proposed new §307.51 establishes the purpose of the rule and to whom it applies.

The proposed new §307.52 sets forth definitions used in the subchapter.

The proposed new §307.53 sets forth eligibility criteria and HCBS-AMH assessment requirements to determine if an adult meets the needs-based eligibility criteria to participate in the HCBS-AMH program. The proposed rule identifies with whom the assessor must consult to conduct the HCBS-AMH assessment and how it must be conducted. For HHSC to determine if an individual is eligible to participate in this program, the individual must meet criteria in accordance with applicable state legislative direction and eligibility requirements as set forth in the Medicaid state plan, which include having three years or more consecutive or cumulative inpatient psychiatric hospitalizations during the five years before initial enrollment in the HCBS-AMH program; having two or more psychiatric crises and four or more discharges from correctional facilities during the three years before initial enrollment in HCBS-AMH; or having two or more psychiatric crises and fifteen or more total emergency department documented contacts in which services are delivered during the three years before initial enrollment in HCBS-AMH. HHSC must approve each HCBS-AMH initial eligibility assessment, annual assessment, and assessments conducted due to changes in circumstances.

The proposed new §307.54 sets forth Individual Recovery Plan (IRP) requirements including IRP parameters and HHSC's IRP review and approval before a provider delivers HCBS-AMH program services to individuals. The section also establishes that HHSC may conduct an IRP utilization review and review supporting documentation at any time. The proposed rule outlines actions HHSC may take if one or more of the services specified in the IRP do not meet the requirements.

The proposed new §307.55 sets forth requirements for assessing co-payments for HCBS-AMH as described in 25 TAC §412.108, concerning Billing Procedures.

The proposed new §307.56 sets forth certain contracting processes.

The proposed new §307.57 sets forth requirements regarding rights of individuals to request a fair hearing.

FISCAL NOTE
Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there is no anticipated impact to costs and revenues of state or local governments as a result.

GOVERNMENT GROWTH IMPACT STATEMENT
HHSC has determined that during the first five years that the sections will be in effect:

1. the proposed rules will not create or eliminate a government program;
2. implementation of the proposed rules will not affect the number of employee positions;
3. implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
4. the proposed rules will not affect fees paid to the agency;
5. the proposed rules will create new rules in Texas Administrative Code, Title 26, which will replace rules being repealed contemporaneously from Title 25;
6. the proposed rules will expand existing rules;
7. the proposed rules will not change the number of individuals subject to the rules; and
8. the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS
Greta Rymal, Deputy Executive Commissioner for Financial Services, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The sections clarify existing program requirements.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT
There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on a local economy.

COSTS TO REGULATED PERSONS
Texas Government Code, §2001.0045, does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; relate to a state agency procurement; and are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT
Enrique Marquez, HHSC Chief Program and Services Officer, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforces or administering the sections will be the continued operation of the program to provide home and community-based services to individuals with a serious mental illness who are eligible for or currently receiving Medicaid in accordance with applicable state legislative direction. Furthermore, including a definition of "HHSC" to align with Chapter 531 of the Texas Government Code effectively shifts responsibility of administering these rules from the Department of State Health Services to HHSC, aligning with organizational changes to the HHS system.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247 or 4900 North Lamar Boulevard, Austin, Texas 78751-2316, or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 25R019" in the subject line.

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code, §531.0055, which requires HHSC's Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services; and Texas Human Resources Code §32.021(c), which requires HHSC's Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program.

The proposed new rules affect Texas Government Code §531.0055 and Texas Human Resources Code, §32.021(c).

§307.51 Purpose and Application.

(a) The purpose of this subchapter is to implement the Home and Community-Based Services--Adult Mental Health (HCBS-AMH) program, providing home and community-based services to individuals with a serious mental illness who are eligible for or currently receiving Medicaid in accordance with the Medicaid state plan and applicable state legislative direction.

(b) The subchapter applies to:

(1) a person or entity contracting with HHSC to provide HCBS-AMH services, as described in this subchapter;

(2) an entity having administrative responsibilities under this program; and

(3) an individual applying for or enrolled in the HCBS-AMH program.

§307.52 Definitions.

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

(1) Activities of daily living--Routine daily activities. These activities include:

(A) performing personal hygiene activities;
(B) dressing;
(C) meal planning and preparation;
(D) managing finances;

(E) shopping for food, clothing, and other essential items;

(F) performing essential household chores;

(G) communicating by phone or other media;

(H) navigating public transportation;

(I) participating in the community; and

(J) other activities as defined by HHSC.

(2) Adult--An individual 18 years of age or older.

(3) Assessor--A qualified mental health professional-community services as defined in 25 TAC Chapter 412, Subchapter G (relating to Mental Health Community Services Standards) who conducts the HCBS-AMH assessment evaluating an individual's need for HCBS-AMH.

(4) Designee--A person or entity named by HHSC to act on its behalf.

(5) HCBS--Home and community-based services.

(6) HCBS-AMH--Home and community-based services-adult mental health.

(7) HCBS-AMH assessment--A set of HHSC-defined standardized assessment measures used by HHSC to determine an individual's level of need based on an individual's strengths and needs. The HCBS-AMH assessment serves as the basis for the IRP.

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

(9) Individual--A person seeking or receiving services under this subchapter.

(10) IRP--Individual recovery plan. A written, individualized plan, developed in accordance with 25 TAC Chapter 412, Subchapter D (relating to Mental Health Services--Admission, Continuity, and Discharge) and 25 TAC §412.322 (relating to Provider Responsibilities for Treatment Planning and Service Authorization) in consultation with the individual and LAR, if applicable, identifying necessary HCBS-AMH services the provider will deliver to the individual and which services as the treatment plan or recovery plan.

(11) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual as defined in Texas Health and Safety Code §241.151.

(12) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251, which serves as a neutral party to help consumers, including consumers who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues related to consumer access to behavioral health care, including care for mental health conditions and substance use disorders.
(13) Provider—A person or entity that contracts with HHSC to provide services under this subchapter.

(14) Serious mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, neurocognitive disorders, substance use disorder, or intellectual disability) that:

(A) substantially impairs thought, perception of reality, emotional process, development, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

§307.53. Eligibility Criteria and HCBS-AMH Assessment.

(a) To participate in the HCBS-AMH program, an assessor must conduct an HCBS-AMH assessment on each individual for HHSC to determine that the individual meets the needs-based eligibility criteria for HCBS-AMH.

(1) The assessor must consult with the individual, the individual's LAR, if applicable, treatment team, providers, and other persons according to the needs and desire of the individual to conduct the HCBS-AMH assessment.

(2) The HCBS-AMH assessment must:

(A) be conducted face-to-face as permitted under Medicaid guidelines;

(B) take into account the ability of the individual to perform two or more activities of daily living; and

(C) assess the individual's need for HCBS-AMH.

(b) For HHSC to determine an individual eligible to participate in HCBS-AMH, the individual must meet criteria in accordance with applicable state legislative direction and eligibility requirements as set forth in the Medicaid state plan, including:

(1) having three years or more of consecutive or cumulative inpatient psychiatric hospitalizations during the five years before initial enrollment in the HCBS-AMH program;

(2) having two or more psychiatric crises and four or more discharges from correctional facilities during the three years before initial enrollment in HCBS-AMH; or

(3) having two or more psychiatric crises and fifteen or more total emergency department documented contacts in which services are delivered during the three years before initial enrollment in HCBS-AMH.

(c) The HCBS-AMH assessment must be repeated at least annually for each individual, and when circumstances necessitate a re-assessment, using the same requirements outlined in subsections (a) and (b) of this section.

(d) HHSC approves each HCBS-AMH initial eligibility assessment, annual assessment, and assessment conducted based on a change in circumstances.


(a) An IRP must:

(1) prepare for the individual's effective transition to the community;

(2) promote the individual's inclusion into the community;

(3) protect the individual's health and welfare in the community;

(4) supplement, rather than replace, the individual's natural support systems and resources;

(5) be designed to prevent or reduce the individual's likelihood of:

(A) an inpatient psychiatric facility admission;

(B) a correctional facility admission; and

(C) an emergency department visit in which services are delivered;

(6) include the most appropriate type and amount of services to meet the individual's needs;

(7) prevent the provision of unnecessary or inappropriate care;

(8) be based on the individual's preferences, needs, and goals; and

(9) be developed with the individual, LAR, individual's treatment team and providers, and other persons according to the needs and desire of the individual.

(b) An HHSC-approved designee must review the IRP and submit it to HHSC for its approval.

(c) An HHSC-approved designee must submit to HHSC, with the IRP:

(1) an HCBS-AMH assessment of the individual identifying the individual's needs and supporting the HCBS-AMH included in the IRP; and

(2) documentation that non-HCBS-AMH support systems and resources are unavailable or are insufficient to meet the goals specified in the IRP.

(d) A provider must obtain HHSC's approval of the IRP before the provider may deliver HCBS-AMH program services.

(e) HHSC may conduct a utilization review of an IRP and supporting documentation at any time to determine if the services specified in the IRP meet the requirements described in subsection (a) of this section.

(f) If HHSC determines one or more of the services specified in the IRP do not meet the requirements described in subsection (a) of this section, HHSC may:

(1) deny, reduce, or terminate the service; or modify the IRP; and

(2) send written notification to the individual, LAR, and the provider according to §307.57 of this subchapter (relating to Fair Hearings Process).

(g) The cost of the IRP must be reasonable as determined by HHSC.


A co-payment for HCBS-AMH services may be assessed as described in 25 TAC §412.108 (relating to Billing Procedures).

§307.56. Provider Qualifications and Contracting.

(a) A prospective provider may request and submit an application to HHSC to provide HCBS-AMH at any time. The application sets forth the qualifications to be a provider.

(b) HHSC must approve the provider and enter into a contract with the provider before the provider serves any individual.

(c) HCBS providers must comply with any applicable federal or state law or rule.

§651.217. FORENSIC ANALYST LICENSING PROGRAM

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.217, related to its Forensic Analyst Licensing Program, to provide clarification that the Commission's Presiding Officer or Designee may unilaterally approve license applications where an applicant has a misdemeanor conviction older than ten (10) years and the Presiding Officer or Designee has determined the person is eligible for a forensic analyst license. The amendment is necessary to reflect adoptions made by the Commission at its January 25, 2019, quarterly meeting. The adoptions were made in accordance with the Commission's authority under Article 38.01 §4-a(d), Code of Criminal Procedure which requires the Commission to create a forensic analyst licensing program that establishes the qualifications and term for a license and sets fees for the issuance and renewal of a license.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there is no anticipated fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. The proposal clarifies the authority of the Commission's Presiding Officer or Designee to approve applications where there is a criminal conviction older than ten (10) years to avoid unnecessary delay in processing applications.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed rules do not impose any direct costs on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be sufficient and accurate notification regarding the consideration of criminal convictions with regard to forensic analyst license eligibility.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs.

Taking Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a taking impact assessment under Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposal clarifies the authority of the Commission's Presiding Officer or Designee to approve applications where there is a criminal conviction older than ten (10) years to avoid unnecessary delay in processing applications and does not expand the regulatory authority of the Commission, but allows staff to ensure efficiency in processing approved applications.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined the proposed rule imposes no cost on regulated persons.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by April 15, 2019, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.217.

§651.217. Ineligibility for License Based on Criminal Conviction.

(a) A proceeding before the Commission to establish factors required to be considered under this section is governed by Chapter 2001, Government Code.
(b) Guidelines for consideration of criminal convictions. If an applicant has a criminal conviction above a Class C misdemeanor, the applicant may not be qualified to hold a forensic analyst license.

(1) Convictions that may trigger a denial. The Commission may suspend or revoke a forensic analyst license, disqualify a person from receiving a license, refuse to renew a person's license or deny to a person the opportunity to take the general forensic licensing examination on the grounds the person has been convicted of:

(A) an offense that directly relates to the duties and responsibilities associated with an analyst's license;

(B) an offense that does not directly relate to the duties and responsibilities associated with an analyst's license and that was committed less than five years before the date the person applies for a license;

(C) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(D) a sexually violent offense as defined by Article 62.001, Code of Criminal Procedure.

(2) A forensic analyst license holder's license may be revoked on the license holder's imprisonment following a felony conviction, felony community supervision, revocation of parole, or revocation of mandatory supervision.

(3) An offense from another state containing elements substantially similar to the enumerated offenses under the Texas Penal Code shall be considered under this section the same way as the offense would have been considered had it been committed in Texas.

(4) Offenses that apply to category paragraph (1)(A) of this subsection because they directly relate to the duties and responsibilities associated with an analyst's license may include, but are not limited to:

(A) Misrepresentation (e.g., fraud, extortion, bribery, theft by check, and deceptive business practices);

(B) Failure to register as a sex offender (as required by the Texas Code of Criminal Procedure, Chapter 62);

(C) Property Crimes, such as theft or burglary;

(D) Crimes against persons, such as homicide, kidnapping, and assault;

(E) Drug crimes, such as possession;

(F) Multiple DWI and DUl crimes;

(G) all felony convictions; and

(H) Misdemeanors above a Class C misdemeanor and felony convictions considered by Texas courts to be crimes of moral turpitude.

(5) Consequences. In the event of a criminal conviction, the Commission may take one of the following courses of action:

(A) Declare a prospective applicant unsuitable for a license;

(B) Deny a renewal application for an existing license;

(C) Revoke or suspend an existing license; or

(D) Deny a person the opportunity to take the general forensic analyst licensing examination.

(6) Determining whether there are grounds to deny. There are four general factors the Commission considers in determining whether a particular criminal conviction should be grounds to deny, revoke or suspend a license:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the analyst's occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharges the responsibilities of the analyst's work.

(7) Determining an applicant's fitness to perform the duties. In determining an applicant's fitness to perform the duties and discharge the responsibilities of a forensic analyst who has been convicted of a crime, the Commission considers, in addition to the factors listed in paragraph (5) of this subsection:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(F) other evidence of the person's fitness, including letters or recommendations from:

(i) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility to the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) any other person in contact with the convicted person.

(8) An applicant has the responsibility, to the extent possible, to obtain and provide to the Commission the recommendations of the prosecution, law enforcement, and correctional authorities as required by paragraph (7)(F)(i) - (iii) of this subsection.

(9) In addition to fulfilling the requirements of paragraph (8) of this subsection, the applicant shall furnish proof in the form required by the Commission that the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(c) Notice and Review of Suspension, Revocation or Denial of License. If the Commission suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license, the Commission shall notify the person in writing of:
(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by §651.216(d) - (g) of this title (relating to Disciplinary Action); and

(3) the earliest date the person may appeal the action of the Commission.

(d) Judicial Review. A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take the general examination as set forth in this subchapter and who has exhausted the person's administrative appeals may file an action in district court in Travis County for review of the evidence presented to the Commission and the decision of the Commission.

(e) Petition for Judicial Review. A petition for judicial review must be filed not later than the 30th day after the date the Commission's decision is final and appealable.

(f) Presiding Officer or Designee Authority to Approve Applications. The Commission's Presiding Officer or Designee may unilaterally approve an application where a criminal background check returns a misdemeanor conviction or convictions older than ten (10) years from the date the application is submitted and the Presiding Officer or Designee has determined the individual is eligible for a license notwithstanding the misdemeanor conviction or convictions.

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 February 26, 2019.

TRD-201900672
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: April 14, 2019
For further information, please call: (512) 784-0037

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