

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.3

The State Board of Education (SBOE) adopts an amendment to §74.3, concerning the required secondary curriculum. The amendment is adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2649) and will not be republished. The adopted amendment updates the list of high school courses for social studies and physical education that are required to be offered to students.

REASONED JUSTIFICATION: The 87th Texas Legislature, Regular Session, 2021, passed Senate Bill (SB) 1063, amending Texas Education Code (TEC), §28.025, to add a one-half credit course in personal financial literacy and economics as an option to meet the one-half credit graduation requirement for economics under the Foundation High School Program. SB 1063 requires that the SBOE adopt Texas Essential Knowledge and Skills (TEKS) for a combined personal financial literacy and economics course to be offered beginning with the 2022-2023 school year. To ensure that students have the option of satisfying the economics graduation requirement with the new Personal Financial Literacy and Economics course, the SBOE added the new course to the list of social studies courses that districts are required to offer.

Additionally, in 2020 the SBOE adopted new Kindergarten-Grade 12 physical education TEKS, which will be implemented beginning with the 2022-2023 school year. The new TEKS replaced the existing high school physical education courses with three new courses.

The adopted amendment adds a requirement in subsection (b)(2)(D) that districts offer the new Personal Financial Literacy and Economics course and provides an exception for districts with an enrollment of less than 500 students.

The adopted amendment also aligns the required secondary curriculum in subsection (b)(2)(E) with the changes to the high school physical education course offerings.

The SBOE approved the amendment for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members

to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will update the rule to address new physical education and social studies courses as soon as possible. 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 May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One teacher stated that one computer science course should be required for all high school students to fulfill their high school graduation requirements.

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

Comment. One teacher stated that more professional development should be made available to educators who teach computer science.

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

Comment. One administrator expressed opposition to the requirement in §74.3(b)(2)(B) to offer Mathematical Models with Applications as part of the secondary curriculum and stated that small schools struggle to offer it. The commenter recommended either removing Mathematical Models with Applications from the required curriculum or adding a provision to allow for schools to offer either Mathematical Models with Applications or the career and technical education course Financial Mathematics.

Response. The SBOE disagrees and has determined that the current requirements in §74.3(b)(2)(B) for mathematics courses that districts are required to offer is appropriate.

Comment. One administrator expressed concern regarding the requirement to offer the new Personal Financial Literacy and Economics course in the upcoming school year because there has not been an opportunity to purchase instructional materials for this course.

Response. The SBOE disagrees and has determined that the timeline for implementation reflects a requirement from Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

Comment. One administrator requested delaying implementation of the proposed new Personal Financial Literacy and Economics course so districts have more time to locate instructional materials and prepare and train teachers.

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

Comment. One administrator expressed concern with the proposed new social studies framework for Kindergarten-Grade 8.

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

Comment. One administrator asked for clarification about the language in proposed §74.3(b)(2)(D) and whether districts would be able to request a waiver to submit to the commissioner of education for the proposed requirement to offer the Personal Financial Literacy and Economics course if a high school has fewer than 500 students.

Response. The SBOE provides the following clarification. The rule as adopted requires districts to offer both Economics with Emphasis on the Free Enterprise System and its Benefits and Personal Financial Literacy and Economics. A district with a total high school enrollment of less than 500 students may apply to the commissioner of education for approval to offer only one of the two courses.

STATUTORY AUTHORITY. The amendment 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 identify by rule 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(b-1), as amended by Senate Bill (SB) 1063, 87th Texas Legislature, Regular Session, 2021, which requires the SBOE to determine by rule specific courses for graduation under the foundation high school program; TEC, §28.025(b-22), as added by SB 1063, 87th Texas Legislature, Regular Session, 2021, which requires that, in adopting Texas Essential Knowledge and Skills for a personal financial literacy and economics course, the SBOE must ensure that the required curriculum allocates two-thirds of instruction time to instruction in personal financial literacy one-third of instruction time to instruction in economics.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(b-1) and (b-22), as amended and added by Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

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 July 12, 2022.

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SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §§74.11 - 74.14

The State Board of Education (SBOE) adopts amendments to §§74.11-74.14, concerning graduation requirements. The amendment to §74.11 is adopted without changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 849) and will not be republished. The amendments to §§74.12-74.14 are adopted with changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 849) and will be republished. The adopted amendments update the high school graduation requirements to align with Senate Bill (SB) 369 and SB 1063, 87th Texas Legislature, Regular Session, 2021; update course titles; add new courses to satisfy specific graduation requirements; and make technical edits.

REASONED JUSTIFICATION: SB 369, 87th Texas Legislature, Regular Session, 2021, amended Texas Education Code (TEC), §28.0256(d), to specify that a school counselor may not indicate that a student has not complied with the financial aid requirement for high school graduation if the school district or open-enrollment charter school fails to provide an opt-out form to the student or the student's parent or other person standing in parental relation to the student. Section 74.11 has been updated to add the new statutory provision.

SB 1063, 87th Texas Legislature, Regular Session, 2021, amended TEC, §28.025(b-1), to add a personal financial literacy and economics course as an option to satisfy graduation requirements for social studies under the foundation high school program. Section 74.12 has been updated to add the new credit option.

At the November 2020 SBOE meeting, the board approved for second reading and final adoption 19 TAC Chapter 116, Texas Essential Knowledge and Skills for Physical Education. The effective date for the new Texas Essential Knowledge and Skills (TEKS) for physical education is August 1, 2022. The board approved the inclusion of new TEKS for three new high school physical education courses in Lifetime Fitness and Wellness Pursuits, Lifetime Recreation and Outdoor Pursuits, and Skill-based Lifetime Activities that will replace Foundations of Personal Fitness, Adventure/Outdoor Education, Aerobic Activities, and Team or Individual Sports. Section 74.12 has been updated to add the new physical education courses to satisfy specific graduation requirements.

At the June 2021 SBOE meeting, the board approved for second reading and final adoption 19 TAC §112.51, Specialized Topics in Science, and the rule became effective November 30, 2021. The board also amended the title of the Earth and Space Science course to Earth Systems Science. Section 74.12 and §74.13 have been updated to add the new course and update the course title to satisfy specific graduation requirements.

At the November 2021 SBOE meeting, the board approved for second reading and final adoption revised career and technical education (CTE) TEKS, which have historically been codified in 19 TAC Chapter 130. To accommodate the addition of these new courses and future courses, the SBOE took action to move the CTE TEKS in Chapter 130 to existing 19 TAC Chapter 127, Texas Essential Knowledge and Skills for Career Development, and to rename the chapter "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." The move of all CTE subchapters from Chapter 130 to Chapter 127 will take place over time as the TEKS in each subchapter are revised. In November 2021 the board gave final approval to new 19 TAC Chapter 127, Subchapters G, I, J, M, and O. At the January 2022 SBOE meeting, the board took action to

repeal the associated subchapters from Chapter 130 and move the sections to Chapter 127. Section 74.11 and §74.13 have been updated to reflect the move of CTE TEKS from Chapter 130 to Chapter 127 as well as the new title for Chapter 127.

The adopted amendment to §74.14 updates references to the College Board's student commendation programs, adds a new college preparation assessment instrument, and adjusts scores on all college preparation assessment instruments to ensure the scores on the different assessments are comparable. A student may earn a performance acknowledgment on the student's transcript for outstanding performance on an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace or on an established valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities. Section 74.14 has been amended to update references to two College Board programs and to adjust scores that would qualify for a performance acknowledgement to ensure all scores reflect outstanding performance.

The following changes were made to the rules since approved for first reading and filing authorization.

In §74.12(b)(2)(A), a reference to Robotics Programming and Design was eliminated since the course was repealed in 2020.

Section 74.13(f)(3)(A)(ii), which included an obsolete cross reference, was deleted.

The term *English learner* was changed to *emergent bilingual student* in §74.14(b)(2) to align with recent changes in statute.

Section 74.14(d)(2) was amended to replace the ACT Aspire™ composite score of 41 with the composite score of 442.

The SBOE approved the proposed amendments for first reading and filing authorization at its January 28, 2022 meeting and for second reading and final adoption at its April 8, 2022 meeting.

In accordance with Texas Education Code, §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 2022-2023 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, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began February 25, 2022, and ended at 5:00 p.m. on April 1, 2022. The SBOE also provided an opportunity for registered oral and written comments at its April 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and responses.

Comment. Two teachers and four administrators expressed support for the addition of new §74.11(k), which would allow districts to exempt students from specific CTE prerequisites for CTE courses that satisfy a mathematics or science graduation requirement if the district determines the student is not using the course to complete a program of study.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Three administrators requested that the SBOE add Integrated Physics and Chemistry (IPC) to the list of courses that

can satisfy curriculum requirements to earn the science, technology, engineering, and mathematics (STEM) endorsement. The commenters expressed concern that excluding IPC from the list precludes students who develop an interest in STEM in IPC from seeking the endorsement because the course doesn't count toward the requirement.

Response. The SBOE disagrees and has determined that the content of the current IPC course does not merit inclusion on the list of courses that may satisfy the third science credit and a STEM endorsement.

Comment. Two administrators recommended adding IPC to the list of courses that satisfy the curriculum requirements for the STEM endorsement because the new TEKS for the course adopted in 2020 are substantially more rigorous.

Response. The SBOE disagrees and has determined that the content of the current IPC course does not merit inclusion on the current list of courses that may satisfy the third science credit. The SBOE may consider including the IPC in the future when the revised course is implemented in 2024-2025.

Comment. One administrator requested that the SBOE move IPC to the list of advanced science courses in §74.12(b)(3)(B).

Response. The SBOE disagrees and has determined that the content of the current IPC course does not merit inclusion on the current list of courses that may satisfy the third science credit.

Comment. One administrator asked when the new rules for performance acknowledgements outlined in §74.14(d)(3) would be implemented. The commenter asked whether a student would be eligible to earn a performance acknowledgement if the student earns a score of 28 prior to the effective date of the new rule.

Response. The SBOE provides the following clarification. Amended §74.14 will be implemented beginning in the 2022-2023 school year. Students who satisfied requirements for the performance acknowledgments that were in place prior to the effective date of the amendments will be considered to have already met the requirements that were in place at the time.

Comment. A representative from ACT, Inc., recommended revising the proposed composite score required to earn a performance acknowledgement for ACT Aspire® to 442, which is comparable to the proposed composite score of 29 for ACT® or Pre-ACT®.

Response. The SBOE agrees and took action to amend §74.14(d)(2) at adoption to read "earning a composite score of 442 on the ACT Aspire™ examination."

Comment. The president of the Texas Association for Bilingual Education (TABE) expressed the organization's support for the proposed amendment to §74.14(b) to align with language in recent legislation from the 87th Texas Legislature, 2021.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. The president of TABE stated that the organization recommends deleting §74.14(b)(2) related to earning a performance acknowledgement in bilingualism and biliteracy because it requires an emergent bilingual student to meet the exit criteria for a bilingual or English as a second language program and to score at the advanced high level on the Texas English Language Proficiency Assessment System. The commenter stated the current language is not only outdated but also not equitable

because it requires additional criteria for an emergent bilingual student that is not required for an English speaker.

Response. The SBOE disagrees that the criteria in §74.14(b)(2) is inequitable and has determined that both emergent bilingual students and students whose first language is English must demonstrate their proficiency in two or more languages. The SBOE agrees that the language is outdated and took action to change the term "English language learner" to "emergent bilingual student."

Comment. One administrator asked that districts be given flexibility in the requirements to offer Economics with Emphasis on the Free Enterprise System, Personal Financial Literacy, and the proposed new Personal Financial Literacy and Economics course so that districts can best accommodate student interest and staffing shortages.

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

Comment. One administrator asked that the SBOE delay implementation of the proposed new Personal Financial Literacy and Economics course until the 2023-2024 school year as it is highly unlikely that any district would be able to write the necessary curriculum and enroll students in time for the 2022-2023 school year.

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

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, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school program that are consistent with the required curriculum and requires the SBOE to designate specific courses that are required for the foundation high school program; TEC, §28.025(b-1), as amended by SB 1063, 87th Texas Legislature, Regular Session, 2021, which requires the SBOE to determine by rule specific courses for graduation under the foundation high school program; TEC, §28.025(b-3), which requires the SBOE to approve a variety of advanced English, mathematics, and science courses that can be taken to fulfill the foundation high school program; TEC, §28.025(b-14), which requires the SBOE to allow a student receiving special education services to substitute the languages other than English requirement with two credits in English language arts, mathematics, science, or social studies or two credits in career and technology education, technology applications, or other academic electives; TEC, §28.025(b-17), which requires the SBOE to adopt rules that ensure a student who successfully completes an advanced career and technical education course, including a course that may lead to an industry-recognized credential or certificate or an associate degree may comply with elective requirements for graduation; TEC, §28.025(c), which requires that, in order to receive a high school diploma, a student must complete the curriculum requirements identified by the SBOE and comply with the financial aid application requirement in accordance with TEC, §28.0256; TEC, §28.025(c-1), which requires the SBOE to adopt rules regarding earning an endorsement; TEC, §28.025(c-2), which requires the SBOE to adopt rules for earning an endorsement that include four credits in mathematics and four credits in science; TEC, §28.025(c-5), which permits a student to earn a performance acknowledgment for outstanding performance in a dual credit course; in bilingualism and biliteracy; on a college ad-

vanced placement test or international baccalaureate examination; on an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace; or on an established, valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process by satisfying the requirements for that acknowledgment adopted by the State Board of Education by rule; TEC, §28.0256(a), which requires each student to complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) before graduating from high school; TEC, §28.0256(b), which provides an exception to students to opt out of the financial aid application requirement under TEC, §28.0256(a), by submitting a form signed by a parent, guardian, or student aged 18 years old or older, that authorizes the student to decline to comply with the financial aid application graduation requirement. A high school counselor may also authorize a student to decline to comply with the financial aid application graduation requirement for good cause; and TEC, §28.0256(d), as amended by SB 369, 87th Texas Legislature, Regular Session, 2021, which specifies that if a school counselor notifies a school district whether a student has complied with the requirement under TEC, §28.0256(a) or (b), the school counselor may only indicate whether the student has complied with this section and may not indicate the manner in which the student complied. A school counselor may not indicate that a student has not complied with the requirement if the school district or charter school fails to provide the form.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.025(a), (b-1), as amended by Senate Bill (SB) 1063, 87th Texas Legislature, Regular Session, 2021, (b-3), (b-14), (b-17), (c), (c-1), (c-2), and (c-5); and 28.0256(a) and (b) and (d), as amended by SB 369, 87th Texas Legislature, Regular Session, 2021.

§74.12. *Foundation High School Program.*

(a) Credits. A student must earn at least 22 credits to complete the Foundation High School Program.

(b) Core courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. Two of the credits must consist of English I and II. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.) A third credit must consist of English III, a comparable Advanced Placement (AP) English language arts course that does not count toward another credit required for graduation, or a comparable International Baccalaureate (IB) English language arts course that meets all the requirements in §110.33 of this title (relating to English Language Arts and Reading, English III (One Credit), Beginning with School Year 2009-2010). A fourth credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) English IV;
- (B) Independent Study in English;
- (C) Literary Genres;
- (D) Creative Writing;

(E) Research and Technical Writing;
(F) Humanities;
(G) Public Speaking III;
(H) Communication Applications, which must be combined with another half credit from the other courses listed in subparagraphs (A)-(G) and (I)-(S) of this paragraph;

- (I) Oral Interpretation III;
- (J) Debate III;
- (K) Independent Study in Speech;
- (L) Independent Study in Journalism;
- (M) Advanced Broadcast Journalism III;
- (N) Advanced Journalism: Newspaper III;
- (O) Advanced Journalism: Yearbook III;

(P) a comparable Advanced Placement (AP) English language arts course that does not count toward another credit required for graduation;

(Q) a comparable International Baccalaureate (IB) English language arts course that meets all the requirements in §110.34 of this title (relating to English Language Arts and Reading, English IV (One Credit), Beginning with School Year 2009-2010);

(R) after the successful completion of English I, II, and III, a locally developed English language arts course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the Texas Education Code (TEC), §28.002(g-1);

(S) Business English; and

(T) a college preparatory English language arts course that is developed pursuant to the TEC, §28.014.

(2) Mathematics--three credits. Two of the credits must consist of Algebra I and Geometry.

(A) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses or a credit selected from the courses listed in subparagraph (B) of this paragraph:

- (i) Mathematical Models with Applications;
- (ii) Mathematical Applications in Agriculture, Food, and Natural Resources;
- (iii) Digital Electronics;
- (iv) Financial Mathematics;
- (v) Applied Mathematics for Technical Professionals;
- (vi) Accounting II;
- (vii) Manufacturing Engineering Technology II; and
- (viii) Robotics II.

(B) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (i) Algebra II;
- (ii) Precalculus;

- (iii) Advanced Quantitative Reasoning;
- (iv) Independent Study in Mathematics;
- (v) Discrete Mathematics for Problem Solving;
- (vi) Algebraic Reasoning;
- (vii) Statistics;

(viii) a comparable AP mathematics course that does not count toward another credit required for graduation;

- (ix) AP Computer Science A;
- (x) IB Computer Science Higher Level;
- (xi) Engineering Mathematics;
- (xii) Statistics and Business Decision Making;
- (xiii) Mathematics for Medical Professionals;
- (xiv) Discrete Mathematics for Computer Science;
- (xv) pursuant to the TEC, §28.025(b-5), after the successful completion of Algebra II, a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses offered under this clause; and

(xvi) after the successful completion of Algebra I and Geometry, a locally developed mathematics course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(C) One credit of a two-credit IB mathematics course selected from Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics) may satisfy the additional mathematics credit.

(3) Science--three credits. One credit must consist of Biology or a comparable AP or IB biology course.

(A) One credit must be selected from the following laboratory-based courses:

- (i) Integrated Physics and Chemistry;
- (ii) Chemistry;
- (iii) Physics;
- (iv) Principles of Technology; and

(v) a comparable AP or IB chemistry or physics course that does not count toward another credit required for graduation.

(B) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following laboratory-based courses:

- (i) Chemistry;
- (ii) Physics;
- (iii) Aquatic Science;
- (iv) Astronomy;
- (v) Earth Systems Science;
- (vi) Environmental Systems;

- (vii) Specialized Topics in Science;
- (viii) a comparable AP science course that does not count toward another credit required for graduation;
- (ix) Advanced Animal Science;
- (x) Advanced Plant and Soil Science;
- (xi) Anatomy and Physiology;
- (xii) Medical Microbiology;
- (xiii) Pathophysiology;
- (xiv) Food Science;
- (xv) Forensic Science;
- (xvi) Biotechnology I;
- (xvii) Biotechnology II;
- (xviii) Principles of Technology;
- (xix) Scientific Research and Design;
- (xx) Engineering Design and Problem Solving;
- (xxi) Engineering Science;
- (xxii) pursuant to the TEC, §28.025(b-5), after the successful completion of physics, a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses offered under this clause;

(xxiii) a locally developed science course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1); and

(xxiv) one credit of a two-credit IB science course selected from Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science).

(C) Credit may not be earned for both physics and Principles of Technology to satisfy science credit requirements.

(4) Social studies--three credits.

(A) One credit must consist of United States History Studies Since 1877.

(B) One-half credit must consist of United States Government.

(C) One-half credit must be selected from the following:

(i) Economics with Emphasis on the Free Enterprise System and Its Benefits; or

(ii) Personal Financial Literacy/Economics.

(D) One credit must be selected from the following:

(i) World History Studies;

(ii) World Geography Studies; or

(iii) a comparable AP or IB world history or world geography course that does not count toward another credit required for graduation.

(5) Languages other than English (LOTE)--two credits.

(A) The credits may be selected from the following:

(i) any two levels in the same language, including comparable AP or IB language courses that do not count toward another credit required for graduation; or

(ii) two credits in computer programming languages, including computer coding, to be selected from Computer Science I, II, and III, AP Computer Science Principles, AP Computer Science A, IB Computer Science Standard Level, and IB Computer Science Higher Level.

(B) A single two-credit IB LOTE course may only satisfy one LOTE requirement.

(C) If a student, in completing the first credit of LOTE, demonstrates that the student is unlikely to be able to complete the second credit, the student may substitute another appropriate course as follows:

(i) Special Topics in Language and Culture;

(ii) World History Studies or World Geography Studies for a student who is not required to complete both by the local district;

(iii) another credit selected from Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English); or

(iv) computer programming languages, including computer coding.

(D) The determination regarding a student's ability to complete the second credit of LOTE must be agreed to by:

(i) the teacher of the first LOTE credit course or another LOTE teacher designated by the school district, the principal or designee, and the student's parent or person standing in parental relation;

(ii) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the TEC, Chapter 29, Subchapter A; or

(iii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(E) A student, who due to a disability, is unable to complete two credits in the same language in a language other than English, may substitute a combination of two credits that are not being used to satisfy another specific graduation requirement selected from English language arts, mathematics, science, or social studies or two credits in career and technical education for the LOTE credit requirements. The determination regarding a student's ability to complete the LOTE credit requirements will be made by:

(i) the student's ARD committee if the student receives special education services under the TEC, Chapter 29, Subchapter A; or

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(F) A student who successfully completes a dual language immersion/two-way or dual language immersion/one-way program in accordance with §89.1210(d)(3) and (4) of this title (relating to Program Content and Design), §89.1227 of this title (relating to Min-

imum Requirements for Dual Language Immersion Program Model), and §89.1228 of this title (relating to Two-Way Dual Language Immersion Program Model Implementation) at an elementary school may satisfy one credit of the two credits required in a language other than English.

(i) To successfully complete a dual language immersion program, a student must:

(I) have participated in a dual language immersion program for at least five consecutive school years;

(II) achieve high levels of academic competence as demonstrated by performance of meets or masters grade level on both the mathematics and reading State of Texas Assessments of Academic Readiness (STAAR®) in English or Spanish, as applicable, in at least one grade level; and

(III) achieve proficiency in both English and a language other than English as demonstrated by scores of proficient or higher in the reading and speaking domains on language proficiency or achievement tests in both languages.

(ii) The second credit of a language other than English must be in the same language as the successfully completed dual language immersion program.

(G) A student who successfully completes a course in American Sign Language while in elementary school may satisfy one credit of the two credits required in a language other than English.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

- (i) Lifetime Fitness and Wellness Pursuits;
- (ii) Lifetime Recreation and Outdoor Pursuits; and
- (iii) Skill-Based Lifetime Activities.

(B) In accordance with local district policy, the required credit may be earned through completion of any Texas essential knowledge and skills-based course that meets the requirement in subparagraph (E) of this paragraph for 100 minutes of moderate to vigorous physical activity per five-day school week and that is not being used to satisfy another specific graduation requirement.

(C) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(D) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(E) All substitution activities allowed in subparagraphs (B)-(D) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(F) Credit may not be earned more than once for any course identified in subparagraph (A) of this paragraph. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B)-(D) of this paragraph.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) or a course that is offered for credit as provided by the TEC, §28.002(g-1), for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's ARD committee if the student receives special education services under the TEC, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Fine arts--one credit.

(A) The credit may be selected from the following courses subject to prerequisite requirements:

- (i) Art, Level I, II, III, or IV;
- (ii) Dance, Level I, II, III, or IV;
- (iii) Music, Level I, II, III, or IV;
- (iv) Music Studies;
- (v) Theatre, Level I, II, III, or IV;
- (vi) Musical Theatre, Level I, II, III, or IV;
- (vii) Technical Theatre, Level I, II, III, or IV;
- (viii) IB Film Standard or Higher Level;
- (ix) Floral Design;
- (x) Digital Art and Animation; and

(xi) 3-D Modeling and Animation.

(B) In accordance with local district policy, credit may be earned through participation in a community-based fine arts program not provided by the school district in which the student is enrolled. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in fine arts. Approval may be granted if the fine arts program provides instruction in the essential knowledge and skills identified for a fine arts course as defined by Chapter 117, Subchapter C, of this title (relating to High School, Adopted 2013).

(c) Elective courses--five credits. The credits must be selected from the list of courses specified in §74.11(g) or (h) of this title (relating to High School Graduation Requirements) or from a locally developed course or activity developed pursuant to the TEC, §28.002(g-1), for which a student may receive credit and that does not satisfy a specific course requirement.

(d) Substitutions. No substitutions are allowed in the Foundation High School Program, except as specified in this chapter.

§74.13. *Endorsements.*

(a) A student shall specify in writing an endorsement the student intends to earn upon entering Grade 9.

(b) A district shall permit a student to enroll in courses under more than one endorsement before the student's junior year and to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated. This section does not entitle a student to remain enrolled to earn more than 26 credits.

(c) A student must earn at least 26 credits to earn an endorsement.

(d) A school district may define advanced courses and determine a coherent sequence of courses for an endorsement area, provided that prerequisites in Chapters 110-117, 127, and 130 of this title are followed.

(e) To earn an endorsement a student must demonstrate proficiency in the following.

(1) The curriculum requirements for the Foundation High School Program as defined by §74.12 of this title (relating to Foundation High School Program).

(2) A fourth credit in mathematics that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) Algebra II;
- (B) Precalculus;
- (C) Advanced Quantitative Reasoning;
- (D) Independent Study in Mathematics;
- (E) Discrete Mathematics for Problem Solving;
- (F) Algebraic Reasoning;
- (G) Statistics;

(H) a comparable Advanced Placement (AP) mathematics course that does not count toward another credit required for graduation;

(I) AP Computer Science A;

(J) International Baccalaureate (IB) Computer Science Higher Level;

(K) Engineering Mathematics;

(L) Statistics and Business Decision Making;

(M) Mathematics for Medical Professionals;

(N) Discrete Mathematics for Computer Science;

(O) pursuant to the Texas Education Code (TEC), §28.025(b-5), after the successful completion of Algebra II, a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses offered under this subparagraph; and

(P) after the successful completion of Algebra I and Geometry, a locally developed mathematics course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(3) A student may complete a course listed in paragraph (2) of this subsection before or after completing a course listed in §74.12(b)(2)(A) of this title.

(4) The fourth mathematics credit may be a college preparatory mathematics course that is developed and offered pursuant to the TEC, §28.014.

(5) The fourth mathematics credit may be satisfied with one credit of a two-credit IB mathematics course selected from Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics) that does not count toward another credit required for graduation.

(6) An additional credit in science that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

(A) Chemistry;

(B) Physics;

(C) Aquatic Science;

(D) Astronomy;

(E) Earth Systems Science;

(F) Environmental Systems;

(G) Specialized Topics in Science;

(H) a comparable AP science course that does not count toward another credit required for graduation;

(I) Advanced Animal Science;

(J) Advanced Plant and Soil Science;

(K) Anatomy and Physiology;

(L) Medical Microbiology;

(M) Pathophysiology;

(N) Food Science;

(O) Forensic Science;

(P) Biotechnology I;

(Q) Biotechnology II;

(R) Principles of Technology;

- (S) Scientific Research and Design;
- (T) Engineering Design and Problem Solving;
- (U) Engineering Science;

(V) pursuant to the TEC, §28.025(b-5), after the successful completion of physics, a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses offered under this subparagraph;

(W) a locally developed science course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1);

(X) pursuant to the TEC, §28.025(c-3), a student pursuing an arts and humanities endorsement who has the written permission of the student's parent or a person standing in parental relation to the student may substitute a course that is not being used to satisfy another specific graduation requirement selected from:

- (i) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);
- (ii) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);
- (iii) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English); or
- (iv) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts); and

(Y) credit may not be earned for both physics and Principles of Technology to satisfy science credit requirements.

(Z) The fourth science credit may be satisfied with one credit of a two-credit IB science course selected from Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science) that does not count toward another credit required for graduation.

(7) Two additional elective credits that may be selected from the list of courses specified in §74.11(g) or (h) of this title (relating to High School Graduation Requirements).

(f) A student may earn any of the following endorsements.

(1) Science, technology, engineering, and mathematics (STEM). A student may earn a STEM endorsement by completing the requirements specified in subsection (e) of this section, including Algebra II, chemistry, and physics or Principles of Technology and:

(A) a coherent sequence of courses for four or more credits in career and technical education (CTE) that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education), Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development and Career and Technical Education), or CTE innovative courses approved by the commissioner of education. The final course in the sequence must be selected from Chapter 127, Subchapter O, of this title (relating to Science, Technology, Engineering, and Mathematics) or Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title (relating to High School), if the course addresses a STEM-related field; or

(B) courses required to complete a TEA-designated program of study related to STEM; or

(C) three credits in mathematics by successfully completing Algebra II and two additional mathematics courses for which Algebra II is a prerequisite by selecting courses from subsection (e)(2) of this section; or

(D) four credits in science by successfully completing chemistry, physics, and two additional science courses by selecting courses from subsection (e)(6) of this section; or

(E) in addition to Algebra II, chemistry, and physics, a coherent sequence of three additional credits from no more than two of the categories or disciplines represented by subparagraphs (A), (B), (C), and (D) of this paragraph.

(2) Business and industry. A student may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses approved by the commissioner. The final course in the sequence must be selected from one of the following:

- (i) Chapter 130, Subchapter A, of this title (relating to Agriculture, Food, and Natural Resources); or
- (ii) Chapter 130, Subchapter B, of this title (relating to Architecture and Construction); or
- (iii) Chapter 130, Subchapter C, of this title (relating to Arts, Audio/Video Technology, and Communications); or
- (iv) Chapter 130, Subchapter D, of this title (relating to Business Management and Administration); or
- (v) Chapter 130, Subchapter F, of this title (relating to Finance); or
- (vi) Chapter 127, Subchapter J, of this title (relating to Hospitality and Tourism); or
- (vii) Chapter 130, Subchapter K, of this title (relating to Information Technology); or
- (viii) Chapter 130, Subchapter M, of this title (relating to Manufacturing); or
- (ix) Chapter 130, Subchapter N, of this title (relating to Marketing); or
- (x) Chapter 130, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics); or
- (xi) Chapter 130, Subchapter Q, of this title (relating to Energy); or
- (xii) Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title if the course addresses a career from a field listed in clauses (i)-(xi) of this subparagraph; or

(B) courses required to complete a TEA-designated program of study related to business and industry; or

(C) four English credits by selecting courses from Chapter 110 of this title to include three levels in one of the following areas:

- (i) public speaking; or
- (ii) debate; or
- (iii) advanced broadcast journalism; or

- (iv) advanced journalism: newspaper; or
- (v) advanced journalism: yearbook; or
- (vi) advanced journalism: literary magazine; or

(D) a coherent sequence of four credits from subparagraph (A), (B), or (C) of this paragraph.

(3) Public services. A student may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses approved by the commissioner. The final course in the sequence must be selected from one of the following:

- (i) Chapter 127, Subchapter G, of this title (relating to Education and Training); or
- (ii) Chapter 127, Subchapter I, of this title (relating to Health Science); or
- (iii) Chapter 130, Subchapter J, of this title (relating to Human Services); or
- (iv) Chapter 127, Subchapter M, of this title (relating to Law and Public Service); or
- (v) Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title if the course addresses a field from a cluster listed in clauses (i)-(v) of this subparagraph; or

(B) courses required to complete a TEA-designated program of study related to public services; or

(C) four courses in Junior Reserve Officer Training Corps (JROTC).

(4) Arts and humanities. A student may earn an arts and humanities endorsement by completing the requirements specified in subsection (e) of this section and:

- (A) five social studies credits by selecting courses from Chapter 113 of this title; or
- (B) four levels of the same language in a language other than English by selecting courses in accordance with Chapter 114 of this title, which may include Advanced Language for Career Applications; or
- (C) two levels of the same language in a language other than English and two levels of a different language in a language other than English by selecting courses in accordance with Chapter 114 of this title; or
- (D) four levels of American sign language by selecting courses in accordance with Chapter 114 of this title; or
- (E) a coherent sequence of four credits by selecting courses from one or two categories or disciplines in fine arts from Chapter 117 of this title or innovative courses approved by the commissioner; or
- (F) four English credits by selecting from the following:
 - (i) English IV; or
 - (ii) Independent Study in English; or
 - (iii) Literary Genres; or
 - (iv) Creative Writing; or

- (v) Research and Technical Writing; or
- (vi) Humanities; or
- (vii) Communication Applications; or
- (viii) AP English Literature and Composition; or
- (ix) AP English Language and Composition; or
- (x) IB Language Studies A: Language and Literature Standard Level; or
- (xi) IB Language Studies A: Language and Literature Higher Level; or
- (xii) IB Language Studies A: Literature Standard Level; or
- (xiii) IB Language Studies A: Literature Higher Level; or
- (xiv) IB Literature and Performance Standard Level.

(5) Multidisciplinary studies. A student may earn a multidisciplinary studies endorsement by completing the requirements specified in subsection (e) of this section and:

(A) four advanced courses that prepare a student to enter the workforce successfully or postsecondary education without remediation from within one endorsement area or among endorsement areas that are not in a coherent sequence; or

(B) four credits in each of the four foundation subject areas to include chemistry and/or physics and English IV or a comparable AP or IB English course; or

(C) four credits in Advanced Placement, International Baccalaureate, or dual credit selected from English, mathematics, science, social studies, economics, languages other than English, or fine arts.

(g) A course completed as part of the set of four courses needed to satisfy an endorsement requirement may also satisfy a requirement under §74.12(b) and (c) of this title and subsection (e)(2), (4), (5), and (6) of this section, including an elective requirement. The same course may count as part of the set of four courses for more than one endorsement.

§74.14. *Performance Acknowledgments.*

(a) A student may earn a performance acknowledgment on the student's transcript for outstanding performance in a dual credit course by successfully completing:

- (1) at least 12 hours of college academic courses, including those taken for dual credit as part of the Texas core curriculum, and advanced technical credit courses, including locally articulated courses, with a grade of the equivalent of 3.0 or higher on a scale of 4.0; or
- (2) an associate degree while in high school.

(b) A student may earn a performance acknowledgment on the student's transcript for outstanding performance in bilingualism and biliteracy as follows.

- (1) A student may earn a performance acknowledgment by demonstrating proficiency in accordance with local school district grading policy in two or more languages by:
 - (A) completing all English language arts requirements and maintaining a minimum grade point average (GPA) of the equivalent of 80 on a scale of 100; and
 - (B) satisfying one of the following:

(i) completion of a minimum of three credits in the same language in a language other than English with a minimum GPA of the equivalent of 80 on a scale of 100; or

(ii) demonstrated proficiency in the Texas Essential Knowledge and Skills for Level IV or higher in a language other than English with a minimum GPA of the equivalent of 80 on a scale of 100; or

(iii) completion of at least three credits in foundation subject area courses in a language other than English with a minimum GPA of 80 on a scale of 100; or

(iv) demonstrated proficiency in one or more languages other than English through one of the following methods:

(I) a score of 3 or higher on a College Board Advanced Placement examination for a language other than English; or

(II) a score of 4 or higher on an International Baccalaureate examination for a higher-level languages other than English course; or

(III) performance on a national assessment of language proficiency in a language other than English of at least Intermediate High or its equivalent.

(2) In addition to meeting the requirements of paragraph (1) of this subsection, to earn a performance acknowledgment in bilingualism and biliteracy, an emergent bilingual student must also have:

(A) participated in and met the exit criteria for a bilingual or English as a second language (ESL) program; and

(B) scored at the Advanced High level on the Texas English Language Proficiency Assessment System (TELPAS).

(c) A student may earn a performance acknowledgment on the student's transcript for outstanding performance on a College Board Advanced Placement test or International Baccalaureate examination by earning:

(1) a score of 3 or above on a College Board Advanced Placement examination; or

(2) a score of 4 or above on an International Baccalaureate examination.

(d) A student may earn a performance acknowledgment on the student's transcript for outstanding performance on an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace or on an established valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process by:

(1) earning a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT®) that qualifies the student for recognition as a commended scholar or higher by the National Merit Scholarship Corporation or as an awardee of the National Recognition Programs of the College Board;

(2) earning a composite score of 442 on the ACT Aspire™ examination;

(3) earning a composite score of 29 on the ACT PreACT® examination;

(4) earning a total score of at least 1350 on the SAT®; or

(5) earning a composite score on the ACT® examination of 29 (excluding the writing subscore).

(e) A student may earn a performance acknowledgment on the student's transcript for earning a state-recognized or nationally or internationally recognized business or industry certification or license as follows.

(1) A student may earn a performance acknowledgment with:

(A) performance on an examination or series of examinations sufficient to obtain a nationally or internationally recognized business or industry certification; or

(B) performance on an examination sufficient to obtain a government-required credential to practice a profession.

(2) Nationally or internationally recognized business or industry certification shall be defined as an industry-validated credential that complies with knowledge and skills standards promulgated by a nationally or internationally recognized business, industry, professional, or government entity representing a particular profession or occupation that is issued by or endorsed by:

(A) a national or international business, industry, or professional organization;

(B) a state agency or other government entity; or

(C) a state-based industry association.

(3) Certifications or licensures for performance acknowledgements shall:

(A) be age appropriate for high school students;

(B) represent a student's substantial course of study and/or end-of-program knowledge and skills;

(C) include an industry-recognized examination or series of examinations, an industry-validated skill test, or demonstrated proficiency through documented, supervised field experience; and

(D) represent substantial knowledge and multiple skills needed for successful entry into a high-skill occupation.

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

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CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

SUBCHAPTER C. HIGH SCHOOL

19 TAC §113.76

The State Board of Education (SBOE) adopts new §113.76, concerning personal financial literacy and economics. The new section is adopted with changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2653)

and will be republished. The adopted new rule adds Texas Essential Knowledge and Skills (TEKS) for a new social studies course to comply with the requirements of Senate Bill (SB) 1063, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: The 83rd Texas Legislature passed House Bill 2662, amending Texas Education Code (TEC), §28.0021, to require school districts and open-enrollment charter schools offering a high school program to provide a one-half credit elective course in personal financial literacy. In 2016, the SBOE adopted the proposed new personal financial literacy course. The course, 19 TAC §113.49, Personal Financial Literacy (One-Half Credit), Adopted 2016, was implemented beginning with the 2016-2017 school year.

In 2021, the 87th Texas Legislature passed SB 1063, amending TEC, §28.025, to add a one-half credit course in personal financial literacy and economics as an option to meet the one-half credit graduation requirement for economics under the Foundation High School Program. SB 1063 requires that the SBOE adopt TEKS for the personal financial literacy and economics course and that the required curriculum for the course allocate two-thirds of the instructional time to personal financial literacy and one-third of instructional time to economics.

A personal financial literacy and economics TEKS review work group convened twice in January 2022 and once in February 2022 to draft recommendations for the new course. The work group's charge included developing recommendations for revisions to §113.49, Personal Financial Literacy (One-Half Credit), Adopted 2016; §113.31, Economics with Emphasis on the Free Enterprise System and Its Benefits, High School (One-Half Credit), Adopted 2018; and §113.61, Economics Advanced Studies (One-Half Credit), which will be presented to the SBOE for discussion at a future meeting.

The following changes were made since published as proposed.

The general requirements in §113.76(b) were amended to state that students may not be awarded credit for both §113.76 and the personal financial literacy course adopted under Chapter 113, Subchapter C.

The student expectation in §113.76(d)(3)(F) was amended by inserting the word "personal" before the phrase "interests and skills."

The student expectation in §113.76(d)(5)(C) was amended by deleting the word "and" before the phrase "additional benefits" and replacing the phrase "with total compensation" with the word "and."

The student expectation in §113.76(d)(5)(F) was amended by replacing the word "organization" with the word "organizations."

The student expectation in §113.76(d)(7)(D) was amended by deleting the word "the" from the phrase "the ability to obtain credit."

The student expectation in §113.76(d)(7)(E) was amended by inserting the phrase "a credit report and score" after the word "access."

The student expectation in §113.76(d)(7)(G) was amended by inserting the word "personal" before the word "factors."

The student expectation in §113.76(d)(9)(I) was amended by inserting the word "financial" before the phrase "schemes and scams."

The student expectation in §113.76(d)(10)(C) was amended by inserting the word "assets" after the phrase "protecting and insuring."

The SBOE approved the new section for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will enable districts to begin offering the new course in the 2022-2023 school year in accordance with statute. 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 May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One teacher recommended adding a new student expectation under the knowledge and skills statement in §113.76(c)(7) to read, "compare and contrast ways to establish first time credit."

Response. The SBOE disagrees and has determined that the addition of the suggested student expectation is unnecessary.

Comment. One teacher requested adding the phrase "and credit score" to §113.76(c)(9)(G).

Response. The SBOE disagrees and has determined that the content of §113.76(c)(9)(G) is appropriate and the addition is unnecessary.

Comment. One administrator expressed concern regarding the requirement to implement proposed new §113.76 in the upcoming school year because there has not been an opportunity to purchase instructional materials for this course. The commenter requested delaying implementation of the proposed new course so districts would have more time to locate instructional materials and prepare and train teachers.

Response. The SBOE disagrees and has determined that the timeline for implementation reflects a requirement from Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

Comment. One teacher requested adding the phrase "and exchange-traded fund" to §113.76(c)(8)(C).

Response. The SBOE disagrees and has determined that exchange-traded funds are sufficiently addressed in §113.76(c)(8)(D).

Comment. One teacher recommended adding a new student expectation under the knowledge and skills statement in §113.76(c)(8) to read, "compare and contrast historical data of active versus passive managed investment strategies, including stock market and index funds."

Response. The SBOE disagrees and has determined that the addition of the suggested student expectation is unnecessary.

Comment. One administrator asked for clarification about the language in proposed §74.3(b)(2)(D) and whether districts would be able to request a waiver to submit to the commissioner of education for the proposed requirement to offer the Personal Finan-

cial Literacy and Economics course if a high school has fewer than 500 students.

Response. This comment is outside the scope of the proposed rulemaking for §113.76. However, the SBOE provides the following clarification related to the proposed amendment to §74.3. Section 74.3 requires districts to offer both Economics with Emphasis on the Free Enterprise System and its Benefits and Personal Financial Literacy and Economics. A district with a total high school enrollment of less than 500 students may apply to the commissioner for approval to offer only one of the two courses.

Comment. One community member suggested that the SBOE amend §113.76(d)(5) to add a new student expectation to read, "explore the role of entrepreneurs from a wide range of backgrounds in creating businesses."

Response. The SBOE disagrees and has determined that the content of §113.76(d)(5) is appropriate and the suggested student expectation is not necessary.

Comment. One community member suggested that the SBOE amend §113.76(d)(5) to add a new student expectation to read, "recognize the importance of personal and family savings, private financing, and community-based lending in establishing businesses."

Response. The SBOE disagrees and has determined that the content of §113.76(d)(5) is appropriate and the suggested student expectation is not necessary.

Comment. One community member suggested that the SBOE amend §113.76(d)(5)(C) to read, "compare total compensation and additional benefits and obligations as a self-employed or independent contractor with total compensation as an employee in the private sector and total compensation as an employee in the public sector; analyze how these differences shape people's strategies for wealth-building over their life cycle."

Response. The SBOE disagrees and has determined that the content of §113.76(d)(5)(C) is appropriate and the suggested addition is not necessary. However, the SBOE did take action to amend the student expectation to better clarify the comparison expected of students.

Comment. One community member recommended that the SBOE revise the student expectation in §113.76(d)(9)(A) to be clearer and more specific and avoid jargon. The commenter suggested that the student expectation be amended to read, "list financial losses that individuals, families, and businesses commonly encounter, and judge how the risk of these losses can be avoided, reduced, retained, or transferred."

Response. The SBOE disagrees and has determined that the student expectation was sufficiently clear and that the suggested revision is not necessary.

Comment. One community member suggested that the TEKS Guide point to historic examples and major economic innovations as well as government decisions that have shaped the contemporary U.S. economy.

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

STATUTORY AUTHORITY. The new section 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 re-

quires the SBOE to identify by rule 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(b-1), as amended by Senate Bill (SB) 1063, 87th Texas Legislature, Regular Session, 2021, which requires the SBOE to determine by rule specific courses for graduation under the foundation high school program; TEC, 28.025(b-22), as added by SB 1063, 87th Texas Legislature, Regular Session, 2021, which requires that in adopting TEKS for a personal financial literacy and economics course, the SBOE must ensure that the required curriculum allocates two-thirds of instruction time to instruction in personal financial literacy and one-third of instruction time to instruction in economics.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(b-1) and (b-22), as amended and added by Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

§113.76. Personal Financial Literacy and Economics (One-Half Credit).

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2022-2023 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Students shall be awarded one-half credit for successful completion of this course. Students may not be awarded credit for both this course and the personal financial literacy course adopted under this subchapter.

(c) Introduction.

(1) The Personal Financial Literacy and Economics Course emphasizes the economic way of thinking, which serves as a framework for the personal financial decision-making opportunities introduced in the course. Students will demonstrate the ability to anticipate and address financial challenges as these challenges occur over their lifetime. In addition, students are introduced to common economic and personal financial planning terms and concepts. As a result of learning objective concepts and integrating subjective information, students gain the ability to lead productive and financially self-sufficient lives.

(2) Personal Financial Literacy and Economics builds on and extends the economic content and concepts studied in Kindergarten-Grade 12 social studies in Texas. The course provides a foundation in both microeconomics and macroeconomics. Students will survey the impact of demand, supply, various industry structures, and government policies on the market for goods, services, and wages for workers. Macroeconomic study involves economic systems with an emphasis on free enterprise market systems, goals of full employment, price stability, and growth while examining problems such as unemployment and inflation and the policies enacted to address them. The course also builds on and extends the personal finance content and concepts studied in Kindergarten-Grade 8 in mathematics in Texas. It is an integrative course that applies the same economic way of thinking developed to making choices about how to allocate scarce resources in an economy to how to make them at the personal level. The course requires that students demonstrate critical thinking by exploring how to invest in themselves with education and skill development, earn income, and budget for spending, saving, investing, and protecting. Students will examine their individual responsibility for managing their personal finances and understand the impact on standard of living and long-term financial well-being. Further, students will connect how their financial decision making impacts the greater economy.

(3) This course was created in response to Texas Education Code (TEC), §28.025(b-22), satisfies the high school requirement, and meets the two-thirds of instructional time in personal financial literacy and one-third of instructional time in economics. In addition, the course addresses new financial challenges of modern economy.

(4) 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 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."

(5) 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.

(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) 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.

(d) Knowledge and skills.

(1) Economics. The student understands the fundamental concepts of economics. The student is expected to:

(A) analyze how the concepts of scarcity, choice, and opportunity costs apply to decision making;

(B) interpret a production-possibilities curve and apply the concepts of scarcity, choice, and opportunity costs;

(C) explain how the production-possibilities curve represents cost-benefit decision making;

(D) use the circular flow model to identify how households, firms, and governments interact in both resource markets and product markets;

(E) evaluate how prices and quantities are determined through supply and demand;

(F) interpret a supply-and-demand graph, including equilibrium point, surpluses, and shortages;

(G) analyze how non-price determinants of supply and demand affect equilibrium price and equilibrium quantity; and

(H) explain how supply and demand exist in both resource and product markets.

(2) Economics. The student understands that macroeconomic issues and policies have an impact on personal finance. The student is expected to:

(A) identify types of progressive and regressive taxes at the local, state, and national levels and explain the economic importance of each;

(B) examine and evaluate the reasons for federal income taxation, Social Security taxation, Medicaid taxation, and Medicare taxation, including earnings limitations as applicable;

(C) explain how all economic systems are mixed and exist on a spectrum between pure market and pure command systems;

(D) explain the benefits of the U.S. free enterprise system, including private property and incentives;

(E) discuss the importance of full employment, price stability, and economic growth in achieving the macroeconomic goals of the United States;

(F) explain the impact of fiscal policies enacted by government decisions on interest rates, inflation, and unemployment; and

(G) explain the impact of monetary policies enacted by the Federal Reserve System on interest rates, inflation, and unemployment.

(3) Personal financial literacy--investing in education and skills. The student recognizes the costs and benefits of various types of postsecondary education and training throughout the student's lifetime. The student is expected to:

(A) analyze the relationship between education and training and earnings throughout the student's lifetime;

(B) investigate and evaluate the costs and benefits of various postsecondary education and training institutions;

(C) describe the process for completing grant and scholarship applications, including the Free Application for Federal Student Aid (FAFSA®) provided by the U.S. Department of Education or the Texas Application for State Financial Aid (TASFA);

(D) analyze and compare various student grant and loan options, including private and federal loans;

(E) interpret data from a student aid report; and

(F) research and align personal interests and skills with potential careers and postsecondary education to assure a life strategy that will produce employment the student enjoys with a desired standard of living.

(4) Personal financial literacy--earning. The student recognizes that a variety of factors influence income. The student is expected to:

(A) identify sources of income, including wages and salaries, profits, interest, rent, dividends, and capital gains;

(B) compare common employee benefits such as health insurance, sick leave, retirement plans, and other tax-favored health and dependent care plans;

(C) differentiate among and calculate gross, net, and taxable income; and

(D) identify factors such as educational attainment and market demand for careers that can influence the labor market and affect income.

(5) Personal financial literacy--entrepreneurship. The student discusses the opportunities available for entrepreneurship. The student is expected to:

(A) describe the role of the entrepreneur in creating businesses;

(B) explain how an entrepreneur earns income, including through profits from the creation or ownership of businesses;

(C) compare total compensation, additional benefits, and obligations as a self-employed or independent contractor and as an employee;

(D) discuss the resources available for entrepreneurship and the federal, state, and local agencies available to assist with or provide grants for the creation of a small business;

(E) analyze the risks and rewards of entrepreneurship, including those associated with starting a new business, owning a small business, and purchasing a franchise; and

(F) explain the characteristics of business organizations such as sole proprietorships, partnerships, and corporations.

(6) Personal financial literacy--spending. The student understands how to set personal spending goals. The student is expected to:

(A) develop financial goals for the short, medium, and long term that are specific, measurable, attainable, realistic, and time based;

(B) analyze the opportunity costs of spending and saving in recognizing short-, medium-, and long-term goals;

(C) identify and prioritize types of purchases and charitable giving;

(D) evaluate various forms of financial exchange such as cash, checks, credit cards, debit cards, mobile payment applications, and electronic transfers;

(E) discuss the importance of tracking income and expenses to reconcile financial records;

(F) evaluate the impact of unplanned spending;

(G) analyze costs and benefits of owning versus renting housing; and

(H) analyze costs and benefits of owning versus leasing a vehicle.

(7) Personal financial literacy--credit and debt. The student understands the costs and benefits of borrowing. The student is expected to:

(A) compare and contrast sources of credit such as banks, merchants, peer-to-peer, payday loans, and title loans;

(B) identify the characteristics and dangers of predatory lending practices;

(C) compare and contrast types of credit, including revolving and installment credit, and collateralized loans versus unsecured credit;

(D) discuss how character, capacity, and collateral can adversely or positively impact an individual's credit rating and ability to obtain credit;

(E) explain how to access a credit report and score and interpret a sample credit report and score;

(F) describe the importance of monitoring credit reports regularly and addressing errors;

(G) discuss how personal factors such as medical expenses, job loss, divorce, or a failed business could lead to bankruptcy; and

(H) determine and discuss if and when to use credit by considering the truth in lending disclosures.

(8) Personal financial literacy--saving and investing. The student understands the importance of saving and investing in creating wealth and building assets. The student is expected to:

(A) determine the exponential growth benefits of starting early to invest with continuous contributions;

(B) determine the number of years it will take for savings to double in value by using the rule of 72;

(C) evaluate the costs and benefits of various savings options such as bank savings accounts, certificates of deposit, and money market mutual funds;

(D) evaluate risk and return of various investment options, including stocks, bonds, mutual funds, and exchange-traded funds (ETFs);

(E) evaluate the relative benefits of pre-tax and post-tax investing;

(F) develop a short-term saving strategy to achieve a goal such as establishing and maintaining an emergency fund;

(G) develop an intermediate-term saving and investing strategy to achieve a goal such as accumulating a down payment on a home or vehicle; and

(H) develop a long-term investing strategy to achieve a goal such as a financially secure retirement.

(9) Personal financial literacy--protecting and insuring. The student recognizes financial risks faced by individuals and families and identifies strategies for handling these risks to avoid potential loss of assets and earning potential. The student is expected to:

(A) apply risk management strategies, including avoiding, reducing, retaining, and transferring risk;

(B) define insurance terminology, including premiums, deductibles, co-pays, and policy limits;

(C) explain the costs and benefits of different types and sources of health insurance;

(D) explain the costs and benefits of disability and long-term care insurance;

(E) explain the costs and benefits of life insurance, including term insurance and whole life insurance;

(F) explain the costs and benefits of property insurance, including homeowner's and renter's insurance;

(G) explain the costs and benefits of automobile insurance and factors that impact the price of insurance, including the type of vehicle, age and sex of driver, driving record, deductible, and geographic location;

(H) identify ways to reduce risk of identity theft and protect personal information;

(I) describe and identify examples of common financial schemes and scams such as Ponzi schemes and pyramid, phishing, check cashing, and home renovation scams;

(J) explain how consumer protection agencies protect consumers against fraud; and

(K) explain the importance of estate planning, including guardianship of minor children, wills, beneficiary designation, power of attorney, living will, and medical directives.

(10) Personal financial literacy skills. The student understands how to set personal financial goals. The student is expected to:

(A) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution;

(B) develop a budget that addresses short-, medium-, and long-term financial goals; and

(C) explain why earning income, spending, credit, debt, saving and investing, and protecting and insuring assets are important parts of a comprehensive financial plan and develop a plan that incorporates these components.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 115. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR HEALTH EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§115.1-115.7, 115.21-115.23, and 115.31-115.33, concerning Texas Essential Knowledge and Skills (TEKS) for health education. The repeals are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2656) and will not be republished. The adopted repeals remove the TEKS for Kindergarten-Grade 12 health education and related implementation language that will be superseded by 19 TAC §§115.11-115.17, 115.25-115.28, and 115.37-115.40 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the November 2020 SBOE meeting, the board approved for second reading and final adoption proposed new §§115.11-115.17, 115.25-115.28, and 115.37-115.40 to be implemented beginning in the 2022-2023 school year.

The adopted repeals remove sections that will be superseded by §§115.11-115.17, 115.25-115.28, and 115.37-115.40 effective August 1, 2022.

The SBOE approved the repeals for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 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 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER A. ELEMENTARY

19 TAC §§115.1 - 115.7

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§115.21 - 115.23

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§115.31 - 115.33

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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CHAPTER 116. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR PHYSICAL EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§116.1-116.7, 116.21-116.24, and 116.51-116.56, concerning Texas Essential Knowledge and Skills (TEKS) for physical education. The repeals are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2658) and will not be republished. The adopted repeal removes the TEKS for Kindergarten-Grade 12 physical education and related implementation language that

will be superseded by 19 TAC §§116.11-116.17, 116.25-116.28, and 116.61-116.64 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the November 2020 SBOE meeting, the board approved for second reading and final adoption proposed new §§116.11-116.17, 116.25-116.28, and 116.61-116.64 to be implemented beginning in the 2022-2023 school year.

The adopted repeals remove sections that will be superseded by §§116.11-116.17, 116.25-116.28, and 116.61-116.64 effective August 1, 2022.

The SBOE approved the repeals for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 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 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER A. ELEMENTARY

19 TAC §§116.1 - 116.7

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§116.21 - 116.24

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§116.51 - 116.56

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

The State Board of Education (SBOE) adopts new §§126.1-126.3, 126.8-126.10, and 126.17-126.19, concerning Texas Essential Knowledge and Skills (TEKS) for technology applications. The new sections are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2660) and will not be republished. The adopted new sections update the technology applications standards to ensure the standards remain current.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. Technology applications is part of the required curriculum for Kindergarten-Grade 8 only. In 2020, the SBOE approved the consolidation of the high school technology applications courses into the career and technical education TEKS.

At the January 2021 meeting, SBOE members were asked to designate content advisors for the review and revision of the technology applications TEKS. Applications to serve on the TEKS review work groups were posted on the Texas Education Agency (TEA) website in March 2021. In April 2021, TEA distributed a survey to collect information from educators regarding the review and revision of the technology applications TEKS. TEA staff provided applications for the technology applications review work groups to SBOE members on a monthly basis from May-September 2021.

Technology applications TEKS review content advisor and work group meetings convened in 2021 were conducted virtually. In July 2021, technology applications TEKS review content advisors met virtually to develop consensus recommendations regarding revisions to the technology applications TEKS and met with representatives from Work Group A to discuss their recommendations. Also in July 2021, Work Group A convened to discuss the consensus recommendations, review survey results, and develop recommendations for how subsequent technology applications TEKS review work groups could address the feedback received. Work Group B was convened in September 2021 and was charged with developing recommendations for a new strand framework. The work group recommended six new strands and reorganized the current technology applications TEKS into the proposed new strands. Work Group C was convened in October 2021 to draft recommendations for student expectations for two of the strands in the proposed new strand framework. Work Group D was convened at the end of October 2021 to draft recommendations for the remaining four proposed new strands. The work group recommended eliminating one of the strands, which would reduce the original proposed strand framework to a total of five strands. Work Group E was convened for a virtual meeting in December 2021 to review the vertical alignment of the strands across all grade levels and to ensure the proposed new standards could be reasonably taught in an academic year. In December 2021, content advisors were sent the draft recommendations for review. A discussion item on the draft recommendations was presented to the board at the January 2022 SBOE meeting. At the April 2022 SBOE meeting, the board approved for first reading and filing authorization proposed new §§126.1-126.3, 126.8-126.10, and 126.17-126.19.

The new sections adopt updated technology applications standards to ensure the standards remain current.

The SBOE approved the new sections for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code (TEC), §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will enable districts to begin preparing for implementation of the revised elementary and middle school technology applications TEKS. 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 May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One university/college representative suggested the addition of student expectations on the creation of accessible media, websites, and documents to provide equitable access to information and services.

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed.

Comment. One community member stated that the proposed new strands align well with the International Society for Technology in Education standards and are written in a way that allows them to be relevant to technology changes.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One parent stated that, even with the health and safety guidelines related to digital devices that TEA is required to develop under TEC, §38.0231, students will be better protected by removing requirements to create or post digital communications.

Response. The SBOE disagrees and has determined that creating and safely posting digital communications is an integral part of technology applications.

Comment. One parent recommended that the SBOE include in the proposed technology applications TEKS the application of higher-order critical thinking skills when engaging with any kind of digital content in a variety of forms as well as knowing where and how to access digital content that is relevant for specific purposes.

Response. The SBOE agrees and has determined that the TEKS as proposed appropriately require students to apply critical-thinking skills.

Comment. One teacher recommended that essential skills related to digital literacy include the ability to access, critically interpret, and evaluate online media and information in addition to using, remixing, and creating.

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed.

Comment. One teacher expressed concern that there is no inclusion of media, information, or news literacy skills in relation to

the application of technology in the proposed technology applications TEKS.

Response. The SBOE disagrees and has determined that media literacy skills are already addressed in other subject areas.

Comment. One teacher stated that the proposed new technology applications TEKS should include clear descriptors related to essential skills that are woven into the use and application of technology both inside and outside of the classroom.

Response. The SBOE agrees and has determined that the TEKS as proposed provide clear descriptors related to the application of technology.

Comment. One parent expressed concerns about the proposed new Kindergarten-Grade 8 technology applications TEKS in regard to health, safety, and cultural issues. The commenter cited articles related to cyber safety, screen time, and mental health in support of the recommendation that children's needs should be based on academic research instead of educational companies' marketing claims.

Response. The SBOE disagrees and has determined that the TEKS as proposed appropriately address health, safety, and cultural concerns.

Comment. One teacher asked if the proposed new TEKS for technology applications will be finalized by the 2022-2023 school year.

Response. The SBOE provides the following clarification. The revised technology applications TEKS will become effective 20 days after filing with the Texas Register and will be implemented in classrooms beginning with the 2024-2025 school year.

Comment. One administrator expressed appreciation for the five strands, how each strand is divided into substrands, and the specificity of skills given to each grade level.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One administrator stated that there should be a continuous review and application of content in the technology applications TEKS throughout the school year.

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

Comment. One community member and one university/college representative expressed concern for the need for professional learning and specialized teachers who can teach these grade levels.

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

Comment. One university/college representative stated that the proposed technology applications TEKS for Kindergarten-Grade 2 are well written and appropriately address the areas of computational thinking, coding, programming, and personal cybersecurity that are absolutely necessary for digital competency in the 21st century.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One administrator and one community member stated that the standards are vertically aligned.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One administrator recommended adding a student expectation from the Computer Science Teacher Association standards to the proposed new data literacy, management, and representation strand in Kindergarten-Grade 2 to read, "model the way programs store and manipulate data by using numbers or other symbols to represent information."

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed and the suggested language is not necessary.

Comment. One administrator recommended adding a student expectation to the applications substrand in the computational thinking strand for Kindergarten-Grade 2 to read, "debug (identify and fix) errors in an algorithm or program that includes sequences and simple loops."

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed and the suggested language is not necessary.

Comment. One parent expressed concern with proposed student expectations in §126.1(c)(5) and (7)(A) in Kindergarten, §126.3(c)(7) in Grade 2, and §126.8(c)(9)(A) in Grade 3 regarding communicating and sharing or interacting online. The commenter stated that digital environments are hunting grounds for predators.

Response. The SBOE disagrees that the student expectations require students to engage in unsecure digital environments. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One parent expressed concern that student expectations related to ergonomically correct keyboarding are impossible with school devices like Chromebooks or iPads.

Response. The SBOE disagrees and has determined that ergonomically correct keyboarding applies to all types of devices.

Comment. One parent expressed concern regarding the appropriateness of the student expectation in §126.2(c)(7)(A), which requires students in Grade 1 to demonstrate the importance of acceptable use of digital resources as outlined in local policies or acceptable use policies, since students are just learning how to read.

Response. The SBOE disagrees and has determined that students are not required to read the policies but to understand and comply with them.

Comment. One parent expressed concern with requiring students in Grade 4 and higher to advocate for self and others with regard to cyberbullying when the proposed new TEKS would put students into the very digital environment where cyberbullying takes place.

Response. The SBOE disagrees and has determined that the proposed TEKS emphasize safe online learning and do not require students to participate in unsafe digital environments. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One administrator recommended adding a student expectation to the applications substrand in the computational thinking strand for Grades 3-5 to read, "test and debug (identify and fix errors) a program or algorithm to ensure it runs as intended."

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed and the suggested language is not necessary.

Comment. One parent expressed concern with the proposed student expectation in §126.9(c)(8)(B) in Grade 4 and §126.10(c)(8)(C) in Grade 5 regarding digital etiquette communication with peers, teachers, and other adults. The commenter stated that requiring students to interact with adults endangers children.

Response. The SBOE disagrees and has determined that the TEKS emphasize safe online learning and do not require students to engage in unsafe digital communication. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One parent expressed concern with the proposed student expectations in §126.17(c)(8)(C) in Grade 6 and §126.19(c)(8)(B) and (C) in Grade 8 regarding video conference presentations and files. The commenter stated that creating and uploading videos to share on the internet is unsafe and these unnecessary skills do not prepare students for 21st century jobs.

Response. The SBOE disagrees that creating and publishing videos are unnecessary and unsafe skills. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One parent expressed concern that the proposed TEKS will require students to spend more time on electronic devices. The commenter cited research that indicates the use of electronic devices has a negative effect on students' health.

Response. The SBOE disagrees and has determined that the proposed TEKS do not require additional time on electronic devices.

Comment. One parent expressed concern that the use of technology in schools does not prevent students from accessing inappropriate websites. The commenter asked that the proposed technology applications TEKS be modified or rejected.

Response. The SBOE disagrees and has determined that a key aspect of the proposed technology applications TEKS is to teach students appropriate and safe use of technology.

Comment. One parent expressed concern that spending time with technology negatively affects students' ability to read and write.

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

Comment. One parent expressed concern that the proposed technology applications TEKS are not measurable and asked for better alignment.

Response. The SBOE disagrees and has determined that the proposed TEKS are measurable and vertically and horizontally aligned.

Comment. One parent expressed concern about possible data mining of students' personal information.

Response. The SBOE disagrees and has determined that a key aspect of the proposed technology applications TEKS is to teach students how to safeguard personal information online.

Comment. One parent suggested that time would be better spent teaching students to read and write and to communicate in person with their teacher instead of trading emails.

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

Comment. One parent expressed concern about the increase in screen time in the classroom and urged the SBOE to reject the proposed changes.

Response. The SBOE disagrees and has determined that the proposed technology applications TEKS do not create an increase in screen time for students.

SUBCHAPTER A. ELEMENTARY

19 TAC §§126.1 - 126.3, 126.8 - 126.10

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 identify by rule 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, §28.002(c-3), which requires the SBOE to include coding, computer programming, computational thinking, and cybersecurity in the Texas Essential Knowledge and Skills (TEKS) for technology applications for Kindergarten-Grade 8. The statute also requires that, as needed, the SBOE review and revise the technology applications TEKS every five years to ensure that the standards are relevant to student education and align current or emerging professions; and TEC, §28.002(z), which requires the SBOE to adopt rules to require school districts to incorporate instruction in digital citizenship, including information regarding the potential criminal consequences of cyberbullying, into the district's curriculum.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (c-3), and (z).

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

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Director, Rulemaking

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§126.17 - 126.19

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 identify by rule 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 evaluat-

ing instructional materials and addressed on the state assessment instruments; TEC, §28.002(c-3), which requires the SBOE to include coding, computer programming, computational thinking, and cybersecurity in the Texas Essential Knowledge and Skills (TEKS) for technology applications for Kindergarten-Grade 8. The statute also requires that, as needed, the SBOE review and revise the technology applications TEKS every five years to ensure that the standards are relevant to student education and align current or emerging professions; and TEC, §28.002(z), which requires the SBOE to adopt rules to require school districts to incorporate instruction in digital citizenship, including information regarding the potential criminal consequences of cyberbullying, into the district's curriculum.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (c-3), and (z).

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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§127.310, 127.312, 127.313, 127.409, 127.753, and 127.755, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education. The repeals are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2675) and will not be republished. The adopted repeals remove the TEKS for six career and technical education (CTE) courses that will be superseded by 19 TAC §§127.316, 127.325, 127.326, 127.418, 127.782, and 127.785 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training, health science, and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new TEKS for these courses.

Due to the structure of Chapter 130, there were not enough sections to add the new CTE courses under consideration in their original subchapters. To accommodate the addition of new and

future courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, which has been renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education."

The adopted repeals remove the TEKS for CTE courses that will be superseded by 19 TAC §§127.316, 127.325, 127.326, 127.418, 127.782, and 127.785 beginning with the 2022-2023 school year.

The SBOE approved the repeals for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 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 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER G. EDUCATION AND TRAINING

19 TAC §§127.310, 127.312, 127.313

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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Cristina De La Fuente-Valadez

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



SUBCHAPTER I. HEALTH SCIENCE

19 TAC §127.409

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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

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SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §127.753, §127.755

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER

DEVELOPMENT AND CAREER AND
TECHNICAL EDUCATION
SUBCHAPTER O. SCIENCE, TECHNOLOGY,
ENGINEERING, AND MATHEMATICS

19 TAC §§127.788 - 127.794

The State Board of Education (SBOE) adopts new §§127.788-127.794, concerning Texas Essential Knowledge and Skills (TEKS) for science, technology, engineering, and mathematics (STEM). Sections 127.788-127.791 and 127.793 are adopted with changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2677) and will be republished. Section 127.792 and §127.794 are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2677) and will not be republished. The new sections update the TEKS for the high school cybersecurity and computer science courses to ensure the standards remain current.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the January 2021 meeting, the board held a work session to discuss the timeline for the TEKS review and revision process and associated activities, including updates to State Board for Educator Certification teacher assignment rules and certification examinations, adoption of instructional materials, and the completion of the Texas Resource Review. Texas Education Agency (TEA) staff provided an overview of career and technical (CTE) programs of study and a skills gap analysis that is being completed to inform review and revision of the CTE TEKS.

Also during the January 2021 meeting, staff provided an update on plans for the review and revision of CTE courses that satisfy a science graduation requirement as well as certain courses in the health science, education and training, and STEM programs of study. Applications to serve on these CTE TEKS review work groups were posted on the TEA website in December 2020. TEA staff provided SBOE members applications for approval to serve on a CTE work group at the January 2021 SBOE meeting. Additional applications were provided to SBOE members in February and March 2021. Work groups were convened from March-July 2021 to develop recommendations for the CTE courses. At the June 2021 SBOE meeting, a discussion item for proposed new 19 TAC Chapter 130 was presented to the board. At the September 2021 SBOE meeting, one representative from each CTE TEKS review committee provided invited testimony to the Committee of the Full Board.

The SBOE postponed first reading and filing authorization for a selection of courses from the education and training and STEM programs of study, including §127.783, Engineering Design and Presentation I, and §127.784, Engineering Design and Presentation II, to allow additional time to review and finalize recommendations. The programming and software development work group met in February and March 2022 to finalize their recommendations and to align the standards for the computer science courses with the Kindergarten-Grade 8 Technology Applications TEKS.

The 85th Texas Legislature, Regular Session, 2017, passed House Bill 3593, requiring that the SBOE approve courses in cy-

bersecurity for credit for high school graduation. The legislation also added cybersecurity and computer coding to the courses to be included in a STEM endorsement and required that the SBOE adopt or select five technology applications courses on cybersecurity to be included in a cybersecurity pathway for the STEM endorsement.

In August 2018, a committee of secondary and postsecondary educators and business and industry representatives was selected to develop recommended TEKS for new cybersecurity courses for the required pathway. In April 2019, the SBOE approved for second reading and final adoption TEKS for two new cybersecurity courses: Foundations of Cybersecurity and Cybersecurity Capstone. At the June 2019 meeting, the board approved revisions to the TEKS for the existing Digital Forensics course so that it would better align with the new pathway. In 2020, the SBOE approved the consolidation of the high school technology applications courses into the CTE TEKS. A discussion item was presented to the board at the January 2022 SBOE meeting.

The new sections update the TEKS for the high school cybersecurity and computer science courses to ensure the standards remain current.

The SBOE approved implementation of the TEKS for Fundamentals of Computer Science and Computer Science III beginning with the 2022-2023 school year. The TEKS for Foundations of Cybersecurity, Cybersecurity Capstone, Digital Forensics, Computer Science I, and Computer Science II were approved for implementation in the 2024-2025 school year.

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

The student expectation in §127.788(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.789(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.790(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.791(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.793(d)(1)(C) was amended by adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The SBOE approved the new sections for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-

2024 school year. The earlier effective date will enable districts to begin preparing for implementation of the revised CTE TEKS. 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 May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One teacher stated that proposed student expectation in subsection (d)(1)(H) in §§127.789-127.791, Computer Science I-III, is unclear and requires additional guidance. The commenter stated that it is unclear whether the student expectation is referring to program development, task completion, or applying for jobs.

Response. The SBOE disagrees and has determined that the student expectation is sufficiently clear as proposed.

Comment. The Computer Science Teachers Association expressed support for the proposal to add Algebra I as a corequisite for Computer Science I.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commended the addition of content in the proposed new Computer Science III course as it is necessary for students in Texas.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the differentiation between the proposed new Computer Science I-III courses. The commenter agreed with the branching and spiraling of concept understanding over the courses.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher recommended the inclusion of employability skills in the proposed new TEKS for Computer Science I and II.

Response. The SBOE agrees and has determined that employability skills are addressed in the student expectations in subsection (d)(1)(A)-(I) in §127.789 and §127.790.

Comment. One teacher requested teacher training for the proposed new computer science and cybersecurity courses.

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

Comment. One teacher suggested adding the DevOps and Agile methodologies to the proposed TEKS for Computer Science II and III.

Response. The SBOE disagrees and has determined that it was not necessary to add the suggested methodologies to the TEKS for Computer Science I and II.

Comment. One teacher recommended adding examples such as manuals, diagrams, and algorithmic flowcharts to the proposed student expectation in subsection (d)(1)(C) in Computer Science I, II, and III.

Response. The SBOE disagrees and has determined that the student expectation in subsection (d)(1)(C) in §§127.789-127.791 was sufficiently clear and the suggested change was not necessary.

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 identify by rule 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, §28.002(c-3), which requires the SBOE to adopt rules for technology applications in Kindergarten-Grade 8 that include coding, computer programming, computational thinking, and cybersecurity; TEC, §28.002(f)(2), which requires the SBOE to approve courses in cybersecurity for credit for high school graduation; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002, and to designate the specific courses in the foundation curriculum that are required under the foundation high school program; TEC, §28.025(c-1)(1), which establishes that an endorsement may be earned in science, technology, engineering, and mathematics (STEM), which includes courses related to science, including environmental science; technology, including computer science, cybersecurity, and computer coding; engineering; and advanced mathematics; and TEC, §28.025(c-10), which requires the SBOE to adopt or select five technology applications courses on cybersecurity to be included in a cybersecurity pathway for the STEM endorsement.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (c-3), and (f)(2); and 28.025(a), (c-1)(1) and (c-10).

§127.788. *Fundamentals of Computer Science (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(1) No later than August 1, 2023, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2023-2024 school year and apply to the 2023-2024 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (a) of this section, the commissioner shall determine no later than August 1 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 9-12. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services such as laboratory and testing services and research and development services.

(3) Fundamentals of Computer Science is intended as a first course for those students just beginning the study of computer science. Students will learn about the computing tools that are used every day. Students will foster their creativity and innovation through opportunities to design, implement, and present solutions to real-world problems. Students will collaborate and use computer science concepts to access, analyze, and evaluate information needed to solve problems. Students will learn computational thinking, problem-solving, and reasoning skills that are the foundation of computer science. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws, regulations, and best practices and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) 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.

(d) Knowledge and skills.

(1) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) demonstrate an understanding of legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills; and

(I) compare university computer science programs.

(2) Creativity and innovation. The student develops products and generates new knowledge, understanding, and skills. The student is expected to:

(A) investigate and explore various career opportunities within the computer science field and report findings through various media;

(B) create algorithms for the solution of various problems;

(C) discuss methods and create and publish web pages using a web-based language such as HTML, Java Script, or XML; and

(D) use generally accepted design standards for spacing, fonts, and color schemes to create functional user interfaces, including static and interactive screens.

(3) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) seek and respond to advice or feedback from peers, educators, or professionals when evaluating problem solutions;

(B) debug and solve problems using reference materials and effective strategies; and

(C) publish information in a variety of ways such as print, monitor display, web pages, or video.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) demonstrate the ability to insert external standalone objects such as scripts or widgets into web pages;

(B) communicate an understanding of binary representation of data in computer systems, perform conversions between decimal and binary number systems, and count in binary number systems;

(C) identify a problem's description, purpose, and goals;

(D) demonstrate coding proficiency in a programming language by developing solutions that create stories, games, and animations;

(E) identify and use the appropriate data type to properly represent the data in a program problem solution;

(F) communicate an understanding of and use variables within a programmed story, game, or animation;

(G) use arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;

(H) communicate an understanding of and use sequence within a programmed story, game, or animation;

(I) communicate an understanding of and use conditional statements within a programmed story, game, or animation;

(J) communicate an understanding of and use iteration within a programmed story, game, or animation;

(K) use random numbers within a programmed story, game, or animation; and

(L) test program solutions by investigating intended outcomes.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss privacy and copyright laws and model ethical acquisition of digital information by citing sources using established methods;

(B) compare various non-copyright asset sharing options such as open source, freeware, and public domain;

(C) demonstrate proper digital etiquette and knowledge of acceptable use policies when using networks;

(D) explain the value of strong passwords and virus detection and prevention for privacy and security;

(E) discuss and give examples of the impact of computing and computing-related advancements on society; and

(F) analyze how electronic media can affect reliability of information.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) identify and explain the function of basic computer components, including a central processing unit (CPU), storage, and peripheral devices;

(B) use system tools, including appropriate file management;

(C) compare different operating systems;

(D) describe the differences between an application and an operating system; and

(E) use various input, processing, output, and primary/secondary storage devices.

§127.789. *Computer Science I (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(1) No later than August 1, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2024-2025 school year and apply to the 2024-2025 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (a) of this section, the commissioner shall determine no later than August 1 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 9-12. Prerequisite or corequisite: Algebra I. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services such as laboratory and testing services and research and development services.

(3) Computer Science I will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through computational thinking and data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws, regulations, and best practices and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations, systems, and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) 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.

(d) Knowledge and skills.

(1) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) communicate an understanding of legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills; and

(I) compare university computer science programs.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) participate in learning communities as a learner, initiator, contributor, and teacher/mentor; and

(B) seek and respond to advice from peers, educators, or professionals when evaluating quality and accuracy of the student's product.

(3) Programming style and presentation. The student utilizes proper programming style and develops appropriate visual presentation of data, input, and output. The student is expected to:

(A) create and properly label and display output;

(B) create interactive input interfaces, with relevant user prompts, to acquire data from a user such as console displays or Graphical User Interfaces (GUIs);

(C) write programs with proper programming style to enhance the readability and functionality of a code by using descriptive identifiers, internal comments, white space, spacing, indentation, and a standardized program style;

(D) format data displays using standard formatting styles; and

(E) display simple vector graphics using lines, circles, and rectangles.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) use program design problem-solving strategies such as flowchart or pseudocode to create program solutions;

(B) create a high-level program plan using a visual tool such as a flowchart or graphic organizer;

(C) identify the tasks and subtasks needed to solve a problem;

(D) identify the data types and objects needed to solve a problem;

(E) identify reusable components from existing code;

(F) design a solution to a problem;

(G) code a solution from a program design;

(H) identify error types, including syntax, lexical, run time, and logic;

(I) test program solutions with valid and invalid test data and analyze resulting behavior;

(J) debug and solve problems using error messages, reference materials, language documentation, and effective strategies;

(K) create and implement common algorithms such as finding greatest common divisor, finding the biggest number out of three, finding primes, making change, and finding the average;

(L) create program solutions that address basic error handling such as preventing division by zero and type mismatch;

(M) select the most appropriate construct for a defined problem;

(N) create program solutions by using the arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;

(O) create program solutions to problems using available mathematics library functions or operators, including absolute value, round, power, square, and square root;

(P) develop program solutions that use assignment;

(Q) develop sequential algorithms to solve non-branching and non-iterative problems;

(R) develop algorithms to decision-making problems using branching control statements;

(S) develop iterative algorithms and code programs to solve practical problems;

(T) demonstrate the appropriate use of the relational operators;

(U) demonstrate the appropriate use of the logical operators; and

(V) generate and use random numbers.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss and explain intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) practice ethical acquisition and use of digital information;

(C) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies;

(D) investigate privacy and security measures, including strong passwords, pass phrases, and other methods of authentication and virus detection and prevention; and

(E) investigate computing and computing-related advancements and the social and ethical ramifications of computer usage.

(6) Technology operations, systems, and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) identify and describe the function of major hardware components, including primary and secondary memory, a central processing unit (CPU), and peripherals;

(B) differentiate between current programming languages, discuss the general purpose for each language, and demonstrate knowledge of specific programming terminology and concepts and types of software development applications;

(C) differentiate between a high-level compiled language and an interpreted language;

(D) identify and use concepts of object-oriented design;

(E) differentiate between local and global scope access variable declarations;

(F) encapsulate data and associated subroutines into an abstract data type;

(G) create subroutines that do not return values with and without the use of arguments and parameters;

(H) create subroutines that return typed values with and without the use of arguments and parameters;

(I) create calls to processes passing arguments that match parameters by number, type, and position;

(J) compare data elements using logical and relational operators;

(K) identify and convert binary representation of numeric and nonnumeric data in computer systems using American Standard Code for Information Interchange (ASCII) or Unicode;

(L) identify finite limits of numeric data such as integer wrap around and floating point precision;

(M) perform numerical conversions between the decimal and binary number systems and count in the binary number system;

(N) choose, identify, and use the appropriate data types for integer, real, and Boolean data when writing program solutions;

(O) analyze the concept of a variable, including primitives and objects;

(P) represent and manipulate text data, including concatenation and other string functions;

(Q) identify and use the structured data type of one-dimensional arrays to traverse, search, and modify data;

(R) choose, identify, and use the appropriate data type or structure to properly represent the data in a program problem solution; and

(S) compare strongly typed and un-typed programming languages.

§127.790. *Computer Science II (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(1) No later than August 1, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2024-2025 school year and apply to the 2024-2025 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (a) of this section, the commissioner shall determine no later than August 1 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Prerequisites: Algebra I and Computer Science I or AP Computer Science Principles. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services such as laboratory and testing services and research and development services.

(3) Computer Science II will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through computational thinking and data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will gain an understanding of computer science through the study of technology operations, systems, and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) 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.

(d) Knowledge and skills.

(1) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) identify legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills;

and
(I) compare university computer science programs.

(2) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) use program design problem-solving strategies to create program solutions;

(B) read, analyze, and modify programs and their accompanying documentation such as an application programming interface (API), internal code comments, external documentation, or readme files;

(C) follow a systematic problem-solving process that identifies the purpose and goals, the data types and objects needed, and the subtasks to be performed;

(D) compare design methodologies and implementation techniques such as top-down, bottom-up, and black box;

(E) trace a program, including inheritance and black box programming;

(F) choose, identify, and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution; and

(G) use object-oriented programming development methodology, including data abstraction, encapsulation with information hiding, inheritance, and procedural abstraction in program development.

(3) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use the principles of software development to work in software design teams;

(B) break a problem statement into specific solution requirements;

(C) create a program development plan;

(D) code part of a solution from a program development plan while a partner codes the remaining part;

(E) collaborate with a team to test a solution, including boundary and standard cases; and

(F) develop presentations to report the solution findings.

(4) Data literacy and management. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) use programming file structure and file access for required resources;

(B) acquire and process information from text files, including files of known and unknown sizes;

(C) manipulate data using string processing;

(D) manipulate data values by casting between data types;

(E) use the structured data type of one-dimensional arrays to traverse, search, modify, insert, and delete data;

(F) identify and use the structured data type of two-dimensional arrays to traverse, search, modify, insert, and delete data;

(G) identify and use a list object data structure to traverse, search, insert, and delete data; and

(H) differentiate between categories of programming languages, including machine, assembly, high-level compiled, high-level interpreted, and scripted.

(5) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop sequential algorithms using branching control statements, including nested structures, to create solutions to decision-making problems;

(B) develop choice algorithms using selection control statements based on ordinal values;

(C) demonstrate the appropriate use of short-circuit evaluation in certain situations;

(D) use Boolean algebra, including De Morgan's Law, to evaluate and simplify logical expressions;

(E) develop iterative algorithms using nested loops;

(F) identify, trace, and appropriately use recursion in programming solutions, including algebraic computations;

(G) trace, construct, evaluate, and compare search algorithms, including linear searching and binary searching;

(H) identify, describe, trace, evaluate, and compare standard sorting algorithms, including selection sort, bubble sort, insertion sort, and merge sort;

(I) measure time and space efficiency of various sorting algorithms, including analyzing algorithms using "big-O" notation for best, average, and worst-case data patterns;

(J) develop algorithms to solve various problems such as factoring, summing a series, finding the roots of a quadratic equation, and generating Fibonacci numbers;

(K) test program solutions by investigating boundary conditions; testing classes, methods, and libraries in isolation; and performing stepwise refinement;

(L) identify and debug compile, syntax, runtime, and logic errors;

(M) compare efficiency of search and sort algorithms by using informal runtime comparisons, exact calculation of statement execution counts, and theoretical efficiency values using "big-O" notation, including worst-case, best-case, and average-case time/space analysis;

(N) count, convert, and perform mathematical operations in the decimal, binary, octal, and hexadecimal number systems;

(O) identify maximum integer boundary, minimum integer boundary, imprecision of real number representations, and round-off errors;

(P) create program solutions to problems using a mathematics library;

(Q) use random number generator algorithms to create simulations;

(R) use composition and inheritance relationships to identify and create class definitions and relationships;

(S) explain and use object relationships between defined classes, abstract classes, and interfaces;

(T) create object-oriented class definitions and declarations using variables, constants, methods, parameters, and interface implementations;

(U) create adaptive behaviors using polymorphism;

(V) use reference variables for object and string data types;

(W) use value and reference parameters appropriately in method definitions and method calls;

(X) implement access scope modifiers;

(Y) use object comparison for content quality;

(Z) duplicate objects using the appropriate deep or shallow copy;

(AA) apply functional decomposition to a program solution;

(BB) create objects from class definitions through instantiation; and

(CC) examine and mutate the properties of an object using accessors and modifiers.

§127.791. *Computer Science III (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(1) No later than August 1, 2023, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2023-2024 school year and apply to the 2023-2024 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (a) of this section, the commissioner shall determine no later than August 1 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Computer Science II, Advanced Placement (AP) Computer Science A, or International Baccalaureate (IB) Computer Science Standard Level or IB Computer Science Higher Level. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services such as laboratory and testing services and research and development services.

(3) Computer Science III will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through computational thinking and data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will

gain an understanding of advanced computer science data structures through the study of technology operations, systems, and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) 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.

(6) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(d) Knowledge and skills.

(1) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) demonstrate an understanding of legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills; and

(I) compare university computer science programs.

(2) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) apply object-oriented programming, including data abstraction, encapsulation, inheritance, and polymorphism, to manage the complexity of a project;

(B) design and implement a class hierarchy;

(C) read and write class specifications using visual organizers, including Unified Modeling Language;

(D) identify, describe, evaluate, compare, and implement standard sorting algorithms that perform sorting operations on data structures, including quick sort and heap sort; and

(E) identify and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution.

(3) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use networked tools for file management and collaboration; and

(B) work in software design teams.

(4) Data literacy and management. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) identify and use two-dimensional ragged arrays to traverse, search, modify, insert, and delete data;

(B) describe and demonstrate proper linked list management, including maintaining the head and safe addition and deletion of linked objects;

(C) create or trace program solutions using a linked-list data structure, including unordered single, ordered single, double, and circular linked;

(D) describe composite data structures, including a linked list of linked lists;

(E) create or trace program solutions using stacks, queues, trees, heaps, priority queues, graph theory, and enumerated data types;

(F) create or trace program solutions using sets, including hash and tree-based data structures;

(G) create or trace program solutions using map style data structures; and

(H) write and modify text file data.

(5) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) evaluate expressions using bitwise operators;

(B) evaluate expressions using the ternary operator;

(C) identify, trace, and appropriately use recursion in programming solutions, including processing binary trees;

(D) create or trace program solutions using hashing;

(E) explore common algorithms such as matrix addition and multiplication, fractals, Towers of Hanoi, and magic square; and

(F) create program solutions that exhibit robust behavior by recognizing and avoiding runtime errors and handling anticipated errors.

(6) Testing and documentation. The student demonstrates appropriate documentation and testing practices. The student is expected to:

(A) use appropriate formatting and write documentation to support code maintenance, including pre- and post-condition statements;

(B) write program assumptions in the form of assertions;

(C) write a Boolean expression to test a program assertion; and

(D) construct assertions to make explicit program invariants.

(7) Practical application of technology. The student utilizes technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) analyze and create computer program workflow charts and basic system diagrams, documenting system functions, features, and operations;

(B) gather requirements, design, and implement a process by which programs can interact with each other such as using interfaces;

(C) create simple programs using a low-level language such as assembly;

(D) create discovery programs in a high-level language;

(E) create scripts for an operating system;

(F) explore industry best practices for secure programming; and

(G) explore emerging industry or technology trends.

§127.793. *Digital Forensics (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(1) No later than August 1, 2023, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2023-2024 school year and apply to the 2023-2024 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 1 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 9-12. Prerequisite: Foundations of Cybersecurity. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards,, industry relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, such as laboratory and testing services and research and development services.

(3) Digital forensics is a critical discipline concerned with analyzing anomalous activity on computers, networks, programs, and data. As a discipline, it has grown with the expansion of a globally connected digital society. As computing has become more sophisticated, so too have the abilities to access systems and sensitive information. Digital forensics professionals investigate and craft appropriate responses to disruptions to governments, organizations, and individuals. Whereas cybersecurity takes a proactive approach to information assurance to minimize harm, digital forensics takes a reactive approach to incident response.

(4) Digital Forensics introduces students to the knowledge and skills of digital forensics. The course provides a survey of the field of digital forensics and incident response.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) 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.

(d) Knowledge and skills.

(1) Employability skills. The student identifies necessary skills for career development and employment opportunities. The student is expected to:

(A) investigate the need for digital forensics;

(B) research careers in digital forensics along with the education and job skills required for obtaining a job in both the public and private sector;

(C) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(D) identify and discuss certifications for digital forensics careers;

(E) explain ethical and legal responsibilities in relation to the field of digital forensics;

(F) identify and describe businesses and government agencies that use digital forensics;

(G) identify and describe the kinds of crimes investigated by digital forensics specialists; and

(H) solve problems and think critically.

(2) Employability skills. The student communicates and collaborates effectively. The student is expected to:

(A) apply effective teamwork strategies;

(B) collaborate with a community of peers and professionals;

(C) create, review, and edit a report summarizing technical findings; and

(D) present technical information to a non-technical audience.

(3) Ethics and laws. The student recognizes and analyzes ethical and current legal standards, rights, and restrictions related to digital forensics. The student is expected to:

(A) develop a plan to advocate for ethical and legal behaviors both online and offline among peers, family, community, and employers;

(B) research and discuss local, state, national, and international law such as the Electronic Communications Privacy Act of 1986, Title III (Pen Register Act); USA PATRIOT Act of 2001; and Digital Millennium Copyright Act;

(C) research and discuss historic cases or events regarding digital forensics or cybersecurity;

(D) analyze ethical and legal behavior when presented with confidential or sensitive information in various scenarios related to cybersecurity activities;

(E) analyze case studies of computer incidents;

(F) use the findings of a computer incident investigation to reconstruct a computer incident;

(G) identify and discuss intellectual property laws, issues, and use;

(H) contrast legal and illegal aspects of information gathering;

(I) contrast ethical and unethical aspects of information gathering;

(J) analyze emerging legal and societal trends affecting digital forensics; and

(K) discuss how technological changes affect applicable laws.

(4) Digital citizenship. The student understands and demonstrates the social responsibility of end users regarding digital technology, safety, digital hygiene, and cyberbullying. The student is expected to:

(A) identify and use digital information responsibly;

(B) use digital tools responsibly;

(C) identify and use valid and reliable sources of information; and

(D) gain informed consent prior to investigating incidents.

(5) Digital forensics skills. The student locates, processes, analyzes, and organizes data. The student is expected to:

(A) identify sources of data;

(B) analyze and report data collected;

(C) discuss how to maintain data integrity such as by enabling encryption;

(D) examine and describe metadata of a file; and

(E) examine and describe how multiple data sources can be used for digital forensics, including investigating malicious software (malware) and email threats.

(6) Digital forensics skills. The student understands software concepts and operations as they apply to digital forensics. The student is expected to:

(A) compare software applications as they apply to digital forensics;

(B) describe the purpose of various application types such as email, web, file sharing, security applications, and data concealment tools;

(C) identify the different purposes of data formats such as pdf, wav, jpeg, and exe;

(D) describe how application logs and metadata are used for investigations such as Security Information and Event Management (SIEM) reports;

(E) describe digital forensics tools;

(F) select the proper software tool based on appropriateness, effectiveness, and efficiency for a given digital forensics scenario;

(G) describe components of applications such as configurations settings, data, supporting files, and user interface; and

(H) describe how the "as a service" model applies to incident response.

(7) Digital forensics skills. The student understands operating systems concepts and functions as they apply to digital forensics. The student is expected to:

- (A) compare various operating systems;
- (B) describe file attributes, including access and creation times;
- (C) describe how operating system logs are used for investigations;
- (D) compare and contrast the file systems of various operating systems;
- (E) compare various primary and secondary storage devices; and
- (F) differentiate between volatile and non-volatile memory.

(8) Digital forensics skills. The student understands networking concepts and operations as they apply to digital forensics. The student is expected to:

- (A) examine networks, including Internet Protocol (IP) addressing and subnets;
- (B) describe the Open Systems Interconnection (OSI) model;
- (C) describe the Transmission Control Protocol/Internet Protocol (TCP/IP) model;
- (D) use network forensic analysis tools to examine network traffic data from sources such as firewalls, routers, intrusion detection systems (IDS), and remote access logs; and
- (E) identify malicious or suspicious network activities such as mandatory access control (MAC) spoofing and rogue wireless access points.

(9) Digital forensics skills. The student explains the principles of access controls. The student is expected to:

- (A) define the principle of least privilege;
- (B) describe the impact of granting access and permissions;
- (C) identify different access components such as passwords, tokens, key cards, and biometric verification systems;
- (D) explain the value of an access log to identify suspicious activity;
- (E) describe the risks of granting third parties access to personal and proprietary data on social media and systems;
- (F) describe the risks involved with accepting Terms of Service (ToS) or End User License Agreements (EULA) without a basic understanding of the terms or agreements; and
- (G) identify various access control methods such as mandatory access control (MAC), attribute-based access control (ABAC), role-based access control (RBAC), and discretionary access control (DAC).

(10) Incident response. The student follows a methodological approach to prepare for and respond to an incident. The student is expected to:

- (A) define the components of the incident response cycle, including preparation; detection and analysis; containment, eradication, and recovery; and post-incident activity;

- (B) describe incident response preparation;
- (C) discuss incident response detection and analysis;
- (D) discuss containment and eradication of and recovery from an incident;
- (E) describe post-incident activities such as reflecting on lessons learned, using collected incident data, and retaining evidence of an incident;
- (F) develop an incident response plan; and
- (G) describe ways a user may compromise the validity of existing evidence.

(11) Incident response. The student objectively analyzes collected data from an incident. The student is expected to:

- (A) identify the role of chain of custody in digital forensics;
- (B) describe safe data handling procedures;
- (C) explain the fundamental concepts of confidentiality, integrity, availability, authentication, and authorization;
- (D) identify and report information conflicts or suspicious activity;
- (E) identify events of interest and suspicious activity by examining network traffic; and
- (F) identify events of interest and suspicious activity by examining event logs.

(12) Incident response. The student analyzes the various ways systems can be compromised. The student is expected to:

- (A) analyze the different signatures of cyberattacks;
- (B) identify points of weakness and attack vectors such as online spoofing, phishing, and social engineering; and
- (C) differentiate between simple versus multistage attacks.

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 July 18, 2022.

TRD-202202704

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 7, 2022

Proposal publication date: May 6, 2022

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

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**CHAPTER 130. TEXAS ESSENTIAL
KNOWLEDGE AND SKILLS FOR CAREER
AND TECHNICAL EDUCATION
SUBCHAPTER J. HUMAN SERVICES
19 TAC §130.277**

The State Board of Education (SBOE) adopts the repeal of §130.277, concerning Texas Essential Knowledge and Skills (TEKS), for career development and career and technical edu-

ation. The repeal is adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2693) and will not be republished. The adopted repeal removes the TEKS for a career and technical education (CTE) course that will be superseded by 19 TAC §127.317 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training, health science, and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new TEKS for these courses.

Due to the structure of Chapter 130, there were not enough sections to add the new CTE courses under consideration in their original subchapters. To accommodate the addition of new and future courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, which has been renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education."

The adopted repeal removes the TEKS for a CTE course that will be superseded by 19 TAC §127.317 beginning with the 2022-2023 school year.

The SBOE approved the repeal for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

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; and TEC, §28.002(c), which requires the SBOE to identify by rule 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.

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

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 July 12, 2022.

TRD-202202616

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 10. WORKERS' COMPENSATION HEALTH CARE NETWORKS

The Commissioner of Insurance adopts the repeal of 28 TAC §10.102 and §10.103; new §10.3; and amendments to §§10.1, 10.2, 10.20 - 10.27, 10.40 - 10.42, 10.60 - 10.63, 10.80 - 10.86, 10.100, 10.101, 10.104, 10.120 - 10.122, and 10.200, concerning workers' compensation health care networks.

The Commissioner adopts the repeal of §10.102 and §10.103, new §10.3, and amended §§10.1, 10.21, 10.23 - 10.25, 10.27, 10.40, 10.42, 10.62, 10.63, 10.80, 10.84 - 10.86, 10.100, 10.101, 10.104, 10.122, and 10.200 without changes to the proposed text published in the February 4, 2022, issue of the *Texas Register* (47 TexReg 457). The rules will not be republished.

The Commissioner adopts amendments to the following sections with changes to the proposed text published in the February 4, 2022, issue of the *Texas Register*: §§10.2, 10.20, 10.22, 10.26, 10.41, 10.60, 10.61, 10.81 - 10.83, 10.120, and 10.121. Changes to the proposed rule text include changes made in response to comment, and additional minor changes to wording and punctuation for clarification, consistency within rule text, and consistency with department language preferences and drafting practices. These rules will be republished.

In the April 1, 2022, issue of the *Texas Register* (47 TexReg 1740), the Secretary of State's Office corrected an error it made to the proposed amendments to 28 TAC §10.60(j)(4). The text for proposed paragraph (4) of subsection (j) was incorrectly identified as new language. Only the paragraph number should have been listed as new language. In the same issue, the department posted a Notice of Hearing for the proposal.

REASONED JUSTIFICATION. The repeals, new section, and amendments in Chapter 10 are necessary to implement legislative amendments to the Insurance Code. Some of the amendments implement changes to Insurance Code Chapter 1305, as added by House Bill 7, 79th Legislature, 2005, and as amended by HB 4290, 81st Legislature, 2009; Title 5 of the Labor Code, as amended by HB 7 and HB 4290; and Occupations Code Chapter 111, as amended by Senate Bill 1107, 85th Legislature, 2019, and HB 2056, 87th Legislature, 2021. This adoption also removes unnecessary data requirements, reducing the burden on workers' compensation health care networks (certified networks) and carriers.

In addition, the amendments and repeals harmonize certified network requirements with rules for other networks and utilization review requirements to comply with Insurance Code Chapter 4201, which was recodified and amended after the Chapter

10 rules were adopted. Recent updates to the Utilization Review Agent rules in 28 TAC Chapter 19 also generally apply to certified networks, so conforming edits are made to Chapter 10 to decrease rule redundancy. The amendments update current rules to correct obsolete statutory citations and physical address references, shorten some rules with simpler citations to statutes or references to other rules, and comply with current department language preferences and drafting practices.

The new and amended sections are described in the following paragraphs, organized by subchapter.

Subchapter A. General Provisions and Definitions.

Section 10.1. The amendments to §10.1 update and add more complete statutory citations, reflect the addition of Insurance Code §1305.008 by HB 472, remove a 2006 applicability date, and make changes to conform to current department language preferences and drafting practices.

Section 10.2. The amendments to §10.2 update and add more complete statutory citations, clarify existing and add new definitions, and make changes to conform to current department language preferences and drafting practices. Specifically, the amendments:

- update the definition of "adverse determination" to clarify that the term does not include a denial of health care services because of a failure to request prospective or concurrent utilization review, and to provide consistency with the requirements in Labor Code §408.021(a) and §413.014(c)(6) and the definition in 28 TAC §19.2003(b)(1) and §134.600(a)(1);
- add the defined terms "administrator," "concurrent utilization review," "Division of Workers' Compensation," "MCQA," "physician," and "telehealth service, telemedicine medical service, and teledentistry dental service;"
- amend the definitions of "affiliate," "capitation," "complainant," "complaint," "credentialing," "emergency," "fee dispute," "independent review," "independent review organization," "medical emergency," "medical records," "mental health emergency," "network or workers' compensation health care network," "person," "quality improvement program," "rural area," "screening criteria," and "transfer of risk" to cite Insurance Code §1305.004 rather than repeat its provisions;
- amend the definition of "life-threatening" to cite Insurance Code Chapter 4201;
- remove the defined term "nurse" because the term is no longer used in 28 TAC Chapter 10;
- amend the definition of "preauthorization" because the definition of "utilization review" in Insurance Code §1305.004 refers to the definition in Insurance Code Chapter 4201, which includes retrospective review, and the 2009 amendments to Insurance Code Chapter 1305 by HB 4290 removed separate references to retrospective review in sections referring to utilization review;
- amend the definition of "retrospective review" to exclude the review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted because preauthorization no longer includes retrospective review and retrospective review does not include preauthorization or concurrent review; and
- update the list of terms that have the meanings assigned by Labor Code §401.011 to include "impairment rating" and "maximum medical improvement."

The department revised proposed §10.2(a)(9) to clarify that the "Division of Workers' Compensation" has the meaning assigned to the "Division" by Labor Code §401.011.

In response to a comment, the department revised proposed §10.2(a)(33) to clarify that "service area" has the meaning assigned by Insurance Code §1305.004(a)(24).

Section 10.3. New §10.3 indicates that any contact information needed for the Division of Workers' Compensation or the Office of Managed Care Quality Assurance can be found on the department's website and notes that this contact information should be used when an email address, mailing address, or telephone number is referenced in Chapter 10.

Subchapter B. Certification.

Section 10.20. The amendments to §10.20 add more complete statutory citations and remove a reference to "contracting with more than one person" from the description of a person who must be certified as a workers' compensation health care network, because this language is not contained in Insurance Code Chapter 1305. The department revised the text of §10.20 as proposed to replace a comma with a semicolon after the word "chapter" in §10.20(1)(A).

Section 10.21. The amendments to §10.21 remove a specific web address and a specific mailing address contained in the section to avoid providing incorrect information should that information change.

Section 10.22. The amendments to §10.22 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- specify submission of the National Association of Insurance Commissioners Uniform Certificate of Authority Application (NAIC UCAA) Form 11 biographical affidavit for providing biographic data;
- clarify that a description and map of the applicant's proposed service area is required and require a map with information for each specialty providing services to injured employees, to simplify applications and shorten processing times by eliminating delays when the department requests these materials;
- require information about providers that provide telehealth service, telemedicine medical service, or teledentistry dental service so the department can know who is providing services by telecommunications or other information technology and how that affects certified networks, as well as what services are available by telecommunications or other information technology and whether those services can actually be provided in that manner;
- clarify that an access plan is required for any service area in which the certified network does not meet accessibility and availability requirements, to simplify applications and shorten processing times by eliminating delays when the department must request the necessary access plans; and
- clarify that applicants must verify that certified network doctors have completed both training and testing as required by the Labor Code and rules adopted by the Commissioner of Workers' Compensation.

The department revised the proposed text of §10.22(20) to add the words "and be designed to reduce inappropriate or unnecessary health care while safeguarding necessary care" as stated in Insurance Code §1305.304 and 28 TAC §10.83(a).

Section 10.23. The amendments to §10.23 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Section 10.24. The amendments to §10.24 add more complete statutory citations, remove a specific mailing address contained in the section and reference an email address instead, to avoid providing incorrect information should that mailing address change, and make changes to conform to current department language preferences and drafting practices.

Section 10.25. The amendments to §10.25 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also:

- refer to §10.27 in regard to material modifications;
- clarify that a certified network must file an expansion, elimination, or reduction of an existing service area, or addition of a new service area with the department for approval before implementation and in accordance with the prior approval requirement in §10.26; and
- add a requirement that a certified network notify the department of the merger of the certified network with another entity and any other organizational change at least 30 days before implementing the merger or organizational change.

Section 10.26. The amendments to §10.26 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- remove a 30-day advance filing requirement for modification requests as duplicative of the requirement for prior approval;
- add statutory citations and references to rules with which a corrected notice of certified network requirements and employee information and acknowledgment form must comply; and
- remove a specific mailing address contained in the section to avoid providing incorrect information should that address change.

The department made a change from the proposal to replace a comma with a semicolon after the word "Requirements" in the text added to §10.26(f).

The department made a change from the proposal to replace a comma with a semicolon after the words "chapter" and "Networks."

Section 10.27. The amendments to §10.27 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. Also, the amendments:

- remove specific email and mailing addresses contained in the section to avoid providing incorrect information should the addresses change;
- add a requirement that a request for a modification to network configuration that adds or modifies telehealth service, telemedicine medical service, or teledentistry dental service must include an explanation about updating its provider directory and any statements or restrictions on those services in the request; and
- in response to continued questions from regulated entities, clarify that a material modification includes a change to the network configuration that alters the ability of the certified network to com-

ply with the availability and accessibility requirements described in §10.80.

Subchapter C. Contracting.

Section 10.40. The amendments to §10.40 add more complete statutory citations and make a change to conform to current department language preferences and drafting practices. Amendments also clarify that a person serving as both a management contractor or a third party and as an agent of the health care provider must comply with Insurance Code §1305.153.

Section 10.41. The amendments to §10.41 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also:

- refer to both the carrier's and the certified network's responsibility for delegated functions, to conform to Insurance Code §1305.154(b);
- require reporting of claim numbers, which are already available and being reported, so that the department will know how many claims are affected;
- remove a separate reference to retrospective review because retrospective review is included in utilization review;
- correct a typographical error; and
- require certified network consent to subdelegation of network functions to avoid situations where networks are unaware of subdelegations or where there is no monitoring of subdelegations.

In response to a comment that the language in proposed §10.41(a) did not include statutory language about confidentiality, the department declined to adopt proposed §10.41(a) because it is not necessary to repeat statutory language. The department redesignated proposed §10.41(b) - (d) as §10.41(a) - (c).

Section 10.42. The amendments to §10.42 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also require provider contracts to provide that:

- the provider agrees to follow the pharmacy closed formulary adopted by the Division of Workers' Compensation under 28 TAC §134.540 so the department can be assured that contracted providers are aware of and compliant with this existing requirement;
- billing and payment will be made in accordance with rules governing the billing and payment for certifications of maximum medical improvement and impairment rating examinations so the department can ensure that providers and certified networks are aware of and compliant with these existing requirements;
- the provider will receive written notice from the carrier if the carrier contests compensability of an injury the provider is treating, to conform to Insurance Code §1305.153(e); and
- the carrier may not deny payment for services provided before the issuance of the notice on the grounds that the injury was not compensable, to conform to Insurance Code §1305.153(e).

Subchapter D. Network Requirements.

Section 10.60. The amendments to §10.60 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- provide that, upon notification that health care services are being provided through the network, an employee living within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with that network, may select a network treating doctor from a list of contracted doctors or request a doctor who the employee selected before the injury as the employee's primary care physician or provider under Insurance Code Chapter 843;

- remove the Health Maintenance Organization Division mailing address from the list of places from which a sample acknowledgment form may be obtained because there is no longer a program area named "Health Maintenance Organization Division;"

- revise language regarding retaliation to reflect the language of Insurance Code §1305.404;

- require the clear identification of providers who provide telehealth service, telemedicine medical service, or teledentistry dental service in lists of certified network providers, so it will be clear to injured employees, providers, certified networks, and the department who is providing these services;

- clarify that the failure of an employer or carrier, as applicable, to establish a standardized process for complying with the delivery of notice of network requirements in this section creates a rebuttable presumption that the employee has not received the notice and is not subject to network requirements; and

- provide that a dispute regarding whether an employer or carrier properly provided the information required by §10.60 to an employee may be resolved by requesting a benefit review conference as provided under Insurance Code §1305.103(c) and §1305.451(e).

The department revised the proposed amendments to §10.60(b) by placing the word "may" at the end of §10.60(b), rather than the beginning of §10.60(b)(1). The department also revised the proposed text by adding a comma after the word "section" in proposed §10.60(e). In addition, the department changed proposed §10.60(f)(2)(A)(i) by replacing a comma with a semicolon after the word "network," and the department made a change from the proposal to add a comma after the word "name" in §10.60(f)(3).

In response to comments, the department declined to adopt proposed new §10.60(g), which would have provided for an employer and carrier to determine which party would be responsible for obtaining a signed acknowledgment form. As part of this change from the proposed text, the department declined to establish a new §10.60(h), and it retained text that would have been deleted as part of the proposed change. For consistency with these changes, the department redesignated the subsections that follow §10.60(g) to reflect that new §10.60(g) is not adopted, and the department made additional changes to the proposal to delete references to "responsible party" in §10.60(b), (c), (e), (i), (j), and (k), as adopted.

The department made changes to §10.60(g) as adopted to add "concerning Treating Doctor; Referrals" following the citation to Insurance Code §1305.103(c) and to replace the word "shall" with "must" to conform to current department language preferences and drafting practices. The department revised proposed §10.60(h)(14)(A) to change "telehealth services, telemedicine medical services, or teledentistry dental services" to "a telehealth service, telemedicine medical service, or teledentistry dental service" for consistency in terminology within the rule text.

In response to a comment, the department declined to adopt proposed §10.60(k). The subsections that followed proposed §10.60(k) have been redesignated as appropriate to reflect this change from the proposed text.

Section 10.61. The amendments to §10.61 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also add a reference to the rules of the Division of Workers' Compensation to provide guidance regarding treatment for compensable injuries to non-network providers.

In response to a comment that deleting §10.61(d) would remove the ability of an employee and network to agree that the employee may participate in a network even though the employee does not live within the network service area, the department retained §10.61(d). For consistency with this change, the department redesignated proposed §10.61(e) and (f) as §10.61(f) and (g) in the adopted text.

Section 10.62. The amendments to §10.62 make changes to conform to current department language preferences and drafting practices.

Section 10.63. The amendments to §10.63 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Subchapter E. Network Operations.

Section 10.80. The amendments to §10.80 make changes to conform to current department language preferences and drafting practices. The amendments also:

- clarify that providers must be licensed to practice in this state, unless exempt from licensing requirements;

- clarify that network adequacy is measured by the number of contracting doctors and specialists, not noncontracted ones;

- replace a requirement to give the reason or reasons that health care services or providers cannot be made available for each geographic area identified as not having adequate health care services or providers available with requirements to list the providers or physicians a certified network attempted to contract with, how and when the certified network contacted each provider, and a description of a reason each provider gave for declining to contract with the certified network to more closely track 28 TAC §3.3707, because these descriptions have resulted in better reporting by carriers and better oversight by the department;

- remove duplicative requirements in current §10.80(g)(4)(B) and (C), which are already included in §10.80(f) and new subsection (g)(6); and

- provide specific reporting requirements in §10.80(g)(5) when a general hospital is not available in an approved nonrural county, or a general acute hospital is available in an approved nonrural area but refuses to contract with the certified network.

Section 10.81. The amendments to §10.81 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- remove a separate reference to retrospective review because a statutory change since the creation of the rule added retrospective review to the definition of utilization review;

- require certified networks to maintain documentation demonstrating that doctors who provide certifications of maximum medical improvement or assign impairment ratings to injured employees are authorized to do so under 28 TAC §130.1; and

- remove a now-obsolete subsection (g), dealing with actions permitted until January 1, 2007.

The department made a change to §10.81(c)(1) as proposed to change "the Joint Commission on Accreditation of Healthcare Organizations" to "The Joint Commission."

Section 10.82. The amendments to §10.82 make changes to conform to current department language preferences and drafting practices. The amendments also:

- substantially shorten the section, simplify the process for selection and retention of preferred providers, and make the process more cost effective by replacing lengthy and detailed credentialing requirements with nationally promulgated processes;

- reduce certified network effort and inquiries by including a reminder that requirements of §10.41 apply to delegation of credentialing; and

- allow time for compliance with the amendments by permitting entities subject to §10.82 to comply with the section as it currently exists until January 1, 2023; entities will have until January 1, 2023, to make a filing attesting to compliance with the rule amendments.

The department revised §10.82(a) as proposed to capitalize the word "the" before "Joint Commission."

In response to comments to change the September 23, 2022, compliance date in proposed §10.82(d) for credentialing standards, the department changed the date to January 1, 2023.

Section 10.83. The amendments to §10.83 make changes to conform to current department language preferences and drafting practices.

The department revised §10.83(a) as proposed to add "be" before "designed," for consistency with Insurance Code §1305.304 and 28 TAC §10.22(20).

Section 10.84. The amendments to §10.84 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Section 10.85. The amendments to §10.85 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Section 10.86. The amendment to §10.86 makes a change to conform to current department language preferences and drafting practices.

Subchapter F. Utilization Review.

The amendments delete "and Retrospective Review" from the title of the subchapter because a statutory change since the creation of the subchapter added retrospective review to the definition of utilization review.

Section 10.100. The amendments to §10.100 correct obsolete citations and add more complete statutory citations.

Section 10.101. The amendments to §10.101 make changes to conform to current department language preferences and drafting practices. The amendments also:

- remove separate references to retrospective review because retrospective review is a part of utilization review;

- add new subsections (c) and (d) to address Labor Code §§408.0043 - 408.0045 requirements relating to qualifications for utilization review reviewers and track the language currently used in the utilization review agent rules;

- add new subsection (e) to clarify the requirements that apply to health care providers through a certified network, as authorized by Labor Code §413.014;

- add new subsection (f) to shorten and simplify the rule by referring to the requirements of Insurance Code Chapter 1305 and 28 TAC Chapter 19, Subchapter U, rather than repeating the requirements of these statutes and rules in §10.102 and §10.103; and

- add new subsection (g) to include a requirement that reconsideration procedures must include a method for expedited reconsideration under Insurance Code §1305.354(b) and (c).

Section 10.102 and §10.103. Section 10.102 and §10.103 are repealed. The general standards for utilization review addressed in those sections are replaced with new subsections in §10.101.

Section 10.104. The amendments to §10.104 update obsolete statutory citations, add more complete statutory citations, and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- insert references to Insurance Code Chapter 1305, Subchapter H, and department and Division of Workers' Compensation rules to clarify applicable requirements for compliance;

- reformat and redesignate some subsections of the rule;

- remove separate references to retrospective review because retrospective review is now included in the definition of utilization review;

- update a reference to conform to the redesignation of subsections;

- shorten and simplify the rule by citing Insurance Code §1305.354(a)(4) and 28 TAC §133.308(k) rather than listing requirements previously contained in §10.104(b)(2)(A) - (E);

- add new subsection (g) to conform to Labor Code §413.0311; and

- note, for the convenience of participants, that the department and the Division of Workers' Compensation are not considered to be parties to a medical dispute.

Subchapter G. Complaints.

Section 10.120. The amendments to §10.120 make changes to the section to conform to current department language preferences and drafting practices and provide clarity to providers and certified networks by clarifying that a complaint relating to a fee dispute is a complaint from a provider regarding the failure to pay a claim in accordance with the contract between the certified network and provider.

In response to a comment to change the language concerning "a network's failure to pay," the department deleted "the network" in proposed §10.120(b) because a health care network is not always the payor.

Section 10.121. The amendments to §10.121 make changes to conform to current department language preferences and drafting practices. The amendments also:

- require resolution letters to explain the certified network's procedures and deadlines for filing an appeal of the complaint;
- require the maintenance of a complaint-and-appeal log because a record of complaints is more useful if a record of appeals is included; and
- remove a reference to retrospective review.

The department changed proposed §10.121(e) in response to a comment for clarification on the meaning of the term "complaint appeal" by removing the term. The language now states that each network must maintain the required complaint-and-appeal log and documentation on each complaint, appeal, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

Section 10.122. The amendments to §10.122 remove specific email addresses contained in the section to avoid providing incorrect information if the addresses change. The amendments also add a provision stating that the complaint form may be obtained from the department's website.

Subchapter H. Examinations.

Section 10.200. The amendments to §10.200 add more complete statutory citations, make changes to conform to current department language preferences and drafting practices, and make revisions to eliminate confusion among regulated entities by clarifying that examination fees are payable to the department at the address shown on the invoice.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received written comments from 27 commenters, and two of the commenters also spoke at a public hearing on the proposal held on April 13, 2022. Commenters in support of the proposal with changes were American Property Casualty Insurance Association, Coventry, Jackson Star Consulting LLC, North Texas Pain Recovery Center, Office of Injured Employee Counsel, Stone Loughlin Swanson, and 20 individuals.

Comments on proposed rules generally

Comments. Two commenters expressed general support for the proposed workers' compensation health care network rules. One commenter supports updating the rules to add complete statutory citations and simplifying and updating rule language. Another commenter states that the amendments help reduce existing burdens on networks and carriers for supplying unnecessary data requirements, make the credentialing process more efficient and consistent with national standards, make the rules more consistent with statutory amendments, and update the rules by deleting obsolete references to statute.

Agency Response. The department appreciates the support.

Comment on §10.2

Comment. A commenter addresses the definitions for "preauthorization" and "service area" in §10.2, saying that they appear to have been updated in the proposed rule but do not align with definitions for the same terms contained in Insurance Code §1305.004(a)(19) and (24), respectively. The commenter requests aligning the definitions.

Agency Response. The department agrees to change the definition for "service area" in proposed §10.2(a)(33) for consistency with Insurance Code §1305.004(a)(24) by stating that "service area" has the meaning assigned by Insurance Code §1305.004.

The department declines to change the "preauthorization" definition, which conforms with the definition of "utilization review" under Insurance Code §4201.002(13) to include prospective, concurrent, and retrospective review. This definition is also consistent with Labor Code §413.014 and 28 TAC §134.600(a)(7).

Comment on §10.22

Comment. A commenter says that the requirement to include information about providers of telehealth service, telemedicine medical service, or teledentistry dental service in each certification application benefits the Texas workers' compensation system. The commenter states that as the use of these types of services increases, tracking these providers ensures compliance with the Labor Code and Division of Workers' Compensation rules and that these changes will simplify the application process and shorten processing times. The commenter says that requiring applicants to verify that the certified network doctors have completed training and testing required by the Labor Code and Division rules ensures that qualified doctors are available to help injured employees of Texas.

Agency Response. The department appreciates the support.

Comment on §10.22(10)

Comment. One commenter requests not requiring networks to provide credentialing information. The commenter explains that this is a manual process to complete and is administratively burdensome. The commenter states that with the revised credentialing requirements, a networks' NCQA/JCAHO/URAC accreditations could be considered by the state to be sufficient to demonstrate that providers within the network are appropriately credentialed, without a redundant separate listing of credentialing detail.

Agency Response. The department does not agree that the process to submit credentialing information is overly burdensome and declines to waive or otherwise modify the submission requirement. The department notes that credentialing information is only required to be submitted upon request, and the department has the option to verify the network's credentialing process upon request. The request would be in conjunction with a desk audit, complaint review, or an examination. This does not require an annual report and TDI does not expect it to be too burdensome for networks that are in compliance with the national accrediting standards.

Comment on §10.22(11)(A)

Comment. A commenter describes concerns about the requirement that a certificate application include maps that demonstrate compliance with the access and availability standards under Insurance Code Chapter 1305. The commenter says that providing a map for each and every specialty would be costly and overly burdensome and that creating maps for each specialty, including specialties that are not commonly involved in the treatment of workplace injuries, far outweighs the benefit such maps could provide. The commenter suggests that only specialties commonly related to the treatment of workplace accidents should be included in the maps. The commenter states that many networks include some providers in specialty areas that are not commonly needed to treat workplace industries, such as pediatric care, obstetrics and gynecology, urology, and nuclear medicine. The commenter notes that the current regulations discuss "the adequacy of the network configuration to provide comprehensive health care services sufficient to serve the population of injured employees within the service area" and suggests that the maps

in the proposed rule should likewise be limited to only those specialties adequate to serve the population of injured workers.

Agency Response. Although the number of maps for certain specialties can change, the department currently requests that workers' compensation networks submit maps for 21 specialties as opposed to group health plans, which submit maps for 42 specialties. Given the difference, the department does not anticipate that providing these maps will be overly burdensome. The changes made to the requirements for network adequacy reviews were done to standardize network review for all networks, including group health and certified workers' compensation health care networks. Furthermore, the department believes that network maps should contain providers who can provide the most commonly needed services for injured employees. Therefore, the department declines to further limit the specialties for which maps are required under this rule.

Comment on §10.22(11)(B) - (F)

Comment. A commenter requests confirmation that, when sharing provider data under proposed §10.22(11)(B) - (F), the required data elements include only the following (by provider category):

- Individual Providers: Name, Address, Specialty, Board Certifications, License Numbers, Hospital Affiliations, Accepting New Patients, and MMI/IR Certificates

- Telemedicine Offering Facilities: Name, Address, FEIN, License, Facility Type, Accepting New Patients, and Telemedicine Offering

The commenter also states that some recently submitted filings require additional data elements, such as credentialing dates and status, initial versus re-credentialing, hospital-based provider status, and telephone number.

The commenter also states that facility FEIN is not included in the state's current file layout but is referenced in the rule. The commenter requests clarification in the rules to streamline the process and to make certain the state receives the information in a timely and efficient manner.

Agency Response. The department declines to modify the rules in response to this comment, but notes that only elements included in statute and rule are required to be submitted, and no amendments were proposed to the existing data elements in §10.22(11)(B) - (E).

Comment on §10.22(11)(F)

Comment. A commenter discusses telehealth, noting that is an emerging field and medical providers, networks, carriers, and the public are currently, and on an ongoing basis, gauging the appropriate extent of the scope of telehealth and telemedicine. The commenter says that new developments in telehealth as an effective and appropriate way to provide medical services have been highlighted recently during the pandemic. The commenter states that, due to the fluid nature of the emerging practice of telemedicine, and providers adopting telemedicine processes on either a temporary or permanent basis, and perhaps, at times, disengaging from telemedicine, it is not possible to state categorically whether a provider may be offering telemedicine services at a particular time. Based on this, the commenter recommends that proposed §10.22(11)(F) not be included in the adopted rule.

Agency Response. The department disagrees with removing proposed §10.22(11)(F). Because telehealth, telemedicine medical, and teledentistry dental services are part of an emerging

field that is being utilized by patients more often, injured employees should be able to use the directory to find providers that provide those services.

Comment on §10.24(b)(1)

Comment. In regard to §10.24(b)(1), a commenter says that carriers do not want to receive the network's financial information and that carriers do not review them. The commenter says the annual filing includes confidential financial information, so changes should be made to allow for provision of these documents only upon request. The commenter proposes alternative text to effectuate this recommendation.

Agency Response. The department disagrees with the suggested changes because the commenter's concerns are outside the scope of the proposed rules. The financial statement submission requirements exist in the current rule, and the department only proposed nonsubstantive changes to §10.24(b)(1).

Comment on §10.25(a)(2)

Comment. A commenter recommends changing §10.25(a)(2) because most books and records are now housed electronically and not at a physical location. The commenter recommends that any updates to the "Physical Location of Books and Records" exhibit be filed as an information-only filing rather than 30 days before use and requiring the department's approval.

Agency Response. The department disagrees with the suggested changes because the commenter's concerns are outside the scope of the proposed rules. The filing requirement at issue currently exists in §10.25(a)(2), and the department proposed only nonsubstantive changes to the rule.

Comments on §10.27(b)(3)

Comment. A commenter expresses concern with the language "and any statements or restrictions on services that can be provided via telehealth service, telemedicine medical service, or teledentistry dental service" in §10.27(b)(3). The commenter states that it would be unduly complicated and burdensome for the department to require insurers to include "any statements or restrictions" on telehealth services in the directory because that could potentially be an extensive amount of information, which would be unrealistic to display in the directory and could be confusing to a claimant. The commenter says that because of the fluid nature of the emerging practice of telemedicine and because providers sometimes adopt telemedicine processes on either a temporary or permanent basis and at times disengaging from telemedicine, it is not possible to state categorically whether a provider may be offering telemedicine services at a particular time. The commenter recommends deleting the proposed provision.

Another commenter states that many health care networks previously submitted a summary of their telemedicine services to the department before the drafting of the proposed rules, in response to the overwhelming demand for telemedicine services seen during the pandemic. The commenter requests clarification in the rule that health care networks that have already submitted a summary of their telemedicine services to the department have already satisfied this requirement. The commenter also states that if the intention of the proposed rules is to require a duplicate material modification filing for telemedicine services, then the department should allow at least 90 days from the effective date of the rules for health care networks to gather necessary documentation to file the material modification.

Agency Response. Section 10.27(b)(3) applies to modifications made on or after January 1, 2023. The department disagrees with adding language to clarify that networks that have already submitted a summary of their telehealth service, telemedicine medical service, or teledentistry dental service to the department prior to the rule adoption will have already satisfied this requirement. The department also disagrees with deleting §10.27(b)(3). Because telehealth, telemedicine medical, and teledentistry dental services are part of an emerging field, it is important that health care networks inform the department about adding or modifying those services. Also, injured employees should be able to use the directory to find providers that provide those services. Provider directories exist to provide prospective patients with information to choose a provider that will meet their needs. Including the telehealth and telemedicine information via a legend or key in the directory should not be overly burdensome for the workers' compensation health networks and will provide injured employees with adequate information to select the appropriate provider for their needs. Group health provider directories already provide this information in an effort to better serve their members.

Comment on proposed §10.41(a)

Comment. A commenter states that, while the proposed language is taken from Insurance Code §1305.154, the draft rule omits the statutory language that network-carrier contracts are to remain confidential and are not subject to disclosure as public information. It is critical that such contracts remain confidential, in accordance with the statute. The commenter recommends that the language of proposed §10.41(a) not be adopted or, if adopted, that text based on the statutory language regarding confidential information be added to the rule.

Agency Response. The department has not included the text of proposed §10.41(a) in the adoption because it is not necessary to repeat Insurance Code §1305.154(a) in rule.

Comment on proposed §10.41(b)(7) (which is adopted as §10.41(a)(7))

Comment. A commenter states that many carriers do not wish to receive the specified data that networks provide to comply with monthly reporting requirements under proposed §10.41(b)(7); they would instead prefer to receive it only when requested. The commenter states that the required data list includes confidential information, including protected health information for injured workers and a network's financial records. The commenter suggests limiting distribution to ensure that only those who need the data for a valid purpose have access. The commenter proposes alternative text to effectuate its recommendation.

The commenter states that removing the burden of providing reports that the carrier may not want to receive helps to improve administrative efficiency for both the network providers as well as payors.

Agency Response. The department disagrees with the suggested changes because the commenter's concerns are outside the scope of the proposed rules. The filing requirement at issue existed in the rule prior to proposal, and the department proposed only one substantive amendment: the new requirement to include the claim number in the filing. The commenter does not specifically object to the inclusion of claim numbers, but objects to the existing filing requirement in general. As such, the commenter's concerns are outside the scope of this rulemaking.

Comment on proposed §10.41(b)(19) (which is adopted as §10.41(a)(19))

Comment. A commenter says that with §10.41(a)(19) the rules add a beneficial requirement for a delegate of the health care network to notify the health care network if the delegate further subdelegates services. The commenter also notes that the rule would require that a health care network delegate have a formal delegation agreement in place with the subdelegate. However, the commenter observes that the section does not specify whether the health care network is required to provide notification to the state of the subdelegation, and the commenter suggests that the section be modified to indicate whether state notification is required and, if it is required, provide that notification must follow the current standard 30-day notification time frame, measured from the date that the health care network is notified of the delegate's agreement with the subdelegate.

Agency Response. The department declines to make the suggested change because it is unnecessary. Insurance Code §1305.102(a) already provides that a network may not enter into a contract with another network for management services unless the proposed contract is first filed with the department and approved by the Commissioner. Also, Insurance Code §1305.154(c)(11) already provides that a network's contract with a carrier must include a provision that requires the network to provide to the department the license number of a management contractor or any delegated third party who performs a function that requires a license as a utilization review agent under Chapter 4201 or any other license under the Insurance Code or another insurance law of this state.

Comment on §10.42

Comment. A commenter supports the changes that require billing and payment to comply with rules governing billing and payment for maximum medical improvement and impairment rating. The commenter states that this change will ensure that providers and certified networks comply with billing and payment requirements.

Agency Response. The department appreciates the support.

Comment on §10.42(b)(2)

Comment. A commenter expresses support for the closed formulary adopted by the Division of Workers' Compensation under §134.540. The commenter states that, as provider contracts are largely standardized across states and products, there are no state-specific statutory references contained in the main contract itself, which allows for operational efficiency. For this reason, the commenter suggests that §10.42(b)(2) be clarified to note that reference to the specific Texas formulary by rule number is not necessary in the text of the provider contract, as long as the provider contract refers to compliance with state formularies as applicable by state law as a condition of contracting.

Agency Response. The department declines to remove the specific Texas formulary references. While the department understands that generic contracts can be used across states and products, this rule addresses workers' compensation coverage, and the applicable reference is necessary. This reference provides clarity to participants in the state of Texas workers' compensation system, and that benefit outweighs any burden to include the specific references, which the department believes to be minimal anyway.

Comment on §10.42(b)(13)

Comment. A commenter acknowledges that §10.42(b)(13) has been modified to add a requirement that network contracts include a statement that provider billing and payments will be made in compliance with rules governing the billing and payment for certification of maximum medical improvement and impairment rating examinations. The commenter states that each health care network provider is contractually required to comply with all applicable federal and state laws and regulations as a standard term of engagement. The commenter states that its Texas contracts currently mention the Labor Code and DWC rule requirements for maximum medical improvement and impairment rating training. The commenter recommends clarifying §10.42(b)(13) to state that specific reference to the billing and payment for MMI/IR is not required, as long as the provider contract references compliance with state law generally as a condition of provider contracting.

Agency Response. The department disagrees with removing the reference to Labor Code §408.027 and rules governing the billing and payment for certification of maximum medical improvement and impairment rating examinations. While the department understands that generic contracts can be used across states and products, this rule addresses workers' compensation coverage, and the applicable reference is necessary. This reference provides clarity to participants in the state of Texas workers' compensation system, and that benefit outweighs any burden to include the specific references, which the department believes to be minimal anyway.

Comment on §10.42(b)(15)

Comment. A commenter states that, although an insurer may not deny payment for services provided before the issuance of the notice that the injury was not compensable, Insurance Code §1305.153(e) sets a \$7,000 cap on such reimbursements. The commenter says that §10.42(b)(15) should state the \$7,000 maximum reimbursement amount.

Agency Response. The department declines to make the change because it believes repeating the statutory language in the rule text is unnecessary.

Comment on §10.60

Comment. A commenter recommends that the employee notification requirements of §10.60 be triggered at the time of injury only. The commenter believes that requiring notification of the health care network at the time of injury only would greatly reduce unnecessary notice and record-keeping burdens on employers and would likely promote greater use of a health care network.

Agency Response. The department declines to make the recommended change. The timing requirements for employee notification are set in Insurance Code §1305.005 and §1305.103.

Comment on §10.60(d)(1)

Comment. A commenter suggests removing the "10 percent or more" threshold for requiring the acknowledgment form to be provided in a language other than English and Spanish. The commenter states that as the Texas workforce becomes more diverse, the "10 percent or more" threshold will exclude some non-English speakers from receiving notice of network requirements. The commenter also states that it is not clear whether the 10 percent refers to a geographic location or the total number of employees at the employer, and that the threshold is not required by Insurance Code §1305.005 or §1305.041.

Agency Response. The department declines to make the suggested change. The department did not propose changes to §10.60(d)(1), thus the commenter's suggestions are outside the scope of the proposed rules.

Comments on proposed §10.60(g)

Comments. Twenty-five commenters object to the provision in §10.60(g) allowing a carrier and employer to determine which of the two is responsible for obtaining a signed employee acknowledgment form, stating that the provision is in conflict with and not permitted under Insurance Code §1305.005. The commenters state that after the passage of the 2005 Workers' Compensation Act, and during the original rulemaking process, the department recognized that the Insurance Code named the employer as the party responsible for delivering notice of network requirements to employees. The commenters state that the proposed change appears to contradict a prior agency position.

Another commenter states that the proposed changes would make Insurance Code §1305.103(c) meaningless. The commenter also states that mailing the notice to an injured employee has not been considered proper notice in the past, and no change in the law has taken place to initiate such a change. The commenter says that the department stated in the original adoption order that even a certified mail receipt cannot be considered proper notice. The commenter states that a carrier cannot truthfully document a refusal when an employee does not return the mailed acknowledgment form. The commenter cites §10.60(j) to provide that a standardized documentation of delivery of notice must contain the delivery date, delivery location, and to whom the notice was delivered. The commenter states that mailing the notice cannot possibly satisfy these requirements since mailing and delivery are different. The commenter further states that part of the employer's responsibility to notify employees under Insurance Code §1305.005(d) is to post a notice of network requirements at each place of employment. If an agreement that the carrier is responsible for the network notice is reached, it is then incumbent on the carrier to go to each place of employment and post the required notice.

Some commenters say they fail to see the need for this amendment to §10.60. The commenters state that its adoption would likely lead to confusion about who has responsibility for network notification.

A few commenters state that Insurance Code §1305.005(d), (e), and (g) clearly state that the employer must provide notice of network requirements at the time of hire and after notice of an injury. The commenters oppose the proposed rule changes to §10.60(g) because they say (1) the changes go beyond the agency's assigned rulemaking and changes the law, (2) it will create an undue burden on injured employees and make their understanding of the rules more difficult, (3) it will create more confusion regarding the process, and (4) that there is no compelling reason for the rule changes. The commenters also state the proposed rule will increase taxpayer cost.

Some commenters state that the employer should remain the responsible party for delivering the notice of network requirements and obtaining the employee's signature of receipt. The commenters state that the employer already has a relationship with the employee, and since it is typically done in person, the injured employee can ask questions, if needed. The commenters state that, in their experience, many of the employees have a limited understanding of workers' compensation insurance matters and have questions. The commenters state that, given the lack

of a prior relationship and an injured employee's skepticism of the insurance carrier, it would be a disservice to an injured employee to have the carrier supply this notice through a remote method such as mail, email, or a telephone conversation. The commenters state as well that the proposal would also increase the cost to the department, and the taxpayer, as it mandates additional record keeping.

One commenter recommends additional changes to include a deadline for the carrier and employer to reach an agreement and to obtain a signed acknowledgment form. The commenter states that an untimely agreement might delay providing notice of network requirements to the employees. The commenter states that delays in providing notice deprive employees of their rights under the law.

Agency Response. In response to these comments, the department has removed proposed §10.60(g) and its requirement for an employer and carrier to determine which party will be responsible for obtaining a signed acknowledgment form from the text as adopted and has also not adopted the references to "responsible party" in adopted §10.60(b), (c), (e), (i), (j), and (k).

Comment on proposed §10.60(i)(14)(A) (which is adopted as §10.60(h)(14)(A))

Comment. A commenter states that, because of the fluid nature of the emerging practice of telemedicine, and providers adopting telemedicine processes on either a temporary or permanent basis, and perhaps, at times, disengaging from telemedicine, it is not possible to state categorically whether a provider may be offering telemedicine services at a particular time. The commenter recommends that the references to telehealth service, telemedicine service, and teledentistry dental service not be included in the adopted text.

Agency Response. The department disagrees with removing the references to telehealth service, telemedicine service, and teledentistry dental service from the rule text. Telehealth services, telemedicine services, and teledentistry dental services are being utilized by patients more frequently, and often are the preferred method of engagement for many providers and patients. For this reason, the department believes this information should be included in the list of network providers.

Comment on proposed §10.60(k)

Comment. A commenter states that the statute does not require an employee to sign the acknowledgment form, and because of this, the employer or carrier should not be required to retain signed forms as specified in proposed §10.60(k). The commenter proposes alternative text to effectuate its recommendation.

Agency Response. The department has removed proposed subsection (k) from the text of §10.60 in response to this comment. The department acknowledges that Insurance Code §1305.005(f) does not require a signed acknowledgment form for the network requirements to be applicable, provided that the employee receives the notice and acknowledgment form as required by Insurance Code §1305.005(d)(1) and §10.60(g).

Comment on §10.61

Comment. A commenter opposes the proposed deletion of §10.61(d). The commenter says that deleting subsection (d) would remove the ability of an employee and network to agree that the employee may participate in a network even though the employee does not live within the network service area. The

commenter states that subsection (d) is beneficial to injured workers because it gives them more opportunities for appropriate treatment. The commenter states this is particularly true for injured workers who live in rural areas outside a network service area but work in urban areas inside the network service area. The commenter states that these workers often choose to receive treatment with network providers near their workplace, and giving such workers this option provides more opportunities for treatment. The commenter also states that deletion of subsection (d) is not required by Insurance Code §1305.451.

Agency Response. The department agrees to not delete §10.61(d).

Comments on §10.80(g)(4), (5), and (6)

Comment. A commenter opposes new paragraphs (5) and (6) because they would impose burdensome documentation requirements on networks that exceed the requirements of Insurance Code §1305.301 and §1305.302. The commenter says the rule should require only that networks demonstrate good faith attempts to obtain provider contracts as required by Insurance Code §1305.302(h)(2).

Another commenter says that a health care network would be required to submit significant detail related to contracting efforts in service areas where the department has determined the health care network has not met availability and accessibility standards under proposed §10.80(g)(4)(A) and (B), (g)(5)(A) and (B), and (g)(6)(A) and (B). The commenter states that while it appreciates that the department is working diligently to ensure that the needs of injured workers in the state are being met by requiring outreach efforts to providers in less-served areas, the proposed language should be streamlined to require a more general overview of contracting efforts within a service area to protect the proprietary nature of the contracting process. The commenter suggests as an alternative that if detailed contact information in underserved areas continues to be required, the rules should be clarified to mandate that detailed documentation needs to be included only on a prospective basis and only at such time as when the health care network undergoes a material modification to a network service area.

The commenter also states that the rules should be clarified to mandate that any information shared with the department under these sections would be kept confidential and out of the public record to protect the proprietary and competitive nature of contracting with providers across the state.

Agency Response. The department disagrees with deleting or limiting the requirements in §10.80(g)(4), (5), and (6). Networks should be able to provide the information in §10.80(g)(6), which includes a list of physicians, providers, and facilities within the service area with whom they attempted to contract but were unsuccessful. Without a list, the department cannot determine that a good faith effort to contract was made. Under §10.80(g)(4), an access plan must include a network development and contracting plan. The department needs this information to ensure the network can provide all necessary care to injured employees, and provide a plan for how care will be made available when a contracted provider is not available in the service area. The contracting plan can include elements such as continued attempts to contract with providers in the service area, case by case arrangements for specific injured employees, and when there is a gap in the network's availability and accessibility. Similarly, the department needs the information specified in §10.80(g)(5) in order to approve an access plan for a nonrural

county without a hospital contract. The required information can show whether the network made a good-faith effort to contract with the available facilities, and whether alternative facilities are available to provide the necessary care for an injured employee.

Also, in response to the comment regarding the prospective submission of information, the department notes that the lists required in §10.80(g)(5) and (6) must be provided after the effective date of this rule. In addition, while the department is not authorized to make records confidential by rule, it will follow the requirements of the Public Information Act (Government Code Chapter 552) and any other relevant laws.

Comment on §10.80(g)(5)(B)

Comment. A commenter requests that the department define and clarify which facilities would be "nonacute care facilities that can provide required acute hospital services" under §10.80(g)(5)(B). The commenter asks if urgent care facilities, freestanding ERs, walk-in clinics, ambulatory surgical centers, and the like would be included within this definition.

Agency Response. Examples of acute hospital services include emergency care, intensive care, coronary care, cardiology, and neonatal intensive care. However, the department is unable to definitively confirm that urgent care facilities, freestanding ERs, walk-in clinics, ambulatory surgical centers, and other similar facilities meet the standard in §10.80(g)(5)(B) because the department does not license facilities or regulate what services each can provide.

Comment on §10.81

Comment. A commenter supports the proposed changes to §10.81 requiring certified networks to maintain documentation demonstrating that doctors who provide certifications of maximum medical improvement and impairment rating to an injured employee are authorized to do so under Division of Workers' Compensation rules.

Agency Response. The department appreciates the support.

Comment on §10.82

Comment. A commenter expresses support for §10.82 as proposed because it simplifies the credentialing requirements within the health care networks, which would be an extremely positive change for networks in Texas. The commenter states that this would align Texas requirements and workflows with the credentialing practices and standards accepted across the country. Also, under these updated credentialing standards, the site visit requirement would be removed, which is also in line with national guidelines.

Agency Response. The department appreciates the support.

Comments on §10.82

Comment. A commenter requests that the department not require networks to provide credentialing information. The commenter explains that this is a manual process to complete and is administratively burdensome. The commenter states that with the revised credentialing requirements, a networks' NCQA/JC-AHO/URAC accreditations should be considered by the state to be sufficient to demonstrate that providers within the network are appropriately credentialed, without a redundant separate listing of credentialing detail.

Another commenter states opposition to new §10.82(a) because it would impose new, unpublished credentialing standards that

networks are unable to evaluate if they do not have access to them by virtue of being accredited or certified by NCQA or URAC. The commenter requests that the department publish the credentialing standards promulgated by those two entities so that networks that are not accredited by them can properly evaluate whether the proposed credentialing standards are feasible.

Agency Response. The department declines to remove the requirement in §10.82(a) to provide credentialing information to the department when requested. The department wants to make certain networks are following the credentialing requirements for their provider panels. The department does not require that the information be provided annually, but only upon request by the department. This limitation should reduce the burden on networks. The department also disagrees with the recommendation to publish the credentialing standards promulgated by NCQA and URAC because the credentialing standards are proprietary, and the department does not have permission to post or publish them. However, the standards are available from the accrediting bodies for a minimal cost and can be purchased separately from accreditation. Most of the networks also do group health and will already have access to the standards, as they are required to use the standards in group health.

Comments on §10.82(d)

Comment. A commenter requests a change to §10.82(d), which sets a deadline of September 23, 2022, for compliance with the proposed credentialing standards. The commenter states that networks will need time to revise their credentialing processes to comply with the new standards, and the deadline of September 23, 2022, may not provide enough time for compliance. The commenter requests that the department revise subsection (d) to provide 180 days for compliance. The commenter proposes alternative text to effectuate its recommendation. Another commenter requests that the compliance date be set for 12 months after final adoption of the rules.

Agency Response. The department agrees to make a change to subsection (d) as adopted and has changed the compliance deadline to January 1, 2023. The department declines to change the compliance deadline to 12 months after the adoption date because it does not believe it will require 12 months for networks to be compliant. The amended credentialing standards streamline the process by eliminating several outdated procedures currently being performed by networks. The re-credentialing time frames remain in place. The change will be in credentialing any new providers using the streamlined, nationally accredited processes.

Comment on §10.101

Comment. A commenter opposes §10.101(d) because the provision can be read to mean that only doctors and dentists may perform utilization review and nurses may not do so. The commenter states that the second sentence states that physicians, doctors, and other health care providers conducting utilization review "must have the appropriate credentials as required by Chapter 180," and the relevant rule in Chapter 180 appears to be 28 TAC §180.1(4), which defines "appropriate credentials," and which mentions only physicians, dentists, and chiropractors. The commenter asks the department to revise §10.101(d) to clarify that the subsection does not prohibit nurses from performing utilization review on initial requests where no adverse determination is issued. The commenter proposes alternative text to effectuate its recommendation.

Agency Response. The department declines to make the requested change. The language in §10.101(d) is consistent with the language in the utilization review rules under §10.200(a).

Comment on §10.120(b)

Comment. A commenter states that §10.120(b) references a "network's failure to pay." The commenter states that this language should be modified because in many cases the health care network is not the payor. The commenter explains that, although a health care network provider would be very involved in managing the research and response to the fee dispute and ensuring the payment level recommended is appropriate, the payment itself would be made by the health care network insurer.

Agency Response. The department agrees and has changed the language to delete the words "the network."

Comment on §10.121(e)

Comment. A commenter requests clarification on the meaning of the term "complaint appeal."

Agency Response. The department has removed "complaint appeal" from the adopted rule. The language now states that each network must maintain the required complaint-and-appeal log and documentation on each complaint, appeal, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

28 TAC §§10.1 - 10.3

STATUTORY AUTHORITY. The Commissioner adopts amendments to §10.1 and §10.2 and new §10.3 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.2. Definitions.

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

(1) Administrator--Has the meaning assigned by Insurance Code §4151.001, concerning Definitions.

(2) Adverse determination--A determination by a URA made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. For the purposes of this subchapter, an adverse determination does not include a determination that health care services are experimental or investigational.

(3) Affiliate--Has the meaning assigned by Insurance Code §1305.004, concerning Definitions.

(4) Capitation--Has the meaning assigned by Insurance Code §1305.004. The term includes predetermined payment to cover the average costs of services for a defined episode of care.

(5) Complainant--Has the meaning assigned by Insurance Code §1305.004.

(6) Complaint--Has the meaning assigned by Insurance Code §1305.004.

(7) Concurrent utilization review--A form of utilization review for ongoing health care or for an extension of treatment beyond previously approved health care.

(8) Credentialing--Has the meaning assigned by Insurance Code §1305.004.

(9) Division of Workers' Compensation--Has the meaning assigned to the "Division" by Labor Code §401.011, concerning General Definitions.

(10) Emergency--Has the meaning assigned by Insurance Code §1305.004.

(11) Employee--Has the meaning assigned by Labor Code §401.012, concerning Definition of Employee.

(12) Fee dispute--Has the meaning assigned by Insurance Code §1305.004.

(13) HMO--A health maintenance organization licensed and regulated under Insurance Code Chapter 843, concerning Health Maintenance Organizations.

(14) Independent review--Has the meaning assigned by Insurance Code §1305.004.

(15) Independent review organization--Has the meaning assigned by Insurance Code §1305.004.

(16) Life-threatening--Has the meaning assigned by Insurance Code Chapter 4201, concerning Utilization Review Agents.

(17) Live or lives--Where an employee lives includes:
(A) the employee's principal residence for legal purposes, including the physical address that the employee represented to the employer as the employee's address;
(B) a temporary residence necessitated by employment;
or

(C) a temporary residence taken by the employee primarily for the purpose of receiving necessary assistance with routine daily activities because of a compensable injury.

(18) MCQA--The Office of Managed Care Quality Assurance, or a successor office at the department.

(19) Medical emergency--Has the meaning assigned by Insurance Code §1305.004.

(20) Medical records--Has the meaning assigned by Insurance Code §1305.004.

(21) Mental health emergency--Has the meaning assigned by Insurance Code §1305.004.

(22) Network or workers' compensation health care network--Has the meaning assigned by Insurance Code §1305.004.

(23) Occupational medicine specialist--A doctor who has received a board certification in occupational medicine from the American Board of Preventive Medicine or who has completed all the re-

quirements of the American Board of Preventive Medicine in order to take the board examination.

(24) Person--Has the meaning assigned by Insurance Code §1305.004.

(25) Physician--Has the meaning assigned by Insurance Code §4201.002, concerning Definitions.

(26) Preauthorization--A form of prospective utilization review by a payor or a payor's URA of health care services proposed to be provided to an injured employee.

(27) Provider--A health care provider.

(28) Quality improvement program--Has the meaning assigned by Insurance Code §1305.004.

(29) Retrospective review--A form of utilization review for health care services that have been provided to an injured employee. Retrospective review does not include review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted.

(30) Routine daily activities""Activities a person normally does in daily living, including sleeping, eating, bathing, dressing, grooming, and homemaking.

(31) Rural area--Has the meaning assigned by Insurance Code §1305.004.

(32) Screening criteria--Has the meaning assigned by Insurance Code §1305.004.

(33) Service area--Has the meaning assigned by Insurance Code §1305.004.

(34) Telehealth service, telemedicine medical service, and teledentistry dental service--Have the meanings assigned by Occupations Code §111.001, concerning Definitions.

(35) Transfer of risk--Has the meaning assigned by Insurance Code §1305.004.

(36) Utilization review--Has the meaning assigned by Insurance Code Chapter 4201.

(37) Utilization review agent or URA--Has the meaning assigned by Insurance Code Chapter 4201.

(b) When used in this chapter, the following terms have the meanings assigned by Labor Code §401.011:

- (1) administrative violation;
- (2) case management;
- (3) compensable injury;
- (4) doctor;
- (5) employer;
- (6) evidence-based medicine;
- (7) health care;
- (8) health care facility;
- (9) health care practitioner;
- (10) health care provider;
- (11) impairment rating;
- (12) injury;
- (13) insurance carrier;

(14) maximum medical improvement; and

(15) treating doctor.

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

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General Counsel

Texas Department of Insurance

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



SUBCHAPTER B. CERTIFICATION

28 TAC §§10.20 - 10.27

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.20 - 10.27 under Insurance Code §§1305.007, 1305.201, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §1305.201 provides for networks to prepare and file financial statements in the manner prescribed by Commissioner rule.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.20. Certification Required.

Except as provided by Labor Code §504.053(b)(2), concerning Election:

(1) A person may not operate or perform any act of a workers' compensation health care network in this state:

(A) unless the person holds a certificate issued under Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks, and this chapter; or

(B) except in accordance with the specific authorization of Insurance Code Chapter 1305 or this chapter.

(2) A person, including an insurance carrier, who provides or arranges to provide workers' compensation health care network services to injured employees within a service area, must be certified as a workers' compensation health care network under Insurance Code Chapter 1305 and this chapter.

(3) An entity performing any act of a workers' compensation health care network may not use in a network's name or in any informational literature distributed about a network any combination or variation of the words "workers' compensation," "certified," "managed care," or "network" to describe a network that is not certified in accordance with this chapter.

§10.22. *Contents of Application.*

Each certificate application must include:

(1) a description or a copy of the applicant's basic organizational structure documents and other related documents, including organizational charts or lists that show:

(A) the relationships and contracts between the applicant and any affiliates of the applicant; and

(B) the internal organizational structure of the applicant's management and administrative staff;

(2) a completed biographical affidavit, NAIC UCAA Form 11 (Rev. 12/8/2020), from each person who governs or manages the affairs of the applicant, including the members of the governing board of the applicant, the chief executive officer, president, secretary, treasurer, chief financial officer and controller, and any other individuals with substantially similar responsibilities, provided that a biographical affidavit is not required if a biographical affidavit from the person is already on file with the department;

(3) a copy of the form of any contract between the applicant and any provider or group of providers as required under Insurance Code Chapter 1305, Subchapter D, concerning Contracting Provisions, and §10.41 and §10.42 of this title (relating to Network-Carrier Contracts and Network Contracts with Providers);

(4) a copy of any agreement with any third party performing delegated functions on behalf of the applicant as required under Insurance Code §1305.154, concerning Network-Carrier Contracts, and §10.41 of this title (relating to Network-Carrier Contracts);

(5) a copy of the form of each contract with an insurance carrier, as described by Insurance Code §1305.154 and §10.41 of this title;

(6) each management contract as described in §10.40 of this title (relating to Management Contracts), if applicable;

(7) a financial statement, current as of the date of the application that includes the most recent calendar quarter, prepared using generally accepted accounting principles, and including:

(A) a balance sheet that reflects a solvent financial position;

(B) an income statement;

(C) a cash flow statement; and

(D) the sources and uses of all funds;

(8) a statement acknowledging that lawful process in a legal action or proceeding against the network on a cause of action arising in this state is valid if served in the manner provided by Insurance Code Chapter 804, concerning Service of Process, for a domestic company;

(9) a description and a map of the applicant's proposed service area or areas, with key and scale, that identifies each county, ZIP code, partial ZIP code, or part of a county to be served;

(10) a description of programs and procedures to be utilized, including:

(A) a complaint system, as required under Insurance Code Chapter 1305, Subchapter I, concerning Complaint Resolution, and Chapter 10, Subchapter G, of this title (relating to Complaints);

(B) a quality improvement program, including return-to-work and medical case management programs, as required under Insurance Code Chapter 1305, Subchapter G, concerning Provision of

Services by Network; Quality Improvement Program, and §10.81 of this title (relating to Quality Improvement Program);

(C) credentialing policies and procedures required under §10.82 of this title (relating to Credentialing);

(D) the utilization review program described in Insurance Code Chapter 1305, Subchapter H, concerning Utilization Review, and Chapter 10, Subchapter F, of this title (relating to Utilization Review), if applicable; and

(E) criteria and procedures for employees to select or change the employee's treating doctor, including procedures for employees to select as the employee's treating doctor a doctor who the employee selected, prior to injury, as the employee's HMO primary care physician or provider;

(11) a description of the network configuration that demonstrates the adequacy of the network to provide comprehensive health care services sufficient to serve the population of injured employees within the service area and maps that demonstrate compliance with the access and availability standards under Insurance Code Chapter 1305, Subchapter G, and §10.80 of this title (relating to Accessibility and Availability Requirements). This description must include, at a minimum, the following:

(A) a map for each specialty providing services to injured employees in accordance with §10.80 of this title, each of which must include:

(i) each location of health care providers and facilities within the proposed service area, indicating each location by symbols of the network's own choosing; and

(ii) the distance from any point in the network's designated service area to each location;

(B) names; addresses, including ZIP codes; specialty or specialties; board certifications, if any; professional license numbers; and hospital affiliations of network providers, including treating doctors, in sufficient number and specialty to provide all required health care services in a timely, effective, and convenient manner;

(C) names; addresses; federal employer identification number (FEIN); licenses; and types of health care facilities, including hospitals, rehabilitation facilities, diagnostic and testing facilities, ambulatory surgical centers, and interdisciplinary pain rehabilitation programs or interdisciplinary pain rehabilitation treatment facilities. The network must also demonstrate adequate access to emergency care;

(D) information indicating whether each network provider is accepting new patients from the workers' compensation health care network;

(E) information indicating which network doctors are trained and certified to perform maximum medical improvement determinations and impairment rating services;

(F) information identifying which network providers provide telehealth service, telemedicine medical service, or teledentistry dental service, indicating which of these providers will provide telehealth service, telemedicine medical service, or teledentistry dental service only; and

(G) for any service area in which the network does not meet accessibility and availability requirements described in §10.80 of this title, an access plan that complies with §10.80(a) and (f) of this title;

(12) the physical location of the applicant's books and records, including:

- (A) financial and accounting records;
- (B) investment records;
- (C) organizational documents of the applicant; and
- (D) minutes of all meetings of the applicant's governing board and executive or management committees;

(13) a business plan that describes the applicant's intended operations in this state, including both a narrative description and projections related to anticipated revenue and profitability for the first two years of operation after certification;

(14) a completed financial authorization form sufficient to allow the department to confirm directly with appropriate financial institutions the reported assets of the applicant, unless the entity is already licensed by the department;

(15) the applicant's plan for provision of care to injured employees who live temporarily outside the service area, if applicable;

(16) the applicant's plan for provision of maximum medical improvement determinations and impairment rating services, including verification that the network doctors reported under paragraph (11)(E) of this section have completed the training and testing required under Labor Code §408.023, concerning List of Approved Doctors; Duties of Treating Doctors, and rules adopted by the Commissioner of Workers' Compensation;

(17) the applicant's plan for obtaining certification by doctors and health care practitioners of filing the required financial disclosure with the Division of Workers' Compensation under Labor Code §408.023 and §413.041, concerning Disclosure;

(18) the form of the notice of network requirements and employee information, and the acknowledgment form required under Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements, and §10.60 of this title (relating to Notice of Network Requirements; Employee Information);

(19) the applicant's plan for monitoring whether providers have been provided and are following treatment guidelines, return-to-work guidelines, and individual treatment protocols as required under Insurance Code §1305.304, concerning Guidelines and Protocols, and §10.83 of this title (relating to Guidelines and Protocols);

(20) a description of treatment guidelines and return-to-work guidelines, and the network medical director's certification that the guidelines are evidence-based, scientifically valid, and outcome-focused, and be designed to reduce inappropriate or unnecessary health care while safeguarding necessary care, as required under Insurance Code §1305.304 and §10.83(a) of this title; and

(21) a certification that:

(A) the network's medical director is an occupational medicine specialist; or

(B) the network employs or contracts with an occupational medicine specialist.

§10.26. Modifications to Service Area.

(a) A network must file a modification request with and receive approval from the department before the network may expand, eliminate, or reduce an existing service area, or add a new service area. An officer or other authorized representative of the network must verify the modification request by attesting to the truth and accuracy of the information in the modification request.

(b) A modification request for a service area modification must include:

(1) a description and a map with key and scale, showing both the currently approved service area and the proposed new service area, as required under §10.22(9) of this title (relating to Contents of Application);

(2) network configuration information, as required under §10.22(11) of this title; and

(3) separate and consolidated projections as described in §10.22(13) of this title for the existing network, the proposed new service area, and the proposed network.

(c) If a modification request for a service area changes any of the following items, the applicant must file the new item or any amendments to an existing item with the modification request filed under this section:

(1) a copy of the form of any new contracts or amendment of any existing contracts as described by and required under §10.22(3), (4), and (5) of this title;

(2) a brief narrative description of the administrative arrangements, organizational charts as required under §10.22(1) of this title, and other pertinent information;

(3) biographical data, on a form prescribed by the department, regarding each individual who governs or manages the affairs of the network as required under §10.22(2) of this title; and

(4) a copy of each management contract as described under §10.22(6) of this title.

(d) A modification request is not considered complete and reviewable until the department has received all information required under this section, including any additional information the department requests as needed to make that determination.

(e) Before the department considers a service area modification request, the applicant must be in good standing with the department and in compliance with all applicable requirements under this chapter; Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks; and Labor Code Title 5, concerning Workers' Compensation, in the existing service areas and in each proposed service area.

(f) A corrected notice of network requirements and employee information form and acknowledgment form that comply with Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements; and §1305.451, concerning Employee Information; Responsibilities of Employee; and §10.60 of this title (relating to Notice of Network Requirements; Employee Information) must be provided to affected employees.

(g) Prescribed modification request forms may be obtained from:

(1) the department's website;

(2) the department's workers' compensation network email address; or

(3) the MCQA mailing address.

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

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SUBCHAPTER C. CONTRACTING

28 TAC §§10.40 - 10.42

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.40 - 10.42 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.41. *Network-Carrier Contracts.*

(a) A network's contract with a carrier must include the following:

(1) a description of the functions to be performed by the network or its delegated entity, consistent with the requirements of Insurance Code §1305.154(b), concerning Network-Carrier Contracts, and the reporting requirements for each function;

(2) a statement that the network will perform all delegated functions in full compliance with all requirements of the Workers' Compensation Health Care Network Act, Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks; the Texas Workers' Compensation Act, Labor Code Title 5, Subtitle A, concerning Workers' Compensation; and the rules of the department and the Division of Workers' Compensation;

(3) a provision that the contract:

(A) may not be terminated without cause by either party without 90 days' prior written notice; and

(B) must be terminated immediately if cause exists;

(4) a hold-harmless provision stating that the network, a management contractor, a third party to which the network delegates a function, and the network's contracted providers are prohibited from billing or attempting to collect any amounts from an employee for health care services for compensable injuries under any circumstances, including the insolvency of the carrier or the network;

(5) a statement that the carrier and the network retain ultimate responsibility for ensuring that all delegated functions and all management contractor functions are performed in accordance with applicable statutes and rules, and that the contract may not be construed to limit in any way the carrier's or network's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements;

(6) a statement that the network's role is to provide the services listed in Insurance Code §1305.154(b) as well as any other ser-

vices or functions the carrier delegates, including functions delegated to a management contractor, subject to the carrier's oversight and monitoring of the network's performance;

(7) a requirement that the network provide the carrier, on at least a monthly basis and in a form that is usable for audit purposes, the data necessary for the carrier to comply with reporting requirements of the department and the Division of Workers' Compensation of the department with respect to any services provided pursuant to the carrier-network contract, including the following data:

(A) last name, first name, date of injury, date of birth, sex, address, telephone number, claim number, and social security number of each injured employee who is being served by the network, and name and license number of the injured employee's treating doctor;

(B) initial date of health care services delivered by the network for each employee; and

(C) any other data, as determined by the contract, necessary to assure proper monitoring of functions delegated to the network by the carrier;

(8) a requirement that the carrier, the network, any management contractor, and any third party to which the network delegates a function comply with a provision that requires the network to provide to the insurance carrier and department the license number of a management contractor or any delegated third party performing any function that requires a license under the Insurance Code or another insurance law of this state, including a license as a utilization review agent under Insurance Code Chapter 4201, concerning Utilization Review Agents;

(9) a contingency plan under which the carrier would, in the event of termination of the contract or a failure to perform, reassume one or more functions of the network under the contract, including functions related to:

(A) payment to providers and notification to employees, as applicable;

(B) quality of care;

(C) utilization review;

(D) continuity of care, including a plan for identifying and transitioning employees to new providers; and

(E) collecting and reporting of data necessary to comply with the reporting requirements described in paragraph (7) of this subsection;

(10) a provision that requires that any agreement by which the network delegates any function to a third party be in writing, and that such agreement require the delegated third party to be subject to all the requirements under Insurance Code Chapter 1305 and this chapter;

(11) a provision that requires the network to provide to the department the license number of a management contractor or any delegated third party performing any function that requires a license under the Insurance Code or another insurance law of this state, including a license as a utilization review agent under Insurance Code Chapter 4201;

(12) an acknowledgment that:

(A) any management contractor or third party to whom the network delegates a function must comply with this chapter and other applicable statutes and rules, and that the management contractor or third party is subject to the carrier's and the network's oversight and monitoring of its performance; and

(B) if the management contractor or third party fails to meet monitoring standards established to ensure that functions delegated or assigned to the management contractor or third party under the delegation contract are in full compliance with all statutory and regulatory requirements, the carrier or network may cancel delegation of any or all delegated functions;

(13) a requirement that the network and any management contractor or third party to which the network delegates a function provide all necessary information to allow the carrier to provide the information required by §10.60 of this title (relating to Notice of Network Requirements; Employee Information) to employers or employees;

(14) a provision that requires the network to require any third party with which it contracts, whether directly or through another third party, to permit the Commissioner to examine at any time any information the Commissioner believes is relevant to the third party's financial condition or the ability of the network to meet the network's responsibilities in connection with any function the third party performs or that has been delegated to the third party.

(15) a requirement that if the network delegates the complaint function, the delegate must:

(A) implement and maintain a complaint system in accordance with requirements under Insurance Code §1305.401, concerning Complaint System Required, and §10.120 of this title (relating to Complaint System Required); and

(B) make the complaint log and complaint files available to the carrier and the network upon request to the extent permitted by law;

(16) a statement that the contract and any network contract with a provider, management contractor, or other third party must not be interpreted to involve a transfer of risk as defined under Insurance Code §1305.004(a)(26), concerning Definitions;

(17) a statement that any network contract with a provider or third party must allow the carrier to effect a contingency plan in the event that the carrier is required to reassume functions from the network as contemplated under Insurance Code §1305.155, concerning Compliance Requirements;

(18) a statement that any network contract with a provider or third party must comply with all applicable statutory and regulatory requirements under federal and state law, including Insurance Code §1305.152, concerning Network Contracts with Providers, and §10.42 of this title (relating to Network Contracts with Providers); and

(19) a statement that if a network's delegate subdelegates a network function, the delegate must first obtain the network's consent to the subdelegation and have a delegation agreement that complies with this section.

(b) Except for the functions described under Insurance Code §1305.154(b) and §10.121 of this title (relating to Complaints; Deadlines for Responses and Resolution), a network's authority to perform a function under a network-carrier contract is conditioned upon whether:

(1) the carrier has delegated the function to the network by contract; and

(2) the network is appropriately licensed to perform the function.

(c) A network must not act as a network for any entity regarding an insurance plan being operated in violation of Insurance Code §101.102, concerning Unauthorized Insurance Prohibited.

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

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James Person

General Counsel

Texas Department of Insurance

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SUBCHAPTER D. NETWORK REQUIREMENTS

28 TAC §§10.60 - 10.63

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.60 - 10.63 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.60. Notice of Network Requirements; Employee Information.

(a) An insurance carrier that establishes or contracts with a network must deliver to the employer, and the employer or carrier, as applicable under subsection (g) of this section, must deliver to the employer's employees in the manner and at the times prescribed by Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements:

(1) the notice of network requirements and employee information required by Insurance Code §1305.005 and §1305.451, concerning Employee Information; Responsibilities of Employee, and this section; and

(2) the employee acknowledgment form described by Insurance Code §1305.005 and this section.

(b) An employee who lives within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with the network may:

(1) select a network treating doctor from the list of contracted doctors who contracted with the workers' compensation network; or

(2) request a doctor who the employee selected, prior to the injury, as the employee's HMO primary care physician or provider under Insurance Code Chapter 843, concerning Health Maintenance Organizations.

(c) The carrier must provide to the employee all information required by Insurance Code §1305.451. The notice must include an em-

ployee acknowledgment form and comply with all requirements under subsections (d) - (i) of this section, as applicable.

(d) The notice of network requirements and employee acknowledgment form:

(1) must be in English, Spanish, and any other language common to 10 percent or more of the employer's employees;

(2) must be in a readable and understandable format that meets the plain language requirements under §10.63 of this title (relating to Plain Language Requirements); and

(3) may be in an electronic format as long as a paper version is available upon request.

(e) The insurance carrier and employer may use an employee acknowledgment form that complies with this section or a sample acknowledgment form that may be obtained from the department's website.

(f) The employee acknowledgment form must include:

(1) a statement that the employee has received information that describes what the employee must do to receive health care under workers' compensation insurance;

(2) a statement that if the employee is injured on the job and lives in the service area described in the information, the employee understands that:

(A) the employee:

(i) must select a treating doctor from the list of doctors who contracted with the workers' compensation network; or

(ii) ask the employee's HMO primary care physician to agree to serve as the employee's treating doctor; and

(iii) must obtain all health care and specialist referrals for a compensable injury through the treating doctor except for emergency services;

(B) the network provider will be paid by the insurance carrier and will not bill the employee for a compensable injury; and

(C) if the employee seeks health care, other than emergency care, from someone other than a network provider without network approval, the insurance carrier may not be liable, and the employee may be liable, for payment for that health care;

(3) separate lines for the employee to fill in the date and employee's signature, printed name, and where the employee lives;

(4) a separate line that indicates the name of the employer; and

(5) a separate line that indicates the name of the network.

(g) The employer must obtain a signed employee acknowledgment form from each employee, and a carrier required to provide employee information to an employee under Insurance Code §1305.103(c), concerning Treating Doctor; Referrals, and subsection (b) of this section must obtain a signed employee acknowledgment form from that employee. For purposes of this subsection, an employer or carrier, as applicable, may obtain an acknowledgment of the notice required under this section through electronic means from an employee who makes an electronic signature in accordance with applicable law.

(h) The notice of network requirements must comply with Insurance Code §1305.005 and §1305.451 and include:

(1) a statement that the entity providing health care to employees is a certified workers' compensation health care network;

(2) the network's toll-free number and address for obtaining additional information about the network, including information about network providers;

(3) a description and map of the network's service area, with key and scale, that clearly identifies each county or ZIP code area or any parts of a county or ZIP code area that are included in the service area;

(4) a statement that an employee who does not live within the network's service area may notify the carrier as described under §10.62 of this title (relating to Dispute Resolution for Employee Requirements Related to In-Network Care);

(5) a statement that an employee who asserts that he or she does not currently live in the network's service area may choose to receive all health care services from the network during the pendency of the insurance carrier's review under §10.62 of this title and the pendency of the department's review of a complaint; and the employee may be liable, and the carrier may not be liable, for payment for health care services received out of network if it is ultimately determined that the employee lives in the network's service area;

(6) a statement that, except for emergency services, the employee must obtain all health care and specialist referrals through the employee's treating doctor;

(7) an explanation that network providers have agreed to look only to the network or insurance carrier and not to employees for payment of providing health care for a compensable injury, except as provided by paragraph (8) of this subsection;

(8) a statement that if the employee obtains health care from non-network providers without network approval, except for emergency care, the insurance carrier may not be liable, and the employee may be liable, for payment for that health care;

(9) information about how to obtain emergency care services, including emergency care outside the service area, and after-hours care;

(10) a list of the health care services for which the insurance carrier or network requires preauthorization or concurrent review;

(11) an explanation regarding continuity of treatment in the event of the termination from the network of a treating doctor;

(12) a description of the network's complaint system, including:

(A) a statement that an employee must file complaints with the network regarding dissatisfaction with any aspect of the network's operations or with network providers;

(B) any deadline for the filing of complaints, provided that the deadline may not be less than 90 days after the date of the event or occurrence that is the basis for the complaint;

(C) a single point of contact within the network for receipt of complaints, including the address and email address of the contact; and

(D) a statement that the network is prohibited from retaliating against:

(i) an employee, employer, or person acting on behalf of the employee or employer if the employee, employer, or person acting on behalf of the employee or employer files a complaint against the network or appeals a decision of the network; or

(ii) a provider if the provider, on behalf of an employee, reasonably files a complaint against the network or appeals a decision of the network; and

(E) a statement explaining how an employee may file a complaint with the department as described under §10.122 of this title (relating to Submitting Complaints to the Department);

(13) a summary of the insurance carrier's or network's procedures relating to adverse determinations and the availability of the independent review process;

(14) a list of network providers updated at least quarterly, including:

(A) the names and addresses of network providers grouped by specialty. Treating doctors must be identified and listed separately from specialists. Providers who are authorized to assess maximum medical improvement and render impairment ratings and providers who provide a telehealth service, telemedicine medical service, or teledentistry dental service must be clearly identified;

(B) a statement of limitations of accessibility and referrals to specialists; and

(C) a disclosure listing which providers are accepting new patients; and

(15) a statement that, except for emergencies, the network must arrange for services, including referrals to specialists, to be accessible to an employee on a timely basis on request and within the time appropriate to the circumstances and condition of the injured employee, but not later than 21 days after the date of the request.

(i) An employer or carrier, as applicable, must deliver the notice of network requirements and acknowledgment form to the employer's employees, and document:

- (1) the method of delivery;
- (2) to whom the notice was delivered;
- (3) the location of the delivery; and
- (4) the date or dates of delivery.

(j) The failure of an employer or carrier, as applicable, to establish a standardized process for complying with subsection (i) of this section creates a rebuttable presumption that the employee has not received the notice of network requirements and is not subject to network requirements.

(k) A dispute regarding whether an employer or carrier provided the information required by this section to an employee may be resolved by requesting a benefit review conference as provided by Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference).

§10.61. Employees Who Live Within the Network Service Area, Employee Access, and Insurance Carrier Liability for Health Care.

(a) The employees of an employer who elects to contract with an insurance carrier for network health care services, and who live within the network's service area, must obtain medical treatment for a compensable injury from in-network providers, except as provided in Insurance Code §1305.006(1) and (3), concerning Insurance Carrier Liability for Out-of-Network Health Care; subsection (e)(1), (3), and (4) of this section; and the rules of the Division of Workers' Compensation.

(b) An employee is presumed to live at the physical address he or she has represented to the employer as his or her address or, if

the employee no longer works for the employer, the physical address of record on file with the insurance carrier.

(c) At any time after the receipt of the notice of network requirements, an employee who no longer lives at the physical address described in subsection (b) of this section, or who otherwise asserts that he or she does not live in the network's service area, may notify the insurance carrier and request a review under §10.62 of this title (relating to Dispute Resolution for Employee Requirements Related to In-Network Care).

(d) An employee who does not live within a network's service area may choose to participate in a network established by the insurance carrier or with which the insurance carrier has a contract upon mutual agreement between the employee and insurance carrier.

(e) An employee who is found to have fraudulently claimed to live outside the network's service area or made an intentional misrepresentation regarding where he or she lives and receives health care outside the network's service area may be liable for payment for that health care.

(f) An insurance carrier that establishes or contracts with a network is liable for in-network health care for a compensable injury that is provided to an injured employee in accordance with Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks, and out-of-network care as follows:

- (1) emergency care;
- (2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract;
- (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network as follows:

(A) if an injured employee's treating doctor requests a referral to an out-of-network provider for medically necessary health care services that are not available from network providers, the network must approve or deny a referral to an out-of-network provider within the time appropriate under the circumstances, but, under any circumstance, not later than seven days after the date the referral is requested;

(B) if the network denies the referral request under subsection (a) of this section because the requested service is available from network providers, the employee may file a complaint in accordance with the network's complaint process under Insurance Code §1305.402, concerning Complaint Initiation and Initial Response; Deadlines for Response and Resolution, and §10.121 of this title (relating to Complaints; Deadlines for Response and Resolution);

(C) if the network denies the referral request under subparagraph (A) of this paragraph because the specialist referral is not medically necessary, the employee may file a request for independent review as described in §10.104 of this title (relating to Independent Review of Adverse Determination); and

(4) health care services provided to an injured employee before the employee received the notice of network requirements and the employee information for the appropriate network and service area under Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements, and §10.60 of this title (relating to Notice of Network Requirements; Employee Information).

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

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James Person

General Counsel

Texas Department of Insurance

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



SUBCHAPTER E. NETWORK OPERATIONS

28 TAC §§10.80 - 10.86

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.80 - 10.86 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.81. *Quality Improvement Program.*

(a) A network must develop and maintain a continuous and comprehensive quality improvement program designed to monitor and evaluate objectively and systematically the quality and appropriateness of health care and network services, and to pursue opportunities for improvement. The quality improvement program must include return-to-work and medical case management programs. The network must dedicate adequate resources, including personnel and information systems, to the quality improvement program.

(b) Required documentation of the quality improvement program, at a minimum, includes:

(1) Written description. The network must develop a written description of the quality improvement program that outlines the program's organizational structure, functional responsibilities, and committee meeting frequency;

(2) Work plan. The network must develop an annual quality improvement work plan designed to reflect the type of services and the population served by the network in terms of age groups, disease or injury categories, and special risk status, such as type of industry. The work plan must include:

(A) objective and measurable goals, planned activities to accomplish the goals, time frames for implementation, individuals responsible, and evaluation methodology;

(B) evaluation of each program, including:

(i) network adequacy, which encompasses availability and accessibility of care and assessment of providers who are and are not accepting new patients;

(ii) continuity of health care and related services;

(iii) clinical studies;

(iv) the adoption and periodic updating of treatment guidelines, return-to-work guidelines, individual treatment protocols, and the list of services requiring preauthorization;

(v) employee and provider satisfaction;

(vi) the complaint-and-appeal process, complaint data, and identification and removal of communication barriers that may impede employees and providers from effectively making complaints against the network;

(vii) provider billing and provider payment processes, if applicable;

(viii) contract monitoring, including delegation oversight, if applicable, and compliance with filing requirements;

(ix) utilization review processes, if applicable;

(x) credentialing;

(xi) employee services, including after-hours telephone access logs;

(xii) return-to-work processes and outcomes; and

(xiii) medical case management outcomes.

(3) Annual evaluation. The network must prepare an annual written report on the quality improvement program that includes:

(A) completed activities;

(B) trending of clinical and service goals;

(C) analysis of program performance; and

(D) conclusions regarding the effectiveness of the program.

(c) The network is presumed to be in compliance with statutory and regulatory requirements regarding quality improvement requirements, including credentialing, if:

(1) the network has received nonconditional accreditation or certification by the National Committee for Quality Assurance, The Joint Commission, URAC, or the Accreditation Association for Ambulatory Health Care;

(2) the accreditation includes all quality improvement requirements set forth in this section;

(3) the certification for a function, including credentialing, includes all requirements set forth in this section;

(4) the national accreditation organization's requirements are the same as, substantially similar to, or more stringent than the department's quality improvement requirements; and

(5) the network has and will maintain documentation demonstrating that doctors who provide certifications of maximum medical improvement or assign impairment ratings to injured employees are authorized under §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).

(d) The network governing body is ultimately responsible for the quality improvement program and must:

(1) appoint a quality improvement committee that includes network providers;

(2) approve the quality improvement program;

(3) approve an annual quality improvement work plan;

(4) meet no less than annually to receive and review reports of the quality improvement committee or group of committees, and take action when appropriate; and

(5) review the annual evaluation of the quality improvement program.

(e) The quality improvement committee must evaluate the overall effectiveness of the quality improvement program. The committee may delegate and oversee quality improvement activities to subcommittees that may, if applicable, include practicing doctors and employees from the service area. All subcommittees must:

(1) collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services; and

(2) meet regularly and routinely report findings, recommendations, and resolutions in writing to the quality improvement committee for the network.

(f) The network must have a medical case management program with certified case managers whose certifying organization must be accredited by an established accrediting organization, including the National Commission for Certifying Agencies, the American Board of Nursing Specialties, or another national accrediting agency with similar standards. In accordance with Labor Code §413.021(a), concerning Return-to-Work Coordination Services, a claims adjuster may not serve as a case manager. The case manager must work with providers, employees, doctors, and employers to facilitate cost-effective health care and the employee's return to work, and must be certified in one or more of the following areas:

- (1) case management;
- (2) case management administration;
- (3) rehabilitation case management;
- (4) continuity of care;
- (5) disability management; or
- (6) occupational health.

§10.82. *Credentialing.*

(a) Networks must have a documented process for selection and retention of preferred providers sufficient to ensure that preferred providers are adequately credentialed. At a minimum, a network's credentialing standards must meet the standards promulgated by the National Committee for Quality Assurance (NCQA) or URAC to the extent that those standards do not conflict with other laws of this state. Networks will be presumed to be in compliance with statutory and regulatory requirements regarding credentialing if they have received nonconditional accreditation or certification by the NCQA, The Joint Commission, URAC, or the Accreditation Association for Ambulatory Health Care; maintain evidence of that accreditation or certification; and provide it to the department on request.

(b) The requirements of §10.41 of this title (relating to Network-Carrier Contracts) apply to delegation of credentialing.

(c) Delegation of credentialing.

(1) If the network delegates credentialing functions to other entities, it must have:

- (A) a process for developing delegation criteria and for performing pre-delegation and annual audits;
- (B) a delegation agreement;
- (C) a monitoring plan; and

(D) a procedure for termination of the delegation agreement for non-performance.

(2) If the network delegates credentialing functions to an entity accredited by one of the national accreditation organizations as described in §10.81(c) of this title (relating to Quality Improvement Program), the annual audit of that entity is not required for the function(s) listed in the accreditation; however, evidence of this accreditation must be made available to the department for review.

(3) The network must maintain and must make available for the department to review:

- (A) documentation of pre-delegation and annual audits;
- (B) executed delegation agreements;
- (C) semi-annual reports received from the delegated entities;
- (D) evidence of evaluation of the reports;
- (E) current rosters or copies of signed contracts with doctors and health care practitioners who are affected by the delegation agreement; and
- (F) documentation of ongoing monitoring.

(4) Credentialing files maintained by the other entities to which the network has delegated credentialing functions must be made available to the department for examination upon request.

(5) In all cases, the network must maintain the right to approve credentialing, suspension, and termination of doctors and health care practitioners.

(d) Compliance. Until January 1, 2023, entities subject to this section will be deemed to be in compliance with the section if they are in compliance with the section as adopted to be effective December 5, 2005. Entities subject to this section must make a filing attesting to compliance no later than January 1, 2023.

§10.83. *Guidelines and Protocols.*

(a) Each network must adopt treatment guidelines, return-to-work guidelines, and individual treatment protocols, which must be evidence-based, scientifically valid, outcome-focused, and be designed to reduce inappropriate or unnecessary health care while safeguarding access to necessary care.

(b) An insurance carrier or network may not deny treatment for a compensable injury solely because its treatment guidelines do not specifically address the treatment or injury.

(c) A network must, through its quality improvement program under §10.81 of this title (relating to Quality Improvement Program), assure that all treatment guidelines, return-to-work guidelines, and individual treatment protocols are made accessible to all network providers. The network must contractually require providers to follow treatment guidelines, return-to-work guidelines, and individual treatment protocols pursuant to §10.42(b)(2) of this title (relating to Network Contracts with Providers).

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

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SUBCHAPTER F. UTILIZATION REVIEW

28 TAC §§10.100, 10.101, 10.104

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.100, 10.101, and 10.104 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

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

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28 TAC §10.102, §10.103

STATUTORY AUTHORITY. The Commissioner adopts the repeals of §10.102 and §10.103 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

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

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SUBCHAPTER G. COMPLAINTS

28 TAC §§10.120 - 10.122

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.120 - 10.122 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.120. *Complaint System Required.*

(a) Each network must implement and maintain a complaint system compliant with Insurance Code Chapter 1305, Subchapter I, concerning Complaint Resolution, and this subchapter that provides reasonable procedures for resolving an oral or written complaint.

(b) For purposes of this subchapter, a complaint relating to a fee dispute is a complaint from a provider regarding failure to pay a claim in accordance with the contract between the network and provider.

§10.121. *Complaints; Deadlines for Response and Resolution.*

(a) Not later than seven calendar days after receipt of an oral or written complaint, a network must:

- (1) acknowledge receipt of the complaint in writing;
- (2) acknowledge the date of receipt; and
- (3) provide a description of the network's complaint procedures and deadlines.

(b) A network must investigate each oral or written complaint received in accordance with the network's policies and in compliance with this subchapter.

(c) After a network has investigated a complaint, the network must issue a resolution letter to the complainant not later than the 30th calendar day after the network receives the written complaint that:

- (1) explains the network's resolution of the complaint;
- (2) states the specific reasons for the resolution;
- (3) states the specialization of any health care provider consulted;
- (4) explains the network's procedures and deadlines for filing an appeal of the complaint; and
- (5) states that, if the complainant is dissatisfied with the resolution of the complaint or the complaint process, the complainant

may file a complaint with the department as described in §10.122 of this title (relating to Submitting Complaints to the Department).

(d) A network must maintain a complaint-and-appeal log regarding each complaint and categorize each complaint and appeal as one or more of the following:

- (1) quality of care or services;
- (2) accessibility and availability of services or providers;
- (3) utilization review;
- (4) complaint procedures;
- (5) health care provider contracts;
- (6) bill payment, as applicable;
- (7) fee disputes; and
- (8) miscellaneous.

(e) Each network must maintain the complaint-and-appeal log required under subsection (d) of this section and documentation on each complaint, appeal, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

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

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SUBCHAPTER H. EXAMINATIONS

28 TAC §10.200

STATUTORY AUTHORITY. The Commissioner adopts amendments to §10.200 under Insurance Code §§1305.007, 1305.251, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §1305.251 provides for the Commissioner to set and collect fees for network examinations under §1305.251 or §1305.252.

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.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.340

The Comptroller of Public Accounts adopts amendments to §3.340, concerning qualified research, without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3425). The rule will not be republished.

The comptroller amends this section to provide guidance regarding the research and development sales tax exemption.

The comptroller amends the definition of Internal Revenue Code (IRC) in subsection (a)(6) to explain which federal Treasury Regulations are applicable to the 2011 federal income tax year. The comptroller has reconsidered comments received during the 2021 rulemaking process and agrees that the adopted definition is too restrictive. The amended definition includes any Treasury Regulation that a taxpayer could have applied to the 2011 federal income tax year. The amended definition also includes specific examples of Treasury Regulations applicable to the 2011 federal income tax year.

The comptroller amends subsection (d)(5) to remove items that are inconsistent with the changes made to the definition of IRC. The comptroller reletters subparagraph (C) accordingly.

The comptroller received comments regarding adoption of the amendment from Michael Thompson of Ryan. While Mr. Thompson welcomes the proposed revisions, he commented on the existing language of the rule rather than the text proposed for amendment. With one exception described below, Mr. Thompson made the same comments during the process of adopting the previous amendments to this rule and the comptroller addressed the comments at that time. The comptroller's response to each comment has not changed. A summary of the comments and the comptroller's responses can be found in the preamble to the previous amendments, as published in October 15, 2021 issue of the *Texas Register* (46 TexReg 7048).

Mr. Thompson requests a public hearing. Government Code, §2001.029 (Public Comment) requires a public hearing if a public hearing is requested by: at least 25 persons; a governmental subdivision or agency; or an association having at least 25 members. Ryan is not a governmental subdivision or agency, and it is not an association having at least 25 members. The minimum of 25 persons required to mandate a public hearing has not been met because Ryan was the only person to request a public hearing. The comptroller declines to hold a public hearing.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §151.3182 (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation).

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

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.599

The Comptroller of Public Accounts adopts amendments to §3.599, concerning margin: research and development activities credit, without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3434). The rule will not be republished.

The comptroller amends this section to provide guidance regarding the franchise tax research and development activities credit.

The comptroller amends the definition of Internal Revenue Code (IRC) in subsection (b)(5) to explain which federal Treasury Regulations are applicable to the 2011 federal income tax year. The comptroller has reconsidered comments received during the 2021 rulemaking process and agrees that the adopted definition is too restrictive. The amended definition includes any Treasury Regulation that a taxable entity could have applied to the 2011 federal income tax year. The amended definition also includes specific examples of Treasury Regulations applicable to the 2011 federal income tax year.

The comptroller amends subsection (d)(5) to remove items that are inconsistent with the changes made to the definition of IRC. The comptroller reletters subparagraph (C) accordingly.

The comptroller reorganizes subsection (i)(1) and (2) for readability and amends the language moved from paragraph (2) to paragraph (1) to explain that the combined group is the taxable entity for the purposes of calculating and reporting the credit.

The comptroller revises paragraph (3) to remove the current text restricting credit carryforwards and describes how to determine the credit carryforward when the membership of a combined group changes.

The comptroller amends subsection (m) by explaining that the conveyance, assignment, or transfer of an ownership interest in the taxable entity is not a conveyance, assignment, or transfer of the credit by the taxable entity.

The comptroller received comments regarding adoption of the amendment from Michael Thompson of Ryan and Mike Williams of RSM US LLP (RSM). While Mr. Thompson welcomes the proposed revisions, both he and Mr. Williams commented on the existing language of the rule rather than the text proposed for amendment. With two exceptions described below, the commenters made the same comments during the process of adopting the previous amendments to this rule and the comptroller addressed the comments at that time. The comptroller's response to each comment has not changed. A summary of the comments and the comptroller's responses can be found in the preamble to the previous amendments, as published in October 15, 2021, issue of the *Texas Register* (46 TexReg 7060).

Mr. Thompson also requests a public hearing. Government Code, §2001.029 (Public Comment) requires a public hearing if a public hearing is requested by: at least 25 persons; a governmental subdivision or agency; or an association having at least 25 members. Ryan is not a governmental subdivision or agency, and it is not an association having at least 25 members. The minimum of 25 persons required to mandate a public hearing has not been met because Ryan was the only person to request a public hearing. The comptroller declines to hold a public hearing.

Mr. Thompson comments that the amendment to subsection (b)(5) that now includes Treasury Regulations related to pilot models is inconsistent with the provision in subsection (b)(8)(A)(iii) explaining that certain sales tax exemptions are allowed for uses that are incompatible with the item also being used in qualified research activities. The pilot model Treasury Regulations referenced relate to the Section 174 Test. These regulations do not affect the other three parts of the Four-Part Test, the definition of "qualified research expenses," or any uses for which sales tax exemptions are allowed. The comptroller declines to modify the rule based on this comment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

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

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Jenny Burleson

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Comptroller of Public Accounts

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3061

The Comptroller of Public Accounts adopts new §9.3061, concerning installment payments of taxes on property not directly damaged in a disaster or emergency area, without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3445). The rule will not be republished.

This new section implements Senate Bill 742, Section 4, 87th Legislation, R.S. (2021). This section closely follows the language in Tax Code, §31.033 so as not to create an undue burden on the taxing units that adopt this installment payment option and to allow them flexibility to create their own policies that comply with the requirements in Tax Code, §31.033.

Subsection (a) provides definitions for terms used in the new section.

Subsection (b) establishes the types of property and taxes to which the new section applies.

Subsection (c) establishes that Tax Code, §31.032(b), (b-1), (c), and (d) apply to the payment of taxes to a taxing unit that has adopted an installment payment option for taxes owed on property described in the new section.

The comptroller did not receive any comments regarding adoption of the amendment.

This new section is authorized by Tax Code, §31.033 (d), which requires the comptroller to adopt rules to implement Tax Code, §31.033.

This new section implements Tax Code, §31.033, concerning Installment Payments of Taxes on Property in Disaster Area or Emergency Area That Has Not Been Damaged as a Result of Disaster or Emergency.

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

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Victoria North

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Comptroller of Public Accounts

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES

The Texas Department of Transportation (department) adopts the repeal of §§4.10 - 4.15, new §§4.10 - 4.16, concerning Job Application Procedures, and §§4.70 - 4.78, concerning Family Leave Pool Program, and amendments to §§4.22 - 4.25, concerning Employment and Education Programs. The repeal of §§4.10 - 4.15, new §§4.10 - 4.16 and §§4.70 - 4.78, and amendments to §§4.22 - 4.25 are adopted without changes to the pro-

posed text as Published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2724) and will not be republished.

EXPLANATION OF ADOPTED REPEAL, AMENDMENTS, AND NEW SECTIONS

The purpose of the repeal, amendments, and new sections is to respond to numerous legislative changes, to align the rules with the procedures that are currently being used, and to promote efficiencies in the department's employment practices.

New §4.10, Purpose, identifies the statutory requirements with which the department's job application procedures will comply. The new section is substantively the same as existing §4.10 with the addition of the recognition of preferences for former foster children.

New §4.11, Definition, defines "department" for this subchapter. Unused and unnecessary definitions from former §4.11 have not been included.

New §4.12, Job Postings, explains the department's job posting process to include the types of positions the department will post, the descriptive information, including military occupational specialty codes, that will be included in the department's job postings, and that the department will notify the Texas Workforce Commission when a vacant position has been filled. Government Code, §§656.002 and 656.023, amended by S. B. No. 389, Acts of the 84th Legislature, Regular Session, require state agencies to include on all employment opening forms and notices the military occupational specialty codes that correspond to the employment opening if the duties of the available position correlate with a military occupational specialty.

New §4.13, Application, requires that an applicant must complete an online application and identifies the online application systems available that an applicant may use to submit an employment application. Government Code, §656.002, amended by H. B. No. 426, Acts of the 84th Legislature, Regular Session, requires state agencies to accept applications through the Texas Workforce Commission's WorkInTexas.com website and allows state agencies to continue to accept employment applications in other ways. New §4.13 also identifies the information that must be included on an employment application and specifies when an application must be received and the minimum age of an applicant for an application to be considered.

New §4.14, Screening, lists the factors that the department considers when determining if an applicant meets the minimum job requirements.

New §4.15, Preferences, identifies employment preferences that the department will give an applicant in accordance with statutory requirements. Government Code, §657.003, amended by S. B. No. 805, Acts of the 84th Legislature, Regular Session, requires state agencies to provide a veterans' employment preference. Chapter 672, Government Code, was added by H. B. No. 1043, Acts of the 81st Legislature, Regular Session, and requires a hiring preference at state agencies for certain individuals who were in the state foster care system.

New §4.16, Medical Examination, provides that an applicant for a physically demanding position must pass a medical examination and adds a definition of physically demanding position. Labor Code, §505.054, which was amended by S. B. No. 1323, Acts of the 87th Legislature, Regular Session, no longer requires that all employees must pass a pre-employment physical examination. New §4.16 clarifies that the director of the Human Resources Division is responsible for determining which positions are phys-

ically demanding. New §4.16 also deletes the requirement that the department must designate practicing physicians to conduct the medical examinations and instead provides that the department may do so. Labor Code, §505.054, no longer requires that the department must designate practicing physicians to conduct the medical examinations.

Amendments to §4.22, College Cooperative Education Program, clarify that a student participating in the cooperative education program will be required to pass the medical examination only if the student's work assignment requires a medical examination under §4.16(a).

Amendments to §4.23, High School Cooperative Program, establish a new minimum age requirement of 16 years of age for a high school student to be eligible to participate in the high school cooperative program. The amendments also clarify that a student will be required to pass the medical examination only if the student's work assignment in the program requires a medical examination under §4.16(a).

Amendments to §4.24, College Intern Program, clarify that a student participating in the college intern program will be required to pass the medical examination only if the student's work assignment in the program requires a medical examination under §4.16(a).

Amendments to §4.25, Conditional Grant Program, correct typographical errors, remove redundancies, and update program procedures. In subsection (d) the due date for an application is changed to April 1. In subsection (g)(3) the amount for one conditional grant per academic semester is increased in response to rising costs of tuition. In subsection (j)(1) the references to freshman and sophomore years are replaced with specific college credit hours relating to repayment of a conditional grant. In subsection (j)(4) the time that a conditional grant recipient is to begin repayment of the conditional grant is changed until after the student's expected date of graduation. In subsection (j)(6) the requirement that a conditional grant recipient must adhere to the established repayment schedule as a part of the condition for the department to waive repayment of any remaining amounts owed to the department is deleted. Changes in subsection (j) expand the reasons that the department may temporarily reduce, defer, or extend repayment of grant funds on a student's submission of a formal request. The changes to §4.25 promote efficiency in the administration of the Conditional Grant Program.

New §4.70, Purpose, describes the purpose and authority for a family leave pool program for an eligible employee of the department to use for bonding and caring for the employee's children or a person over whom the employee has guardianship, or caring for an immediate family member's or the employee's serious illness, including a pandemic-related illness or complication. Government Code, Chapter 661, Subchapter A-1, which was added by H. B. No. 2063, Acts of the 87th Legislature, Regular Session, 2021, requires each state agency to create a family leave pool program.

New §4.71, Definitions, provides meaning for the words and terminology used in this subchapter.

New §4.72, Administration of the Pool, establishes the Pool Administrator's responsibilities for the administration of the family leave pool.

New §4.73, Eligibility, identifies eligibility requirements for the ability to use time contributed to the family leave pool and identifies ineligibility to use time contributed to the family leave pool.

New §4.74, Contributions, explains allowable contributions that employees and retiring employees may make to the family leave pool and clarifies that contributions are not returnable. The section authorizes the pool administrator to adjust employees' accounts and the family leave pool balances based on contributions to the family leave pool and use of leave granted under the family leave pool.

New §4.75, Requests for Withdrawals, establishes procedures for an eligible employee to apply for permission to withdraw time from the family leave pool and places limitations on the amounts that employees may withdraw from the family leave pool.

New §4.76, Decision on a Request, establishes the criteria the pool administrator must use when considering requests and the timeline in which the pool administrator must issue a determination.

New §4.77, Unused Leave, establishes the procedures for returning unused leave granted under the family leave pool program.

New §4.78, Equal Treatment, establishes that use of leave granted under the family leave pool program is equivalent to an employee's using sick leave earned by the employee.

COMMENTS

No comments on the proposed repeal, new, and amendments were received.

SUBCHAPTER B. JOB APPLICATION PROCEDURES

43 TAC §§4.10 - 4.15

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Labor Code, §505.051, which provides the department with the authority to adopt rules to effectively administer Labor Code, Chapter 505; Education Code, §56.142, which requires the department to establish and administer a conditional grant program; and Government Code, §661.022, which provides the department with the authority to adopt rules to effectively administer a family leave pool program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Education Code, §§56.141-56.145; Government Code, §§656.002, 656.023, and 657.003, Chapter 661, Subchapter A-1, and §§672.002 and 672.005; and Labor Code, §505.054.

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

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43 TAC §§4.10 - 4.16

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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SUBCHAPTER C. EMPLOYMENT AND EDUCATION PROGRAMS

43 TAC §§4.22 - 4.25

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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SUBCHAPTER G. FAMILY LEAVE POOL PROGRAM

43 TAC §§4.70 - 4.78

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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