

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.112, concerning Attendant Compensation Rate Enhancement. The amendment to §355.112 is adopted without changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1915). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment to §355.112 is to implement Rider 44 of the 2020-21 General Appropriations Act, Article II, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 44). Rider 44(a)(4) appropriated funds for the creation of separate categories in the Attendant Compensation Rate Enhancement (rate enhancement) programs which serve individuals with intellectual and developmental disabilities in order to increase participation in those rate enhancement programs. The rider directed that the categories be based on the number of attendant hours included in the billing unit. The amendment to §355.112 creates separate rate enhancement categories for day habilitation (DH) services and non-DH services for Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) programs and for services in a residential setting for the HCS program. The change allows flexibility in the rate enhancement program for HCS and TxHmL providers of services that do not utilize an hourly unit of service.

COMMENTS

The 31-day comment period ended on April 20, 2020.

During this period, HHSC received comments regarding the amendment from two entities: Texas Parent to Parent (TxP2P) and Providers Alliance for Community Services of Texas (PAC-STX). A summary of comments relating to the rule and HHSC's responses follow.

Comment: All commenters expressed support for the proposed rule amendment.

Response: HHSC appreciates the commenters' support of the rule.

Comment: One commenter pointed out a potential discrepancy between the appropriated funding in Rider 44(a)(4) and the fiscal estimate associated with the proposed rule amendment.

Response: Rider 44(a)(4) provided \$6,317,103 in General Revenue and \$10,298,107 in Federal Funds in fiscal year 2021 in Strategy A.3.1, HCS for an All Funds Amount of \$16,615,210. The fiscal estimate provided for the proposed amendment applied updated growth trends for the HCS waiver program and revised the Federal match percentage applied to the amounts appropriated in Rider 44(a)(4). No changes were made in response to this comment.

Comment: One commenter stated that Rider 44(a)(4) also appropriated additional funding for HHSC to address the daily unit of billing in Intermediate Care Facilities with an Intellectual Disability or Related Condition (ICF/IID) and noted that HHSC did not propose a similar rule amendment for that purpose. This commenter also asked if a September 1, 2020, implementation date for any changes applicable to ICF/IID would be feasible.

Response: HHSC believes that the Attendant Compensation Rate Enhancement Program for ICF/IID providers already accounts for separate billing categories based on the number of direct care hours in the billing unit. The ICF/IID program provides Residential and DH services, and there are already separate rate enhancement categories for both of those services. Therefore, no rule amendments are necessary. No changes were made in response to this comment.

Comment: One commenter stated that language needs to be added to §355.112(f)(7) to ensure that currently-participating providers who enroll for 2021 are able to maintain at least their 2020 participation level.

Response: HHSC is requesting that all HCS and ICF/IID providers who participate in the Attendant Compensation Rate Enhancement program complete a revised enrollment as specified in §355.112(f)(7). Since the program is undergoing substantial revision, including higher add-ons for DH and Residential Services, HHSC believes that all participating providers should request to enroll at a new level to ensure that they are able to meet the associated spending requirements. No changes were made in response to this comment.

Comment: One commenter stated that language should be added to §355.112 to allow currently-participating providers to request an increase of more than three levels if funds are available to do so.

Response: HHSC does not think adding language to the rule is necessary. Section 355.112(f)(1)(3) allows participating and nonparticipating providers to request to modify their enrollment status during any open enrollment period. The rule does not prevent non-limited providers from requesting an increase of more than three levels during open enrollment. However,

§355.112(f)(1)(4) prevents providers whose prior year enrollment was limited from requesting an increase of their enrollment levels to three or fewer levels during the first open enrollment period after their limitation. HHSC believes it would be inappropriate to enforce limitations on HCS and ICF/IID providers during the 2021 enrollment period due to the significant revisions to the program. No changes were made in response to this comment.

Comment: One commenter requested that HHSC provide the number of levels and add-on amounts for HCS and ICF/IID providers.

Response: HHSC will issue guidance through an information letter regarding the number of levels and add-on amounts for HCS and ICF/IID providers. No changes were made in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002279

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 25, 2020

Proposal publication date: March 20, 2020

For further information, please call: (512) 424-6637



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §§74.11 - 74.13

The State Board of Education (SBOE) adopts amendments to §§74.11-74.13, concerning curriculum requirements. The amendments are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1531) and will not be republished. The adopted amendments update the rules to align with the requirements

of House Bill (HB) 678, 86th Texas Legislature, 2019, and revisions to career and technical education (CTE) programs of study.

REASONED JUSTIFICATION: The 83rd Texas Legislature, Regular Session, 2013, passed HB 5, amending Texas Education Code (TEC), §28.025, to transition from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 gave the SBOE the authority to identify advanced courses related to the new graduation program, identify the curriculum requirements for the endorsements, and determine the requirements for performance acknowledgments related to the graduation program.

The 86th Texas Legislature, 2019, passed HB 678, which amended TEC, §28.025(b-21), to allow elementary school students to earn one high school credit toward the languages other than English (LOTE) graduation requirement by successfully completing a course in American Sign Language (ASL).

The 86th Texas Legislature, 2019, also passed HB 963, which requires the SBOE, not later than March 1, 2020, to conduct a review of the TEKS for CTE and technology applications courses for Grades 9-12 and amend the board's rules to consolidate courses and eliminate duplicative courses. The SBOE is required to implement this provision only if the legislature appropriated money specifically for that purpose. If the legislature did not appropriate money specifically for that purpose, the SBOE may, but is not required to, implement a requirement using other appropriations available for that purpose. The legislature did not appropriate money specifically for the purpose of implementing this requirement.

Texas is redesigning state-level programs of study to include coherent and rigorous content with challenging academic standards and relevant career and technical content. Programs of study will be aligned with state and regional labor market information, including high-wage, high-skill, and in-demand occupations. As a part of the program of study revision process, Texas conducted a statewide labor market analysis that discovered several instances where occupations and postsecondary training overlap.

The adopted amendments update the graduation requirements to reflect changes to the rules on endorsements to reflect the revised programs of study and to ensure that a student who completed a program of study could earn one of the endorsements. Additionally, the amendments update the rules to align with the consolidation of the high school technology applications and CTE TEKS, allow students who completed an ASL course in elementary school to earn one high school credit toward the LOTE graduation requirement, and clarify language regarding the requirements for satisfying a LOTE graduation requirement by completing a dual language immersion program while in elementary school.

The SBOE approved the proposed amendments for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rules when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school program that are consistent with the required curriculum and to designate the specific courses in the foundation curriculum that are required under the foundation high school program; and TEC, §28.025(c-1), which requires the SBOE to by rule provide students with multiple options for earning each endorsement, including, to the greatest extent possible, coherent sequences of courses. The SBOE by rule must permit a student to enroll in courses under more than one endorsement curriculum before the student's junior year.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a) and (c-1).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002227

Cristina De La Fuente-Valadez
Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER B. USE OF STATE FUNDS

19 TAC §105.11, §105.12

The State Board of Education (SBOE) adopts the repeal of §105.11 and §105.12, concerning use of state funds. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1536) and will not be republished. The adopted repeals implement House Bill (HB) 3, 86th Texas Legislature, 2019, which removed the SBOE's rulemaking authority related to maximum allowable indirect costs and the basic allotment for the Foundation School Program (FSP).

REASONED JUSTIFICATION: Section 105.11 establishes the limits that may be expended from special allotments on indirect

costs related to compensatory education, bilingual education, special language programs, and special education.

Section 105.12 explains the authorized use of state aid for acquisitions, renovation, repairs, and maintenance of facilities.

HB 3, 86th Texas Legislature, 2019, renumbered Texas Education Code (TEC), §42.004, to §48.004. The renumbered statute was amended to remove the SBOE's rulemaking authority related to maximum allowable indirect costs and the basic allotment for the FSP. The repeal of the rules is necessary since statutory authority no longer exists.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will implement legislation in a timely manner by removing provisions for which statutory authority no longer exists. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules, take actions, and require reports necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002228

Cristina De La Fuente-Valadez
Director, Rulemaking

Texas Education Agency

Effective date: June 21, 2020

Proposal publication date: March 6, 2020

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



CHAPTER 110. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ENGLISH LANGUAGE ARTS AND READING

The State Board of Education (SBOE) adopts the repeal of §§110.30-110.34 and 110.85, concerning Texas Essential Knowledge and Skills (TEKS) for English language arts and reading. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the

Texas Register (45 TexReg 1537) and will not be republished. The adopted repeals remove the TEKS adopted to be effective in 2009 for high school English language arts and reading and related implementation language that will be superseded by new 19 TAC §§110.35-110.39 beginning with the 2020-2021 school year.

REASONED JUSTIFICATION: In 2017, the SBOE adopted revisions to the English language arts and reading TEKS. The revised TEKS for high school are scheduled to be implemented beginning with the 2020-2021 school year.

With the implementation of the revised English language arts and reading TEKS for high school scheduled for the 2020-2021 school year, the current TEKS in 19 TAC §§110.30-110.34 and 110.85 are no longer needed and may now be repealed.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

SUBCHAPTER C. HIGH SCHOOL

19 TAC §§110.30 - 110.34

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002229

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



SUBCHAPTER D. OTHER HIGH SCHOOL ENGLISH LANGUAGE ARTS AND READING COURSES

19 TAC §110.85

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002230

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

The State Board of Education (SBOE) adopts an amendment to §113.30, the repeal of §§113.51-113.68 and 113.71-113.80, and new §§113.51, 113.60, 113.61, and 113.101-113.126, concerning Texas Essential Knowledge and Skills (TEKS) for social studies. New §113.51 is adopted with changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1538) and will be republished. The amendment to §113.30, the repeal of §§113.51-113.68 and 113.71-113.80, and new §§113.60, 113.61, and 113.101-113.126 are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1538) and will not be republished. The adopted rule actions add TEKS for a

new African American studies ethnic studies course, renumber sections, and update references to course numbers and titles to reflect recent revisions to the social studies TEKS.

REASONED JUSTIFICATION: The 83rd Texas Legislature, 2013, passed House Bill (HB) 5, amending Texas Education Code, §28.025, to transition from three high school graduation programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. In August 2013, the SBOE held a work session to discuss changes to the graduation requirements in order to align with the requirements of HB 5, including discussion of courses required by HB 5.

There are currently state-approved TEKS for general social studies elective courses that allow educators to select specific historical, cultural, or research topics in social studies to address in greater depth. In social studies, these courses include Special Topics in Social Studies, Social Studies Research Methods, Social Studies Advanced Studies, and Ethnic Studies: Mexican American Studies.

In June 2019, a new African American Studies innovative course was approved by the commissioner of education for use beginning with the 2019-2020 school year. School districts and open-enrollment charter schools may offer any state-approved innovative course for elective credit with the approval of the local board of trustees.

New §113.51 adds TEKS for a new ethnic studies course in African American studies. Existing §§113.51-113.68 and 113.71-113.80 were repealed and adopted with new section numbers in order to move Social Studies Advanced Studies and Economics Advanced Studies from Subchapter D to the high school courses in Subchapter C and to group the ethnic studies courses together. The content of the renumbered sections did not change except to update references to course numbers and titles in new §§113.102, 113.104-113.106, 113.111, 113.114, and 113.115 to reflect recent revisions to the social studies TEKS. In addition, the implementation language in §113.30 and new §113.101 was updated to remove outdated references to section numbers and school years.

The following changes to §113.51 were made since the rules were published as proposed.

The student expectation in subsection (c)(2)(A) was amended to delete the phrase "the economic, political, and social reasons for."

The student expectation in subsection (c)(3)(A) was amended to delete the phrase "and evaluate" and to add the word "some" before the word "Americans."

The student expectation in subsection (c)(3)(E) was amended to replace the word "including" with the phrase "such as."

The student expectation in subsection (c)(3)(F) was amended to add the phrase "the gradual emancipation of enslaved people in the North (1777-1804)" after the word "including" and to delete the word "and" before the phrase "the abolition of slavery in Mexico (1829)."

A new student expectation in subsection (c)(4)(E) was added that states, "explain the impact of the convict leasing system on African Americans such as the Sugar Land 95." Subsequent student expectations in subsection (c)(4) were relettered appropriately.

The student expectation in proposed subsection (c)(4)(E), relettered as (c)(4)(F) at adoption, was amended to replace the word "analyze" with the word "explain."

The student expectation in proposed subsection (c)(4)(I), relettered as (c)(4)(J) at adoption, was amended to replace the word "evaluate" with the word "describe."

A new student expectation in subsection (c)(5)(B) was added that states, "describe the impact of U.S. Supreme Court decisions *Sweatt v. Painter* (1950) and *Brown v. Board of Education* (1954)." Subsequent student expectations in subsection (c)(5) were relettered appropriately.

The student expectation in proposed subsection (c)(5)(B), relettered as (c)(5)(C) at adoption, was amended to replace the word "including" with the phrase "such as" and to add the individual Rosa Parks and the organization Student Non-Violent Coordinating Committee.

The student expectation in proposed subsection (c)(5)(F), relettered as (c)(5)(G) at adoption, was amended to replace the word "including" with the phrase "such as."

The student expectation in proposed subsection (c)(5)(G), relettered as (c)(5)(H) at adoption, was amended to delete the word "and" before the word "failures" and to insert the phrase "and ongoing impact" before the phrase "of the Civil Rights Movement."

The student expectation in subsection (c)(6)(A) was amended to replace the phrase "quest for" with the phrase "effort to achieve."

The student expectation in subsection (c)(6)(B) was amended to replace the word "contributions" with the word "achievements" and to add the individual Fannie Lou Hamer.

The student expectation in proposed subsection (c)(7)(B) was replaced by a new student expectations that reads, "identify and explain the physical and human geographic factors that contributed to the Atlantic Slave Trade, the rise of the plantation system in the South, the development of textile mills in the North, and economic interdependence between the North and South."

The student expectations in proposed subsection (c)(8)(A) and (B) were deleted. Subsequent student expectations in subsection (c)(8) were relettered appropriately.

The student expectation in proposed subsection (c)(8)(C), relettered as (c)(8)(A) at adoption, was amended to add the phrase "and the roles of 'King Cotton' after the phrase "analyze the effects of the Industrial Revolution" and to replace the word "on" with the word "in" before the phrase "the economies of the United States and the world."

The student expectation in proposed subsection (c)(8)(D), relettered as (c)(8)(B) at adoption, was amended to delete the phrases "economic policies such as" and "Jim Crow economies" and to replace the phrase "impacted the standard of living of" with the phrase "limited economic opportunities for."

The student expectation in proposed subsection (c)(8)(E), relettered as (c)(8)(C) at adoption, was amended to delete the word "unsatisfactory" and to replace the phrase "opportunities in the South and increased economic opportunities in cities of the North and West caused" with the phrase "conditions and racism contributed to."

The student expectation in proposed subsection (c)(8)(J), relettered as (c)(8)(H) at adoption, was amended to replace the individual Fannie Lou Hamer with the individual Maggie L. Walker.

The student expectation in proposed subsection (c)(9)(A) was replaced by a new student expectation that reads, "compare and contrast how political perspectives of free and enslaved African Americans in the late 1700s and early 1800s were influenced by the unalienable rights expressed in the Declaration of Independence and civil rights in the Bill of Rights."

The student expectation in subsection (c)(9)(E) was amended to add the phrase "the War on Crime, the War on Drugs, mass incarceration" after the phrase "affirmative action."

The student expectation in subsection (c)(10)(C) was amended to delete the phrase "and analyze," to replace the phrase "leadership roles" with the word "leaders," and to delete the phrase "including Supreme Court cases."

A new student expectation in subsection (c)(11)(E) was added that reads, "identify and describe the diversity of peoples of African ancestry such as Afro-Latinos, Afro-Caribbeans, and recent African immigrants."

The student expectation in subsection (c)(14)(A) was amended to replace the phrase "of blues, ragtime, and jazz music" with "and influence of blues, ragtime, jazz, and hip hop music," to replace the phrase "including the achievements" with the phrase "such as the achievements," and to delete the phrase "such as" before Scott Joplin.

The student expectation in subsection (c)(14)(C) was amended to replace the word "including" with the phrase "such as" and to delete the phrase "individuals such as."

The student expectation in subsection (c)(14)(D) was amended to add the novel "Beloved by Toni Morrison" after the novel "Their Eyes Were Watching God by Zora Neale Hurston."

The student expectation in subsection (c)(14)(E) was amended to add the individual James Baldwin after the individual John T. Biggers.

A new subsection (c)(15) on African American culture was added that reads:

"(15) Culture. The student understands African American educational developments, achievements, and opportunities before and after the U.S. Supreme Court decision of *Brown v. Board of Education* (1954). The student is expected to:

(A) describe the efforts to prevent the education of enslaved people and free African Americans, including anti-literacy laws;

(B) analyze the expansion of educational opportunities for African Americans, including the Freedman's Bureau, Rosenwald Schools, the Second Morrill Act (1890), the establishment of Historically Black Colleges and Universities, and the role of the National Pan-Hellenic Council (Divine 9); and

(C) describe contemporary issues in education for African American students such as the school-to-prison pipeline, opportunity gaps, overrepresentation in special education, and underrepresentation in gifted and talented opportunities."

Subsequent paragraphs in subsection (c) were renumbered appropriately.

The student expectation in proposed subsection (c)(15)(C), renumbered as (c)(16)(C) at adoption, was amended to replace the word "including" with the phrase "such as."

In addition, technical edits were made throughout the section.

The SBOE approved the proposed rule actions for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the rule actions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rulemaking when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the comments received and corresponding responses.

Comment. One parent stated that African American historians such as Dr. John Hope Franklin and Dr. Henry Louis Gates should be considered for inclusion the TEKS for the proposed new Ethnic Studies: African American Studies course.

Response. The SBOE disagrees and has determined that the suggested additions were not necessary.

Comment. One parent recommended adding student expectations focusing on the Black Lives Matter movement in the citizenship strand of the proposed new course.

Response. The SBOE disagrees and has determined that the suggested addition was not necessary.

Comment. One parent recommended that the truth about the Confederacy as it pertains to African Americans should be included in the TEKS for the proposed new course.

Response. The SBOE disagrees and has determined that the topic is sufficiently addressed in the course as proposed. In response to other comments, the SBOE took action to approve additional changes to the proposed new course.

Comment. One parent recommended adding student expectations focusing on systematic racism, or certain policies that have harmed African Americans, in the government strand of the proposed new course.

Response. The SBOE agrees that a student expectation on racial and social injustices was warranted in the proposed new course. In response to this and other comments, the SBOE took action to amend §113.51(c)(9)(E) to read: "analyze the causes and effects of government actions and legislation addressing racial and social injustices from 1960 to the present day such as the issues of voting rights, civil rights, fair housing, education, employment, affirmative action, the War on Crime, the War on Drugs, mass incarceration, and health and nutrition."

Comment. One parent expressed support for the addition of student expectations focusing on structural, institutional, and systemic racism and the adverse effects these policies and actions had on African Americans, including the distrust and suspicion of the government that resulted.

Response. The SBOE agrees that a student expectation on racial and social injustices was warranted in the proposed new course. In response to this and other comments, the SBOE took action to amend §113.51(c)(9)(E) to read: "analyze the causes and effects of government actions and legislation addressing

racial and social injustices from 1960 to the present day such as the issues of voting rights, civil rights, fair housing, education, employment, affirmative action, the War on Crime, the War on Drugs, mass incarceration, and health and nutrition."

Comment. One community member recommended replacing the word "slavery" with the word "enslavement" and the word "slaves" with "enslaved people" throughout the proposed TEKS for the new Ethnic Studies: African American Studies course. The commenter stated that enslavement implies an external opposition.

Response. The SBOE disagrees and has determined that the terms "slavery" and "slaves" were appropriate as proposed as they align with language throughout the social studies TEKS.

Comment. One parent stated that it is important to include state or local components in the course and requested that the SBOE consider adding Texas-specific African American history topics.

Response. The SBOE agrees that it is important to address local examples when teaching the proposed course. However, the SBOE disagrees that local examples should be added to the proposed TEKS. The SBOE has determined that teachers may add more content than what is required in the standards.

Comment. One community member expressed support for the adoption of TEKS for the Ethnic Studies: African American Studies course.

Response. The SBOE agrees and took action to adopt the proposed new course as amended.

Comment. One community member proposed amending the student expectation in §113.51(c)(3)(F) by adding the Haitian Revolution of 1791-1804 because it was an important starting point of anti-slavery movements in the Americas.

Response. The SBOE disagrees and has determined that the suggested language was not necessary. In response to other comments, the SBOE took action to amend §113.51(c)(3)(F) to read, "analyze national and international abolition efforts, including the gradual emancipation of enslaved people in the North (1777-1804), the U.S. ban on the slave trade (1808), the abolition of slavery in Mexico (1829) and Great Britain (1833), and the significance of the Guerrero Decree in the Texas Revolution."

Comment. One community member recommended that civil rights should be referenced within the broader context of the Black Freedom Movement in the student expectations in §113.51(c)(5).

Response. The SBOE disagrees and has determined that civil rights are appropriately referenced in the student expectation in §113.51(c)(5). In response to other comments, the SBOE took action to amend the student expectation in proposed §113.51(c)(5).

Comment. One community member recommended adding Malcolm X to the student expectation in §113.51(c)(5)(B).

Response. The SBOE disagrees and has determined that the suggested change was not necessary. In response to other comments, the SBOE took action to amend the student expectation in proposed §113.51(c)(5)(B), adopted as (c)(5)(C), to read, "describe the continued struggle for civil rights in America during this time in history such as the notable works of the NAACP, National Urban League, Jackie Robinson, Rosa Parks, Martin Luther King Jr., Daisy Bates and the Little Rock Nine, the Student Non-Violent Coordinating Committee (SNCC), and local leaders."

Comment. One community member recommended adding Benjamin O. Davis, Sr. and Benjamin O. Davis, Jr. to the student expectation in §113.51(c)(5)(E).

Response. The SBOE disagrees and has determined that the suggested additions were not necessary.

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectation in §113.51(c)(7)(D) by adding the phrase "and environmental protections" after the phrase "urban development."

Response. The SBOE disagrees and has determined that the suggested addition was not necessary.

Comment. One community member proposed amending the student expectation in §113.51(c)(14)(D) by adding Notes of a Native Son by James Baldwin to the list of selected works by African American authors.

Response. The SBOE disagrees with the recommendation to add Notes of a Native Son to §113.51(c)(14)(D). However, in response to this and other comments, the SBOE amended the student expectation in §113.51(c)(14)(E) at adoption by adding James Baldwin. Additionally, the SBOE amended the student expectation in §113.51(c)(14)(D) by adding "Beloved by Toni Morrison."

Comment. One community member proposed amending the student expectation in §113.51(c)(14)(E) by adding Audre Lorde and Toni Morrison to the list of artists who have contributed works to African American self-identity.

Response. The SBOE disagrees with the recommendation to add Audre Lorde and has determined that the addition was not necessary. However, in response in this and other comments, the SBOE amended the student expectation in §113.51(c)(14)(D) at adoption by adding "Beloved by Toni Morrison."

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectations in §113.51(c)(15) by adding a new student expectation that reads, "identify how African American communities have used science and community-based participatory research or youth-led participatory action research methods to study disproportionate public health impacts among African American communities."

Response. The SBOE disagrees and has determined that the suggested addition to student expectations in §113.51(c)(15) was not necessary.

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectation in §113.51(c)(15)(B) by adding the phrase "and how industrialization has impacted African America communities and quality of life."

Response. The SBOE disagrees and has determined that the suggested addition was not necessary.

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectation in §113.51(c)(15)(C) by adding Emelda J. West to the list of contributions of African American individuals.

Response. The SBOE disagrees and has determined that the suggested addition was not necessary.

SUBCHAPTER C. HIGH SCHOOL

19 TAC §§113.30, 113.51, 113.60, 113.61

STATUTORY AUTHORITY. The amendment and new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The amendment and new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

§113.51. *Ethnic Studies: African American Studies (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 10-12.

(b) Introduction.

(1) In *Ethnic Studies: African American Studies*, an elective course, students learn about the history and cultural contributions of African Americans. This course is designed to assist students in understanding issues and events from multiple perspectives. This course develops an understanding of the historical roots of African American culture, especially as it pertains to social, economic, and political interactions within the broader context of United States history. It requires an analysis of important ideas, social and cultural values, beliefs, and traditions. Knowledge of past achievements provides citizens of the 21st century with a broader context within which to address the many issues facing the United States.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, landmark cases of the U.S. Supreme Court, novels, speeches, letters, diaries, poetry, songs, and artwork is encouraged. Resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students identify and discuss how the actions of U.S. citizens and the local, state, and federal governments have either met or failed to meet the ideals espoused in the founding documents.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) History. The student understands the influential historical points of reference in African history prior to 1619. The student is expected to:

(A) identify the major eras, civilizations, and contributions of African history that are foundational to humanity and predate American slavery;

(B) describe and compare the various pre-colonial, indigenous, and ancestral roots of African Americans such as educational systems, social and political developments, family structures, global trade, and exchange; and

(C) analyze the effects of dehumanization through the capture, trade, and enslavement of Africans, within a regional and global context, including the Atlantic Slave Trade.

(2) History. The student understands the economic, political, and social development of slavery during the American colonial period, 1619 to 1775. The student is expected to:

(A) analyze the African diaspora, including the role of Africans and Europeans;

(B) compare and contrast the colonization of North, Central, and South America and the West Indies and neighboring islands and analyze the interactions among enslaved Africans and Native Americans;

(C) describe and explain the impact of the Middle Passage on African American culture; and

(D) explain the causes for the growth and development of slavery, primarily in the Southern colonies.

(3) History. The student understands the rationalization and ramifications for the continuation and growth of slavery and the anti-slavery movement in the United States from independence (1776) through the Emancipation Proclamation (1863). The student is expected to:

(A) analyze the economic, social, religious, and legal rationalization used by some Americans to continue and expand slavery after declaring independence from Great Britain;

(B) describe the impact of the Three-Fifths Compromise and the Fugitive Slave Act;

(C) analyze the role that slavery played in the development of nationalism and sectionalism during the early 19th century;

(D) analyze and evaluate various forms of individual and group resistance against the enslavement of African Americans;

(E) analyze the influence of significant individuals and groups prior to and during the abolitionist movement to determine their impact on ending slavery such as the work of David Walker, Elijah P. Lovejoy, John Brown, Sojourner Truth, Frederick Douglass, the American Anti-Slavery Society, and the Underground Railroad; and

(F) analyze national and international abolition efforts, including the gradual emancipation of enslaved people in the North (1777-1804), the U.S. ban on the slave trade (1808), the abolition of slavery in Mexico (1829) and Great Britain (1833), and the significance of the Guerrero Decree in the Texas Revolution.

(4) History. The student understands African American life from the Civil War through World War I. The student is expected to:

(A) summarize the roles and experiences of African American soldiers and spies in both the North and South during the Civil War;

(B) describe and analyze the successes and failures of Reconstruction;

(C) compare the opportunities and challenges faced by African Americans from post-Reconstruction to the early 20th century and viewpoints and actions of African Americans, including Ida B. Wells, W.E.B. Du Bois, Booker T. Washington, Marcus Garvey, the National Association for the Advancement of Colored People (NAACP), Freedmen's Towns, and the Exodusters;

(D) explain the circumstances surrounding increased violence and extremism such as the Ku Klux Klan (KKK), the Colfax Massacre, lynchings, race riots, and the Camp Logan Mutiny (The Houston Riot of 1917);

(E) explain the impact of the convict leasing system on African Americans such as the Sugar Land 95;

(F) explain how the rise of Jim Crow laws affected the life experiences of African Americans in the late 19th and early 20th centuries;

(G) describe the impact of the U.S. Supreme Court decision *Plessy v. Ferguson* (1896);

(H) analyze the social, economic, and political actions of African Americans in response to the Jim Crow era during the early

20th century such as the Great Migration, civil rights organizations, social organizations, political organizations, and organized labor unions;

(I) examine the experiences of African American soldiers during and after World War I; and

(J) describe the impact of African American military service from Reconstruction through World War I, including the role of the Buffalo Soldiers.

(5) History. The student understands change and continuity in the African American cultural identity during the Great Depression, World War II, and the Civil Rights Movement. The student is expected to:

(A) compare the positive and negative effects of the Great Depression and New Deal on the social and economic status of African Americans in various geographic regions;

(B) describe the impact of U.S. Supreme Court decisions *Sweatt v. Painter* (1950) and *Brown v. Board of Education* (1954);

(C) describe the continued struggle for civil rights in America during this time in history such as the notable works of the NAACP, National Urban League, Jackie Robinson, Rosa Parks, Martin Luther King Jr., Daisy Bates and the Little Rock Nine, the Student Non-Violent Coordinating Committee (SNCC), and local leaders;

(D) describe the interactions of the people of the diaspora relative to the struggle for civil rights;

(E) describe the impact of racism during World War II;

(F) explain the contributions of significant African American individuals and groups during World War II, including Doris "Dorie" Miller, the Tuskegee Airmen, and the 761st Tank Battalion;

(G) analyze how the effects of World War II laid the groundwork for the Civil Rights Movement such as Harry S. Truman's Executive Order 9981 and the contributions of A. Phillip Randolph, Mary McLeod Bethune, and Thurgood Marshall;

(H) analyze the successes, failures, and ongoing impact of the Civil Rights Movement, including methods such as sit-ins, boycotts, marches, speeches, music, and organizations; and

(I) evaluate the extent to which the Civil Rights Movement transformed American politics and society.

(6) History. The student understands the progress made and challenges faced by African Americans from the post-Civil Rights Era to contemporary times. The student is expected to:

(A) identify and explain the issues confronting African Americans in the continuing effort to achieve equality;

(B) describe the major achievements of contemporary African Americans and how their contributions have shaped the American experience such as John H. Johnson, Muhammad Ali, Fannie Lou Hamer, Shirley Chisholm, Earl G. Graves, Barbara Jordan, Colin Powell, Condoleezza Rice, and Barack Obama; and

(C) analyze the progress and challenges for African American men and women socially, economically, and politically from 1970 to the present such as the evolving role of education in the African American community.

(7) Geography. The student understands the impact of geographic factors on major events related to African Americans over time. The student is expected to:

(A) explain the causes and effects of forced and voluntary migration on individuals, groups, and societies throughout African American history;

(B) identify and explain the physical and human geographic factors that contributed to the Atlantic Slave Trade, the rise of the plantation system in the South, the development of textile mills in the North, and economic interdependence between the North and South;

(C) explain the westward movement and the Great Migration and summarize their impact on African Americans; and

(D) analyze how environmental changes impacted African American communities such as land use, settlement patterns, and urban development.

(8) Economics. The student understands ways in which African Americans have addressed opportunities, challenges, and strategies concerning economic well-being over time. The student is expected to:

(A) analyze the effects of the Industrial Revolution and the roles of "King Cotton" and the cotton gin in the economies of the United States and the world;

(B) explain how sharecropping and redlining limited economic opportunities for African Americans;

(C) explain how economic conditions and racism contributed to the Great Migration;

(D) evaluate the economic impact of the American labor movement and unionism on African Americans from the late nineteenth century to today;

(E) analyze how various geographic, cultural, social, political, and financial factors influenced the economic mobility of African Americans such as skin color, wealth, and educational background;

(F) evaluate the effectiveness of various approaches African Americans have used to solve economic issues;

(G) trace the rise and development African American businesses and entrepreneurship from the late 19th century to today; and

(H) examine the contributions of African American and Black American Business entrepreneurship such as Black Wall Street, black inventors, and the black experience in business and the economic contributions of individuals such as Madame C. J. Walker and Maggie L. Walker.

(9) Government. The student understands the significant impact of political decisions on African Americans throughout history. The student is expected to:

(A) compare and contrast how political perspectives of free and enslaved African Americans in the late 1700s and early 1800s were influenced by the unalienable rights expressed in the Declaration of Independence and civil rights in the Bill of Rights;

(B) explain the regional perspectives toward political rights of African American men and women from the early years of the republic through 1877;

(C) analyze the construction, interpretation, and implementation of the 13th, 14th, and 15th Amendments to the U.S. Constitution and the effects on African American men and women between 1877 and 1920;

(D) analyze how government policies, court actions, and legislation impacted African Americans from the 1920s through the 1950s;

(E) analyze the causes and effects of government actions and legislation addressing racial and social injustices from 1960 to the present day such as the issues of voting rights, civil rights, fair housing, education, employment, affirmative action, the War on Crime, the War on Drugs, mass incarceration, and health and nutrition; and

(F) analyze how the changing political environment has impacted civil rights from the late 20th century to the present.

(10) Government. The student understands the impact of political interactions on the African American struggle for human rights over time. The student is expected to:

(A) analyze examples of conflict and cooperation between African Americans and other groups in the pursuit of individual freedoms and civil rights such as the Freedom Riders and the Memphis Sanitation Workers Strike;

(B) explain how various philosophies and ideologies influenced the African American experience for social, political, and legal equality such as fair housing, equal opportunity, affirmative action, and voting rights; and

(C) identify the contributions of African American leaders at local, state, and national levels of government.

(11) Citizenship. The student understands the importance of multiple and changing points of view regarding citizenship of African Americans. The student is expected to:

(A) trace how perceptions of the rights and civic responsibilities of African Americans have changed over time, including the idea of being considered property with no rights under slavery;

(B) analyze how regional differences influenced political perspectives of African American communities;

(C) analyze the significance and associations of identity nomenclature relevant to African Americans such as Negro and Black;

(D) analyze selected contemporary African American issues that have led to diverse points of view in public discourse, including rights and activism; and

(E) identify and describe the diversity of peoples of African ancestry such as Afro-Latinos, Afro-Caribbeans, and recent African immigrants.

(12) Culture. The student understands the development of African American culture and society and the impact of shared identities and differing experiences. The student is expected to:

(A) analyze the impact of assimilation, stereotypes, de facto practices, and oppression on the lives of African Americans;

(B) analyze ways in which African Americans have retained cultural identity over time while adapting to and contributing to mainstream American culture; and

(C) analyze the various cultural practices that have shaped the individual and collective identity of African Americans over time to understand shared and differing experiences.

(13) Culture. The student understands the cultural traditions and contributions of African Americans from the colonial era through Reconstruction. The student is expected to:

(A) identify and describe the influence of African oral traditions, visual art, literary art, theater, music, and dance on African American culture;

(B) describe the influence of enslavement on African American culture;

(C) identify the contributions of early African American literature, including the works of Jupiter Hammon and Phillis Wheatley;

(D) explain the origins and characteristics of different musical genres and traditions of African Americans; and

(E) describe the expanding influence of African American music through the work of performers such as the Fisk Jubilee Singers.

(14) Culture. The student understands the influence of artistic expression on the African American experience and American culture from Reconstruction to the present. The student is expected to:

(A) describe the development and influence of blues, ragtime, jazz, and hip hop music such as the achievements of composers Scott Joplin and James Reese Europe;

(B) describe how various African American expressions of dance forms such as tap dance, step dance, hip hop, and modern dance and the contributions of African American dancers such as the Dance Theater of Harlem, Katherine Dunham, Bill "Bojangles" Robinson, Alvin Ailey, and Misty Copeland have contributed to the shared identity of various groups;

(C) explain the lasting impact of the Harlem Renaissance on American culture and society such as the achievements of Louis Armstrong, Josephine Baker, Duke Ellington, Langston Hughes, Sargent Johnson, Jules Bledsoe, Paul Robeson, Augusta Savage, and James VanDerZee;

(D) describe the reactions to and the influence of selected works by African American authors such as *The Souls of Black Folk* by W.E.B. Du Bois, *Native Son* by Richard Wright, *Their Eyes Were Watching God* by Zora Neale Hurston, *Beloved* by Toni Morrison, and *Eyes on the Prize* by Henry Hampton;

(E) describe storytelling, literary, filmmaking, and visual arts contributions related to self-identity made by African Americans such as Oscar Micheaux, John T. Biggers, James Baldwin, Lorraine Hansberry, Amiri Baraka, Sidney Poitier, Maya Angelou, Faith Ringgold, August Wilson, bell hooks, Spike Lee, John Singleton, and Oprah Winfrey;

(F) describe how characteristics of African American history and culture have been reflected in various genres of art, music, film, theatre, visual arts, and dance; and

(G) analyze the impact of popular culture on African Americans during significant eras.

(15) Culture. The student understands African American educational developments, achievements, and opportunities before and after the U.S. Supreme Court decision of *Brown v. Board of Education* (1954). The student is expected to:

(A) describe the efforts to prevent the education of enslaved people and free African Americans, including anti-literacy laws;

(B) analyze the expansion of educational opportunities for African Americans, including the Freedman's Bureau, Rosenwald Schools, the Second Morrill Act (1890), the establishment of Historically Black Colleges and Universities, and the role of the National Pan-Hellenic Council (Divine 9); and

(C) describe contemporary issues in education for African American students such as the school-to-prison pipeline, opportunity gaps, overrepresentation in special education, and underrepresentation in gifted and talented opportunities.

(16) Science, technology, and society. The student understands how African American achievements in science and technology have contributed to economic and social development in the United States. The student is expected to:

(A) identify examples of how advances made by African civilizations in areas such as astronomy, mathematics, architecture, and engineering have contributed to science and technology in the United States;

(B) identify examples of how industrialization was influenced by African Americans over time; and

(C) describe the contributions of significant African American individuals to science, philosophy, mathematics, and technology such as Benjamin Banneker, George Washington Carver, Granville Woods, Mary Jackson, Katherine Johnson, Henrietta Lacks, Dorothy Vaughan, Mae Jemison, and Neil deGrasse Tyson.

(17) Social studies skills. The student understands how historians use historiography to interpret the past and applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) analyze primary and secondary sources such as maps, graphs, speeches, political cartoons, and artifacts to acquire information to answer historical questions;

(B) analyze information by applying absolute and relative chronology through sequencing, categorizing, identifying cause-and-effect relationships, comparing and contrasting, finding the main idea, summarizing, making generalizations, making predictions, drawing inferences, and drawing conclusions;

(C) apply the process of historical inquiry to research, interpret, and use multiple types of sources of evidence;

(D) evaluate the validity of a source based on corroboration with other sources and information about the author, including points of view, frames of reference, and historical context; and

(E) identify bias and support with historical evidence a point of view on a social studies issue or event.

(18) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) create written, oral, and visual presentations of social studies information using effective communication skills, including proper citations and avoiding plagiarism; and

(B) use social studies terminology correctly.

(19) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) create a visual representation of historical information such as thematic maps, graphs, and charts; and

(B) pose and answer questions about geographic distributions and patterns shown on maps, graphs, charts, and available databases.

(20) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to use problem-solving and decision-making processes to identify a problem, gather information, list and con-

sider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002231

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



SUBCHAPTER D. OTHER SOCIAL STUDIES COURSES

19 TAC §§113.51 - 113.68, 113.71 - 113.80

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002232

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



19 TAC §§113.101 - 113.126

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating

instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002233

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS SUBCHAPTER C. HIGH SCHOOL

19 TAC §§126.31 - 126.52

The State Board of Education (SBOE) adopts the repeal of §§126.31-126.52 and 126.61-126.67, concerning Texas Essential Knowledge and Skills (TEKS) for technology applications. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1548) and will not be republished. The adopted repeals update the TEKS to align with recent legislation requiring the board to consolidate high school technology applications TEKS into career and technical education (CTE) TEKS and eliminate TEKS for duplicative courses.

REASONED JUSTIFICATION: The 86th Texas Legislature, 2019, passed House Bill 963, which required the SBOE, not later than March 1, 2020, to conduct a review of the TEKS for CTE and technology applications courses for Grades 9-12 and amend the board's rules to consolidate courses and eliminate duplicative courses. The SBOE is only required to implement this provision if the legislature appropriated money specifically for that purpose. If the legislature did not appropriate money specifically for that purpose, the SBOE may, but is not required to, implement a requirement using other appropriations available for that purpose. The legislature did not appropriate money specifically for the purpose of implementing this requirement.

All but two of the courses in Chapter 126, Subchapters C and D, were repealed and adopted as new courses in 19 TAC Chapter 130. Section 126.40 and §126.45, relating to robotics programming and digital video and audio design, are duplicative of other courses in Chapter 130 and were not adopted as new courses in Chapter 130.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rulemaking when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and the corresponding response.

Comment. An administrator expressed support for eliminating courses duplicated in 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, and 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

Response. The SBOE agrees that the elimination of duplicative courses is appropriate.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002236

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



SUBCHAPTER D. OTHER TECHNOLOGY APPLICATIONS COURSES

19 TAC §§126.61 - 126.67

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the

subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002237

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



CHAPTER 128. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SPANISH LANGUAGE ARTS AND READING AND ENGLISH AS A SECOND LANGUAGE

SUBCHAPTER C. HIGH SCHOOL

19 TAC §§128.30 - 128.32

The State Board of Education (SBOE) adopts the repeal of §§128.30-128.32, concerning Texas Essential Knowledge and Skills (TEKS) for Spanish language arts and reading and English as a second language. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1550) and will not be republished. The adopted repeals remove the TEKS adopted to be effective in 2009 for high school Spanish language arts and reading and English as a second language and related implementation language that will be superseded by new 19 TAC §§128.33-128.35 beginning with the 2020-2021 school year.

REASONED JUSTIFICATION: In 2017, the SBOE adopted revisions to the Spanish language arts and reading and English as a second language TEKS. The revised TEKS for high school are scheduled to be implemented beginning with the 2020-2021 school year.

With the implementation of the revised Spanish language arts and reading TEKS for high school scheduled for the 2020-2021 school year, the current TEKS in 19 TAC §§128.30-128.32 are no longer needed and may now be repealed.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002238

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§130.13, 130.14, and 130.308-130.310 and new §§130.123-130.127, 130.315-130.318, 130.420-130.435, and 130.485-130.491, concerning Texas Essential Knowledge and Skills (TEKS) for career and technical education (CTE). The repeals and new sections are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1551) and will not be republished. The adopted repeals and new sections update the TEKS to align with recent legislation requiring the board to consolidate high school technology applications TEKS into CTE TEKS and eliminate TEKS for duplicative courses. The new sections also

update the TEKS for CTE to add a new career cluster in energy to align with revised programs of study.

REASONED JUSTIFICATION: The 86th Texas Legislature, 2019, passed House Bill 963, which required the SBOE, not later than March 1, 2020, to conduct a review of the TEKS for CTE and technology applications courses for Grades 9-12 and amend the board's rules to consolidate courses and eliminate duplicative courses. The SBOE is only required to implement this provision if the legislature appropriated money specifically for that purpose. If the legislature did not appropriate money specifically for that purpose, the SBOE may, but is not required to, implement a requirement using other appropriations available for that purpose. The legislature did not appropriate money specifically for the purpose of implementing this requirement.

Texas is redesigning state-level programs of study to include coherent and rigorous content with challenging academic standards and relevant career and technical content. Programs of study will be aligned with state and regional labor market information, including high-wage, high-skill, and in-demand occupations. As a part of the program of study revision process, Texas conducted a statewide labor market analysis that discovered several instances where occupations and postsecondary training overlap. As part of this process, it was recommended that a new career cluster in energy be added to address programs of study in the energy industry.

In Chapter 130, repealed courses from 19 TAC Chapter 126 were adopted as new courses in Subchapters C, K, and O. Subchapter K also includes the repeal of duplicative courses in web technologies and computer programming. New Subchapter Q includes two courses formerly contained in Subchapter A as well as five new courses.

The SBOE approved the proposed repeals and new sections for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeals and new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rulemaking when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the comments received and corresponding responses.

Comment. An administrator expressed support for eliminating courses duplicated in Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, and Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

Response. The SBOE agrees that the elimination of duplicative courses is appropriate.

Comment. An administrator stated that it is not clear whether teachers with technology applications certifications will be permitted to teach computer science courses and expressed concern that eliminating Computer Programming I and II, which tech-

nology applications teachers are currently certified to teach, without a provision that would allow them to teach the alternative computer science courses would create a burden for school districts that already struggle with hiring computer science teachers.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. An administrator stated that certification requirements for teaching computer science courses from 19 TAC Chapter 126 and CTE computer programming courses from 19 TAC Chapter 130 vary and that while teachers need certification in computer science to teach Computer Science I, the certification for the CTE course Practicum in Information Technology requires certification in technology applications. The commenter stated that computer science teachers should be able to teach courses listed in both the programming and the software development pathways.

Response. This comment is outside the scope of the proposed rulemaking.

SUBCHAPTER A. AGRICULTURE, FOOD, AND NATURAL RESOURCES

19 TAC §130.13, §130.14

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002239

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



SUBCHAPTER C. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS

19 TAC §§130.123 - 130.127

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002240

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



SUBCHAPTER K. INFORMATION TECHNOLOGY

19 TAC §§130.308 - 130.310

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002241

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 1, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 475-1497



19 TAC §§130.315 - 130.318

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002242
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 1, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 475-1497



SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §§130.420 - 130.435

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002243
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 1, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 475-1497



SUBCHAPTER Q. ENERGY

19 TAC §§130.485 - 130.491

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002244
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 1, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 475-1497



CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

The Texas Education Agency (TEA) adopts the repeal of §153.1011 and new §153.1011, concerning commissioner's rules on professional development. The repeal is adopted without changes to the proposed text as published in the March 20, 2020 issue of the *Texas Register* (45 TexReg 1922) and will not be republished. The new section is adopted with changes to the

proposed text as published in the March 20, 2020 issue of the *Texas Register* (45 TexReg 1922) and will be republished. The adopted rule actions repeal the existing teacher mentorship rule and add a new rule to implement the mentor program allotment enacted by House Bill (HB) 3, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Section 153.1011 currently describes the program requirements for the Beginning Teacher Induction and Mentoring Program, an optional, grant-funded program to support mentorship that has been inactive due to lack of funding.

HB 3, 86th Texas Legislature, 2019, amended state law on mentorship requirements in Texas Education Code (TEC), §21.458, and created an optional mentor program allotment in TEC, §48.114. The new allotment is for eligible districts that implement a mentor training program in accordance with TEC, §21.458.

Because of these statutory changes, it is necessary to repeal §153.1011 as it relates to the Beginning Teacher Induction and Mentoring Program and replace it with a new rule related to the mentor program allotment for district mentor training programs.

The adopted new rule clarifies aspects of law related to mentor training programs for new teachers, as follows.

Adopted new subsection (a) establishes definitions related to the new rule. In response to public comment, subsection (a)(1) has been modified at adoption to clarify that a beginning teacher is a classroom teacher with less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

Adopted new subsection (b) specifies how many beginning teachers a mentor teacher may be assigned, specific district- and school-based staff who must complete mentor training, and the timelines related to mentor training. Subsection (b) also clarifies the appropriate times of day and frequency with which meetings between mentors and beginning teachers should occur and the topics that mentor teachers and beginning teachers must cover. In response to public comment, modifications were made to subsection (b) at adoption. Subsection (b)(4) has been modified at adoption to indicate the responsibilities of a district, not a mentor teacher, and to specify that the district must designate at least 12 hours per semester for mentoring activities to occur between the mentor and beginning teacher. Subsection (b)(5)(A) has been modified at adoption to remove the option for 2 of the 12 required hours of mentoring activity between the mentor and beginning teacher per semester to occur outside the regularly contracted school day.

Adopted new subsection (c) addresses the application approval process for mentor program allotment funding.

Adopted new subsection (d) specifies compliance requirements for participating districts. In response to public comment, subsection (d)(1) has been modified at adoption to clarify the type of information collected through compliance reporting. The data will include an annual compliance report submitted by the district and an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114.

Adopted new subsection (e) addresses permissible uses of mentor program allotment funds.

Adopted new subsection (f) outlines program review requirements.

Adopted new subsection (g) specifies the finality of commissioner decisions regarding mentor program allotment funds. In response to public comment, subsection (g) has been modified at adoption to clarify that the limitation on appeals addresses appeals to the commissioner, which reflects the promotion of efficient administration of the mentor allotment program.

Changes have been made to the assessment of data and reporting impact since published as proposed.

As proposed, the new rule required school districts to submit an application to be approved for mentor program allotment funds. In addition, school districts that receive mentor program allotment funds are required to submit information annually to verify program compliance and submit any information requested by TEA through activity/progress reports. At adoption, new subsection (d)(1)(B) was added to require beginning teachers and mentor teachers for whom funds were used under TEC, §48.114, to complete an annual survey as part of the verification of compliance.

Changes have been made to the assessment of principal and classroom teacher paperwork requirements since published as proposed.

At proposal, TEA determined that the proposed new rule would require a written report or other paperwork but that the rule did not specifically require a principal or classroom teacher to complete the report or paperwork. However, at adoption, new subsection (d)(1)(B) was added to require beginning teachers and mentor teachers for whom funds were used under TEC, §48.114, to complete an annual survey as part of the verification of compliance. Therefore, TEA has updated this assessment of paperwork requirements. The TEA has determined that the adopted new rule requires a written report or other paperwork to be completed by a principal or classroom teacher. However, the rule imposes the least burdensome requirement possible to achieve the objective of the rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 20, 2020, and ended April 20, 2020. Following is a summary of the comments received and corresponding responses.

Comment: The Texas Classroom Teachers Association (TCTA) commented that the definition of a beginning teacher should include one who has less than two years of experience in the subject or grade level to which the teacher is assigned, consistent with statutory language in TEC, §21.458(a).

Agency Response: The agency agrees. Subsection (a)(1) has been modified at adoption to clarify that a beginning teacher is a teacher who has less than two years of teaching experience in the grade level or subject to which the teacher is assigned.

Comment: TCTA commented that the definition of a mentor teacher should include statutory language from TEC, §21.458(a)(1) and (2), indicating that mentors must, to the extent practicable, teach in the same school and subject or grade level as the beginning teacher. TCTA commented this addition would emphasize best practices on selecting and assigning mentors.

Agency Response: The agency disagrees. Since TEC, §21.458, explicitly states that mentors must, to the extent practicable, teach in the same school and subject or grade level as the beginning teacher, those requirements do not need to be included in rule.

Comment: TCTA commented that subsection (b)(2) regarding mentor assignment should include the requirements in TEC, §21.458(a)(1) and (2), because it would outline the timelines and required level of commitment from districts and mentors to implement mentor programs with fidelity.

Agency Response: The agency disagrees. TEC, §21.458(b), requires the commissioner to include in rule the number of classroom teachers that may be assigned to a mentor, which is the intent of subsection (b)(2). Since TEC, §21.458(a)(1) and (2), state that, to the extent practicable, the mentor teacher must teach in the same grade or subject level and school as the beginning teacher, those requirements do not need to be included in rule.

Comment: TCTA expressed appreciation for subsection (b)(4), which requires districts to abide by TEC, §21.404, when designating a specific time for mentoring activities to occur. TCTA commented that its members have expressed concerns regarding campus and district attempts to use a teacher's planning and preparation time in ways inconsistent with TEC, §21.404.

Agency Response: The agency agrees that districts must abide by TEC, §21.404, when designating a specific time for mentoring meetings to occur.

Comment: TCTA commented that subsection (b)(4) should be renamed because the substance of the paragraph relates to district, not mentor, roles and responsibilities.

Agency Response: The agency agrees. Subsection (b)(4) has been modified at adoption to clarify that the paragraph addresses the district roles and responsibilities.

Comment: TCTA commented that subsection (b)(4) should include language from TEC, §21.458(g)(2), indicating that a district must provide release time or a reduced teaching load to mentor and beginning teachers, because it would indicate ways in which districts can facilitate time for mentoring activities to occur.

Agency Response: The agency disagrees. The purpose of subsection (b)(4) is to clarify that districts must abide by the requirements in TEC, §21.404, when specifying a time during which mentoring activities can occur. Since TEC, §21.458(g)(2), explicitly states that districts must schedule release time or a reduced teacher load for mentor teachers and beginning teachers to facilitate mentoring activities, those requirements do not need to be included in this rule.

Comment: TCTA commented that the 2 of the 12 required hours of mentoring activities should not be allowed to occur outside the regularly contracted school day because it conflicts with statutory requirements of TEC, §21.458(g).

Agency Response: The agency agrees. Subsection (b)(4) and (5)(A) have been modified at adoption to clarify that a district must designate at least 12 hours of time during the regularly contracted school day for mentoring activities to occur between mentor and beginning teachers.

Comment: Texas State Teachers Association (TSTA) commented it was unnecessary to state that districts may use teacher designations under TEC, §21.3521, to meet mentor selection requirements because district participation in the teacher incentive allotment is optional and other districts are equally capable of identifying highly effective teachers.

Agency Response: The agency disagrees. Subsection (b)(1)(C) provides further clarity in how a district may identify teachers who

have a superior record of improving student achievement, and no district is required to use these designations.

Comment: TSTA commented that the provisions in subsection (b)(5)(B)(i)(I)-(IV) exceed the parameters outlined in TEC, §21.458, and are unnecessary because they are too prescriptive, and mentor teachers, who are selected for their effectiveness, would know how to orient beginning teachers to the context, policies, and practices of the district. Additionally, TSTA commented that subsection (b)(5)(B)(ii)-(iv) sufficiently cover the intent of subsection (b)(5)(B)(i)(I)-(IV).

Agency Response: The agency disagrees. The provisions of subsection (b)(5)(B)(i)(I)-(IV) further clarify high-leverage best practices related to district context, policies, and practices with which beginning teachers interact daily.

Comment: TSTA commented that all districts that have implemented a mentoring program in accordance with TEC, §21.458, are entitled to an allotment as determined by a commissioner formula. TSTA referenced language in TEC, §48.114, stating that the commissioner formula is to determine "the amount to which" each district is entitled, and not base it on the availability of funds. TSTA also commented that annual adjustments to the funding formula may obscure the application process for districts.

Agency Response: The agency disagrees. The Texas Legislature appropriated \$3 million in funding for the mentor program allotment for the current biennium, and, should it decline to appropriate funds for a future biennium, no allotment funding would be available. Furthermore, a school district may not receive an allotment if its mentoring program does not meet the requirements of TEC, §21.458. Finally, there is no limitation in TEC, §48.114, on the ability of the commissioner to revise the allotment funding formula.

Comment: Texas Public Charter School Association (TPCSA) noted its support for the proposed new rule. Specifically, TPCSA supported the fact that charter school teachers do not need to be certified to serve as mentors, that mentor teachers must have three years of experience and a proven impact on student achievement, and that districts may use teacher designation under TEC, §21.3521, to fulfill some of the mentor selection requirements.

Agency Response: The agency agrees that mentor teachers serving in charter schools do not need to be certified classroom teachers and that districts may use designations through the teacher incentive allotment to fulfill some of the mentor selection requirements.

Comment: TPCSA expressed concern that without proper context for subsection (a)(2)(B), it may seem the agency is waiving a certification requirement for charter teachers to serve as mentors when most charter teachers do not require certification under TAC.

Agency Response: The agency disagrees that additional context is required in subsection (a)(2)(B) because the intent is to clarify mentor teacher certification requirements.

Comment: TPCSA commented that subsection (b)(1)(C) does not include the reason mentor teachers must have three years of teaching experience. TPCSA noted that three years of teaching experience suffices for establishing a superior record of student achievement.

Agency Response: The agency disagrees. While three years of teaching experience may be sufficient for some teachers to demonstrate a superior impact on student achievement, this is not necessarily true for all teachers. Additionally, the intent of subsection (b)(1)(C) is to clarify that districts may use teacher designations under TEC, §21.3521, as a way to identify highly effective teachers and includes language from TEC, §21.458(b)(3), for context.

Comment: Educate Texas commented that it would benefit districts and teachers if the approval for the "Mentor School Program" would allow for an appeal.

Agency Response: The agency disagrees. However, subsection (g) has been modified at adoption to clarify that the limitation on appeals addresses appeals to the commissioner, which reflects the promotion of efficient administration of the mentor program allotment.

Comment: Educate Texas commented that funding is based on the availability of funds, and the commissioner will have control over which districts receive funding. Educate Texas suggested the agency may consider this arbitrary decision-making related to which districts, teachers, and students may benefit.

Agency Response: The agency disagrees that the process for district funding will be arbitrary. The agency has posted a transparent application process to its website, which is based on statutory requirements. The agency has also posted to its website how funding will prioritize districts based on need with a transparent process for assigning priority points.

Comment: Educate Texas commented that the agency's reported fiscal impact to districts is zero, which is not the case if districts want to implement meaningful mentor programs.

Agency Response: The agency disagrees. Districts across the state vary greatly in terms of the infrastructure and programmatic elements already in place for mentor programs. Additionally, it is assumed there will be great variability among districts regarding how they choose to implement mentor programs, creating differences in programmatic spending.

Comment: Educate Texas commented that the agency may want to clarify how charter school teachers who do not need to be certified to teach may be eligible for state funding for the mentor program and offer funding proportional to traditional schools.

Agency Response: The agency provides the following clarification. Charter school teachers who do not need to be certified to serve as mentors may be eligible for state funding through the mentor program allotment.

Comment: Educate Texas commented that the agency may want to specify the types of data that will be collected from districts so that they can make informed decisions when applying.

Agency Response: The agency agrees. Subsection (d)(1) has been modified at adoption to clarify the type of information that will be collected through annual compliance reporting. The data will include an annual compliance report submitted by the district and an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114.

Comment: Educate Texas commented that the agency should consider sharing information about the most comprehensive mentorship training programs to help inform districts in developing their programs.

Agency Response: The comment is outside the scope of the proposed rule. The agency agrees that providing information on comprehensive mentorship training programs would be helpful and will post information to its website.

19 TAC §153.1011

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements for mentor selection, assignment, and training and topics to be covered between the mentor teacher and the classroom teacher being mentored. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §21.458 and §48.114.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002309

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: June 28, 2020

Proposal publication date: March 20, 2020

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



19 TAC §153.1011

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements for mentor selection, assignment, and training and topics to be covered between the mentor teacher and the classroom teacher being mentored. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §21.458 and §48.114.

§153.1011. *Mentor Program Allotment.*

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

(1) Beginning teacher--A classroom teacher in Texas who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

(2) Classroom teacher--An educator who is employed by a school district in Texas and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. The term does not include a teacher's aide or a full-time administrator.

(A) For a school district, a classroom teacher, as defined in this paragraph, must hold an appropriate certificate issued by the State Board for Educator Certification and must meet the specifications regarding instructional duties defined in this paragraph.

(B) For an open-enrollment charter school, a classroom teacher is not required to be certified but must meet the qualifications of the employing charter school and the specifications regarding instructional duties defined in this paragraph.

(3) Mentor teacher--A classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter schools.

(5) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Program requirements. In order for a district mentor program to receive funds through the mentor program allotment, as described in Texas Education Code (TEC), §48.114, the program must be approved by the commissioner of education using the application and approval process described in subsection (c) of this section. To be approved by the commissioner, district mentor programs must comply with TEC, §21.458, and commit to meet the following requirements.

(1) Mentor selection. To qualify as a mentor teacher, a classroom teacher must:

(A) complete a research-based mentor and induction training program approved by the commissioner;

(B) complete a mentor training program provided by the district;

(C) have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance. Districts may use the master, exemplary, or recognized designations under TEC, §21.3521, to fulfill this requirement; and

(D) demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

(2) Mentor assignment. School districts must agree to assign no more than:

(A) two beginning teachers to a mentor who serves as a teacher of record for, on average, six hours per instructional day; or

(B) four beginning teachers to a mentor who serves as a teacher of record for, on average, less than six hours per instructional day.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, such as principals, assistant prin-

cipals, and instructional coaches, who work with a beginning teacher or supervise a beginning teacher;

(B) ensure that mentor teachers and any appropriate district and campus employees are trained before the beginning of the school year;

(C) provide supplemental training that includes best mentorship practices to mentor teachers and any appropriate district and campus employees throughout the school year, minimally once per semester; and

(D) provide training for a mentor assigned to a beginning teacher who is hired after the beginning of the school year by the 45th day of employment of the beginning teacher.

(4) District roles and responsibilities. A school district must designate a specific time during the regularly contracted school day for meetings between mentor teachers and the beginning teachers they mentor, which must abide by the mentor and beginning teachers' entitled planning and preparation requirements in TEC, §21.404, and the provisions of paragraph (5)(A) of this subsection.

(5) Meetings between mentors and beginning teachers. A mentor teacher must:

(A) meet with each beginning teacher assigned to the mentor not less than 12 hours each semester, with observations of the mentor teacher by the beginning teacher being mentored or observations of the beginning teacher being mentored by the mentor teacher counting toward the 12 hours each semester; and

(B) address the following topics in mentoring sessions with the beginning teacher being mentored:

(i) orientation to the context, policies, and practices of the school district, including:

(I) campus-wide student culture routines;

(II) district and campus teacher evaluation systems;

(III) campus curriculum and curricular resources, including formative and summative assessments; and

(IV) campus policies and practices related to lesson planning;

(ii) data-driven instructional practices;

(iii) specific instructional coaching cycles, including coaching regarding conferences between parents and the beginning teacher;

(iv) professional development; and

(v) professional expectations.

(c) Application approval process. Each year, TEA will provide an application and approval process for school districts to apply for mentor program allotment funding. Funding will be limited based on availability of funds, and, annually, the commissioner shall adopt a formula to determine the amount to which approved districts are entitled. The application shall address the requirements of TEC, §21.458, and include:

(1) the timeline for application and approval;

(2) approval criteria, including the minimum requirements necessary for an application to be eligible for approval; and

(3) criteria used to determine which districts would be eligible for funding.

(d) Ongoing verification of compliance with program requirements.

(1) Each year, participating districts will be required to submit or participate in a verification of compliance with program requirements through a process to be described in the application form. The verification of compliance will include:

(A) an annual compliance report, submitted by the district, attesting to compliance with authorizing statute and commissioner rule. The report is to include the number of beginning teachers for whom the district used funds received under TEC, §48.114; and

(B) an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114. The survey will be used to gather data on program implementation and teacher perceptions.

(2) Failure to comply with TEC, §21.458, and this section after receiving an allotment may result in negative impact on a district's future mentor program allotment funding.

(e) Allowable expenditures. Mentor program allotment funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers limited to activities in accordance with this section; and

(3) mentoring support through providers of mentor training.

(f) District mentor program review. School districts awarded mentor program allotment funds must agree to submit all information requested by TEA through periodic activity/progress reports, which will occur not more than once yearly. Reports will be due no later than 45 calendar days after receipt of the information request and must contain all requested information in the format prescribed by the commissioner.

(g) Final decisions. Commissioner decisions regarding eligibility for mentor program allotment funds are final and appeals to the commissioner regarding such decisions will not be considered.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002310

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: June 28, 2020

Proposal publication date: March 20, 2020

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.3

The State Board of Dental Examiners (Board) adopts the amendment to 22 TAC §101.3, concerning the requirements for licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2812), and will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002287

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



22 TAC §101.4

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.4, concerning the requirements for temporary licensure by credentials. This amendment removes the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. The amendment also clarifies that biennial, not annual, renewals are required. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2814), and will be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association (TDA) provided a written comment in support of adoption of the rule amendment as proposed. TDA noted that language intended to be stricken through to denote deletion had been published in the *Texas Register* without the strikethrough. The language has been removed as per the proposed amendment's original intent.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§101.4. *Temporary Licensure by Credentials.*

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(3) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(4) Is endorsed by the state board of dentistry in the jurisdiction in which the applicant practices at the time of the application. Such endorsement is established by providing a copy under seal of the applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action;

(6) Is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) A license granted under this section is valid only for practice as an employee of a non-profit corporation. If a dentist holding a temporary license under this section becomes employed by a non-profit corporation other than the non-profit corporation named in the application, the licensee must notify the Board of the change in employment within fifteen days of such change.

(c) A dentist holding a temporary license issued under this section may renew the license by submitting an application and paying all required fees.

(d) A dentist holding a temporary license may obtain a license under the provision of §101.3 of this chapter (relating to Licensure by Credentials) when the dentist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §101.3 of this chapter and the application fee charged under this section.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002289

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



22 TAC §101.14

The State Board of Dental Examiners (Board) adopts new 22 TAC §101.14, concerning Exemption from Licensure for Certain Military Spouses. The adopted new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. This rule allows qualified military spouses to practice dentistry without obtaining a license to practice dentistry during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. This new rule is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2815), and will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002290

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



22 TAC §101.15

The State Board of Dental Examiners (Board) adopts new 22 TAC §101.15 concerning Reinstatement of a Cancelled License. This rule will clarify the Board's considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled. This new rule is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2816), and will be republished.

After publication in the *Texas Register*, Board staff changed the proposed text of the rule in subsection (a)(1), Board staff substituted the phrase "and has practiced" to replace the existing "or had practiced." No other changes were made to the proposed text.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§101.15. Reinstatement of a Cancelled License.

The Board may reinstate a cancelled Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) An applicant who, at the time of application for reinstatement, is practicing dentistry in another state, or territory outside of the United States, and has practiced dentistry actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) An applicant who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled license must submit proof that the applicant has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board as required by §101.2 of this chapter (relating to Licensure by Examination) pursuant to §257.002(d) of the Dental Practice Act.

(3) An applicant who applies to reinstate a cancelled license must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled license must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the license was cancelled.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled license.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002291

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.3

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §103.3, concerning the requirements for licensure by credentials. This amendment removes the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2817). The rule will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002292

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



22 TAC §103.4

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §103.4, concerning the requirements for temporary licensure by credentials. This amendment removes the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. The amendment also clarifies that biannual, not annual, renewals are required. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2818). The rule will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002293

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



22 TAC §103.10

The State Board of Dental Examiners (Board) adopts new 22 TAC §103.10 concerning Exemption from Licensure for Certain Military Spouses. The adopted new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. This new rule is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2819), and will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with

state laws relating to the practice of dentistry to protect the public health and safety.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002294

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



22 TAC §103.11

The State Board of Dental Examiners (Board) adopts new rule 22 TAC §103.11, concerning Reinstatement of a Canceled License. This rule clarifies the Board's considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled. This new rule is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2820). The rule will be republished.

After publication in the *Texas Register*, Board staff changed the proposed text of the rule in paragraph (1). Board staff substituted the phrase "and has practiced" to replace the existing "or had practiced." No other changes were made to the proposed text.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§103.11 Reinstatement of a Cancelled License.

The Board may reinstate a cancelled Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) An applicant who, at the time of application for reinstatement, is practicing dental hygiene in another state, or territory outside of the United States, and has practiced dental hygiene actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an

entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) An applicant whose license has been expired for one year or more, who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled license, must submit proof that the applicant has taken and passed the appropriate clinical examination administered by a regional examining board designated by the Board as required by §103.2 of this chapter (relating to Licensure by Examination) pursuant to §257.002(d) of the Dental Practice Act.

(3) An applicant who applies to reinstate a cancelled license must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled license must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the license was cancelled.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled license.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002295

Casey Nichols

General Counsel

State Board of Dental Examiners

Effective date: June 25, 2020

Proposal publication date: May 1, 2020

For further information, please call: (512) 305-9380



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.7

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §114.7 concerning Exemption from Licensure for Certain Military Spouses. The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. This new rule is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2821), and will be republished.

At the June 5, 2020 Board meeting, the Board voted to replace the phrase "practice" with "perform delegated permitted duties," in an effort to align the language with the Dental Practice Act and Chapter 114. No other changes were made to the proposed text.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§114.7 Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to perform delegated permitted duties as a dental assistant in Texas without obtaining a registration in accordance with §55.0041(a), Texas Occupations Code. This authorization to perform delegated permitted duties is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to perform delegated permitted duties the military spouse must:

(1) hold an active registration to perform delegated permitted duties as a dental assistant in another state, territory, Canadian province, or country that:

(A) has registration requirements that are determined by the board to be substantially equivalent to the requirements for registration in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to perform delegated permitted duties in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to perform delegated permitted duties as a dental assistant in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to perform delegated permitted duties in Texas, the board shall verify whether the military spouse's dental assistant registration in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board shall determine whether the registration requirements in that jurisdiction are substantially equivalent to the requirements for registration in Texas.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002296
Casey Nichols
General Counsel
State Board of Dental Examiners
Effective date: June 25, 2020
Proposal publication date: May 1, 2020
For further information, please call: (512) 305-9380

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

**PART 1. DEPARTMENT OF STATE
HEALTH SERVICES**

**CHAPTER 265. GENERAL SANITATION
SUBCHAPTER B. TEXAS YOUTH CAMPS
SAFETY AND HEALTH**

**25 TAC §§265.11 - 265.13, 265.15, 265.16, 265.23, 265.24,
265.27, 265.28**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §265.11, concerning Definitions; §265.12, concerning Directors, Supervisors, and Staff; §265.13, concerning Site and Physical Facilities; §265.15, concerning Medical and Nursing Care; §265.16, concerning Waterfront Safety; §265.23, concerning Application and Denial of a New License; Non-transferable; §265.24, concerning Application and Denial of a Renewal License; §265.27, concerning Revocation, Administrative Penalties, and Hearings; and §265.28, concerning Fees.

The amendment to §265.11 is adopted with changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1952) and will be republished. The amendments to §§265.12, 265.13, 265.15, 265.16, 265.23, 265.24, 265.27, and 265.28 are adopted without changes to the proposed text, and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

Texas Health and Safety Code, §141.006 establishes DSHS as the principal authority on matters relating to health and safety conditions at youth camps. Texas Health and Safety Code, §141.008 authorizes the Executive Commissioner of HHSC to adopt rules to implement the Texas Youth Camp Safety and Health Act.

The adoption amends §265.12 and §265.15 to address the requirements in House Bill (H.B.) 4372, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 141. H.B. 4372 requires that DSHS consider whether a youth camp employs an individual who was convicted of an act of sexual abuse in making a determination on issuance, renewal, or revocation of a youth camp operator's license and requires that DSHS forward a report of alleged abuse of a camper received by DSHS to the Department of Family and Protective Services or another appropriate agency. H.B. 4372 also creates a new retention period for camp staff records related to an investigation of, or conviction of, an act of sexual abuse and requires a written policy for youth camps reporting suspected abuse.

The amendments revise definitions and clarify the requirements for a criminal background check and completion of a sexual

abuse and child molestation awareness training and examination program for an individual having unsupervised contact with campers. The amendments update the requirements concerning preclusion of persons at a youth camp by excluding Class C assault misdemeanors under Texas Penal Code, §22.01 from the types of criminal convictions and deferred adjudications requiring preclusion and allow for the employment of persons with Class C assault misdemeanors under Texas Penal Code, §22.01 committed within the past ten years at the discretion of the youth camp. The amendments also update license application sections to reflect changes to youth camp definitions and simplify the rule language. The amendments update the references to Texas statutes throughout the subchapter to include the word "Texas."

COMMENTS

The 31-day comment period ended April 20, 2020.

During this period, DSHS received one comment from an individual in HHSC Child Care Regulation. A summary of the comment and DSHS's response follows.

Comment: The commenter pointed out that the childcare licensing agency listed as the "Department of Family and Protective Services" in §265.11(6) and (25) is incorrect and should be replaced with the current childcare licensing agency "Health and Human Services Commission."

Response: DSHS agrees and revises the rule as suggested.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, §141.008, which authorizes the Executive Commissioner of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§265.11. Definitions.

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

- (1) Act--Texas Youth Camp Safety and Health Act, Texas Health and Safety Code, Chapter 141.
- (2) Adult--A person at least 18 years of age or older.
- (3) Camper--A minor child, under 18 years of age, who is attending a youth camp on either a day or boarding basis.
- (4) Challenge course--Activity designed for educational purposes or team building, which may offer a variety of challenges, including zip lines, high and low rope courses, rappelling, and climbing walls.
- (5) Commissioner--The Commissioner of the Department of State Health Services.
- (6) Day camp--A camp that operates during the day or any portion of the day between 7:00 a.m. and 10:00 p.m. for four or more consecutive days and that offers no more than two overnight stays during each camp session. To be eligible to be licensed as a youth camp, the camp's schedule shall be structured so that each camper attends for four hours or more per day for four consecutive days. The term does

not include a facility that is required to be licensed with the Health and Human Services Commission.

(7) Department--Department of State Health Services.

(8) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(9) Firearm--Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or a burning substance, or any device readily convertible to that use.

(10) Municipal water supply--A public water supply owned or operated by or for a city or a corporation having the right of administering local government.

(11) Pellet gun--Any device designed, made, or adapted to expel a projectile through a barrel by using compressed air or carbon dioxide. This definition includes air guns, air rifles, BB guns, and paint-ball guns.

(12) Permanent structure--Man-made buildings such as dining halls, dormitories, cabins, or other buildings that are constructed to remain stationary.

(13) Person--An individual, partnership, corporation, association, or organization. In rules for this subchapter, a person does not include a government or governmental subdivision.

(14) Playground--A designated area designed for campers to play freely on equipment as defined in the U.S. Consumer Product Safety Commission Publication Number 325, "Handbook for Public Playground Safety," December 2015 as amended.

(15) Primitive camp--A youth camp that does not provide either permanent structures or utilities for camper use.

(16) Public water system--A public water system, as defined in 30 Texas Administrative Code (TAC) §290.38(71) is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water (30 TAC §290.38(23)). Such a system shall have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(17) Resident camp--A camp that for a period of four or more consecutive days continuously provides residential services to each camper, including overnight accommodations for at least three consecutive nights.

(18) Supervised--A person is supervised if the person is within sight, except for infrequent momentary periods such as restroom breaks, and within reasonable hearing distance of a camper's outcry, of an adult with an obligation to report inappropriate or dangerous activ-

ities or behavior who has been made aware that the obligation is in effect at that time and who has willingly accepted the obligation. This definition is applicable only to rules relating to unsupervised contact with campers.

(19) Supervisor/counselor--A person, at least 18 years of age or older, who is responsible for the immediate supervision of campers.

(20) Swim test--A formalized test, specific to the body of water utilized, to determine each child's swimming ability. A swim test includes a skill evaluation, or some equivalent method of determining swimming ability, such as:

(A) Non-swimmer: Get into the shallow water, sit down, stand up, and exit the water.

(B) Intermediate swimmer: Jump feet first into water at least twelve inches deeper than the height of the child. Level off, swim 25 feet, turn around and swim back. Exit the water.

(C) Swimmer: Jump feet-first into water at least twelve inches deeper than the height of the child and swim 75 yards in a strong stroke on your stomach or side (breaststroke, sidestroke, crawl, trudgen, or any combination). Then swim 25 yards on your back (elementary back stroke), then float and rest on your back for one minute. Exit the water.

(21) TCEQ--Texas Commission on Environmental Quality.

(22) Travel camp--A day or resident camp, lasting for four or more consecutive days, that begins and ends at a fixed location, but may move from location to location on a daily basis.

(23) Waterfront--A natural or artificial body of water that includes a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(24) Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

(25) Youth camp--A facility or property, other than a facility required to be licensed by the Health and Human Services Commission that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) provides supervision, and instruction in recreational, athletic, religious, or educational activities;

(C) during a camp session, offers at least two youth camp specialized activities in an outdoor setting;

(D) accommodates at least five minors during each camp session who attend or temporarily reside at the camp, apart from parents or guardians, for all or part of at least four consecutive days;

(E) operates as a youth camp for four consecutive hours or more per day;

(F) operates as a youth camp only during school vacation periods;

(G) operates as a youth camp for no more than 120 days each calendar year; and

(H) is not a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the

Texas Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(26) Youth camp specialized activity--A camp activity such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations, and a high level of adult supervision at all times.

(27) Youth camp operator--Any person who owns, operates, controls, or supervises a youth camp, whether or not for profit.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002281

Barbara L. Klein

General Counsel

Department of State Health Services

Effective date: June 25, 2020

Proposal publication date: March 20, 2020

For further information, please call: (512) 231-5753



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §§21.4901 - 21.4904

The Commissioner of Insurance adopts new 28 Texas Administrative Code (TAC) §§21.4901 - 21.4904, concerning disclosures by out-of-network providers. The new sections are adopted with changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 268). The department adopts §21.4902 and §21.4904 without changes to the proposed text. The department revises §21.4901 and §21.4903 to correct punctuation for consistency with agency style, and the department also revises §21.4903 in response to public comments. Sections 21.4901 and 21.4903 will be republished.

REASONED JUSTIFICATION. The new sections are necessary to implement exceptions to balance billing prohibitions in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111, as enacted by Senate Bill 1264, 86th Legislature, Regular Session (2019).

A hearing was held on February 4, 2020.

The new rules interpret and implement SB 1264, which prohibits balance billing for certain health benefit claims under certain health benefit plans; provides exceptions to balance billing prohibitions; and authorizes an independent dispute resolution process for claim disputes between certain out-of-network providers and health benefit plan issuers and administrators.

SB 1264's balance billing protections generally apply to enrollees of health benefit plans offered by insurers and health mainte-

nance organizations that the department regulates, as well as to the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The changes to law made by the bill apply to health care and medical services or supplies provided on or after January 1, 2020.

The new rules implement the exceptions to balance billing prohibitions found in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. The exceptions to balance billing prohibitions are only applicable in nonemergencies when a health benefit plan enrollee elects to receive covered health care or medical services or supplies from a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or from a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

For many consumers, a surprise balance bill can be financially ruinous, which could dissuade some consumers from seeking necessary or advisable medical care. To protect consumers, SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The proposed rules are necessary to prevent unscrupulous providers from exploiting the law's narrow exceptions to the balance billing prohibition, which would negatively affect the health and financial welfare of consumers. Without the new rules, a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rule, the provider could slip an inconspicuous SB 1264 notice among a number of other forms that the enrollee must review before the procedure. Patients could be forced to make tough financial and health-related decisions in a vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider.

On December 18, 2019, the department adopted 28 TAC §§21.4901 - 21.4904 under emergency rulemaking procedures, to be effective on January 1, 2020. The emergency rules will be withdrawn at the time these rules become effective.

New §21.4901 addresses the purpose and applicability of new Subchapter OO. The department makes a change to §21.4901 as proposed to remove the hyphen from the word "non-emergency," for consistency with agency style.

New §21.4902 provides that words and terms defined in Insurance Code Chapter 1467 have the same meaning when used in Subchapter OO, unless the context clearly indicates otherwise.

New §21.4903 clarifies that, for purposes of the exceptions to the balance billing prohibitions, an enrollee's election is only valid if the enrollee has a meaningful choice between an in-network provider and an out-of-network provider, the enrollee was not coerced by another provider or their health benefit plan into selecting the out-of-network provider, and the enrollee signs a notice and disclosure statement at least 10 business days before the service or supply is provided acknowledging that the enrollee

may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out-of-network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out-of-network provider may choose to participate in SB 1264's claim dispute resolution process instead of balance billing an enrollee.

New §21.4903 also adopts by reference the notice and disclosure statement that must be filled out by the out-of-network provider and given to the enrollee if the provider chooses to balance bill.

The proposed text in §21.4903 was changed in the adoption order in response to comments.

A change is made to §21.4903(a) to refer to an enrollee's "health benefit plan" instead of "health care plan." The department notes that SB 1264 uses both "health care plan" and "health benefit plan" in its provisions. Nevertheless, the department agrees to make the suggested change. However, this change in terms is not substantive and does not alter the scope or application of the rule.

The department makes a change to §21.4903(b). The department clarifies that legal representatives or guardians may make an election on behalf of an enrollee. The department adds "An enrollee's legal representative or guardian may elect on behalf of an enrollee" to the text of subsection (b).

The department also makes changes to §21.4903(d). The changes are made in part to allow for a provider's agent or assignee to maintain a copy of the notice and disclosure statement. This flexibility will help providers comply with the rule, for those providers that would rather delegate that responsibility. In addition, the department clarifies that the copy of the notice and disclosure statement must only be maintained if the medical service or supply is provided and a balance bill is sent. There is no need to maintain records when the underlying purpose is no longer necessary. The department also makes a change to state that the provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

The department makes a change to §21.4903(f). The change clarifies when the dispute resolution procedures under Insurance Code Chapter 1467 and 28 TAC Chapter 21, Subchapter PP apply. The change provides an exception to the subsection's prohibition on participating in the dispute resolution processes if the election is defective or rescinded.

The department also makes changes to §21.4903(b) and (c) to remove the hyphen from the word "non-emergency," for consistency with agency style.

New §21.4904 requires health benefit plans to help their enrollees determine their financial responsibility for a service or supply for which a notice and disclosure statement has been provided, consistent with Insurance Code §1661.002.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received 103 written comments and six oral comments. Commenters in support of the proposal were: AARP, Center for Public Policy Priorities, and Office of Public Insurance Counsel. Commenters in support of the proposal with changes were: Texas Association of Health Plans, Texas Hospital Association, and Texas Public Policy Foundation. Commenters against the proposal were: 94 individuals; American College of Obstetricians and Gynecologists, District

XI; American College of Physicians Services, Texas Chapter; Association of American Physicians and Surgeons, Inc.; Texas Medical Association; Texas Society for Gastroenterology and Endoscopy; and Texas Society of Pathologists.

Comments on the rule generally

Comment: Two commenters state that they strongly support proposed 28 TAC §§21.4901 - 21.4904 and state that it is consistent with the language and intent of SB 1264 and is necessary to protect Texas consumers.

One commenter states that it strongly supports the consumer protections in the proposed rules.

One commenter extends its support to the department's efforts and states that the rules are necessary to clarify that the non-emergency exception from the balance billing protections in SB 1264 is only permitted when the consumer has a choice between in-network and out-of-network providers and is afforded adequate time to understand the financial implications of their decision.

Agency Response: The department appreciates the support.

Comment: Many commenters state that the proposed rules contradict the principles of limited government and protection of individual rights in the Texas and U.S. Constitutions. One commenter states that the proposed rules protect third-party interests and are not in the best interests of the good practice of medicine or quality patient care.

Agency Response: The department notes that the commenters failed to specify which provisions of the U.S. or Texas Constitutions they believe are inconsistent with the proposed rules. Nevertheless, the department does not agree that the proposed rules violate either the federal or state constitutions. The department proposed the rule to interpret and implement SB 1264, including its limited exceptions to the balance billing prohibition. SB 1264 and the proposed rules serve an important consumer protection function, as surprise balance bills can be financially ruinous for many consumers. The proposed rules do not unreasonably intrude on the doctor-patient relationship, because the rules only apply when an out-of-network provider chooses to balance bill a patient. An out-of-network provider that chooses to participate in SB 1264's claim dispute resolution process instead of balance billing a patient is not subject to the proposed rule requirements.

Comment on §21.4901.

Comment: Several commenters state that the department has insufficient statutory authority to adopt the proposed rules. The commenters state that Insurance Code §§36.001, 752.0003(c), and 1467.003 do not authorize the department to adopt the rule proposal. The commenters also assert that the department's limited jurisdiction does not include prohibitions on balance billing and the disclosure exceptions.

Agency Response: The department disagrees that it lacks statutory authority to adopt the proposed rules or that it has exceeded its jurisdiction.

Insurance Code §36.001 provides authority for the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Insurance Code §31.002(3) imposes a duty on the department to "ensure that the Insurance Code and other laws regarding insurance and insurance companies are executed...." Therefore, for purposes of determining the department's authority, it is significant that all

provisions of SB 1264, including the balance billing prohibitions, were codified in the Insurance Code.

Enforcement of the balance billing prohibition is governed by Chapter 752 of the Insurance Code. Section 752.0003(c) states that an appropriate regulatory agency "or the commissioner may adopt rules as necessary to implement this section." The department has exercised its rulemaking authority to interpret and implement SB 1264.

Insurance Code §1467.003 mandates that the department adopt rules as necessary to implement its powers and duties under Chapter 1467, which governs out-of-network claim dispute resolution. The proposed rules are related to the dispute resolution processes created by Chapter 1467. The proposed written notice and disclosure procedure and form are inextricably linked to the application of the dispute resolution processes in Chapter 1467 and the rules that implement that chapter in 28 TAC Chapter 21, Subchapter PP. Though the proposed rules and Subchapter PP are in different subchapters, they are part of a coherent regulatory framework of balance billing consumer protections. Proposed section 21.4903(f) relates to Insurance Code Chapter 1467 and makes explicit the connection between the subchapters.

Comment: One commenter requests that the purpose and applicability of the proposed rules be clarified to not include direct care models of providing health care because a direct care provider or facility does not submit out-of-network claims to a health benefit plan. Another commenter asks whether the proposed rules would apply to providers that offer patients up-front pricing for health care services. The commenter notes that these patients already have an understanding that they will be paying out-of-network costs but want the procedure performed at an in-network facility that is covered by their plan.

Agency Response: The department declines to make a change. The applicability of the proposed rules is based on and is consistent with the applicability of SB 1264's balance billing prohibitions to out-of-network facility-based providers, diagnostic imaging providers, and laboratory service providers. SB 1264 clearly defines "facility-based provider," "diagnostic imaging provider," and "laboratory service provider."

Consistent with Insurance Code §752.0003, regulatory agencies that license, certify, or otherwise authorize providers have authority to discipline their respective providers for violating a law that prohibits the provider from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, or deductible. The department will coordinate with other regulatory agencies and will refer complaints about balance billing appropriately. The appropriate regulatory agency will determine the appropriate sanctions, if any, for a violation of the statute or the rules. The department has communicated with other state agencies and will continue to work with them to implement SB 1264. The department will closely monitor implementation and be ready to provide additional guidance, as needed.

Comments on §21.4903.

Comment: Several commenters note that the term "enrollee" is used throughout proposed §21.4903 and the form. The commenters suggest that the notice and disclosure form be revised to permit a guardian or legal representative of the patient to sign the form.

Agency Response: The department agrees with the commenters and has revised the proposed text by amending

§21.4903(b) to clarify that an enrollee's legal representative or guardian may elect on behalf of an enrollee.

Comment: Several commenters recommend that the term "health care plan" be replaced with "health benefit plan."

Agency Response: The department notes that SB 1264 uses both "health care plan" and "health benefit plan" in its provisions. Nevertheless, the department agrees to make the suggested change. However, this change in terms is not substantive and does not alter the scope or application of the rule.

Comment on: Several commenters recommend deleting §21.4903(b)(1). The commenters state that the proposed requirement limits the exception to the balance billing prohibition beyond what the Legislature intended. The commenters also oppose §21.4903(b)(1) because it would make satisfaction of the requirement dependent on a third party that is out of the provider's control. In addition, commenters state that the requirement is vague, overbroad, too subjective, and does not provide enough guidance. Further, the commenters state that if an enrollee is assigned an out-of-network provider, but is offered a choice, the assigned out-of-network provider should be able to use the waiver.

One commenter states that it supports the provisions of proposed §21.4903(b), and states that the provisions ensure that an actual election by the patient, within the meaning of SB 1264, has taken place.

One commenter supports the proposed rule because it allows providers to avoid the consumer protections of SB 1264 and balance bill only in the limited situation where they have given their patient all the information needed to make an informed decision and the patient has actively chosen to see that out-of-network provider.

Agency Response: The department disagrees that proposed §21.4903(b)(1) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. As stated in the Author's/Sponsor's Statement of Intent, SB 1264 "prevents consumers from receiving surprise medical bills so that in situations where the consumer has no choice over who provides their care, they cannot be surprise-billed." Senate Research Center, Bill Analysis, Tex. S.B. 1264, 86th Leg., R.S. (2019). Proposed §21.4903(b)(1) implements SB 1264 by clarifying that if an out-of-network provider wants to balance bill a consumer, that consumer must have a meaningful choice between an in-network provider and the out-of-network provider. As other commenters recognize, proposed §21.4903(b)(1) ensures that an election occurs, not merely an assignment.

The department acknowledges that individual providers may not have control over the assignment of providers to a particular enrollee. However, in circumstances where enrollee election is not feasible, providers are still entitled to payment under SB 1264's default arrangement. This includes payment at the usual and customary rate or at an agreed-on rate and an option to utilize alternate dispute resolution processes under Insurance Code Chapter 1467 and the rules adopted in 28 TAC Chapter 21, Subchapter PP. The statutory and regulatory framework operates to make the exceptions to the balance billing prohibition not the presumed operation, but the narrowly available option.

Comment: Several commenters state that the term "coerced," as used in proposed §21.4903(b)(2), is vague and overbroad.

The commenters also object to the proposed language because it provides that an out-of-network provider's use of the exception can be invalidated by someone else's coercive conduct--and potentially subjecting a provider to discipline because of someone else's conduct is unfair and exceeds the department's authority. The commenters state that the provision is a new condition that was not authorized by the Legislature. In addition, the commenters state that the language could put a provider in the position of being unable to either balance bill or access the dispute resolution procedures established under Insurance Code Chapter 1467.

Agency Response: The department disagrees that the text of proposed §21.4903(b)(2) is impermissibly vague or overbroad. See *CISPES (Comm. in Solidarity with People of El Salvador) v. FBI*, 77 F.2d 468, 475-76 (5th Cir. 1985) (addressing whether the term "coerce," as used in a federal statute, is vague or overbroad). An administrative rule need not define all the terms used in the rule, particularly when the term in question has a commonly understood definition. See *Tex. Mut. Ins. Co. v. Vista Cmty. Med. Ctr.*, 275 S.W.3d 538, 554 (Tex. App.-Austin 2008, pet. denied). In this context, to "'coerce' means to 'persuade (an unwilling person) to do something by using force or threats.'" Tex. Att'y Gen. Op. No. GA-949 (2012) (quoting New Oxford American Dictionary). Furthermore, the rule provides additional clarity as to the usage of the term, stating that "[a] provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election." Both the plain meaning of the term and its usage in the context of §21.4903(b)(2) demonstrate that it is not impermissibly vague or overbroad.

The department also disagrees that proposed §21.4903(b)(2) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. The rule simply recognizes that a valid election or choice must be free of coercion. That principal is recognized in other settings involving elections. See, e.g., *Union Mfg. Co. v. NLRB*, 221 F.2d 532, 540 (D.C. Cir. 1955) (Under the National Labor Relations Act, a "'valid' election is one free from fraud, from restraint or from coercion of employees in the exercise of their rights.").

The commenters are also concerned that, due to the proposed rule, a provider could be put in the position of being unable to either balance bill a patient or participate in SB 1264's dispute resolution process. The proffered scenario assumes that the enrollee can successfully demonstrate that the notice and disclosure was entered into coercively. This would be a question of fact that the provider could rebut, as with other contractual disputes. In response to other comments, the department made changes to §21.4903(f) to clarify that in instances where coercion took place, voiding the election, then the claim may be eligible to participate in dispute resolution under Insurance Code Chapter 1467 and 28 TAC Chapter 21, Subchapter PP. Therefore, the department does not believe a change to the proposed rule is warranted in response to the commenters' concern.

Comment: Several commenters oppose the language in §21.4903(b)(3) that requires the provider to obtain the enrollee's written consent. The commenters state that the provision is a new condition that was not authorized by the Legislature. The commenters also recommend that proposed §21.4903(b)(3) be amended to allow the enrollee's legal representative or guardian to provide the required consent.

Agency Response: The department agrees that an enrollee's legal representative or guardian should be permitted to provide the written consent required by the rule. In response to comment, the department amends §21.4903(b) accordingly.

The department does not agree that proposed §21.4903(b)(3) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. SB 1264 requires that an enrollee make an election in writing, and the proposed rule simply clarifies that such an election is manifested through the enrollee's written consent.

Comment: Several commenters have concerns with the requirement that out-of-network providers provide the notice and disclosure statement before scheduling a medical service or supply. The commenters believe that this requirement is not authorized by statute, and state that the requirement imposes operational challenges that make the use of the exception almost impossible for certain provider types. If the department moves forward with the scheduling requirement, the commenters recommend that it be substituted with language that the notice and disclosure statement must be provided to the enrollee or the enrollee's legal representative or guardian no later than three business days after the scheduling of the nonemergency service or supply. According to the commenters, this shorter time frame would better reflect how services are delivered by indirect access providers.

Two commenters support each of the provisions in §21.4903(c) and state that they work together to ensure that patients can freely make an election without feeling coerced.

Agency Response: The department does not agree that proposed §21.4903(c) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. SB 1264 requires certain out-of-network providers to provide a complete written disclosure about a medical service or supply in order to balance bill the patient for that service or supply. The department believes that, for the written disclosure requirement to be an effective consumer protection tool, the disclosure must be provided to the patient before scheduling the service or supply. Nevertheless, the proposed rule does not require the notice and disclosure statement to be provided at a separate office visit from the scheduling. The provision simply requires that the notice and disclosure statement, and the important consumer information and cost estimate, be provided before scheduling the service or supply. Provision of the notice and disclosure statement and scheduling of the service or supply could occur consecutively at the same office visit.

The department recognizes that indirect access providers may have more difficulties providing the notice and disclosure statement in the timeframes required by the rule. However, SB 1264 requires an enrollee election, and it does not provide lesser consumer protections because those protections may be inconvenient. In circumstances where an enrollee election fails to satisfy the requirements of the rule, providers are still entitled to payment under the default statutory arrangement. This includes payment at the usual and customary rate or at an agreed rate. Additionally, the provider may be able to seek alternate dispute resolution processes under Insurance Code Chapter 1467 and the rules adopted in 28 TAC Chapter 21, Subchapter PP. The statutory framework operates to make the use of the notice and disclosure statement not the presumed operation, but the narrowly available option.

Comment: Many commenters state that requiring a patient to wait at least 10 business days to receive care from an out-of-network provider--on mutually agreeable terms--is potentially dangerous and contrary to the wording and intent of SB 1264. One commenter states that requiring a patient to wait 10 business days to receive assistance for medical problems will magnify those problems.

Several commenters state that requiring delay of treatment is not just inconvenient, but is also potentially dangerous and discriminates against patients who might prefer a provider who does not contract with a third-party payer.

Agency Response: The department recognizes these concerns but does not agree that changes to the proposed rule text are necessary and declines to revise the proposed rule. The department notes that the proposed rule does not require an out-of-network provider to wait 10 business days before providing a medical service or supply. Rather, the signed notice and disclosure statement are required at least 10 business days before the date of the service or supply only if the provider chooses to balance bill the patient. If the provider is willing to accept a reasonable payment for the service or supply through SB 1264's independent dispute resolution process instead of balance billing the patient, the service or supply can be scheduled at any time that is agreeable to the patient and provider. Any delays in care will be the result of providers' billing choices and not the proposed rule.

The department also does not agree that proposed §21.4903(c) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. To protect consumers, SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The new rules are necessary to prevent providers from exploiting the law's narrow exceptions to the balance billing prohibition, which, if allowed, would exacerbate the balance billing concerns that led to the passage of SB 1264. Without the new rules, particularly proposed §21.4903(c), a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rules, the provider could slip an inconspicuous SB 1264 notice amongst several other forms that the enrollee must review prior to the procedure. Patients could be forced to make tough financial and health-related decisions in an extremely vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider.

Comment: One commenter asks who bears the liability in the event a nonemergent medical issue becomes life-threatening during a 10-business day wait.

Agency Response: The department does not determine tortious liability. Liability is set by law and the application of that law is fact specific. The department notes, however, that the proposed rule does not require an out-of-network provider to wait 10 business days before providing a medical service or supply. Rather, the signed notice and disclosure statement are required at least 10 business days before the date of the service or supply only if the provider chooses to balance bill the patient. Any delays in

care will be the result of the providers' billing choices and not the proposed rule. Furthermore, under SB 1264 the disclosure and notice requirements imposed by these rules are not applicable to emergency care or supplies.

Comment: One commenter asks for the department's rationale for choosing a 10-business day timeframe.

Agency Response: The department's reason for choosing 10 business days is so that the enrollee has adequate time to consider the potential financial impact of his or her decision. In addition, the timeframe provides an enrollee the opportunity to contact their health benefit plan or administrator and request assistance to improve the accuracy of the cost estimate. The time also may allow an enrollee to consider alternatives to the out-of-network provider.

Comment: Several commenters express concern about the 10-business day requirement in proposed §21.4903(c). The commenters state that the one-size-fits-all timeframe is arbitrary, contrary to the plain language of the statute, and presents challenges to patients and providers alike. The commenters note that the delay is not required for consent to the procedure itself and is longer than timeframes advocated by stakeholders in the context of the department's stakeholder process. The commenters highlight certain scenarios where the 10-day requirement may affect health-care practices. For example, where a patient wants to pick an out-of-network provider but have the service performed at an in-network facility and wants to have the service performed sooner than 10 business days. Another scenario the commenters discuss is for urgent care issues, where the rule would apply even if the patient would like to be treated and be willing to pay the balance bill without waiting for the requisite time period.

The commenters state that if the department is unwilling to remove the time requirement, they recommend lowering it to three business days with one business day for rescission. Additionally, the commenters recommend that if the department moves forward that it add the option to waive the 10-business day requirement, and another possible exception for urgent care scenarios.

Two commenters support the 10-business-day timeframe and state that it is reasonable and necessary to protect patients. First, it ensures that patients who need medical care urgently will not be placed under duress by a waiver. Second, it affords the patient time needed to make an informed election. They state that the timeframe needs to accommodate the ability of a patient to explore alternatives, including in-network alternatives, after learning through the notice and disclosure statement that some of their care will be out-of-network and cost more. The patient will need time to contact their health plan to both get firm costs for care outlined in the disclosure as well as to identify alternate in-network providers. The patient also may need to reach out to alternative providers to learn more or get an appointment. The timeframe also needs to accommodate a reasonable period during which a patient can rescind acceptance of the waiver, in the event that they are able to find alternate in-network providers.

One commenter recommends that the department not adopt a specific timeframe, because an excessive notice period could result in unnecessary delays in nonemergent care.

One commenter states that the form be provided in time for the consumer to make an informed decision on whether to proceed in getting out-of-network care. They state that the rule addresses this concern.

Agency Response: The department recognizes these concerns but does not agree that changes to the proposed rule text are necessary and declines to revise the proposed rule. The department notes that requesting a waiver is entirely optional on the part of the provider or facility.

As other commenters recognize, the 10-business day timeframe provides an enrollee the opportunity to contact their health benefit plan or administrator and request assistance to improve the accuracy of the cost estimate. The time also may allow an enrollee to consider alternatives to the out-of-network provider.

The 10-business day requirement provides strong balance billing protection, consistent with the intent of SB 1264. A shorter timeframe or an enrollee waiver exception would erode the strong balance billing prohibitions created by the Legislature. SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The statute provides new payment regulations to benefit out-of-network providers, including the possibility of dispute resolution. The department acknowledges the notice and disclosure procedures are not as simple or expedient as medical informed consent, but the framework of SB 1264 assumes that these waivers will not be the default billing scenario. There is a tradeoff between enrollee balance billing protection and status quo disruption, but SB 1264 requires a strong consideration of consumer protection.

Comment: Several commenters express concerns with the record retention requirement in proposed §21.4903(d). Some commenters state that the record retention requirement is not authorized by statute and that the department has no authority to impose it. Some commenters suggest that the rule be amended to allow the provider's agent or assignee to maintain and provide a copy of a signed and dated notice and disclosure statement. The commenters also suggest that the proposed rule is overbroad because it could require a provider to maintain the record even if the provider does not perform the service or balance bill the enrollee. The commenters also have concerns that the proposed rule would require a provider to provide a copy of the signed notice and disclosure statement on the same date the statement is signed, even if the enrollee signs the statement but does not immediately provide it to the provider. The commenters also recommend language that clarifies that a provider's failure to maintain a copy of the notice and disclosure statement or to provide a copy to the enrollee does not disqualify a provider from eligibility for the balance billing exception.

Two commenters support §21.4903(d) and state that it is important that the provider both give a copy of the signed statement to the patient and retain a copy for long enough that all billing, payments, and any disputes would have been resolved.

Agency Response: The department agrees to revise the proposed rule in response to some of the comments. The department believes it is reasonable to permit a provider's agent or assignee to maintain a signed notice and disclosure statement, and the proposed language is amended accordingly.

The department also agrees with the commenters that a provider need not maintain a signed statement if the provider ultimately does not perform the medical service or supply or balance bill the enrollee. The proposed language is amended accordingly.

The department also agrees with the commenters to amend the proposed language to clarify that a provider must give the enrollee a copy of the signed statement on the same date the signed statement is provided to the provider by the enrollee.

The department does not agree that proposed §21.4903(d) exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. The existence of a signed statement is key to determining whether the balance billing prohibition was properly waived, thus it is proper to require providers to maintain that document for a reasonable period of time. The department further notes that the cost to maintain these documents is expected to be negligible. Providers already maintain patients' health and billings records, and the new notice and disclosure statement form may be stored with other documents commonly used by providers.

The department also declines to amend the proposed language to clarify the consequences to a provider for failing to maintain a copy of the notice and disclosure statement or provide a copy of the signed statement to the enrollee. The regulatory agency that licenses the provider is responsible for enforcing the proposed rules and determining sanctions or penalties where appropriate.

Comment on §21.4903(f): Several commenters note that a provider should be permitted to participate in SB 1264's dispute resolution process if the provider decides not to balance bill, receives an enrollee rescission, reschedules for a later date and does not balance bill, or realizes the form is defective. The commenters suggest revised language to amend §21.4903(f) and a new related §21.4903(g).

Two commenters state that they support §21.4903(f). They state that it ensures out-of-network providers use just one of the two available paths for payment in SB 1264.

Agency Response: The department agrees to revise the proposed rule in response to some of the comments. The department believes it is reasonable to permit a provider to participate in the dispute resolution processes described in Insurance Code Chapter 1467 if an enrollee rescinds a waiver or if the election was invalid because it does not meet the requirements of §21.4903(b). Changes to §21.4903(f) are made to provide clarification.

The department declines to allow a provider to receive a valid election under §21.4903 and then later unilaterally put it aside and pursue statutory dispute resolution. Once a waiver is agreed to, the enrollee has certain expectations. Allowing the retrospective unilateral waiver on the part of the provider might encourage providers to seek such waivers as a matter of routine practice. Additionally, existence of a waiver is a threshold question in the department's portal. The department anticipates contested waivers to be infrequent events. Allowing provider cancellation of a waiver already sought and obtained impedes the efficient implementation of the portal.

Comments on §21.4904. Two commenters state that proposed §21.4904 ensures health plans will help patients understand their costs outlined in the waiver.

Several commenters recommend that the adopted rule include an additional subsection to ensure that health benefit plan issuers and administrators are required to provide information similar to the Insurance Code §1661.002 requirement to provide information to enrollees in order to assist providers.

Agency Response: The department does not agree that changes to the proposed rule text are necessary and declines to revise the proposed rule. SB 1264 requires providers to provide a complete written disclosure to the enrollee, including specific mandates to disclose projected amounts for which the enrollee

may be responsible and the circumstances under which the enrollee would be responsible for those amounts. The department recognizes that out-of-network providers may lack the ability to make precise predictions as to an enrollee's financial responsibility. However, the provider should be able to provide the likely billed charges. The department and other regulatory agencies enforcing SB 1264 have the discretion to consider the full context of what information an out-of-network has access to. The department anticipates that out-of-network providers will make their best efforts to provide as much information as possible so that the enrollees may make an informed decision.

SB 1264 does not create a specific requirement for health benefit plans to provide out-of-network enrollee financial responsibility information to out-of-network providers, but the department expects that health benefit plans will coordinate with out-of-network providers in the interest of their enrollees.

Comments on the form

Comment: One commenter states that the form should be written in plain language for the consumer to make an informed decision on whether to proceed with out-of-network care despite the potential for balance billing.

Agency Response: The department agrees that plain language is important for the enrollee to make an informed decision, and it believes the proposed form uses plain language.

Comment: Several commenters recommend that the "you may need to pay" column be eliminated and replaced with a direction to seek an estimate of the health benefit plan issuer's or administrator's payment and coverage information. The commenters state that the requirement is neither appropriate nor feasible and could cause delays in care. In addition, the commenters ask the department to add an exception to the rules for a provider's good faith attempt if the department adopts the form as proposed.

One commenter also has concerns over the ability of an out-of-network provider to obtain information necessary for the form. The commenter urges an exemption for out-of-network physicians and their patients from the requirements to provide cost sharing information in situations where patients and physicians already have been making mutually agreeable and mutually beneficial arrangements without the oversight of this new rule.

Agency Response: The department does not agree that changes to the proposed form are necessary and declines to revise the form. SB 1264 requires a complete written disclosure to the enrollee, including specific mandates to disclose projected amounts for which the enrollee may be responsible and the circumstances under which the enrollee would be responsible for those amounts. The department recognizes that out-of-network providers may lack the ability to make precise predictions as to an enrollee's financial responsibility. However, the provider should be able to provide the likely billed charges. The department and other regulatory agencies enforcing SB 1264 have the discretion to consider the full context of what information an out-of-network provider has access to. The department anticipates that out-of-network providers will make their best efforts to provide as much information as possible so that the enrollees may make an informed decision.

Comment: Several commenters recommend striking or modifying many portions of the notice and disclosure form. These changes include amending the form title, headings, and content. Alternative language is suggested.

Agency Response: The department does not agree that changes to the proposed form are necessary and declines to revise the form. As previously noted, the form was written in plain language so that it is easy to understand. The department believes that the potential financial consequences of an enrollee signing the form are substantial, and the form was drafted so that enrollees would know the legal protections they are waiving. The department believes that the changes proposed by the commenters would undercut the intent of the form.

The department does note that the proposed rules do not prohibit a provider from manually entering the required information in the form, provided that it is legible.

Comment: One commenter asks the department to remove the CPT code requirement in the waiver form. The commenter states that a clear description of the service should suffice.

Agency Response: The department declines to modify this portion of the form. However, the department acknowledges that CPT codes are the intellectual property of the American Medical Association, and that not every provider uses CPT codes, or they may use them only selectively. The department encourages supplying CPT codes where the provider can provide them so that the enrollee can provide the code to their health benefit plan for an explanation of potential costs. The regulatory agencies charged with enforcing the proposed rules can determine whether a provider has substantially complied with the rule requirements and SB 1264.

Other comments:

Comment: One commenter recommends that the proposed rules address submission of claims subject to SB 1264 to require an indication of whether or not a waiver has been obtained and to clarify that such information may constitute "information necessary for" the health plan to pay the claim for purposes of the timely payment provisions of SB 1264.

One commenter asks the department to consider how insurers could be better held accountable for providing enrollees seeking out-of-network care and their physicians timely access to the information they need to make informed choices.

Agency Response: The department declines to make a change. These concerns are outside the scope of the proposed rules because the proposed rules implement what is required by SB 1264. Submission of claims is regulated by other provisions not amended by SB 1264. The department encourages health benefit plans to assist providers with supplying accurate cost estimates to enrollees.

Comment: One commenter suggested that the state pass a law to stop insurance companies from having network policies at all in Texas.

Agency Response: The department declines to make a change as the comment is outside the scope of the proposed rules and the department's authority.

STATUTORY AUTHORITY. The department adopts the new §§21.4901 - 21.4904 under Insurance Code §§36.001, 752.003(c), and 1467.003.

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

Insurance Code §752.0003(c) authorizes the Commissioner to adopt rules as necessary to implement balance billing prohibitions and exceptions to those prohibitions outlined in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111.

Insurance Code §1467.003 provides that the Commissioner may adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

§21.4901. Purpose and Applicability.

(a) The purpose of this subchapter is to interpret and implement Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111; and Insurance Code Chapter 1467.

(b) Section 21.4903 of this title is only applicable to a covered nonemergency health care or medical service or supply provided by:

(1) a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(2) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

§21.4903. Out-of-Network Notice and Disclosure Requirements.

(a) For purposes of this section a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health benefit plan, as specified in Insurance Code §§1271.157(c), 1271.158(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(b) An out-of-network provider may not balance bill an enrollee receiving a nonemergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out-of-network provider knowing that the provider is out-of-network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee. For purposes of this subsection, an enrollee elects to obtain a service or supply only if:

(1) the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out-of-network provider. No meaningful choice exists if an out-of-network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator;

(2) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a non-refundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(3) the out-of-network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in subsection (c) of this section.

(c) If an out-of-network provider elects to balance bill an enrollee, rather than participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title, the out-of-network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subsection (e) of this section prior to scheduling the nonemergency health care

or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form.

(d) Each out-of-network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years if the medical service or supply is provided and a balance bill is sent to the enrollee. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

(e) The department adopts by reference Form AH025 as the notice and disclosure statement to be used under this section. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a stand-alone document and not incorporated into any other document. The form is available from the department by accessing its website at www.tdi.texas.gov/forms.

(f) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this section is not eligible to participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title. This subsection does not apply if the election is defective as described by subsection (b) of this section or rescinded by the enrollee under subsection (c) of this section.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002284

James Person

General Counsel

Texas Department of Insurance

Effective date: June 25, 2020

Proposal publication date: January 10, 2020

For further information, please call: (512) 676-6584

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357. REGIONAL WATER PLANNING

The Texas Water Development Board (TWDB) adopts amendments to §§357.10, 357.21, 357.31, 357.33, 357.34, 357.42, and 357.43, relating to regional water planning, without changes. These rules will not be republished. Sections 357.11 and 357.45 are adopted with changes to the text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1317), and therefore, will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The purpose of the amendments is to implement changes from House Bill (HB) 807, 86th (R) Legislative Session, and to clarify rules to make them more understandable and uniformly applied by regional water planning groups (RWPGs). The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter A. General Information.

Section 357.10. Definitions and Acronyms.

The definition of Regional Water Planning Gallons Per Capita Per Day is added to clarify the term as used in regional water planning. This definition aligns with the Texas Water Development Board and Texas Commission on Environmental Quality guidance document *Guidance and Methodology for Reporting on Water Conservation and Water Use*.

The remaining sections in §357.10 are renumbered to accommodate the addition of §357.10(25).

Section 357.11. Designations.

Section 357.11(d)(7) is revised to expand the eligible participation of the small businesses interest category. The updated ranges are based on information collected by the U.S. Small Business Administration.

Section 357.11(d)(9) is revised to remove Palo Duro River Authority from the required river authority interest category. The authority of the Palo Duro River Authority was revised by HB 1920 during the 85th Legislative Session by the reclassification of the river authority to a local water district.

New section 357.11(k) is added to implement a change to Texas Water Code (TWC) §16.052 made by HB 807, 86th Legislative Session (relating to an Interregional Planning Council). The change requires that the Board appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council is to be considered a Governmental Body in accordance with Texas Government Code §551.001 and must conduct business in accordance with the Texas Open Meetings Act. The Interregional Planning Council is also considered a Governmental Body under Texas Government Code §552.003 and must follow the Texas Public Information Act.

Due to the timing of the current planning cycle, the deliverable date for the Council's report will be determined by the EA and will be no later than adoption of the 2022 State Water Plan. For state water plan cycles beginning with the 2027 State Water Plan, a deliverable date for the Council's report will occur in advance of the Initially Prepared Plans to allow for consideration of recommendations by the RWPGs during development of their plans.

In future planning cycles, each RWPG will be required to submit an alternate along with their nomination(s). Alternates may assume all responsibilities of the appointed Council member, should the Council member not be able to serve during their term, without additional Board action. Interregional Planning Council nominees and their alternates must be current voting members of the RWPG.

The TWDB Board is required by statute to appoint the Council and, per statute, council members will only serve until the adoption of the next state water plan. Appointed Council(s) will have discretion in their voting procedures. Only current voting planning group members are eligible to be appointed to the Council

and future nominations must include alternates when submitted to the TWDB. It is up to each RWPG how many nominations they wish to submit. The TWDB does not have geographic residency requirements pertaining to regional water planning group or Council membership.

Subchapter B. Guidance Principles and Notice Requirements.

Section 357.21. Notice and Public Participation.

Section 357.21(a) is revised to specify that the collection of certain information related to existing major water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552.

Subchapter C. Planning Activities For Needs Analysis And Strategy Recommendations.

Section 357.31. Projected Population and Water Demands.

Section 357.31(f) is revised to clarify that Population and Water Demand projections shall be presented for each Planning Decade for Water User Groups (WUG) and that Water Demand projections associated with Major Water Providers will be presented for each Planning Decade by category of water use.

Section 357.33. Needs Analysis: Comparison of Water Supplies and Demands.

Section 357.33(d) is revised to clarify that the reporting requirements for the social and economic impacts of not meeting Water Needs are only required for WUGs.

Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Section 357.34(e)(3)(A) is revised to correct a typographical error.

Section 357.34(g) is added to specify the RWPGs must document in their RWP why certain water management strategies were not recommended, a task that is already required of RWPGs by the contract scopes of work. These strategies include aquifer storage and recovery, seawater desalination, and brackish groundwater desalination.

Section 357.34(h) is added to implement a change to TWC §16.053(e)(10) made by HB 807 (relating to Aquifer Storage and Recovery). The change requires that RWPGs assess the potential for aquifer storage and recovery to meet significant water needs in the planning area, as identified by the RWPG. RWPGs are to determine the threshold of significant needs, as it is critical to allow for a level of flexibility in planning approaches to maintain the bottoms up approach to planning. Each region has its unique circumstances that would contribute to what constitutes significant needs. Requiring the RWPGs to at a minimum provide their methodology for determining significant water needs allows for appropriate discussion in the state water plan.

Previous sections (g) and (h) are renumbered to (i) and (j), respectively.

Section 357.34(i)(3) is added to implement a change to TWC §16.053(e)(11) made by HB 807 (relating to Gallons Per Capita Per Day Goals). The change requires that RWPGs set specific gallons per capita per day goals for municipal WUGs in the planning region. The use of a drought water use condition (rather than an average water use condition) is adopted to align with

the drought condition requirements under which RWPs are developed.

Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation.

Section 357.42. Drought Response Information, Activities, and Recommendations.

Section 357.42(b) is revised to clarify language of drought assessments.

A new section 357.42(b)(1) is added to clarify considerations drought assessments should include.

A new section 357.42(b)(2) is added to implement a change to TWC §16.053(e)(3)(E) made by HB 807 (relating to Drought Response Strategies). The change requires that RWPGs identify unnecessary or counterproductive variations in drought response strategies in the planning region that may confuse the public or impede drought response efforts. Additional information will be provided in guidance.

Section 357.42(d) is revised to remove the requirement that the collection of information related to existing major water infrastructure facilities be collected in a closed meeting, to comply with Texas Open Meeting Act requirements and to clarify the minimum content required to be presented in the RWPGs.

Section 357.43. Regulatory, Administrative, or Legislative Recommendations.

Section 357.43(b)(2) is revised to clarify that the RWPG shall assess the impact of the RWP on unique stream segments that have been designated by the legislature during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, by any previous legislative session, or recommended as a unique river or stream segment in the RWP.

Section 357.43(d) is revised to implement a change to TWC §16.053(i) made by HB 807 (relating to Recommendations to Improve the Water Planning Process). The change specifies that RWPGs may include recommendations the RWPG believes would improve the planning process.

Section 357.45. Implementation and Comparison to Previous Regional Water Plan.

Section 357.45(b) is added to implement a change to TWC §16.053(e)(12) made by HB 807 (relating to Regionalization). The change requires that the RWPGs assess the progress of regionalization in the planning area.

Previous section 357.34(b) is renumbered to (c).

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes and

provide greater clarity regarding the TWDB's rules related to regional water planning.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislative changes and clarify existing rules to make them more understandable. The rule substantially advances this stated purpose by adding language related to legislative changes and clarifying existing language related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding the state water planning process. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

The following written comments were received from the Central Texas Water Coalition (CTWC), Freese and Nichols, Inc. (FNI), and HDR Engineering, Inc. (HDR).

Comment

The CTWC commented that TWDB rules should provide additional guidance and structure on membership and operation of RWPGs. The CTWC provided recommendations on term

limits, residency requirements, interest category requirements, teleconference allowances for committee meetings, and requirements for procurement of technical consultants.

Response

The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rules. No change has been made in response to this comment.

Regarding

Section 357.10. Definitions and Acronyms.

Comment

FNI commented that a formal definition of Regional Water Planning Gallons Per Capita Per Day is a welcome addition to Chapter 357. FNI recommends revising the proposed definition to include reclaimed water and seawater desalination used to meet municipal water demands in the calculation of Regional Water Planning Gallons Per Capita Per Day since the current planning cycle includes demands for reclaimed water and that interest in innovative supply approaches such as desalination has continued to grow.

Response

Municipal water demands developed by the TWDB do not include reuse or brackish groundwater sources. The proposed definition maintains consistency with the existing definition established by the TWDB and Texas Commission on Environmental Quality in consultation with the Texas Water Conservation Advisory Council. If guidance on definitions are updated in the future, stakeholder input will be solicited. No change has been made in response to this comment.

Regarding

Section 357.11. Designations.

Comment

CTWC commented that the proposed addition to §357.11(k) regarding the Interregional Planning Council lacks specificity on membership and nominations.

Response

Further clarification on membership and nominations for the Interregional Planning Council is provided in the "Section by Section Analysis." No changes have been made to the rule in response to this comment.

Comment

The CTWC questioned the timing feasibility of the first Interregional Planning Council to deliver their report to the TWDB by October 14, 2020. HDR commented that the proposed deadline for the Interregional Planning Council to submit its recommendation report to the TWDB six months prior to the Initially Prepared Plan deadline appears reasonable, however if the RWPGs are expected to evaluate and respond to the report, more time may be necessary.

Response

The Board agrees that additional time may be warranted for the Council to submit a report to the TWDB this cycle, and that additional time may be warranted for RWPGs to consider and respond to recommendations from the Council in future cycles. The adopted rule language for Section 357.11(k)(5) is revised to:

For the planning cycle of the 2022 State Water Plan, the Council's report shall be delivered to the Board by a date established by the EA, which will be no later than adoption of the 2022 State Water Plan. Beginning with the planning cycle for the 2027 State Water Plan and each planning cycle thereafter, the report shall be delivered to the Board no later than one year prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

Comment

CTWC encouraged the TWDB to facilitate the Interregional Planning Council and identify and discuss issues to be addressed by the Interregional Planning Council.

Response

The Board acknowledges and appreciates this comment. No changes have been made in response to this comment.

Comment

FNI commented that it supports the proposed addition of Section 357.11(k) regarding the Interregional Planning Council. FNI commented that the new language clearly defines primary requirements while allowing the Council necessary flexibility in determining meeting schedules and report contents, which may vary within and among planning cycles.

Response

The Board acknowledges and appreciates this comment. No changes have been made in response to this comment.

Regarding

Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Comment

CTWC requested the TWDB to explain why the proposed §357.34(g) allows each RWPG to set the threshold for significant identified water needs in the planning area and questioned how information that is not uniformly consistent be presented in the state water plan.

Response

Further clarification on significant identified water needs is provided in the "Section by Section Analysis." No changes have been made to the rule in response to this comment.

Comment

FNI commented that it supports the proposed addition to §357.34(g) and (h) regarding aquifer storage and recovery. FNI provided recommendations for future contract guidance and future grant funding.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

FNI commented that it supports the proposed addition to §357.34(i)(3) regarding gallons per capita per day goals.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Regarding

Section 357.42. Drought Response Information, Activities, and Recommendations.

Comment

CTWC commented that they support the proposed addition to §357.42(b) regarding the identification of unnecessary or counterproductive variations in drought response strategies. CTWC commented that the proposed rule as written appears to apply only to municipal water user groups and requested that the proposed revisions are clarified to encompass all water user groups.

Response

The proposed rule does not limit RWPGs from identifying drought response strategies from non-municipal water user groups. No changes have been made in response to this comment.

Comment

FNI commented that the proposed addition to §357.42(b) regarding the identification of unnecessary or counterproductive variations in drought response strategies appears to set a reasonable minimum requirement and allows for RWPG flexibility.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Regarding

Section 357.45. Implementation and Comparison to Previous Regional Water Plan.

Comment

FNI commented that it supports the proposed addition to §357.45(b) regarding an assessment of regionalization.

Response

The Board acknowledges this comment. No changes have been made in response to this comment.

Comment

HDR provided the following suggested revision to the proposed language in §357.45(b)(2) regarding an assessment of regionalization: "The number of implemented WMSs recommended in the previous RWP that have been implemented since the previously adopted RWP that serve more than one WUG,".

Response

The Board agrees that clarification on this rule is warranted. The rule is revised in response to this comment to clarify that the regionalization assessment of implemented water management strategies (WMS) in the previously adopted plan is specific to recommended WMS in the previous plan. In response to this, the adopted rule language for Section 357.45(b)(2)) is revised to: *The number of recommended WMSs in the previously adopted RWP that serve more than one WUG and have been implemented since the previously adopted RWP; and.*

SUBCHAPTER A. GENERAL INFORMATION

31 TAC §357.10, §357.11

STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary

to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

§357.11. Designations.

(a) The Board shall review and update the designations of RW-PAs as necessary but at least every five years, on its own initiative or upon recommendation of the EA. The Board shall provide 30 days notice of its intent to amend the designations of RW-PAs by publication of the proposed change in the *Texas Register* and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RW-PAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RW-PAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of an RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs shall be developed, taking into consideration factors such as:

- (1) River basin and aquifer delineations;
- (2) Water utility development patterns;
- (3) Socioeconomic characteristics;
- (4) Existing RW-PAs;
- (5) Political Subdivision boundaries;
- (6) Public comment; and
- (7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RWPG shall at a minimum address the following elements:

- (1) definition of a quorum necessary to conduct business;
- (2) method to be used to approve items of business including adoption of RWPs or amendments thereto;
- (3) methods to be used to name additional members;
- (4) terms and conditions of membership;
- (5) methods to record minutes and where minutes will be archived as part of the public record; and
- (6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one representative of each of the following interest categories as voting members of the RWPG. However, if an RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 500 employees or less than \$10 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority;

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within an RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA;

(5) Staff member of the Texas Department of Agriculture designated by its commissioner; and

(6) Staff member of the State Soil and Water Conservation Board designated by its executive director.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures and water conservation practices.

(k) The Board shall appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council will be subject to the following provisions:

(1) The Interregional Planning Council consists of one voting member from each RWPG, as appointed by the Board.

(2) Upon request by the EA, each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination.

(3) Interregional Planning Council members will serve until adoption of the State Water Plan.

(4) The Interregional Planning Council, during each planning cycle to develop the State Water Plan, shall hold at least one public meeting and deliver a report to the Board. The report format may be determined by the Council. The report at a minimum shall include a summary of the dates the Council convened, the actions taken, minutes of the meetings, and any recommendations for the Board's consideration, based on the Council's work. Meeting frequency, location, and additional report content shall be determined by the Council.

(5) For the planning cycle of the 2022 State Water Plan, the Council's report shall be delivered to the Board by a date established by the EA, which will be no later than adoption of the 2022 State Water

Plan. Beginning with the planning cycle for the 2027 State Water Plan and each planning cycle thereafter, the report shall be delivered to the Board no later than one year prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002298

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

31 TAC §357.21

STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002299

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY

31 TAC §§357.31, 357.33, 357.34

STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002301

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



SUBCHAPTER D. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

31 TAC §§357.42, 357.43, 357.45

STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

§357.45. *Implementation and Comparison to Previous Regional Water Plan.*

(a) RWPGs shall describe the level of implementation of previously recommended WMSs and associated impediments to implementation in accordance with guidance provided by the board. Information on the progress of implementation of all WMSs that were recommended in the previous RWP, including conservation and Drought Management WMSs; and the implementation of WMSPs that have affected progress in meeting the state's future water needs.

(b) RWPGs shall assess the progress of the RWPA in encouraging cooperation between WUGs for the purpose of achieving economies of scale and otherwise incentivizing WMSs that benefit the entire RWPA. This assessment of regionalization shall include:

(1) The number of recommended WMSs in the previously adopted and current RWPs that serve more than one WUG;

(2) The number of recommended WMSs in the previously adopted RWP that serve more than one WUG and have been implemented since the previously adopted RWP; and

(3) A description of efforts the RWPG has made to encourage WMSs and WMSPs that serve more than one WUG, and that benefit the entire region.

(c) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

(1) Water Demand projections;

(2) Drought of Record and hydrologic and modeling assumptions used in planning for the region;

(3) Groundwater and surface water Availability, Existing Water Supplies, and identified Water Needs for WUGs and WWPs; and

(4) Recommended and Alternative WMSs and WMSPs.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002302

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER C. CLAIMS PROCESSING-- TRAVEL VOUCHERS

34 TAC §5.22

The Comptroller of Public Accounts adopts amendments to §5.22 concerning state of Texas travel guidance, without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2689). The rule will not be republished.

The amendment to subsection (a) changes "Web site" to "website" to conform with current spelling of the term and to be consistent with the way the term is spelled in Chapter 5.

The amendments to subsection (b)(3) clarify that a state agency may not reimburse a state employee for any costs or expenses in excess of those incurred for official travel that result from a state employee's personal preference or convenience.

The amendments to subsection (b)(4) clarify that a state agency may not reimburse a state employee for a travel expense incurred by or on behalf of another state employee, except under the circumstances specified in this subsection.

The amendments to subsection (g)(2)(B) and (C) require point-to-point mileage to be documented by an employee's vehicle odometer reading or by the single, readily available electronic mapping service selected by the employee's agency, institution of higher education, or other entity required to comply with Government Code, Chapter 660, and adopted by internal policy of the agency, institution, or entity.

The amendments to subsection (j)(1)(C) change "Texas Procurement and Support Services" to "comptroller's Statewide Procurement Division" because the name of that division has changed.

The comptroller did not receive any comments regarding adoption of the amendments.

The amendments are adopted under Government Code, §660.021, which authorizes the comptroller to adopt rules relating to the administration of Government Code, Chapter 660, concerning travel expenses, and the travel provisions of the General Appropriations Act.

The amendments implement Government Code, Chapter 660, concerning travel expenses.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002280

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: June 25, 2020

Proposal publication date: April 24, 2020

For further information, please call: (512) 475-2220

