

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §12.13

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §12.13 to allow a non-resident attorney to represent a respondent in a sworn complaint proceeding if the non-resident attorney follows the *pro hac vice* (temporary admission) procedures promulgated by the Supreme Court of Texas. The amendment is adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2653), and will not be republished.

Appearances filed by non-resident attorneys in Commission sworn complaint matters may cause unnecessary delay and raise concerns about the authority of such attorneys to participate in such matters. This amendment will resolve these issues and create a process through which a non-resident attorney may be allowed to practice before the Commission. The amendment is modelled after §155.201 of the State Office of Administrative Hearings (SOAH) Rules of Procedure and will allow a non-resident attorney to follow the procedure set by the Texas Supreme Court for *pro hac vice* admission found in Rule XIX of the Supreme Court's Rules Governing Admission to the Bar of Texas. The rule requires a non-resident attorney to pay the admission fee to the state Board of Law Examiners, complete the application form, and file a motion with the Commission. The Commission's presiding officer may then issue an order granting admission to the non-resident attorney for the purpose of representing a respondent in a particular sworn complaint.

No public comments were received on this amendment.

The amendment to §12.13 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §12.13 affects Subchapters E and F of Chapter 571 of the Government Code.

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, 2018.

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For further information, please call: (512) 463-5800



1 TAC §12.31

The Texas Ethics Commission (the Commission) adopts new Texas Ethics Commission Rules §12.31, regarding conduct and decorum during complaint proceedings. The new rule is adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2654) and will not be republished.

The new rule will clearly set out rules of conduct for enforcement hearings conducted by the Commission to facilitate order and fairness for all involved parties. The rule draws primarily from rules of the State Office of Administrative Hearings (SOAH).

No public comments were received on this new rule.

The new rule §12.31 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code, and Texas Government Code §571.1244 and §571.131, which require the Commission to adopt rules and procedures governing preliminary review hearings and formal hearings.

The new rule §12.31 affects Chapter 571 of the Government Code.

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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1 TAC §12.33

The Texas Ethics Commission (the Commission) adopts new Texas Ethics Commission Rules §12.33, regarding sanctions for violations or other actions abusing the complaint process. The

new rule is adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2654) and will not be republished.

Commission rule §6.21 currently authorizes the presiding officer of the Commission to take certain actions at a hearing to clarify issues and preserve order. New rule §12.33 specifies the Commission's sanction authority for either a violation of new Commission rule §12.31 (adopted contemporaneously with this rule) or abuse of the complaint process, including filing a frivolous or dilatory motion, abuse of discovery, or failing to comply with a Commission order. The new rule is modeled after rules of the State Office of Administrative Hearings (SOAH).

No public comments were received on this new rule.

The new rule §12.33 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code, and Texas Government Code §571.1244 and §571.131, which require the Commission to adopt rules and procedures governing preliminary review hearings and formal hearings.

The new rule §12.33 affects Chapter 571 of the Government Code.

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 B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §12.53

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §12.53, regarding ex parte communications between staff and commissioners in sworn complaint proceedings. The amendment is adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2655) and will not be republished.

The amendment expressly states that Commission staff and members may communicate ex parte in contemplation of, or in preparation for, initiating a preliminary review. The amendment is intended to facilitate the sworn complaint process and give assurance to all persons involved in that process.

No written public comments were received on this amended rule. At a public meeting held by the Commission, Mr. Trey Trainor spoke to the Commission and stated that ex parte communications regarding the initiation of a preliminary review should only be permitted for Commission staff who are involved in an audit or that the rule should require recusal of that staff in the subsequent preliminary review. The Commission did not agree with the proposal because the Commission's authority to initiate a

preliminary review includes matters other than the audit of a report and a requirement for staff to recuse from the preliminary review would hinder the Commission's enforcement process.

The amended rule §12.53 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule §12.53 affects Subchapters E and F of Chapter 571 of the Government Code.

§12.53. Commission Initiated Complaint.

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate outside the presence of the respondent with commissioners in contemplation of, or in preparation for, a commission initiated preliminary review. Commissioners may request documents, evidence, or recommendations, and otherwise communicate with commission staff outside the presence of the respondent, in contemplation of, or in preparation for, a commission initiated preliminary review.

(b) A preliminary review initiated by the commission under section 571.124(b) of the Government Code is deemed to be a complaint for purposes of all further proceedings under chapter 571 of the Government Code and of this chapter.

(c) Documents or evidence gathered by the commission and commission staff in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

(d) Discussions between the commission and commission staff regarding gathering documents or evidence in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

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

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. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.83

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §12.83, regarding ex parte communications between staff and commissioners in sworn complaint proceedings. The amendment is adopted without changes to the proposed text as published in the May

4, 2018, issue of the *Texas Register* (43 TexReg 2656) and will not be republished.

The amendment expressly states that Commission staff and members may communicate ex parte, outside the presence of a respondent, during a preliminary review and expressly requires all such communications to cease regarding a pending complaint once it is set for a preliminary review hearing and notice of the hearing has been sent to the respondent. The amendment is intended to facilitate the sworn complaint process and give assurance to all persons involved in that process.

No written public comments were received on this amended rule. At a public meeting held by the Commission, Mr. Trey Trainor spoke to the Commission in opposition to the practice of ex parte communications in the complaint process. The Commission did not agree with the comments because the authority to communicate ex parte facilitates the resolution of sworn complaints and a respondent's right to a preliminary review hearing and formal hearing before the Commission and subsequent appeal to state district court provides ample due process.

The amended rule §12.83 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule §12.83 affects Subchapters E and F of Chapter 571 of the Government Code.

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 E. FORMAL HEARING DIVISION 1. GENERAL PROCEDURES

1 TAC §12.101, §12.102

The Texas Ethics Commission (the Commission) adopts new Ethics Commission Rules §12.101 and §12.102, regarding procedures for formal hearings. The new rules are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2657) and will not be republished.

Subchapter E, Chapter 571, of the Government Code governs the Commission's sworn complaint process and includes §571.121, which authorizes the Commission to hold hearings and render decisions on complaints. Sections 571.1211 to 571.139 set out the complaint process. The new rules further the directive provided by §571.131(c) of the Government Code to adopt rules governing discovery, hearings, and related procedures consistent with the Commission's operating statutes and the APA. The intent of this rulemaking is to set out clear procedures for both respondents and agency staff and are largely

based on rules promulgated by the State Office of Administrative Hearings (SOAH). The rules accomplish the following:

Section 12.101 clarifies the laws that govern a formal hearing. This rule largely repeats §571.139(c), Government Code.

Section 12.102 provides how the executive director will give a complainant and respondent a copy of the Commission's decision to order a formal hearing.

The Commission is also contemporaneously submitting the following adopted rules, which also further the directive provided by §571.131(c), including §§12.121, 12.123, 12.125, 12.127, 12.131, 12.133, 12.151, 12.153, 12.155, 12.161, 12.163, 12.165, 12.167, 12.171, 12.173, and 12.175.

No public comments were received on these new rules.

The new rules are adopted under Texas Government Code §571.062 and §571.131(c).

The new rules affect Subchapter E of Chapter 571 of the Government Code.

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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DIVISION 2. SCHEDULING, FILING, AND SERVICE

1 TAC §§12.121, 12.123, 12.125, 12.127

The Texas Ethics Commission (the Commission) adopts new Ethics Commission Rules §§12.121, 12.123, 12.125, and 12.127, regarding procedures for formal hearings. Sections 12.121, 12.123, and 12.127 are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2657) and will not be republished. Section 12.125 is adopted with minor punctuation changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2657) and will be republished.

Subchapter E, Chapter 571, of the Government Code governs the Commission's sworn complaint process and includes §571.121, which authorizes the Commission to hold hearings and render decisions on complaints. Sections 571.121 to 571.139 set out the complaint process. The new rules further the directive provided by §571.131(c) of the Government Code to adopt rules governing discovery, hearings, and related procedures consistent with the Commission's operating statutes and the APA. The intent of this rulemaking is to set out clear procedures for both respondents and agency staff and are largely based on rules promulgated by the State Office of Administrative Hearings (SOAH). The rules accomplish the following:

Section 12.121 authorizes the presiding officer to order prehearing conferences to resolve matters prior to the formal hearing.

Section 12.123 provides certain deadlines for motions and responses and requires deadlines to be included in a scheduling order included with a formal hearing notice.

Section 12.125 provides the requirements for filing documents with the Commission for a formal hearing.

Section 12.127 provides the requirements for serving documents on parties.

The Commission is also contemporaneously submitting the following adopted rules, which also further the directive provided by §571.131(c), including §§12.101, 12.102, 12.131, 12.133, 12.151, 12.153, 12.155, 12.161, 12.163, 12.165, 12.167, 12.171, 12.173, and 12.175.

No public comments were received on these new rules.

The new rules are adopted under Texas Government Code §571.062 and §571.131(c).

The new rules affect Subchapter E of Chapter 571 of the Government Code.

§12.125. Filing of Documents.

(a) Motions, responses, and other documents in a formal hearing must be filed with the Commission:

(1) by mail addressed to the commission at P.O. Box 12070, Austin, Texas 78711-2070;

(2) by hand-delivery to the commission at 201 East 14th Street, 10th Floor, Austin, Texas 78701;

(3) by fax to the commission at (512) 463-5777; or

(4) by email to a dedicated filing address.

(b) All documents must clearly indicate the sworn complaint number and the name of the respondent for which it is filed.

(c) Time of filing. With respect to documents filed by mail, fax, or hand-delivery, the time and date of filing shall be determined by the file stamp affixed by the commission. With respect to documents filed by email, the time and date of filing is the electronic time stamp affixed by the commission's email system. Documents received when the commission is closed shall be deemed filed the next business day.

(d) Non-conforming documents. The commission may not refuse to file a document that fails to conform with this chapter. When a filed document fails to conform to this rule, the executive director or presiding officer may identify the errors to be corrected and state a deadline.

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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DIVISION 3. POWERS AND DUTIES OF COMMISSION AND PRESIDING OFFICER

1 TAC §12.131, §12.133

The Texas Ethics Commission (the Commission) adopts new Ethics Commission Rules §12.131 and §12.133, regarding procedures for formal hearings. The new rules are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2659) and will not be republished.

The Commission is also contemporaneously submitting the following adopted rules, which also further the directive provided by §571.131(c): §§12.101, 12.102, 12.121, 12.123, 12.125, 12.127, 12.151, 12.153, 12.155, 12.161, 12.163, 12.165, 12.167, 12.171, 12.173, and 12.175.

Subchapter E, Chapter 571, of the Government Code governs the Commission's sworn complaint process and includes §571.121, which authorizes the Commission to hold hearings and render decisions on complaints. Sections 571.121 to 571.139 set out the complaint process. The new rules further the directive provided by §571.131(c) of the Government Code to adopt rules governing discovery, hearings, and related procedures consistent with the Commission's operating statutes and the APA. This rulemaking sets out clear procedures for both respondents and agency staff and is largely based on rules promulgated by the State Office of Administrative Hearings (SOAH). The new rules accomplish the following:

Section 12.131 provides the powers and duties of the presiding officer regarding a formal hearing.

Section 12.133 provides the presiding officer's authority to issue orders and administer a formal hearing.

No public comments were received on these new rules.

The new rules are adopted under Texas Government Code §571.062 and §571.131(c).

The new rules affect Subchapter E of Chapter 571 of the Government Code.

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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DIVISION 5. PLEADINGS AND MOTIONS

1 TAC §§12.151, 12.153, 12.155

The Texas Ethics Commission (the Commission) adopts new Ethics Commission Rules §§12.151, 12.153, and 12.155, regarding procedures for formal hearings. The new rules are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2660) and will not be republished.

The Commission is also contemporaneously submitting the following adopted rules, which also further the directive provided

by §571.131(c), including §§12.101, 12.102, 12.121, 12.123, 12.125, 12.127, 12.131, 12.133, 12.161, 12.163, 12.165, 12.167, 12.171, 12.173, and 12.175.

Subchapter E, Chapter 571, of the Government Code governs the Commission's sworn complaint process and includes §571.121, which authorizes the Commission to hold hearings and render decisions on complaints. Sections 571.121 to 571.139 set out the complaint process. The new rules further the directive provided by §571.131(c) of the Government Code to adopt rules governing discovery, hearings, and related procedures consistent with the Commission's operating statutes and the APA. The intent of this rulemaking is to set out clear procedures for both respondents and agency staff and are largely based on rules promulgated by the State Office of Administrative Hearings (SOAH). The rules accomplish the following:

Section 12.151 provides the form requirements for pleadings filed for a formal hearing.

Section 12.153 requires any request in a formal hearing to be filed by motion, including a certificate of conference that certifies that the party attempted to resolve the matter by conferring with the opposing party. The rule authorizes the presiding officer to extend a deadline for good cause.

Section 12.155 provides requirements for a motion for a continuance or to extend time, including that such motion must be filed at least 5 days before the date of the proceeding or deadline unless the presiding officer permits a late filing for good cause shown.

No public comments were received on these new rules.

The new rules are adopted under Texas Government Code §571.062 and §571.131(c).

The new rules affect Subchapter E of Chapter 571 of the Government Code.

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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DIVISION 6. HEARINGS AND PREHEARING CONFERENCES

1 TAC §§12.161, 12.163, 12.165, 12.167

The Texas Ethics Commission (the Commission) adopts new Ethics Commission Rules §§12.161, 12.163, 12.165 and 12.167, regarding procedures for formal hearings. The new rules are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2662) and will not be republished.

Subchapter E, Chapter 571, of the Government Code governs the Commission's sworn complaint process and includes

§571.121, which authorizes the Commission to hold hearings and render decisions on complaints. Sections 571.121 to 571.139 set out the complaint process. The new rules further the directive provided by §571.131(c) of the Government Code to adopt rules governing discovery, hearings, and related procedures consistent with the Commission's operating statutes and the APA. The intent of this rulemaking is to set out clear procedures for both respondents and agency staff and are largely based on rules promulgated by the State Office of Administrative Hearings (SOAH). The rules accomplish the following:

Section 12.161 requires the presiding officer to provide each party with an amount of time to present their case at a formal hearing, which can be adjusted for good cause or for a violation of procedural rules.

Section 12.163 provides how the parties shall make their presentation at a formal hearing.

Section 12.165 specifies that the Texas Rules of Evidence as applied in a nonjury civil case in district court govern a formal hearing to the extent they are consistent with Chapter 571, Government Code, and that evidence may be admitted if it meets the standards set out in §2001.081, Government Code.

Section 12.167 specifies the procedural requirements for admitting evidence at a formal hearing.

The Commission is also contemporaneously submitting the following adopted rules, which also further the directive provided by §571.131(c), including §§12.101, 12.102, 12.121, 12.123, 12.125, 12.127, 12.131, 12.133, 12.151, 12.153, 12.155, 12.171, 12.173, and 12.175.

No public comments were received on these new rules.

The new rules are adopted under Texas Government Code §571.062 and §571.131(c).

The new rules affect Subchapter E of Chapter 571 of the Government Code.

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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DIVISION 7. DISPOSITION OF FORMAL HEARING

1 TAC §§12.171, 12.173, 12.175

The Texas Ethics Commission (the Commission) adopts new Ethics Commission Rules §§12.171, 12.173, and 12.175, regarding procedures for formal hearings. The new rules are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2663) and will not be republished.

Subchapter E, Chapter 571, of the Government Code governs the Commission's sworn complaint process and includes §571.121, which authorizes the Commission to hold hearings and render decisions on complaints. Sections 571.121 to 571.139 set out the complaint process. The new rules further the directive provided by §571.131(c) of the Government Code to adopt rules governing discovery, hearings, and related procedures consistent with the Commission's operating statutes and the APA. The intent of this rulemaking is to set out clear procedures for both respondents and agency staff and are largely based on rules promulgated by the State Office of Administrative Hearings (SOAH). The rules accomplish the following:

Section 12.171 specifies that the Commission shall determine at a formal hearing whether a violation occurred by preponderance of the evidence.

Section 12.173 provides how the Commission may proceed in a respondent's absence at a formal hearing, including deeming the allegations admitted and granting the relief sought.

Section 12.175 clarifies that the Commission may deliberate in closed session regarding certain formal hearing matters, including the resolution of the hearing.

The Commission is also contemporaneously submitting the following adopted rules, which also further the directive provided by §571.131(c), including §§12.101, 12.102, 12.121, 12.123, 12.125, 12.127, 12.131, 12.133, 12.151, 12.153, 12.155, 12.161, 12.163, 12.165, and 12.167.

No public comments were received on these new rules.

The new rules are adopted under Texas Government Code §571.062 and §571.131(c).

The new rules affect Subchapter E of Chapter 571 of the Government Code.

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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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1, 175.3, 175.4

The Texas Judicial Council (the Council) adopts amendments to §§175.1, 175.3, and 175.4 of Chapter 175, Title I, Texas Administrative Code, concerning the Collections Improvement Program. The amendments are adopted without changes to the proposed

text as published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3171). The rule text will not be republished.

The amendments implement changes in the law made by House Bill 3167, 85th Texas Legislature, Regular Session (2017), repeal reporting requirements that are no longer essential for compliance with Art. 103.0033 of the Code of Criminal Procedure, and require monthly submission of certain reports consistent with the current practice of most of the local programs that are subject to the rules.

No comments were received regarding the proposed adoption of the amendments.

The amendments are adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the rules is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the new rules.

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 3, 2018, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability and performance monitoring. The amendment is adopted with changes to the proposed text as published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3203). The amendment adopts in rule applicable excerpts of the *2018 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

REASONED JUSTIFICATION. The TEA has adopted its academic accountability manual in rule since 2000. The account-

ability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2018 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-9 of the *2018 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and open-enrollment charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. The TEA will issue accountability ratings and distinction designations under the procedures specified in the *2018 Accountability Manual* by August 15, 2018. Ratings and distinction designations may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.057.

This year's manual is substantially different from previous manuals. While some parts of the manual are completely new, other parts remained largely the same but were moved to a different chapter; others remained largely the same and remain in the same chapter. The following is a chapter-by-chapter summarization of this year's manual.

Chapter 1 gives an overview of the entire accountability system. It combines parts of Chapter 1 (not adopted in rule in previous years) and Chapter 2 from the previous manual, reorders some of the material in Chapter 2, and removes language specific to the past accountability system. It adds information about State of Texas Assessments of Academic Readiness (STAAR®) indicators, Texas Student Data System Public Education Information Management System (TSDS PEIMS) indicators, and other assessment indicators. Another substantial difference from the previous Chapter 2 is the description of the three new domains and the rating labels for school districts and open-enrollment charter schools. The three new domains are required by TEC, §39.053(c). The requirement to use the new rating labels is in TEC, §39.054(a).

Chapter 2 describes the Student Achievement domain and is entirely new. This domain evaluates the results of STAAR® assessments at the Approaches, Meets, and Masters Grade Level standards across all grade levels, graduation rates, and several college, career, and military readiness indicators. Evaluating Approaches and Meets Grade Level standards on STAAR® is required by TEC, §39.053(c)(1)(A)(i)(a) and (b). The inclusion of the Masters Grade Level standard is a policy choice. The objective is to reward success at all performance levels to encourage administrative focus on all students, rather than just those near the lowest passing standard.

The use of graduation rates, which are measured in the Graduation Rate Component, is required by TEC, §39.053(c)(1)(B)(ix). The college, career, and military readiness indicators are required by TEC, §39.053(c)(1)(B)(i)-(viii), (x), and (xi). How these indicators are used is a policy choice. The indicators and an explanation for how each one is used follows.

Indicator: Meet Texas Success Initiative (TSI) Criteria in ELA/Reading and Mathematics.

Explanation: A graduate meeting the TSI college readiness standards in both ELA/reading and mathematics; specifically, meeting the college-ready criteria on the TSI assessment (TSIA), SAT,

ACT, or by successfully completing and earning credit for a college prep course as defined in TEC, §28.014, in both ELA and mathematics. Meeting the criteria in both reading and mathematics aligns with the Texas Higher Education Coordinating Board's (THECB's) expectations for college readiness.

Indicator: Meet Criteria on Advanced Placement (AP)/International Baccalaureate (IB) Examination.

Explanation: A graduate meeting the criterion score on an AP or IB examination in any subject area. Criterion score is 3 or more for AP and 4 or more for IB. Research shows a correlation between first-year persistence in higher education for students who meet the criteria on an AP/IB examination, consistent with the college-ready threshold for SAT/ACT/TSIA. Including any subject area is in response to stakeholder feedback.

Indicator: Earn Dual Course Credits.

Explanation: A graduate completing and earning credit for at least three credit hours in ELA or mathematics or at least nine credit hours in any subject. This requirement was decreased from the 12 hours required by House Bill (HB) 2804, 84th Texas Legislature, Regular Session, 2015. Research shows a correlation between first-year persistence in higher education for students who complete three hours of credit in ELA or mathematics. Including nine hours in any subject is in response to stakeholder feedback.

Indicator: Enlist in the Armed Forces.

Explanation: A graduate enlisting in the U.S. Army, Navy, Air Force, Coast Guard, or Marines. Enlistment standard encompasses academic readiness (ASVAB), physical fitness, and character screening.

Indicator: Earn an Industry-Based Certification.

Explanation: A graduate earning an industry-based certification under 19 TAC §74.1003, Industry-Based Certifications for Public School Accountability. Completion of at least one of the 73 industry-based certifications adopted under 19 TAC §74.1003 is a strong indicator of meaningful post-graduate employment. List validated via tri-agency stakeholder feedback (TEA, THECB, Texas Workforce Commission) and, where available, employment data.

Indicator: Earn an Associate's Degree.

Explanation: A graduate earning an associate's degree while in high school. Automatically met by students meeting dual-credit threshold but highlighted distinctly to showcase postsecondary completion.

Indicator: Graduate with Completed IEP and Workforce Readiness.

Explanation: A graduate receiving a graduation type code of 04, 05, 54, or 55, which indicates the student has completed his/her individualized education program (IEP) and has either demonstrated self-employment with self-help skills to maintain employment or has demonstrated mastery of specific employability and self-help skills that do not require public school services. Crediting school districts, open-enrollment charter schools, and campuses for annual special education graduates who complete workforce or work-skill programs while in high school meets the intent of the statute.

Indicator: CTE Coherent Sequence Coursework Aligned with Industry-Based Certifications.

Explanation: A career and technical education (CTE) coherent sequence graduate who has completed and received credit for at least one CTE course aligned with an industry-based certification. This indicator will award one-half point only for graduates who have met no other College, Career, and Military Readiness (CCMR) indicator. These graduates will receive one-half point credit for coursework completed toward an industry-based certification. Giving partial credit to school districts, open-enrollment charter schools, and campuses for CTE coherent sequence students who complete and earn credit for coursework aligned with the approved list of industry-based certifications is in response to stakeholder feedback. Also, phasing out CTE coherent sequence allows school districts, open-enrollment charter schools, and campuses to receive credit for efforts already in progress.

In relation to this indicator, the following is an overview of the current transition plan from CTE coherent sequence to industry-based certification. For 2018 and 2019, CTE coherent sequence graduates who complete and receive credit for at least one industry-based certification aligned CTE course earn one-half point. For 2020 and 2021, CTE coherent sequence graduates who complete and receive credit for a pathway of courses toward an industry-based certification earn one-half point. For 2022 and beyond, only graduates who earn an industry-based certification earn one point.

Chapter 3 describes the School Progress domain and is entirely new. This domain has two parts. The first part, Academic Growth, uses academic growth on the STAAR® assessment. The requirement for using growth on STAAR® is in TEC, §39.053(c)(2)(A). How growth is measured and how school districts, open-enrollment charter schools, and campuses are awarded for different levels of growth is a policy choice. The first part of the domain awards points depending on the amount of growth and the maintenance of proficiency. The rationale is to provide opportunities for school districts, open-enrollment charter schools, and campuses to receive credit for STAAR® results that either maintain proficiency or meet the student-level criteria for progress. This decision was also influenced by stakeholder feedback.

The second part, Relative Performance, uses the performance of school districts, open-enrollment charter schools, and campuses relative to similar school districts, open-enrollment charter schools, and campuses. The requirement for using relative performance is in TEC, §39.053(c)(2)(B). The determination of how to measure relative performance is based on available research. The second part of the domain compares academic performance to the percentage of students who are economically disadvantaged. The second part of the domain is based on research that has shown that a student's socioeconomic status is one of the most accurate predictors of achievement. Highlighting campuses that are the most successful in educating students who are economically disadvantaged can help identify best practices.

Chapter 4 describes the Closing the Gaps domain and is entirely new. This domain evaluates academic differences among student groups. The requirement to look at these differences is in TEC, §39.053(c)(3). This domain was designed to meet the federal requirements of the Every Student Succeeds Act (ESSA). ESSA requires five different indicators; the law prescribes four indicators and leaves the fifth indicator to the states' discretion (subject to approval of the U.S. Department of Education (USDE)). The construction of this domain is based on the

need to align to the language of ESSA and in response to comments from USDE.

Chapter 5 describes how the overall ratings are calculated and is entirely new. The overall ratings are a combination of two of the three domains. How to combine the ratings and the weight of each domain are required by TEC, §39.054(a-1).

Chapter 6 describes distinction designations; it was Chapter 5 in the previous manual. The only substantial change to this chapter is the explanation that districts that earn an *A*, *B*, *C*, or *D* are eligible for distinction designations. The eligibility of these districts for distinction designations is established in TEC, §39.054(a) and §39.201(b).

Chapter 7 describes the pairing process and the alternative education accountability provisions; it was Chapter 6 in the previous manual. There were no substantial changes from the previous manual.

Chapter 8 describes the process for appealing ratings; it was Chapter 7 in the previous manual. There were no substantial changes from the previous manual.

Chapter 8 from the previous manual has been removed completely.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions; it was Chapter 9 in the previous manual. There are no substantial changes from the previous manual.

In 2018, campuses and districts will be evaluated using three domains of indicators, which were developed based on extensive feedback from educators, school board members, business and community representatives, professional organizations, and legislative representatives from across the state. The three domains include performance on the STAAR® assessments for Grades 3-8 and end-of-course; CCMR indicators; and longitudinal graduation rates/annual dropout rates. The domains incorporate the various criteria mandated by statute as set out in the description of statutory authority under which the manual is adopted.

The Student Achievement domain evaluates performance across all subjects for all students on general and alternate assessments, CCMR, and graduation rates. The School Progress domain measures district and campus outcomes in two parts: (1) the number of students that grew at least one year academically (or are on track) as measured by STAAR® results, and (2) the achievement of students on STAAR® or a combination of STAAR® and CCMR relative to similar districts or campuses. The Closing the Gaps domain measures achievement differentials among students, including differentials among students from different racial and ethnic groups and socioeconomic backgrounds and other factors, including students formerly receiving special education services, continuously enrolled students, and students who are mobile. The better outcome of the Student Achievement domain and the School Progress domain is weighted at 70 percent of the overall rating. The Closing the Gaps domain is weighted at 30 percent. The combined total weighted outcomes of the two domains is the overall score.

The 2018 cut points for districts and campuses reflect high expectations for student achievement, school progress, and reducing achievement gaps among students of different racial and ethnic backgrounds and different socioeconomic statuses.

The cut points for an *A* equate high performance consistent with meeting statewide goals for students. For example, achieving a raw score of 60 in Student Achievement is consistent with the 60x30TX plan and is used to designate an *A* (or a 90 out of 100 scaled score) in that domain. Performance in a domain that was precisely average for campuses in the 2016-2017 school year is used to determine *C* cut points (specifically, 78 out of 100 for a slightly high *C*). Exact cut score levels are informed based on performance achieved in the 2016-2017 school year. To the extent possible, cut scores will remain static over five-year intervals so that as campuses improve statewide, campus ratings also improve. This allows for easier year-over-year performance comparisons and ensures it remains mathematically possible for all campuses to achieve an *A*, even in the first year of implementation. A performance rating of *A* reflects exemplary performance, *B* reflects recognized performance, *C* reflects acceptable performance, *D* reflects performance that needs improvement, and *F* reflects unacceptable performance. In 2018, *A*, *B*, *C*, *D*, or *F* ratings are assigned to districts for overall performance and for performance in each domain. Campuses are assigned *Met Standard*, *Met Alternative Standard*, or *Improvement Required* ratings for overall performance and for performance in each domain.

There are substantive changes to the accountability system for 2018. HB 22, 85th Texas Legislature, Regular Session, 2017, revised the accountability system from four indices to three domains. Additionally, HB 22 updated the performance indicators evaluated in the three domains. The *2018 Accountability Manual* incorporates these changes and includes the following: STAAR Component, which evaluates STAAR® at Approaches Grade Level, STAAR® at Meets Grade Level, and STAAR® at Masters Grade Level; CCMR Component, which includes the following indicators: Meet TSI Criteria in ELA/Reading and Mathematics, Meet Criteria on AP/IB Examination, Earn Dual Course Credits, Enlist in the Armed Forces, Earn an Industry-Based Certification, Earn an Associate's Degree, Graduate with Completed IEP and Workforce Readiness, and CTE Coherent Sequence Coursework Aligned with Industry-Based Certifications; Graduation Rate Component, which evaluates the four-year, five-year, or six-year longitudinal graduation rates; Academic Growth, which measures the percentage of students who met the standard for improvement; Relative Performance, which measures overall student performance compared to similar districts and campuses; and student achievement differentials among students, including differentials among students from different racial and ethnic groups and socioeconomic backgrounds and other factors, including students formerly receiving special education services, continuously enrolled students, and students who are mobile in Academic Achievement; Academic Growth Status; Federal Graduation Status; English Language Proficiency Component; Student Achievement Domain Score: STAAR® Component Only; CCMR Component Performance.

In 2018, the distinction designations system will award seven distinctions to eligible campuses that receive a *Met Standard* rating: Academic Achievement in English Language Arts/Reading; Academic Achievement in Mathematics; Academic Achievement in Science; Academic Achievement in Social Studies; Top 25 Percent: Comparative Academic Growth; Top 25 Percent: Comparative Closing the Gaps; and Postsecondary Readiness. Districts that receive an *A*, *B*, *C*, or *D* will be eligible for a distinction designation for Postsecondary Readiness.

The amendment to 19 TAC §97.1001 also updates cross references to statute in subsections (a) and (c).

Changes were made to the manual since published as proposed. The adopted manual includes the following changes either to provide clarification or in response to public comment.

Chapter 1 was revised to specify that, in calculating STAAR® retester performance, the best result is found for performance and progress, considered separately.

Chapter 2 was revised to include a modified methodology for small numbers analysis applied to the CCMR component. Language was added to clarify how English learners (ELs) who are in their second year in U.S. schools will be included in 2018 accountability calculations if the Texas English Language Proficiency Assessment System (TELPAS) waiver submitted to the U.S. Department of Education is denied. In addition, a technical edit was made to the URL link pointing to the list of 73 industry-based certifications found in 19 TAC §74.1003.

Chapter 3 was updated to reflect three changes. Language was added to clarify how ELs who are in their second year in U.S. schools will be included in 2018 accountability calculations if the TELPAS waiver submitted to the U.S. Department of Education is denied. Language was revised to specify that Academic Growth evaluates STAAR® assessment results for Grades 4-8, English II, and Algebra I end of course. Language was also updated to specify that the y-axis value for School Progress, Part B: Relative Performance is either the raw STAAR® component score or the average of the raw STAAR® and CCMR component scores.

Chapter 4 was updated to reflect multiple changes. Language was added to clarify how ELs who are in their second year in U.S. schools will be included in 2018 accountability calculations if the TELPAS waiver submitted to the U.S. Department of Education is denied. Language was revised to clarify that the Academic Achievement component evaluates STAAR® results at the Meets Grade Level standard or above. Language was revised to clarify the data sources for former special education identification. Language was modified to clarify the minimum size criteria for the Academic Achievement component of the Closing the Gaps domain. Language was added, as a technical correction, to clarify the methodology for the English Language Proficiency component if the TELPAS waiver submitted to the U.S. Department of Education is denied. The Student Achievement Domain Score: STAAR® Component Only minimum size criteria and small numbers analysis section was updated to remove subject area references as this component does not disaggregate by subject area. The CCMR component was revised to include a modified methodology for small numbers analysis. The targets for elementary and middle schools were rearranged to be presented before the targets for high schools, K-12s, and districts. The Federal Graduation Status targets for former special education, continuously enrolled, and non-continuously enrolled students were removed as these student groups are not evaluated in the graduation component of the Closing the Gaps domain.

Chapter 5 was updated to correct scaling formulas for *F* and scaled scores 30-59. Additionally, Chapter 5 was updated to include language clarifying overall district, open-enrollment charter school, and campus overall rating calculations. For districts and open-enrollment charter schools, if three of the four areas (Student Achievement; School Progress, Part A: Academic Growth; School Progress, Part B: Relative Performance; or Closing the Gaps) result in *F* ratings, the highest scaled score a district or open-enrollment charter school can receive for the overall rating is a 59. Likewise, if a campus receives an

Improvement Required rating in three of the four areas (Student Achievement; School Progress, Part A: Academic Growth; School Progress, Part B: Relative Performance; or Closing the Gaps), the highest scaled score a campus can receive for the overall rating is a 59. In order for this provision to be applied, the district, open-enrollment charter school, or campus must be evaluated on all four areas.

In addition, the page numbers were updated to reflect the changes made throughout the manual.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 18, 2018, and ended June 18, 2018. A public hearing on the proposed amendment was held on June 1, 2018. Following is a summary of the public comments received and the corresponding agency responses.

Comment. Lewisville Independent School District (ISD) commented that it is not legislatively mandated to include the Masters Grade Level standard in accountability and proposed accountability calculations only include the Approaches and Meets Grade Level standards as required by the legislature.

Agency Response. The agency disagrees. The average of the three performance levels is very close to the percentage of students who achieve the Meets Grade Level standard. The Meets Grade Level standard equates to a 60% chance of completing one year of college without remediation, which aligns with the THECB's 60x30TX plan.

Comment. An individual proposed adding the following statement to the description on page 3: "Student Achievement evaluates all performance levels across all subjects for all students, on both general and alternate assessments, CCMR indicators, and graduation rates."

Agency Response. The agency disagrees. Districts and campuses earn points in the Student Achievement domain for the percentages of assessment results at the Approaches Grade Level or above, Meets Grade Level or above, and Masters Grade Level standards. No points are awarded for assessments at the Did Not Meet Grade Level standard.

Comment. New Frontiers Public Schools proposed that the Student Achievement domain include only assessments at the Approaches Grade Level standard in the denominator when calculating the percentage of results at the Meets Grade Level standard and only the number of assessment at the Meets Grade Level standard in the denominator for calculating the percentage of results at the Masters Grade Level standard.

Agency Response. The agency disagrees. The accountability system must ensure that districts and campuses are held accountable for all students, including those who have yet to meet satisfactory standards.

Comment. Premont ISD proposed allowing end-of-course (EOC) testers who met the Approaches Grade Level standard to retest until they achieve the Meets Grade Level or Masters Grade Level standard. Premont ISD proposed the use of the higher outcome in accountability calculations.

Agency Response. The agency disagrees with including the commenter's recommendation in the *2018 Accountability Manual*. This allowance needs to be considered more thoroughly before inclusion in the accountability system. However, the accountability manual is adopted annually and TEA may consider including the recommendation in future manuals.

Comment. Petersburg ISD commented that the CCMR component should be evaluated even if the district or campus has fewer than ten annual graduates. The district also questioned how requiring a minimum size of annual graduates meets TEC, §39.053(c).

Agency Response. The agency agrees. A two-year-average CCMR rate will be calculated for the all students group. The calculation will be based on an aggregated two-year uniform average using the district's or campus's 2018 CCMR data and the 2017 modeled CCMR data. The all students group will be evaluated if the two-year average has at least ten students. At adoption, Figure: 19 TAC §97.1001(b) was updated to include small number analysis methodologies on page 14 of Chapter 2 and page 34 of Chapter 4.

Comment. One district staff member asked how CCMR can be heavily weighted in each domain as they see the measure as unfair for the first two years. The commenter proposed that districts have a few years to adjust to the way that CCMR will be evaluated.

Agency Response. The agency disagrees. The CCMR component is legislatively mandated under HB 22, 85th Texas Legislature, Regular Session, 2017, and CCMR weighting was developed in response to stakeholder feedback.

Comment. One district staff member asked why CCMR is included in calculations for high school campuses and districts, noting that there are many differences and variables among districts.

Agency Response. The agency disagrees. HB 22 requires the inclusion of the CCMR component in high school, K-12, and district accountability calculations.

Comment. One district staff member asked why October is the cut off for TEA to receive TSIA results while June is the cut off for SAT and ACT.

Agency Response. The agency provides the following clarification. The TSIA may be taken by students after enrolling in higher education and is intended to determine whether the student should receive academic remediation. The SAT and ACT are higher education entrance examinations and, therefore, are typically taken before enrolling in higher education.

Comment. One district staff member asked about accountability implications for students who choose to not report SAT, ACT, or TSIA scores to their district.

Agency Response. The agency provides the following clarification. TEA does not receive SAT, ACT, or TSIA results from districts. The College Board provides SAT results to TEA and the TSIA results to the Texas Higher Education Coordinating Board, who then provides the results to TEA. ACT provides ACT results to TEA.

Comment. The College Board encouraged TEA to add additional weight or a bonus point for scores of 3 or better on AP examinations to incentivize campuses to increase access to and participation in AP.

Agency Response. The agency disagrees. Each annual graduate is included once in the denominator of the CCMR component. If an annual graduate earns a 3 or better on an AP examination, they earn one full point for the numerator. Adding additional weighting would not be mathematically sound as it could make the numerator greater than the denominator.

Comment. Lewisville ISD recommended that TEA consider the American Association of School Administrators research on career and college readiness and the inclusion of the metrics in the accountability system.

Agency Response. The comment is outside the scope of the proposed rulemaking. The CCMR indicators evaluated in the 2018 accountability system were established by HB 22.

Comment. One district staff member commented that the 2018 implementation of the CTE Coherent Sequence with Coursework Aligned to an Industry-Based Certification indicator does not allow adequate time for districts to transition from the previous indicator (solely CTE Coherent Sequence) to offering the coursework aligned to the industry-based certifications. A commenter also noted that the industry-based certification list is too narrow.

Agency Response. The agency disagrees. Phasing out CTE Coherent Sequence by awarding one-half point for CTE coherent graduates who complete and receive credit for at least one industry-based certification-aligned CTE course allows districts and campuses to receive credit for efforts already in progress.

Comment. The Texas Urban Council requested that students who complete a coherent sequence of CTE courses receive credit for a full point instead of one-half point in the Student Achievement domain and that this measure be maintained in the accountability system beyond 2022.

Agency Response. The agency disagrees. Phasing out CTE Coherent Sequence by awarding one-half point for CTE coherent graduates who complete and receive credit for at least one industry-based certification-aligned CTE course allows districts and campuses to receive credit for efforts already in progress.

Comment. An individual proposed implementing the CTE Coherent Sequence Coursework indicator with an incoming class in the same manner as new graduation plans.

Agency Response. The agency disagrees. Phasing out CTE Coherent Sequence by awarding one-half point for CTE coherent graduates who complete and receive credit for at least one industry-based certification-aligned CTE course allows districts and campuses to receive credit for efforts already in progress.

Comment. One district staff member asked whether there will be a public comment period for the CTE pathway of courses indicator and how the list is being developed. The commenter noted that counselors are advising students now for four-year graduation plans and need information to counsel students.

Agency Response. The agency provides the following clarification. TEA will develop the CTE pathway of courses indicator, which is expected to be implemented in 2020, collaboratively with stakeholders throughout the 2018-2019 school year.

Comment. One district staff member asked if the CTE Coherent Sequence indicator includes TSDS PEIMS code 2 students only.

Agency Response. The agency provides the following clarification. In order to receive credit for this indicator, an annual graduate must be coded as a 2 in TSDS PEIMS Element ID E0031 during his or her final year of enrollment and be coded as having completed coursework from the list of 85 industry-based certification-aligned courses.

Comment. One district staff member asked whether TEA will consider awarding credit in the CCMR component of the Stu-

dent Achievement domain for annual graduates who earned an industry-based certification and CTE dual enrollment.

Agency Response. The agency provides the following clarification. The denominator for the CCMR component is the number of annual graduates; the numerator is the number of annual graduates who accomplishes at least one of the CCMR indicators. The CCMR component currently awards credit for students who earn an industry-based certification or earn at least three hours of dual credit in English language arts (ELA)/reading or mathematics or nine hours of dual-credit in any subject area, including CTE hours.

Comment. A district staff member commented that TEA should consider adding Culinary Arts and Food Preparation/Handling as a CTE course aligned with industry-based certifications.

Agency Response. The agency disagrees. Culinary Arts and Food Preparation/Handling is not aligned with the list of 73 industry-based certifications in 19 TAC §74.1003.

Comment. The Texas School Alliance (TSA), the Texas Association of School Administrators (TASA), and six district staff members commented that the scaling methodology for the graduation rate component does not comply with HB 22 provisions, which require that the rating system provide the mathematical possibility for all districts and campuses to receive an A rating. TSA stated that the scaling appears to show a forced distribution and goes against the general public's understanding of letter grades.

Agency Response. The agency disagrees. The scaling methodology used in the graduation rate component reflects the historical high graduation rates across the state of Texas. The scaling methodology distinguishes among districts and campuses with high graduation rates and those with comparably low graduation rates. Additionally, the scaling does not prohibit the possibility for any district or campus to achieve an A rating.

Comment. TSA and six district staff members requested clarity on which graduation rate is used in the Student Achievement domain for high schools and districts.

Agency Response. The agency provides the following clarification. Chapter 2 indicates that TEA evaluates the four-year, five-year, and six-year longitudinal high school graduation rates. The graduation rate that results in the highest score is used for the Graduation Rate component of the Student Achievement domain.

Comment. One district staff member commented that the annual dropout rate conversion of 10 times the annual dropout rate is unnecessarily punitive. The commenter proposed using a conversion with five times the annual dropout rate.

Agency Response. The agency disagrees. The annual dropout rate conversion multiplier of 10 allows a district or campus to accumulate points toward the Student Achievement domain score only if its annual dropout rate is less than 10%. Alternative education accountability (AEA) districts and campuses use a conversion multiplier of five, which allows an AEA district or campus to accumulate points toward the Student Achievement domain score if its annual dropout rate is less than 20%.

Comment. One district staff member commented that using the dropout rate for new high schools often penalizes these campuses because the dropout rate produces a lower score than the campus would have received if the graduation rate was available. The staff member proposed that TEA either compute a graduation rate for students in Grade 9 in both year one and year

five of the cohort or use an annual dropout rate proxy, whichever would earn more points.

Agency Response. The comment about changing the computation of graduation rates is outside the scope of the proposed rulemaking.

Comment. TSA, TASA, the Texas Urban Council, and six district staff members proposed that the three components of the Student Achievement domain should be weighted equally.

Agency Response. The agency disagrees. The weighting for the Student Achievement domain was developed in response to stakeholder feedback.

Comment. One district staff member requested that the weighting for the CCMR component in the Student Achievement domain be reduced to 20% and the graduation weight be increased to 40%.

Agency Response. The agency disagrees. The weighting for the Student Achievement domain was developed in response to stakeholder feedback.

Comment. One district staff member proposed excluding high schools from evaluation in the School Progress Domain, Part A: Academic Growth domain.

Agency Response. The agency disagrees. Stakeholder feedback indicated that although growth data for high schools is limited, it is still valuable to recognize the growth for these campuses. Therefore, the better of Part A: Academic Growth or Part B: Relative Performance will be used for the School Progress domain score.

Comment. Regarding School Progress, Part A: Academic Growth, one district staff member commented that it is unfair to penalize districts or campuses for students who were at "commended" or Masters Grade Level in 2017 but fell just short of "commended" or Masters Grade Level in 2018. A commenter proposed that if the student is on the "cusp" of Masters Grade Level, the district or campus receive credit for the result.

Agency Response. The agency disagrees. Based on recommendations from stakeholders, districts and campuses receive credit for STAAR® results that either meet the student-level criteria for the STAAR® progress measure or maintain proficiency.

Comment. One district staff member commented that if students achieve the Meets Grade Level standard this year and in the prior year, they should receive one full point for Academic Growth. The commenter stated that Meets Grade Level satisfies the THECB's 60x30TX plan.

Agency Response. The agency disagrees. The School Progress, Part A: Academic Growth methodology was developed in response to stakeholder feedback. STAAR® results that maintain proficiency at the Approaches Grade Level or Meets Grade Level standard are awarded one-half point.

Comment. An individual proposed updating the list of assessments evaluated in School Progress, Part A: Academic Growth on page 21 to Grades 4-8, English II, and Algebra I.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to correct Grade 3 to Grade 4 on page 21 of Chapter 3.

Comment. TSA, the Texas Urban Council, and six district staff members commented that the School Progress, Part A: Academic Growth domain should include the Spanish to English

proxy calculation. TSA recommended that if the inclusion lowers the rating of the campus, then a hold harmless provision should be applied.

Agency Response. The agency disagrees. The School Progress, Part A: Academic Growth domain evaluates eligible STAAR® progress measures. Spanish to English transition assessments are not evaluated for progress. It is not possible to have a viable accountability system based on analyses of best-case scenarios for districts and campuses. The decision to exclude the Spanish to English proxy was made in response to accountability advisory committee and stakeholder feedback.

Comment. TSA and six district staff members requested that the state award a full point in School Progress, Part A: Academic Growth for students who skip a STAAR® grade level and score at either Meets Grade Level or Masters Grade Level.

Agency Response. The agency disagrees. A student's grade level is not accounted for in the methodology for the STAAR® progress measure calculations. Likewise, a student's grade level is not considered in the School Progress domain.

Comment. TSA and five district staff members requested that the state evaluate growth for all English II assessments, regardless of their English I administration date.

Agency Response. The comment is outside the scope of the proposed rulemaking.

Comment. TSA and TASA suggested that the cut points and scaled scores in the School Progress domain be revised because they are inconsistent with the general public's understanding of letter grades.

Agency Response. The agency disagrees. The cut points used in the 2018 accountability system reflect high expectations for student achievement, school progress, and reducing achievement gaps among students of different racial and ethnic backgrounds and different socioeconomic statuses.

Comment. One district staff member asked why the percentage of economically disadvantaged students is gathered from TSDS PEIMS snapshot instead of STAAR® answer documents and whether the percentage of economically disadvantaged students is for the entire campus or just the testing grades.

Agency Response. The agency provides the following clarification. The percentage of economically disadvantaged students used in the School Progress, Part B: Relative Performance domain is based on the TSDS PEIMS snapshot data for all students at the campus or district. In the Closing the Gaps domain, the economically disadvantaged student group is identified based on information on STAAR® answer documents. Commonly, these answer documents are prepopulated with information provided from the TSDS PEIMS snapshot.

Comment. The Texas Urban Council requested that TEA consider weighting the graduation rate component at least one-third of the overall score for the School Progress domain.

Agency Response. The agency disagrees. The School Progress domain methodology was developed in response to stakeholder feedback.

Comment. A district staff member commented that TEA should consider phasing in the Meets Grade Level and Masters Grade Level requirements for student groups in each component of the Closing the Gaps domain.

Agency Response. The agency disagrees. The indicators and construction of the Closing the Gaps domain is aligned with the federal ESSA, which does not allow for the phasing in of components.

Comment. An individual proposed adding language to page 27 specifying that the Academic Achievement component evaluates assessment results at the Meets Grade Level standard in ELA/reading and mathematics.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to add "at the Meets Grade Level or above standard" on page 27 of Chapter 4.

Comment. A district staff member commented that the Academic Achievement component in the Closing the Gaps domain is redundant since proficiency is already included in the Student Achievement domain.

Agency Response. The agency disagrees. The Academic Achievement component measures STAAR® performance in ELA/reading and mathematics at the Meets Grade Level or above standard. Academic Achievement is evaluated in Closing the Gaps to align with the federal requirement of ESSA to evaluate the proficiency of individual student groups.

Comment. An individual proposed updating the list of assessments evaluated in the Academic Growth Status component on page 30 to Grades 4-8, English II, and Algebra I.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to correct Grade 3 to Grade 4 on page 30 of Chapter 4.

Comment. TSA and six district staff members commented that TEA should apply the same methodology for CCMR in all components of the accountability system. The commenters proposed not including Grade 12 students who did not graduate in the CCMR component of the Closing the Gaps domain.

Agency Response. The agency disagrees. The indicators and construction of the Closing the Gaps domain are aligned with ESSA, which does not allow for the evaluation to be limited to annual graduates.

Comment. One district staff member requested that AEA campuses, which serve as dropout recovery campuses, be excluded from the four-year Federal Graduation Status component in the Closing the Gaps domain. The commenter proposed that AEA campuses use School Progress, Part A: Academic Growth in the Closing the Gaps domain in place of the four-year federal graduation rate.

Agency Response. The agency disagrees. The indicators and construction of the Closing the Gaps domain aligns with ESSA, which does not allow for AEA provisions.

Comment. TASA, TSA, and three district staff members commented that student groups who have met the state's final long-term graduation rate target of 94% should be given credit and that a cap should be applied to the federal graduation rate so that any minuscule changes do not affect a campus or district performance target.

Agency Response. The agency disagrees. The four-year graduation rate requirement under ESSA requires that campuses demonstrate improvement annually.

Comment. One district staff member asked whether students who graduate early remain in their original cohort year of grad-

uates for graduation rates and if this will affect the Closing the Gaps domain if they remain in their cohort.

Agency Response. The agency provides the following clarification. Early graduates remain in their original cohort and are included as graduates in the four-year graduation rate, just as other graduates in their cohort who graduate in four years.

Comment. One district staff member questioned the minimum size criteria for student groups in the Student Success component of the Closing the Gaps domain and stated that the criteria in Chapter 4, page 32, incorrectly states that it is by subject area.

Agency Response. The agency agrees. The Student Success component of the Closing the Gaps domain does not disaggregate by subject area. At adoption, Figure: 19 TAC §97.1001(b) was updated to correct the minimum size criteria and small numbers analysis details on page 33 of Chapter 4.

Comment. Four district staff members requested clarification on the minimum size criteria for student groups in the Closing the Gaps domain and recommended the following statement: "Student groups are evaluated if there are 25 assessments in mathematics and 25 assessments in reading."

Agency Response. The agency agrees that clarification is necessary. A student group is evaluated in an Academic Achievement ELA/reading indicator if there are 25 assessments in ELA/reading. A student group is evaluated in an Academic Achievement mathematics indicator if there are 25 assessments in mathematics. A student group is evaluated in an Academic Growth Status ELA/reading indicator if there are 25 or more STAAR® progress measures in ELA/reading. A student group is evaluated in an Academic Growth Status mathematics indicator if there are 25 or more STAAR® progress measures in mathematics. Subject areas are considered separately. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify the minimum size criteria and small numbers analysis details on page 29 of Chapter 4.

Comment. Arrow Academy Charter School and five district staff members commented that minimum size criteria in the Closing the Gaps domain adversely affects smaller schools as small student group results are not included or reported in the component score calculation. Two commenters recommended that the growth component be used even if minimum size is not met or that the minimum size for student groups be modified to 10. A commenter recommended using a weighted matrix to measure for growth achievements of student groups.

Agency Response. The agency disagrees. The all students group will be evaluated if there are at least 10 assessments in the subject area or at least 10 students in the CCMR or graduation components. Individual student group results are evaluated if there are at least 25 or more assessments in the subject area or at least 25 students in the CCMR or graduation components. If a student group does not meet minimum size criteria, the results are reported on data tables but not evaluated.

Comment. An individual commented that the chart on page 36 was confusing as the example has 7 columns instead of 14.

Agency Response. The agency provides the following clarification. While 14 student groups are evaluated in the Closing the Gaps domain, the examples provided on page 36 have 7 student groups with component data available for evaluation.

Comment. An individual proposed listing the remaining components that require only one evaluated indicator on page 36 of Chapter 4.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to list the two components that require only one evaluated indicator on page 36 of Chapter 4.

Comment. An individual proposed revising the targets on page 40 to consistently present elementary and middle school targets before high school, K-12, and district targets.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to list the targets for elementary and middle schools before the targets for high schools, K-12s, and districts on page 40 of Chapter 4.

Comment. One district staff member expressed concern that the Academic Achievement performance target for some ethnicities is lower than that of other ethnicities in the Closing the Gaps domain. The commenter encouraged the state to identify different parameters for the Closing the Gaps domain targets.

Agency Response. The agency disagrees. The indicators and construction of the Closing the Gaps domain are aligned with ESSA. In the original submission of the ESSA state plan, TEA set equal targets for all ethnicities with a hold harmless provision that recognized incremental achievements toward the target. Ultimately, TEA revised the targets to align with baseline data based on feedback from the U.S. Department of Education.

Comment. TSA requested clarification on the calculation of the Closing the Gaps domain, including the weights if components are not available or if the TELPAS waiver is approved.

Agency Response. The agency provides the following clarification. If a district or campus has a component that is not available for evaluation in Closing the Gaps, its weight is distributed proportionally among the remaining evaluated indicators.

Comment. An individual questioned how campuses will be identified for Additional Targeted Support in 2018-2019 if campuses are not identified for Targeted Support and Improvement until August 2019.

Agency Response. The agency provides the following clarification. Comprehensive Support and Improvement, Targeted Support and Improvement, and Additional Targeted Support are required identifications under ESSA. The identification of campuses for Additional Targeted Support is independent of identification of campuses for Targeted Support and Improvement.

Comment. One district staff member commented on the calculation adjustment of the Academic Achievement component of Closing the Gaps for a student group whose participation rate falls below 95%. The commenter stated that if a group falls below 95 percent, then the denominator will be increased by the number of assessments necessary to achieve a 95 percent participation rate. If this procedure is applied without regard to student group size, the commenter noted that it is possible for a student group below the minimum size before the participation adjustment to meet the minimum size after the adjustment. The commenter proposed that TEA not apply the participation adjustment to any student group that does not meet minimum size.

Agency Response. The agency disagrees. The participation rate methodology was developed to align with the federal accountability requirements under ESSA, which do not allow for the exclusion of student groups from the recalculation.

Comment. One district staff member commented that AEA with a majority of students enrolled as recovered dropouts may not meet minimum size criteria for School Progress, Part A: Academic Growth nor would these campuses have Part B: Relative Performance data.

Agency Response. The agency provides the following clarification. If an AEA or alternative education campus (AEC) does not have data for the School Progress domain, the Student Achievement domain will be weighted at 70% of the overall rating.

Comment. One district staff member commented that AEA with a majority of students enrolled as recovered dropouts potentially have little opportunity to obtain points in the Academic Growth Status and Federal Graduation Status components in the Closing the Gaps domain.

Agency Response. The agency provides the following clarification. If an AEA or AEC does not have data for the Federal Graduation Status or Academic Growth Status components of the Closing the Gaps domain, the weight from those components is distributed proportionally among the remaining evaluated indicators.

Comment. One district staff member commented that AEA are penalized in the accountability system for dropout recovery and that the system does not fairly represent the success of the AEA campus.

Agency Response. The comment is outside the scope of the proposed rulemaking.

Comment. One district staff member commented that the scaling formulas shown in Chapter 5, page 49, for letter grade *F* and scaled scores 30-59 appear to be incorrect based on the other scaling formulas in the table.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to correct the *F* and scaled scores 30-59 scaling formulas shown on page 49 of Chapter 5.

Comment. One district staff member requested clarification regarding the methodology for combining the STAAR® and CCMR rates in the School Progress, Part B: Relative Performance domain.

Agency Response. The agency agrees that clarification is needed. School Progress, Part B: Relative Performance uses either the STAAR® raw component score or the average of the Student Achievement STAAR® and CCMR raw components from the Student Achievement domain, depending upon campus type. At adoption, Figure: 19 TAC §97.1001(b) was updated on page 26 of Chapter 3 to clarify that the raw component scores are used.

Comment. One district staff member commented that 89 should not be the highest available scaled score for School Progress if either Part A: Academic Growth or Part B: Relative Performance has a scaled score equal to or below 59.

Agency Response. The agency disagrees. The better of methodology for Part A: Academic Growth or Part B: Relative Performance aligns with the better of methodology established under HB 22. Under HB 22, when a domain outcome is determined by using the better of outcome, if one domain has an *F* performance rating, the district or campus may not be assigned a performance rating higher than a *B* for the composite for the two domains.

Comment. TSA requested clarification on scaling tables, scaled scores, cut scores, and lookup tables that indicate the values will remain constant for the next five years.

Agency Response. The comment is outside the scope of the proposed rulemaking. While TEA intends on holding cut points constant for five years, the rule adoption process must occur annually.

Comment. TSA requested that the word "score" always be preceded with either "raw" or "scaled."

Agency Response. The agency provides the following clarification. The terms "component score" or "domain score" reference raw scores. If the score is a scaled score, the manual uses the term "scaled score."

Comment. One district staff member commented that for the Postsecondary Readiness Distinction Designation, some students meet TSI criteria and meet the criteria to be considered a CCMR graduate. The commenter asked whether districts and campuses get double points for these graduates. The commenter also asked whether the TSI Criteria Graduates indicator in the Postsecondary Readiness Distinction Designation is the same as the Student Achievement TSI Criteria indicator and why only participation in SAT, ACT, and AP is included in the Postsecondary Readiness Distinction Designation.

Agency Response. The agency provides the following clarification. TSI Criteria Graduates and CCMR Graduates are two separate indicators in the Postsecondary Readiness Distinction Designation; therefore, graduates who satisfy the TSI criteria are included in the numerator for both indicators. The TSI Criteria Graduates indicator used in the Postsecondary Readiness Distinction Designation is identical to the TSI Criteria used in the Student Achievement domain. Only participation in SAT, ACT, AP, and IB assessments is included in the Postsecondary Readiness Distinction Designation because the subject-specific distinction designations evaluate performance.

Comment. Seventy-five district staff members commented on the inclusion of percentage of students enrolled in an Early College High School (ECHS) as a variable used to construct campus comparison groups. The commenters noted that some ECHSs select only a small percentage of students to participate. The commenters requested that consideration be given to campuses that service all students in a school-wide early college model. The commenters proposed considering the other demographic variables higher than the ECHS variable when determining campus comparison groups.

Agency Response. The agency provides the following clarification. The methodology for assigning campuses to unique comparison groups was updated in 2017 based on accountability advisory group and stakeholder feedback to include the percentage of students enrolled in an ECHS program. Using the percentage of ECHS students enrolled at the campus in conjunction with other demographic variables refines the calculation that determines campus comparison groups; campuses will be grouped with more comparable peers than they would be otherwise. Accountability advisory committees review and refine the methodology for campus comparison groups and distinction designations annually. TEA will forward the comment to the committees for consideration for 2019 accountability recommendations.

Comment. TASA, TSA, the Texas Urban Council, and six district staff members proposed that substitute assessments be in-

cluded at the Masters Grade Level standard instead of at the Meets Grade Level standard.

Agency Response. The agency disagrees. The standard-setting and equating processes for aligning substitute assessments with STAAR® takes more time than what was available in the 2017-2018 school year. For the 2018 accountability ratings, substitute assessments will be included at the Meets Grade Level standard. TEA will explore identifying cut points for Approaches Grade Level and Masters Grade Level on all substitute assessments. TEA will also explore using the differentiated performance level descriptors to calculate simple academic growth for high school students on substitute assessments. The goal is for this to be in place for the 2020 accountability ratings.

Comment. The Texas Chapter of the American Federation of Teachers (Texas AFT) commented that while substitute assessments are available to students, the standard setting process would not conclude until 2020, at which time substitute assessments could be included at the Masters Grade Level standard. Texas AFT stated that this does not help districts currently and, therefore, the accountability system is not ready for implementation.

Agency Response. The agency disagrees. The 2018 accountability system credits districts and campuses at the Meets Grade Level standard for the results of students who have successfully completed a substitute assessment while an equating process is conducted.

Comment. TASA, TSA, and six district staff members commented that the appeal process should allow for districts to appeal the identification of Comprehensive, Targeted, and Additional Targeted Support. The commenters stated that several factors outside of a campus's control, such as online testing issues and Hurricane Harvey, could have negative impacts on a campus's performance, and TEA should not identify schools for circumstances outside of their control.

Agency Response. The agency disagrees. The identification of Comprehensive, Targeted, and Additional Targeted Support and Improvement is federally required under ESSA and is not appealable. TEA has developed state accountability provisions for districts, open-enrollment charter schools, and campuses affected by Hurricane Harvey. Additionally, identification for Comprehensive, Targeted, and Additional Targeted Support and Improvement only includes assessment results affected by testing interruptions for districts, open-enrollment charter schools, and campuses if the overall rating benefits from such inclusion.

Comment. The Texas Charter Schools Association proposed revising three sentences in Chapter 8 related to appeals. The proposed language would state: "Districts and charter schools may appeal for any reason. The most successful basis for appeals are generally related to data or calculation error attributable to TEA, an ESC, or the testing contractor(s). The appeals process may not be an appropriate method to correct data that were inaccurately reported by the district. A district that submits inaccurate data must follow the procedures and timelines for resubmitting data (e.g., the Texas Education Data Standards). Appeals based on poor data quality may not receive favorable consideration."

Agency Response. The agency disagrees. The appeals process is not an appropriate method to correct data that were inaccurately reported by the district. A district that submits inaccurate data must follow the procedures and timelines for resubmitting data (e.g., the Texas Education Data Standards). Appeals based on poor data quality will not receive favorable consideration.

Comment. An individual questioned why Chapter 9 does not specifically mention the interventions found in TEC, §39A.051, for any campus rated *Improvement Required*.

Agency Response. The agency provides the following clarification. The TEA Division of School Improvement provides interventions for campuses that receive an *Improvement Required* rating. Intervention requirements are available through documents provided by this division.

Comment. One district staff member recommended the inclusion of STAAR® results for year two ELs if the inclusion helps a campus with an *Improvement Required* rating achieve a *Met Standard* rating. The commenter noted that in 2017 some year two ELs were included and that many year two ELs take Spanish STAAR® and do well.

Agency Response. The agency disagrees. The state accountability system is intended to accurately reflect and distinguish among district and campus performance. It is not possible to have a viable accountability system based on analyses of best-case scenarios for districts and campuses.

Comment. The Texas Public Policy Foundation, Texans for Education Opportunity, and the Texas Business Leadership Council commented that the accountability system is transparent, fair, and holds schools accountable for performance of students. The commenters stated that specifically, the system utilizes an easy to understand A-F letter grade designation, allows for a school district to design its own local campus accountability rating, relies on the STAAR®, provides that all districts and schools can possibly earn an A, and will maintain the same targets for at least five years.

Agency Response. The agency agrees.

Comment. Texas AFT and Lewisville ISD commented that the accountability system is difficult to understand and calculating an overall rating takes too long. Texas AFT recommended that each domain be rated, similar to the School Report Card.

Agency Response. The agency disagrees. Districts and campuses receive a rating for each domain and overall as statutorily required by HB 22.

Comment. Texas AFT commented that campuses should be rated on indicators such as school funding, class sizes, and teacher quality, none of which are in the current accountability system.

Agency Response. The comment is outside the scope of the proposed rulemaking. The 2018 accountability system indicators are statutorily required.

Comment. Texas AFT commented that elementary and middle school campuses are rated based solely on performance on STAAR® assessments, which have not been determined to be reliable and valued for the purposes described in HB 743 (84th Texas Legislature).

Agency Response. The agency disagrees. The 2018 accountability system indicators used for elementary and middle schools are statutorily required.

Comment. Two district staff members asked why EOC retest results are included in accountability each year until the student graduates.

Agency Response. The agency provides the following clarification. Each accountability cycle, one result per student, per subject is included in accountability calculations. This ensures that

districts and campuses are held accountable for students who have yet to meet satisfactory standards. This also credits districts and campuses for successful EOC retest results.

Comment. One district staff member asked how retests are factored into accountability.

Agency Response. The agency provides the following clarification. Each student who tests or retests during the 2018 accountability cycle (summer 2017, fall 2017, or spring 2018) contributes one assessment result, either the best or most recent, per subject tested if he or she meets the accountability subset. To meet the subset, a student must be reported as enrolled in the same district or campus on the previous TSDS PEIMS October snapshot as where he or she tested. The June administration for Grades 5 and 8 is not considered for accountability calculations.

Comment. An individual proposed adding a phrase to pages 7 and 8 explaining the process for selecting the single best result for progress and performance separately for retesters.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated on pages 7 and 8 of Chapter 1 to clarify that the best result is found for performance and progress, considered separately.

Comment. One district staff member asked whether the consolidated accountability file (CAF) will be available in a friendlier format and stated that with the new accountability system, districts are going to want to know exactly where every number is coming from.

Agency Response. The agency provides the following clarification. The CAF is in the same format as years past. Districts need to use software to read the file. Each year TEA provides student lists to districts explaining how each student was included in accountability calculations.

Comment. An individual commented that the rigor of a child's STAAR® assessment should be based on the child's current abilities rather than the grade level.

Agency Response. The comment is outside the scope of the proposed rulemaking.

Comment. A district staff member commented that the phrase "Tests as of" on page 9 is ambiguous and requested that TEA use more explicit language.

Agency Response. The agency provides the following clarification. "Tests as of" refers to any tests taken prior to or during the month referenced in the chart on page 9.

Comment. Two individuals commented that open-enrollment charter schools practice selective enrollment and should be held to a higher standard in the academic accountability system. A commenter recommended an accountability system in which these campus types are identified and rated with different cut scores.

Agency Response. The agency disagrees. Districts, open-enrollment charter schools, and campuses are held accountable for the students enrolled. With the implementation of local accountability systems, districts and open-enrollment charter schools have the opportunity to develop accountability indicators to highlight successes within their campuses.

Comment. The Texas Urban Council commented that the accountability manual does not explain why a school may receive a low letter grade and fails to provide context for A-F ratings such as school funding or high poverty rates.

Agency Response. The agency disagrees. The indicators, methodology, and cut points for ratings are clearly defined within the manual.

Comment. An individual commented that the colors used for elementary and middle schools in the school types chart on page 6 are hard to differentiate.

Agency Response. The agency disagrees. The colors that were chosen vary considerably. As an alternative, the user may print the school types chart in greyscale or request a greyscale version of the chart from the TEA Department of Performance Reporting.

Comment. A district staff member proposed changes to the school types and cut points for campuses that serve early elementary through Grade 8. The commenter proposed holding these types of campuses to either the elementary or middle school target, whichever is lower; holding these campuses to targets based on which grades the majority of test results come from; or allowing districts to appeal ratings if a change in school type classification would result in a higher rating.

Agency Response. The agency disagrees. The cut points by campus type were developed in response to stakeholder feedback. TEA has determined that the assignment of cut points should be based on grade configurations known at the beginning of the year rather than on a variable that is not known until after all assessments have been administered. It is not possible to have a viable accountability system based on analyses of best-case scenarios for districts and campuses.

Comment. Austin Chamber of Commerce commented on the possibility for a district or campus to receive an *F* in the Student Achievement; School Progress, Part A: Academic Growth; and Closing the Gaps domains and a *B* in the School Progress, Part B: Relative Performance domain and have the *B* used as the overall rating due to the "best of" methodology. The commenter noted that it does not seem fitting to implement a "best of" approach among Student Achievement and School Progress, Part A and Part B. Such a scenario would allow a district or campus to fail in three domains, get a *B* in a fourth, and receive an overall rating of *B*.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to address the possibility of a district or campus overall rating inaccurately reflecting performance across all four areas. A step was added to the overall rating methodologies on pages 42 and 43 of Chapter 5. If a district receives an *F* in three of the four areas (Student Achievement; School Progress, Part A: Academic Growth; School Progress, Part B: Relative Performance; or Closing the Gaps), the highest scaled score a district or open-enrollment charter school can receive for the overall rating is a 59. Likewise, if a campus receives an *Improvement Required* rating in three of the four areas (Student Achievement; School Progress, Part A: Academic Growth; School Progress, Part B: Relative Performance; or Closing the Gaps), the highest scaled score a campus can receive for the overall rating is a 59. In order for this provision to be applied, the district, open-enrollment charter school, or campus must be evaluated on all four areas.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A), which requires the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which

requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which defines criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(2)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203, 29.081(e), (e-1), and (e-2); and 12.104(b)(2)(L).

§97.1001. *Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2018 are based upon specific criteria and calculations, which are described in excerpted sections of the 2018 Accountability Manual provided in this subsection. Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.4, 214.6 - 214.11, 214.13

Introduction. The Texas Board of Nursing (Board) adopts amendments to §§214.2 - 214.4, 214.6 - 214.11, and 214.13. The amendments are adopted without changes to the proposed text published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3544).

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.157 and are necessary to clarify existing provisions of the chapter, better organize the sections, and conform the rule text to existing procedures and policies of the Board.

Description of Changes

§214.2. The adopted amendments to this section include clarifying language and editorial changes, which are not substantive in nature.

§214.3. The adopted amendments to this section clarify the Board's processes for the submission of a new vocational nursing education program proposal. First, the amendments clarify that the process to establish a new vocational nursing education program must be initiated by a letter of intent from the governing entity to the Board office. Second, if the program's governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing program's NCLEX-PN® pass rates are at least 80% for the current examination year, as that term is defined in §214.2(19) of this chapter and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing. Third, the individual writing the proposal for a new vocational nursing education program must be the proposed director and must meet the rule's requirements regarding the director's qualifications. Fourth, a program proposal must be ready for

the Board's consideration of approval within one (1) year from the date of receipt of the initial proposal draft in the Board's offices. If the proposal is not ready for the Board's consideration within this time period, the proposal will be considered withdrawn or will be presented to the Board at its next regularly scheduled meeting, with a Staff recommendation of denial/disapproval. Additionally, any proposal without action for one (1) calendar year will be considered withdrawn, and a new proposal application and fee, as set forth in §223.1 of this title (relating to Fees) will be required to begin the new proposal process again. The adopted amendments also address extension sites/campuses.

Pursuant to the amendments, an approved vocational nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources must include information in its application evidencing documentation of communication and collaboration with other programs within fifty (50) miles of the extension site and currently signed contracts from clinical affiliating agencies to provide clinical practice settings for students. Finally, the adopted amendments address vocational nursing education programs outside of Texas' jurisdiction that wish to conduct clinical learning experiences in Texas. Before approval can be granted by the Board to conduct clinical learning experiences in Texas, evidence that the program's NCLEX-PN® examination rate is at least 80% for the current examination year must be provided to the Board. These changes clarify provisions of the existing rule text and are necessary to conform the rule text to the Board's current procedures and policies.

§214.4. The majority of the adopted changes to this section are editorial, clarifying, and non-substantive in nature. The remaining changes to the section are necessary to conform the rule text to the Board's current procedures and policies. First, the adopted changes address the withdrawal of a program's approval status. Under the adopted amendments, the Board may withdraw approval from a program which fails to meet the Board's requirements or a program may elect to voluntarily close a program. In either case, the program will be removed from the list of Board approved vocational nursing education programs. Further, a program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal after at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or from the date of the program's withdrawal of approval by the Board. For those programs that are required to submit a self-study report to the Board, the amendments clarify that the program must also provide evaluation data on the effectiveness of corrective measures implemented within one year of the submission of the self-study report to the Board. Regarding a change in program status, the adopted amendments clarify that the Board may consider a change in approval status at a regularly scheduled Board meeting for a program on full approval with warning or conditional approval if certain specified circumstances exist.

§214.6. The adopted amendments to this section relate to the administration and organization of a vocational nursing education program. First, the adopted amendments clarify that the director/coordinator of a program must hold a current, unencumbered license or privilege to practice nursing in Texas. Further, every newly appointed director/coordinator or interim director/coordinator of a vocational nursing education program must attend a scheduled new director/coordinator workshop provided by the Board related to education rules and the role and responsibilities of newly appointed directors/coordinators within one (1) year of

his/her hire date in that role. These requirements are necessary to ensure that programs hire qualified and capable individuals to direct the program and to ensure that individuals who are new to the role obtain the necessary information to be successful.

§214.7. While the adopted changes to this section significantly reorganize the section, the majority of the existing provisions of the rule still remain. Further, there are a few clarifying requirements. First, written policies for nursing faculty workload must allow sufficient time for faculty to accomplish those activities related to the teaching-learning process. Second, personnel policies must include position descriptions for all members of the nursing program (including the director/coordinator) outlining the qualifications and responsibilities directly related to the nursing program. Finally, written policies for nursing faculty must include terms of employment, plans for faculty orientation to the institution and to the nursing program, resources and opportunities for faculty development and evaluation of faculty, and Nursing Peer Review, as described in §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections) and §217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections) of this title.

§214.8. The adopted changes to this section relate to a program's Nursing Student Handbook. The amendments clarify that the Handbook must include policies to ensure students fulfill requirements for obtaining criminal history record information in compliance with the Occupations Code §301.257. Further, the adopted amendments re-iterate that processes must be in place for policy development, implementation, and enforcement. The remaining changes to this section are necessary for consistency with prior changes made to §213.28 (relating to Licensure of Individuals with Criminal History), §213.29 (relating to Fitness to Practice), and §213.27 (relating to Good Professional Character) of this title. These changes are clarifying in nature and are not intended to be substantive.

§214.9. This section addresses the program of study. First, the amendments include an additional reference to Board Education Guideline 3.7.4.a. Using Standardized Examinations and clarifies that this guideline outlines the effective use of standardized examinations as an evaluation of student progress. Second, the amendments clarify that a major curriculum change includes the addition of tracks or alternate programs of study, including advanced placement or Dual-Credit High School programs that provide educational mobility, and revisions in program hours. Finally, because the current text directs programs to utilize Board Education Guideline 3.7.1.a. in submitting curriculum changes to the Board for approval, the amendments eliminate unnecessary language from the rule of the text, as the guidelines appropriately addresses the necessary components of the proposal. These changes are clarifying in nature and are necessary to conform to the Board's current procedures and policies.

§214.10. This section addresses clinical learning experiences. The amendments clarify that, when a high-fidelity simulation laboratory is used to meet clinical learning objectives, the faculty must be trained in planning and guiding the experience and in debriefing and evaluating students. Further, the amendments clarify that programs may use up to 50% simulation activities in each clinical course. The amendments further re-iterate that clinical learning experiences must be designed for students to meet clinical objectives in all clinical activities (skills and simulation laboratories and hands-on care).

§214.11. The adopted amendments to this section clarify the appropriate use of a skills laboratory. The amendments re-iterate

that an appropriately equipped skills laboratory must be provided to accommodate the maximum number of students allowed for the program and to provide a learning environment where students can receive instruction and demonstrate all basic nursing skills. A simulation laboratory may be provided to enhance clinical learning experiences where students can practice nursing care through planned scenarios that mimic real clinical situations.

§214.13. The adopted changes to this section are editorial in nature and are not substantive.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.157 and §301.151.

Section 301.157 addresses the Board's authority to regulate programs of study that prepare individuals to receive initial licenses to practice nursing in Texas. Among other things, this section authorizes the Board to prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; approve schools of nursing and educational programs that meet the Board's requirements; select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the Board, fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board, or fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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

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Texas Board of Nursing

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.4, 215.6 - 215.11, 215.13

The Texas Board of Nursing (Board) adopts amendments to §§215.2 - 215.4, 215.6 - 215.11, and 215.13. The amendments are adopted with nonsubstantive changes to references in the proposed text as published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3553). These rules will be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.157 and are necessary to clarify existing provisions of the chapter, better organize the sections, and conform the rule text to existing procedures and policies of the Board.

Description of Changes

§215.2. The adopted amendments to this section include clarifying language and editorial changes and are not substantive in nature.

§215.3. The adopted amendments to this section clarify the Board's processes for the submission of a new professional nursing education program proposal. First, the amendments clarify that the process to establish a new professional nursing education program must be initiated by a letter of intent from the governing entity to the Board office. Second, if the program's governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing program's NCLEX-PN® pass rates are at least 80% for the current examination year and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing. Third, the individual writing the proposal for a new professional nursing education program must be the proposed director and must meet the rule's requirements regarding the director's qualifications. Fourth, a program proposal must be ready for the Board's consideration of approval within one (1) year from the date of receipt of the initial proposal draft in the Board's offices. If the proposal is not ready for the Board's consideration within this time period, the proposal will be considered withdrawn or will be presented to the Board at its next regularly scheduled meeting, with a Staff recommendation of denial/disapproval. Additionally, any proposal without action for one (1) calendar year will be considered withdrawn, and a new proposal application and fee, as set forth in §223.1 of this title (relating to Fees) will be required to begin the new proposal process again.

The amendments also address extension sites/campuses. Under the adopted amendments, an approved professional nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources must include information in its application evidencing documentation of communication and collaboration with other programs within fifty (50) miles of the extension site and currently signed contracts from clinical affiliating agencies to provide clinical practice settings for students. Finally, the adopted amendments to this section address professional nursing education programs outside of Texas' jurisdiction that wish to conduct clinical learning experiences in Texas. Before approval can be granted by the Board to conduct clinical learning experiences in Texas, evidence that the program's NCLEX-PN® examination rate is at least 80% for the current examination year must be provided to the Board. These changes

clarify provisions of the existing rule text and are necessary to conform the rule text to the Board's current procedures and policies.

§215.4. The majority of the adopted changes to this section are editorial, clarifying, and non-substantive in nature. The remaining changes to the section are necessary to conform the rule text to the Board's current procedures and policies. First, the adopted changes address the withdrawal of a program's approval status. Under the adopted amendments, the Board may withdraw approval from a program which fails to meet the Board's requirements or a program may elect to voluntarily close a program. In either case, the program will be removed from the list of Board approved vocational nursing education programs. Further, under the amendments, a program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal after at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or from the date of the program's withdrawal of approval by the Board. For those programs that are required to submit a self-study report to the Board, the amendments clarify that the program must also provide evaluation data on the effectiveness of corrective measures implemented within one year of the submission of the self-study report to the Board. Regarding a change in program status, the amendments clarify that the Board may consider a change in approval status at a regularly scheduled Board meeting for a program on full approval with warning or conditional approval if certain specified circumstances exist.

§215.6. The adopted amendments to this section relate to the administration and organization of a professional nursing education program. First, the amendments clarify that the dean/director of a program must hold a current, unencumbered license or privilege to practice nursing in Texas. Further, the amendments clarify that every newly appointed dean/director or interim dean/director of a professional nursing education program must attend a scheduled new dean/director workshop provided by the Board related to education rules and the role and responsibilities of newly appointed deans/directors within one (1) year of his/her hire date in that role. These requirements are necessary to ensure that programs hire qualified and capable individuals to direct the program and to ensure that individuals who are new to the role obtain the necessary information to be successful.

§215.7. While the adopted changes to this section significantly reorganize the section, the majority of the existing provisions of the rule still remain. Further, the amendments contain a few clarifying requirements. First, the amendments clarify that written policies for nursing faculty workload must allow sufficient time for faculty to accomplish those activities related to the teaching-learning process. Second, personnel policies must include position descriptions for all members of the nursing program (including the dean/director) outlining the qualifications and responsibilities directly related to the nursing program. Finally, written policies for nursing faculty must include terms of employment, plans for faculty orientation to the institution and to the nursing program, resources and opportunities for faculty development and evaluation of faculty, and Nursing Peer Review, as described in §217.19 (relating to Incident-Based Nursing Peer Review and Whistle-blower Protections) and §217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections) of this title.

§215.8. The adopted changes to this section relate to a program's Nursing Student Handbook. The amendments clarify that

the Handbook must include policies to ensure students fulfill requirements for obtaining criminal history record information in compliance with the Occupations Code §301.257. Further, the amendments reiterate that processes must be in place for policy development, implementation, and enforcement. The remaining changes to this section are necessary for consistency with prior changes made to §213.28 (relating to Licensure of Individuals with Criminal History), §213.29 (relating to Fitness to Practice), and §213.27 (relating to Good Professional Character) of this title. These changes are clarifying in nature and are not intended to be substantive.

§215.9. This section addresses the program of study. First, the amendments provide clarification regarding the selection and organization of the learning experiences in the curriculum. The amendments reiterate that the curriculum must provide continuity, sequence, and integration of learning. Further, the learning experiences must provide for progressive development of values, knowledge, judgment, and skills. Didactic learning experiences must be provided either prior to or concurrent (at the same time) with the related clinical learning experiences. Clinical learning experiences must be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes. Students must have sufficient opportunities in simulated or clinical settings to develop technical skills, using contemporary technologies, essential for safe, effective nursing practice. Learning opportunities must assist students to develop communication and interpersonal skills. Second, the amendments clarify that a major curriculum change includes the addition of transition course(s), tracks/alternative programs of study, including MEEP and Dual-Credit High School programs, that provide educational mobility. Finally, because the current text directs programs to utilize Board Education Guideline 3.7.1.a. in submitting curriculum changes to the Board for approval, the amendments eliminate unnecessary language from the rule of the text, as the guidelines appropriately addresses the necessary components of the proposal. These changes are clarifying in nature and are necessary to conform to the Board's current procedures and policies.

§215.10. This section addresses clinical learning experiences. The amendments clarify that when a high-fidelity simulation laboratory is used to meet clinical learning objectives, the faculty must be trained in planning and guiding the experience and in debriefing and evaluating students. Further, the amendments clarify that programs may use up to 50% simulation activities in each clinical course. The amendments further reiterate that clinical learning experiences must be designed for students to meet clinical objectives in all clinical activities (skills and simulation laboratories and hands-on care).

§215.11. The adopted amendments to this section clarify the appropriate use of a skills laboratory. The amendments reiterate that an appropriately equipped skills laboratory must be provided to accommodate the maximum number of students allowed for the program and to provide a learning environment where students can receive instruction and demonstrate all basic nursing skills. A simulation laboratory may be provided to enhance clinical learning experiences where students can practice nursing care through planned scenarios that mimic real clinical situations.

Summary of Comments Received. The Board did not receive any comments on the proposal.

§215.13. The adopted changes to this section are editorial in nature and are not substantive.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.157 and §301.151.

Section 301.157 addresses the Board's authority to regulate programs of study that prepare individuals to receive initial licenses to practice nursing in Texas. Among other things, this section authorizes the Board to prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; approve schools of nursing and educational programs that meet the Board's requirements; select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the Board, fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board, or fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§215.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affidavit of Graduation--an official Board form required in the initial licensure process that is signed by the approved nursing program dean/director verifying that the applicant has successfully completed all requirements for graduation from an approved professional nursing program that meets the requirements set forth in §215.9 of this title (relating to Program of Study).

(2) Affiliating agency or clinical facility--a health care facility or agency providing clinical learning experiences for students.

(3) Alternative practice settings--settings providing opportunities for clinical learning experiences, including those whose primary function is not the delivery of health care.

(4) Approved vocational nursing education program--a Board-approved professional nursing education program that meets the requirements set forth in §215.9 of this title and prepares graduates to provide safe nursing care using concepts identified in the Differentiated Essential Competencies (DECs).

(5) Articulation--a planned process between two (2) or more educational systems to assist students in making a smooth transition from one (1) level of education to another without duplication in education.

(6) Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(7) CANEP (Compliance Audit for Nursing Education Programs)--a document required by the Board to be submitted by the professional nursing education program's dean/director that serves as verification of the program's adherence to the requirements of this chapter.

(8) Career school or college--an educational entity as defined in Title 3, Texas Education Code, §132.001(1) as a "career school or college".

(9) Classroom instruction hours--hours allocated to didactic instruction and testing in nursing and non-nursing Board-required courses and content.

(10) Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet the stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by debriefing and evaluation of student performance. The clinical settings for faculty-supervised hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care and rehabilitation facilities; primary care settings; extended care facilities (long-term care and nursing homes); residential care settings; respite or day care facilities; community or public health agencies; and other settings where actual patients receive nursing care.

(11) Clinical preceptor--a registered nurse who meets the requirements in §215.10(j)(6) of this title (relating to Clinical Learning Experiences), who is not employed as a faculty member by the governing entity, and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(12) Clinical teaching assistant--a registered nurse licensed in Texas, who is employed to assist in the clinical area and work under the supervision of a Master's or Doctorally prepared nursing faculty member and who meets the requirements of §215.10(j)(8) of this title.

(13) Conceptual framework--theories or concepts giving structure to the curriculum and guiding faculty in making decisions about curriculum development, implementation, and evaluation.

(14) Correlated theory and clinical practice--didactic and clinical experiences that have a reciprocal relationship or mutually complement each other.

(15) Course--organized subject content and related activities, that may include face-to-face and/or online didactic, laboratory, and/or clinical experiences, planned to achieve specific objectives within a given time period.

(16) Curriculum--course offerings, which in aggregate, make up the total learning activities in a program of study.

(17) Dean/director--a registered nurse who is accountable for administering a professional nursing education program, who meets the requirements as stated in §215.6(f) of this title (relating to Administration and Organization), and is approved by the Board.

(18) Declaratory Order of Eligibility--an order issued by the Board pursuant to Texas Occupations Code §301.257, determining

the eligibility of an individual for initial licensure as a vocational or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of disclosed eligibility issues.

(19) Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(20) Examination year--the period beginning October 1 and ending September 30 used for the purposes of determining a professional nursing education program's annual NCLEX-RN® examination pass rate.

(21) Extension site/campus--a location other than the program's main campus where a portion or all of the curriculum is provided.

(22) Faculty member--an individual employed to teach in the professional nursing education program who meets the requirements as stated in §215.7 of this title (relating to Faculty).

(23) Faculty waiver--a waiver granted by a dean or director of a professional nursing education program to an individual who meets the criteria specified in §215.7(e)(1) - (3) of this title.

(24) Governing entity--the body with administrative and operational authority over a Board-approved professional nursing education program.

(25) Health care professional--an individual other than a registered nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: a respiratory therapist, physical therapist, occupational therapist, dietitian, pharmacist, physician, social worker, and psychologist.

(26) MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing education program designed for students to complete course work and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

(27) Mobility--the ability to advance without educational barriers.

(28) NEPIS (Nursing Education Program Information Survey)--a document required by the Board to be submitted by the professional nursing education program dean/director to provide annual workforce data.

(29) Non-nursing faculty--instructors who teach non-nursing content, such as pharmacology, pathophysiology, research, management and statistics, and who have educational preparation appropriate to the assigned teaching responsibilities.

(30) Objectives/Outcomes--expected student behaviors that are attainable and measurable.

(A) Program Objectives/Outcomes--broad statements describing student learning outcomes achieved upon graduation.

(B) Clinical Objectives/Outcomes--expected student behaviors for clinical learning experiences that provide evidence of progression of students' cognitive, affective, and psychomotor achievement in clinical practice across the curriculum.

(C) Course Objectives/Outcomes--expected student outcomes upon successful completion of specific course content, serving as a mechanism for the evaluation of student progression.

(31) Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in hands-on patient/client care.

(32) Pass rate--the percentage of first-time candidates within the examination year, as that term is defined in paragraph (20) of this section, who pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN®).

(33) Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(34) Professional Nursing Education Program--an education unit that offers courses and learning experiences preparing graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN® examination, often referred to as a pre-licensure nursing program. Types of pre-licensure professional nursing education programs:

(A) Associate degree nursing education program--a program leading to an associate degree in nursing conducted by an education unit in nursing within the structure of a public institution of higher education or a private or independent institution of higher education, as defined in Texas Education Code §61.003; a private postsecondary educational institution, as defined in Texas Education Code §61.302; or a career school or college, as defined in Texas Education Code §132.001 authorized to grant associate degrees.

(B) Baccalaureate degree nursing education program--a program leading to a bachelor's degree in nursing conducted by an education unit in nursing which is a part of a public institution of higher education or a private or independent institution of higher education, as defined in Texas Education Code §61.003; a private postsecondary educational institution, as defined in Texas Education Code §61.302; or a career school or college, as defined in Texas Education Code §132.001 authorized to grant baccalaureate degrees.

(C) Master's degree pre-licensure nursing education program--a program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an education unit in nursing within the structure of a college or university authorized to grant graduate degrees.

(D) Diploma nursing education program--a program leading to a diploma in nursing conducted by a single purpose school, usually under the control of a hospital.

(35) Program of study--the courses and learning experiences that constitute the requirements for completion of a professional nursing education program.

(36) Recommendation--a specific suggestion based upon program assessment that is indirectly related to the rules to which the program must respond but in a method of their choosing.

(37) Requirement--mandatory criterion based upon program assessment that is directly related to the rules that must be addressed in the manner prescribed.

(38) Shall--denotes mandatory requirements.

(39) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the

nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice.

(40) Staff--employees of the Texas Board of Nursing.

(41) Supervision--immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

(42) Survey visit--an on-site visit to a professional nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements.

(43) Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the registered nurse engages in:

(A) performing comprehensive nursing assessments regarding the health status of the client;

(B) making nursing diagnoses that serve as the basis for the strategy of care;

(C) developing a plan of care based on the assessment and nursing diagnosis;

(D) implementing nursing care; and

(E) evaluating the client's responses to nursing interventions.

(44) Texas Higher Education Coordinating Board (THECB) the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(45) Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

§215.3. Program Development, Expansion, and Closure.

(a) New Programs.

(1) New professional nursing education programs must be approved by the Board in order to operate in the State of Texas. The Board has established guidelines for the initial approval of professional nursing education programs.

(2) Proposal to establish a new professional nursing education program.

(A) The proposal to establish a new professional nursing education program may be submitted by:

(i) a college or university accredited by an agency recognized by the THECB or holding a certificate of authority from the THECB under provisions leading to accreditation of the institution; or

(ii) a single-purpose school, such as a hospital, proposing a new diploma program.

(B) The new professional nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB, or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new professional nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC. If the governing entity has nursing programs in other jurisdictions, the submitted program proposal must in-

clude evidence that the nursing programs' NCLEX-RN® pass rates are at least 80% for the current examination year, as that term is defined in §215.2(20) of this title (relating to Definitions), and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing.

(C) The process to establish a new professional nursing education program shall be initiated by a letter of intent from the governing entity to the Board office. A program proposal must be ready for the Board's consideration of approval within one (1) year from the date of receipt of the initial proposal draft in the Board's office. If the proposal is not ready for the Board's consideration within this time period, the proposal will be considered withdrawn or will be presented to the Board at its next regularly scheduled meeting, with a Staff recommendation of denial/disapproval.

(D) The individual writing the proposal for a new professional nursing education program shall be the proposed director and shall meet the qualifications for the program director as specified in §215.6(f) of this title (relating to Administration and Organization).

(E) At least one (1) potential faculty member shall be identified before the curriculum development to assist in planning the program of study.

(F) The proposal shall include information outlined in Board Education Guidelines 3.1.1.b. Proposal to Establish a New Diploma Nursing Education Program and 3.1.1.c. Proposal to Establish a New Pre-Licensure Associate, Baccalaureate, or Entry-Level Master's Degree Nursing Education Program.

(G) A proposal for a new diploma nursing education program must include a written plan addressing the legislative mandate that all nursing diploma programs in Texas must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB or the TWC, as applicable, and, at a minimum, entitle a graduate of the diploma program to receive an associate degree in nursing.

(H) After the proposal is submitted and determined to be complete, a preliminary survey visit shall be conducted by Board Staff prior to presentation to the Board.

(I) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) In addition to imposing restrictions and conditions, the Board may also require specific monitoring of newly approved programs that may be high-risk.

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: unfamiliarity of the governing entity with nursing education; inexperience of the potential dean or director in directing a nursing program; potential for director or faculty turnover; multiple admission cycles per year; or potential for a high attrition rate among students.

(iii) Board monitoring of a high-risk program may include the review and analysis of program reports; extended communication with program deans and directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned

mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.

(J) The program shall not enroll students until the Board approves the proposal and grants initial approval.

(K) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory agencies shall be provided.

(L) When the proposal is submitted, an initial approval fee shall be assessed per §223.1 of this title (relating to Fees).

(M) A proposal without action for one (1) calendar year shall be considered withdrawn and a new proposal application and fee, as set forth in §223.1 of this title (relating to Fees) will be required to begin the new proposal process again.

(N) If the Board denies a proposal, the educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital must wait a minimum of twelve (12) calendar months from the date of the denial before submitting a new proposal to establish a professional nursing education program.

(3) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Site/Campus.

(1) Only professional nursing education programs that have full approval with a current NCLEX-RN® examination pass rate of 80% or better and are in compliance with Board rules are eligible to initiate or modify an extension site/campus.

(2) Instruction provided for the extension site/campus may include a variety of instructional methods, shall be consistent with the main campus program's current curriculum, and shall enable students to meet the goals, objectives, and competencies of the professional nursing education program and requirements of the Board as stated in §§215.1 - 215.13 of this title (relating to Professional Nursing Education).

(3) An approved professional nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall:

(A) Complete and submit an application form for approval of the extension site to Board Staff at least four (4) months prior to implementation of the extension site/campus; and

(B) Provide information in the application form that evidences:

(i) a strong rationale for the establishment of the extension site in the community;

(ii) availability of a qualified director or coordinator, if applicable, and qualified faculty;

(iii) adequate educational resources (classrooms, labs, and equipment);

(iv) documentation of communication and collaboration with other programs within fifty (50) miles of the extension site;

(v) currently signed contracts from clinical affiliating agencies to provide clinical practice settings for students;

- (2) years;
- (vi) projected student enrollments for the first two
 - (vii) plans for quality instruction;
 - (viii) a planned schedule for class and clinical learning activities for one (1) year; and

(ix) notification or approval from the governing entity and from other regulatory/accrediting agencies, as required. This includes regional approval of out-of-service extension sites for public colleges.

(4) When the curriculum of the extension site/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board Education Guidelines 3.1.1.b and 3.1.1.c apply.

(5) Extension programs of professional nursing education programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board Education Guideline 3.1.2.a. for initiating an extension program.

(6) A program intending to close an extension site/campus shall:

(A) Notify the Board office at least four (4) months prior to closure of the extension site/campus; and

(B) Submit required information according to Board Education Guideline 3.1.2.a., including:

(i) reason for closing the program;

(ii) date of intended closure;

(iii) academic provisions for students; and

(iv) provisions made for access to and storage of vital school records.

(c) Transfer of Administrative Control by Governing Entity. The authorities of the governing entity shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board Education Guideline 3.1.3.a. Notification of Transfer of Administrative Control of a Professional Nursing Education Program or a Professional Nursing Education Program by the Governing Entity.

(d) Closing a Program.

(1) When the decision to close a program has been made, the dean or director must notify the Board by submitting a written plan for closure which includes the following:

(A) reason for closing the program;

(B) date of intended closure;

(C) academic provisions for students to complete the professional nursing education program and teach-out arrangements that have been approved by the appropriate Texas agency (i.e., the THECB, the TWC, or the Board);

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students enrolled in the professional nursing education program at the time of the decision to close have graduated. In the event this is not

possible, a plan shall be developed whereby students may transfer to other approved programs.

(3) A program is deemed closed when the program has not enrolled students for a period of two (2) years since the last graduating class or student enrollment has not occurred for a two (2) year period. Board-ordered enrollment suspensions may be an exception.

(4) A program's voluntary closure under this section may be accepted by the Executive Director of the Board without requirement of Board ratification. Notice of a program's accepted closure shall be sent to the director or coordinator and others as determined by the Board. The chief administrative officer of the governing entity shall be notified by the Board when the program's closure is accepted by the Executive Director. The program shall then be removed from the list of Board approved professional nursing education programs.

(5) A program that has voluntarily closed under this section may reapply for approval. However, a new proposal may not be submitted to the Board until at least twelve (12) calendar months from the date the program's closure was accepted by the Executive Director have elapsed.

(6) A program submitting its voluntary closure under this section must comply with all of the requirements of this section.

(e) Approval of a Professional Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The professional nursing education program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Board at least four (4) months prior to the anticipated start date of the clinical learning experiences in Texas.

(2) A written request, the required fee set forth in §223.1(a)(27) of this title, and all required supporting documentation shall be submitted to the Board office following Board Education Guideline 3.1.1.f. Process for Approval of a Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, (i.e., the THECB, the TWC) to conduct business in the State of Texas, must be provided before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

(4) Evidence that the program's NCLEX-RN® examination rate is at least 80% for the current examination year, as that term is defined in §215.2(20) of this title (relating to Definitions).

(5) The Board may withdraw the approval of any program that fails to maintain the requirements set forth in Board Education Guideline 3.1.1.f. and this section.

§215.7. Faculty.

(a) Faculty Organization.

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to: the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives, and evaluation criteria shall be included in the policies for part-time faculty.

(b) There shall be a Nursing Faculty Handbook that contains written policies for nursing faculty that are in keeping with accepted educational standards and are consistent with the policies of the governing entity. Nursing policies that differ from those of the governing entity shall be consistent with nursing unit mission and goals (philosophy and outcome).

(1) Written policies concerning workload for the director or coordinator shall allow for sufficient time for administrative responsibilities consistent with §215.6 of this title (relating to Administration and Organization). Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.

(2) Personnel policies shall include position descriptions for all members of the nursing program (including the director/coordinator) outlining the qualifications and responsibilities directly related to the nursing program.

(3) Written policies for nursing faculty shall also include: terms of employment, plans for faculty orientation to the institution and to the nursing program, resources and opportunities for faculty development and evaluation of faculty, and Nursing Peer Review, as described in §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections) and §217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections) of this title.

(4) Orientation of new nursing faculty members shall be initiated at the onset of employment.

(5) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.

(6) A variety of means shall be used to evaluate faculty performance such as self, student, peer, and administrative evaluation.

(c) A professional nursing education program shall employ sufficient faculty members with educational preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

- (1) The number and level of students enrolled;
- (2) The curriculum plan;
- (3) Activities and responsibilities required of faculty;
- (4) The number and geographic locations of affiliating agencies and clinical practice settings; and
- (5) The level of care and acuity of clients.

(d) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the program.

(2) Each nurse faculty member shall:

(A) Hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject areas of teaching responsibility;

(C) Hold a master's degree or doctoral degree, preferably in nursing;

(D) A nurse faculty member holding a master's degree or doctoral degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an approved or accredited baccalaureate program in nursing; and

(i) if teaching in a diploma or associate degree nursing program, shall have at least six (6) graduate semester hours in nursing appropriate to assigned teaching responsibilities, or

(ii) if teaching in a baccalaureate level program, shall have at least twelve (12) graduate semester hours in nursing appropriate to assigned teaching responsibilities.

(e) Faculty Waivers.

(1) In fully approved programs, if an individual to be appointed as a faculty member does not meet the requirements for faculty as specified in subsection (c) of this section, the dean or director is permitted to waive the Board's requirements, without Board approval, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one (1) year:

(2) Minimum program criteria:

(A) program's NCLEX-RN® pass rate for the preceding examination year was 80% or above; and

(B) total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty.

(3) Minimum criteria for prospective faculty member:

(A) hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) has at least two (2) years in the last four (4) years of nursing practice experience in the anticipated subject areas of teaching responsibility;

(C) has earned a bachelor's degree in nursing or completed, as part of a nursing education program culminating in a master's or doctorate degree in nursing, the course work equivalent to the course work required for a bachelor's degree in nursing; and either

(i) is currently enrolled in a master's nursing education program and has earned a minimum of 50% of the required credits toward the master's degree in nursing, excluding thesis or professional paper; or

(ii) holds a master's degree in another field and has a documented plan to complete, within a designated time frame, the required number of graduate semester hours in nursing appropriate to the anticipated subject areas of teaching responsibility, six (6) graduate semester hours in nursing to teach in a diploma or associate degree nursing education program or twelve (12) graduate semester hours in nursing to teach in a baccalaureate degree or entry-level master's degree in nursing education program.

(4) When the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member, a petition for an emergency waiver

may be submitted to the Board Staff for approval when a vacancy occurs because a faculty member fails to report as planned, i.e., sudden illness or death of a faculty member, or there is an unexpected resignation, or qualified applicants/prospective faculty are not available.

(5) A waiver is valid for up to one (1) year.

(6) If an extension of the waiver is needed, the dean or director shall petition Board Staff for an extension of the original waiver.

(f) Non-nursing faculty are exempt from meeting the faculty qualifications of this chapter as long as the teaching assignments are not nursing content or clinical nursing courses.

(g) All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including pathophysiology, pharmacology, research, nutrition, human growth and development, management, and statistics, shall have sufficient graduate level educational preparation verified by the program dean or director as appropriate to these areas of responsibility.

(h) Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(i) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(j) Faculty shall be responsible for:

(1) supervising students in clinical learning experiences;

(2) supervising all initial nursing procedures performed by the student in the clinical area and ascertaining that the student is competent before allowing the student to perform an actual nursing procedure independently;

(3) developing, implementing, and evaluating curriculum; and

(4) participating in the development, implementation, and enforcement of standards/policies for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling.

(k) Teaching activities shall be coordinated among full-time faculty, part-time faculty, clinical preceptors, and clinical teaching assistants.

(l) There shall be a minimum of one (1) full-time nursing instructor for the program.

(m) A dean/director without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a professional nursing education program.

§215.8. Students.

(a) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students.

(b) A program must seek approval prior to an increase in enrollment of twenty-five percent (25%) or greater by headcount in one (1) academic year for each nursing program offered. The program must notify Board Staff four (4) months prior to the anticipated increase in enrollment. The Executive Director shall have the authority to approve an increase in enrollment on behalf of the Board. When determining whether to approve a request for an increase in enrollment under this rule, the Executive Director and/or the Board shall consider:

(1) the comparison of previous to projected nursing program enrollment by headcount;

(2) enrollment projections and enrollment management plan;

(3) the effect of the change of enrollment on faculty workload;

(4) clinical placement/utilization;

(5) additional resources required by the enrollment increase; and

(6) the program's plan to evaluate the effect of the enrollment increase on the program's success.

(c) Individuals enrolled in approved professional nursing education programs preparing students for licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:

(1) Texas Occupations Code §§301.252, 301.257, and 301.452 - 301.469; and

(2) Sections 213.27 - 213.30 of this title (relating to Good Professional Character, Licensure of Individuals with Criminal History, Fitness to Practice, and Declaratory Order of Eligibility for Licensure).

(d) The program shall have a Nursing Student Handbook with well-defined, written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, graduation policies, and policies to ensure students fulfill requirements for obtaining criminal history record information as set forth in the Occupations Code §301.257. Processes shall be in place for policy development, implementation, and enforcement.

(1) Student policies shall be in accordance with the requirements of all applicable federal and state agencies.

(2) Nursing student policies which differ from those of the governing entity shall be in writing and shall be made available to faculty and students.

(e) Reasons for dismissal from the program shall be clearly stated in written nursing student policies and shall address:

(1) behavior evidencing actual or potential harm to patients, clients, or the public;

(2) criminal behavior that could affect licensure, as set forth in §213.28 (relating to Licensure of Individuals with Criminal History) of this title;

(3) current fitness to practice nursing, as set forth in §213.29 (relating to Fitness to Practice) of this title; and

(4) good professional character, as set forth in §213.27 (relating to Good Professional Character) of this title.

(f) Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

(g) Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the professional nursing education program.

(1) The program shall maintain a signed receipt of student policies in all students' records.

(2) The program shall maintain evidence of student receipt of the Board's license eligibility information as specifically outlined in subsection (c) of this section.

(3) It is the responsibility of the program and the nursing faculty to define and enforce nursing student policies.

(h) Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the dean or director of the program and the governing entity. Upon completing the program's requirements, the transferred student is considered to be a graduate of the program.

(i) Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(j) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

§215.9. *Program of Study.*

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) at least the equivalent of two (2) academic years and shall not exceed four (4) calendar years;

(2) planned, implemented, and evaluated by the faculty;

(3) based on the philosophy/mission and objectives/outcomes;

(4) organized logically, sequenced appropriately;

(5) based on sound educational principles;

(6) designed to prepare graduates to practice according to the Standards of Nursing Practice as set forth in the Board's Rules and Regulations;

(7) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010 (DECs)*; and

(8) designed to teach students to use a systematic approach to clinical decision making and safe patient care.

(b) The faculty shall be responsible for the development, implementation, and evaluation of the curriculum based upon the following guidelines:

(1) There shall be a reasonable balance between non-nursing courses and nursing courses that are clearly appropriate for collegiate study and are offered in a supportive sequence based upon the rationale for the curriculum.

(2) Instruction shall be provided in nursing roles; biological, physical, social, behavioral, and nursing sciences, including body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, human growth and development; and nursing skills.

(3) Delivery of the curriculum through distance education shall comply with the requirements of this section and §215.10 of this title (relating to Clinical Learning Experiences) to ensure that students receive comparable curriculum, supervised clinical learning experiences, and formative and summative evaluations. Faculty must have documented competencies specific to online education.

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

(1) Classroom instruction hours shall include actual hours of classroom instruction in nursing and non-nursing Board-required courses/content.

(2) Laboratory activities/instruction in the nursing skills or simulation laboratory may be considered as either classroom instruction hours or clinical learning experience hours.

(3) Clinical learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; debriefing; and observation experiences. Observation experiences provide supplemental learning experiences to meet specific learning objectives.

(4) Hours in clinical learning experiences shall be sufficient to meet program of study requirements. There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The suggested ratio is one (1) contact hour of didactic to three (3) contact hours of related clinical learning experiences (1:3).

(d) Associate degree nursing education programs shall develop formal articulation agreements to enable graduates to earn a bachelor's degree in nursing in a timely manner.

(e) The program of study shall include, but not be limited to, the following areas:

(1) non-nursing courses, clearly appropriate for collegiate study, offered in a supportive sequence.

(2) nursing courses which include didactic and clinical learning experiences in the five (5) content areas, medical-surgical, geriatric, maternal/child health, pediatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and prepare students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, restoration of health, and palliative and end-of-life care for individuals across the lifespan.

(A) Course content shall be appropriate to the role expectations of the graduate.

(B) Professional values including ethics, safety, diversity, and confidentiality shall be addressed.

(C) The Nursing Practice Act, Standards of Nursing Practice, Unprofessional Conduct Rules, Delegation Rules, and other laws and regulations which pertain to various practice settings shall be addressed.

(3) Nursing courses shall prepare students to recognize and analyze patient, family, and environmental cues and use critical thinking in making nursing clinical judgments.

(4) Baccalaureate and entry-level master's degree programs in nursing shall include learning activities in basic research and management/leadership, and didactic and clinical learning experiences in community health nursing.

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning.

(1) The learning experiences shall provide for progressive development of values, knowledge, judgment, and skills.

(2) Didactic learning experiences shall be provided either prior to or concurrent (at the same time) with the related clinical learning experiences.

(3) Clinical learning experiences shall be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes.

(4) Students shall have sufficient opportunities in simulated or clinical settings to develop technical skills, using contemporary technologies, essential for safe, effective nursing practice.

(5) Learning opportunities shall assist students to develop communication and interpersonal skills.

(g) The curriculum plan and course content shall be appropriate to the role expectations of the graduate and shall be kept current and available to faculty and Board representatives.

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.7.3.a. Student Evaluation Methods and Tools. Board Education Guideline 3.7.4.a. Using Standardized Examinations outlines the effective use of standardized examinations as an evaluation of student progress.

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.7.1.a. Proposals for Curriculum Changes. The two (2) types of curriculum changes are:

(1) Minor curriculum changes not requiring prior Board Staff approval include:

(A) Editorial updates of philosophy/mission and objectives/outcomes; or

(B) Redistribution of course content or course hours; and

(2) Major curriculum changes requiring Board staff approval prior to implementation include:

(A) Changes in program philosophy/mission and objectives/outcomes which result in a reorganization or re-conceptualization of the entire curriculum including, but not limited to, changing from a block to an integrated curriculum or changing the approved delivery method of the curriculum to methods consistent with distance education/learning;

(B) The addition of transition course(s), tracks/alternative programs of study, including MEEP and Dual-Credit High School programs, that provide educational mobility;

(C) Revisions in program hours; and

(D) Addition/reduction of course(s) in the program of study.

(j) Documentation of governing entity approval and appropriate approval from either the TWC or the THECB, if approved/licensed by the TWC or the THECB, must be provided to the Board prior to implementation of changes, as appropriate.

(k) Professional nursing education programs planning major curriculum changes shall submit a curriculum change proposal, as outlined in Board Education Guideline 3.7.1.a., to the Board office for approval at least four (4) months prior to implementation.

(l) All professional nursing education programs implementing any curriculum change shall submit to Board Staff an evaluation of

the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

§215.11. *Facilities, Resources, and Services*

(a) The governing entity shall be responsible for providing:

(1) educational facilities;

(2) resources; and

(3) services which support the effective development and implementation of the professional nursing education program.

(b) An appropriately equipped skills laboratory shall be provided to accommodate the maximum number of students allowed for the program and to provide a learning environment where students can receive instruction and demonstrate all basic nursing skills. A simulation laboratory may be provided to enhance clinical learning experiences where students can practice nursing care through planned scenarios that mimic real clinical situations.

(1) The laboratories shall be equipped with hot and cold running water.

(2) The laboratories shall have adequate storage for equipment and supplies.

(c) The dean/director and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(d) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) The dean/director shall have a private office.

(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.

(3) Space for clerical staff, records, files, and equipment shall be adequate.

(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.

(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.

(6) Teaching aids shall be provided to meet the objectives/outcomes of the program.

(7) Adequate restrooms and lounges shall be provided convenient to the classroom.

(e) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.

(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

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

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.1, relating to *Definitions*. The amendments are adopted without changes to the proposed text published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3564).

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code Chapter 601 and are necessary for consistency with those statutory definitions.

Background

During the 84th Legislative Session, Senate Bill (SB) 202 was enacted by the Texas Legislature and amended Chapter 601 of the Texas Occupations Code. Among other things, SB 202 transferred the licensing and regulation of radiologic technologists from the Department of State Health Services (DSHS) to the Texas Medical Board. However, the Board's current rule still refers to rules that were adopted by DSHS under the old statutory scheme, but no longer exist. The proposed amendments are necessary to correct this outdated reference and to include a proper reference to the statutory definition of the term *radiologic procedure*.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §601.002(9) and §301.151.

Section 601.002(9) defines the term *radiologic procedure* as a procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that: (i) is intended for use in the diagnosis of disease or other medical or dental conditions in humans or the cure, mitigation, treatment, or prevention of disease in humans; and (ii) achieves its intended purpose through the emission of radiation.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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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22 TAC §217.14

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.14, relating to *Registered Nurses Performing Radiologic Procedures*. The amendments are adopted without changes to the proposed text published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3565).

Reasoned Justification. The amendments are being adopted under the authority of the Occupations Code Chapter 601 and are necessary for consistency with those statutory mandates.

Background

During the 84th Legislative Session, Senate Bill (SB) 202 was enacted by the Texas Legislature and amended Chapter 601 of the Texas Occupations Code. Among other things, SB 202 transferred the licensing and regulation of radiologic technologists from the Department of State Health Services to the Texas Medical Board. SB 202 also created an advisory board responsible for establishing the minimum standards for curriculum and education programs designed to train medical radiologic technologists to perform radiologic procedures.

Pursuant to Chapter 601, any individual who performs a radiologic procedure must hold a certificate issued by the advisory board. However, an individual may be exempted from holding a certificate under the chapter if: (i) the individual is a licensed practitioner (doctor of medicine, osteopathy, podiatry, or dentistry, or a chiropractor) and performs the procedure in the course and scope of the profession for which the individual holds the license; (ii) the individual performs the procedure under the instruction or direction of a practitioner and complies with rules adopted under §601.252 of the chapter; (iii) the procedure is performed under the supervision of a dentist and the individual is registered with the State Board of Dental Examiners and complies with rules adopted by that board under §601.252; (iv) the procedure is performed in a hospital that participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Hospitals and the individual has completed a training program approved by the advisory board under §601.252; (v) the individual is a student enrolled in a training program that meets the minimum standards adopted under §601.201 and is performing a radiologic procedure in an academic or clinical setting as part of the training program; or (vi) the individual is licensed or otherwise registered as a medical radiologic technologist by another state, the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or a professional organization or association recognized by the advisory board, enrolled in a continuing education program that meets the requirements adopted under §601.108, and is performing a radiologic procedure as part of the continuing education program for not more than 10 days.

Section 601.253 further requires the Board to adopt rules governing registered nurses performing radiologic procedures. These rules must establish mandatory training guidelines and require registered nurses performing radiologic procedures

under the instruction or direction of a practitioner to register with the Board and to identify the practitioner ordering the procedures.

The Board's existing rule already requires registered nurses performing radiologic procedures, other than those performing radiologic procedures in a hospital in the federal Medicare program or that is accredited by the Joint Commission, to register with the Board. The Board's existing rule also currently requires registered nurses performing radiologic procedures to comply with the training requirements of Chapter 601 and those of the Texas Medical Board. Further, the Board's current rule requires registered nurses performing radiologic procedures to comply with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas affecting their practice. The adopted amendments do not change these existing requirements. Rather, the amendments reiterate that the training program completed by the registered nurse must sufficiently and adequately prepare the nurse to provide safe and effective nursing care in that role.

The amendments do include one new requirement. Each registered nurse who completes a training course under the rule must maintain a record demonstrating completion of an appropriate training program that has adequately prepared the nurse to perform radiologic procedures. The records must document the nurse's attendance and completion of the training program, as evidenced by original certificates of attendance and completion, and must be available for submission to the Board upon audit. The records must be maintained by the nurse for a minimum of three consecutive renewal periods or six years. These requirements are necessary to ensure that registered nurses subject to the rule complete the required training and that the Board is able to audit completion of the training to ensure compliance as necessary.

The remaining amendments are not substantive in nature and make editorial and/or grammatical changes to the text of the section.

Section by Section Overview.

Adopted §217.14(a) states that a registered nurse who performs radiologic procedures other than in a hospital that participates in the federal Medicare program or that is accredited by the Joint Commission shall submit an application for registration to the Board and shall submit evidence including, but not limited to: (i) current licensure as a registered nurse in the State of Texas; and (ii) the name and business address of the practitioner or director of radiological services under whose instruction or direction the radiologic procedures are performed.

Adopted §217.14(b) provides that, after review by the Board, notification of registration shall be mailed to the registered nurse informing him/her that the registration with the Board has been completed.

Adopted §217.14(c) provides that the registered nurse who is registered to perform radiologic procedures pursuant to subsection (a) of the section shall notify the Board within 30 days of any changes that would render the information on the nurse's application incorrect, including, but not limited to any changes in the identity of the practitioner or director of radiological procedures under whose instruction or direction the radiologic procedures are performed.

Adopted §217.14(d) states that the registered nurse whose functions include radiologic procedures must act within the scope of

the Texas Nursing Practice Act and the Board's rules and complete a training program that adequately prepares the nurse to provide safe and effective nursing care in that role. Further, the nurse shall comply with the requirements and limitations of the Medical Radiologic Technologist Certification Act (Occupations Code Chapter 601) and any applicable rules of the Texas Medical Board. In addition, to the extent applicable, the registered nurse must be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas.

Adopted §217.14(e) states that each nurse shall be responsible for maintaining a record demonstrating completion of an appropriate training program that has adequately prepared the nurse to perform radiologic procedures. These records shall document attendance and completion of the training program, as evidenced by original certificates of attendance and completion, and must be available for submission to the Board upon audit. These records shall be maintained by the nurse for a minimum of three consecutive renewal periods or six years.

Adopted §217.14(f) provides that any nurse who violates the Board's rule, the applicable rules of the Texas Medical Board, or other applicable law shall be subject to disciplinary action.

Summary of Comments Received.

Summary of Comment: A commenter representing the American Society of Radiologic Technologists suggests requiring nurses who perform radiologic procedures to complete six hours of continuing education, each renewal period, in the topics of radiation physics, radiobiology, radiation safety, radiation management, or radiation protection.

Agency Response: The Board declines to make this change. The Board agrees that nurses performing radiologic procedures must be properly educated and trained to do so. To this end, the rule requires nurses performing radiologic procedures to complete a training program that will adequately prepare them to provide safe and effective nursing care in that role. As with all areas of nursing practice, the specific role or function of the nurse will vary based upon the type of radiologic procedure being performed. In some cases, a procedure may require a great deal of specialized knowledge and training. In others, it may not. It is the responsibility of each nurse performing a radiologic procedure to know and understand the complexities of the procedure and to ensure that he/she is adequately prepared to perform the procedure in a safe and effective manner.

The complexity of radiologic procedures, and the frequency with which nurses perform them, will necessarily vary among individual licensees. As a result, some nurses may perform complex procedures a few times a year, while others may perform simple, routine procedures several times a day. Each practice setting is different. It is each nurse's individual responsibility to choose continuing nursing education courses that will promote and enrich their knowledge and improve their skills in their specific practice settings. The Board believes the current continuing competency requirements set forth in Chapter 216 of the Board's rules are sufficient to ensure the ongoing safe practice of nurses performing radiologic procedures.

In order to renew his/her license, each nurse must either complete 20 hours of continuing nursing education in his/her area of practice each renewal period or obtain, maintain, or renew an approved national nursing certification in the nurse's area of practice. While the Board encourages nurses to choose continuing education courses that relate to their work setting, the

Board does not generally prescribe the specific courses that a nurse must complete in order to meet these requirements. While the Board has enacted rules requiring the completion of specific courses (targeted continuing education) to implement specific legislative requirements in the past, and is authorized to require the completion of targeted continuing education, the Board declines to do so here for reasons given herein.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: The American Society of Radiologic Technologists.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code Chapter 601 and §301.151.

Specifically, §601.253 requires the Board to adopt rules governing registered nurses performing radiologic procedures, including rules establishing mandatory training guidelines and requiring registered nurses performing radiologic procedures to register with the Board and to identify the practitioner ordering the procedures.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 20, 2018.

TRD-201803152

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: August 9, 2018

Proposal publication date: June 1, 2018

For further information, please call: (512) 305-6878



22 TAC §217.23

Introduction

The Texas Board of Nursing (Board) adopts new §217.23, relating to Balance Billing. The new section is adopted with changes to the proposed text published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3567).

Reasoned Justification. The new section is being adopted under the authority of the Insurance Code Chapter 1467 and is necessary for compliance with those statutory mandates.

Background

During the 85th Legislative Session, the Texas Legislature enacted Senate Bill (SB) 507, which amended the Insurance Code

Chapter 1467, and became effective on September 1, 2107. Chapter 1467 originally applied only to facility-based physicians (those working in ambulatory surgical centers; birthing centers; hospitals, and free standing emergency medical care facilities). SB 507, however, expanded the provisions of the chapter to all health care providers, including nurses in certain circumstances.

In general, SB 507 permits certain insured individuals (enrollees) to request mandatory mediation with a facility-based or emergency care provider if the individual receives a bill exceeding \$500 (after co-payments, deductibles, and co-insurance) for emergency care or a health care or medical service or supply provided by a facility-based or emergency care provider. If requested, the provider and the insurer/administrator, or their representatives, must attend and participate in the mediation. Prior to the mediation, all of the parties must participate in a mandatory informal settlement teleconference. If the matter is not resolved during the teleconference, a mediation must take place in the county where the health care services were rendered. The mediation will focus on whether the amount charged by the provider was excessive and whether the amount covered by the insurer/administrator was usual and customary or whether the amount paid was low. The mediator's fee is required to be split evenly among the provider and the insurer/administrator. Unsuccessful mediations must be referred to a special judge for a hearing in district court.

Except in the case of an emergency, and if requested by an enrollee, a health care provider subject to the chapter must also provide to the enrollee an estimate of the costs the enrollee will be responsible for paying. This estimate must be provided before any health care services are rendered. If the provider obtains the individual's written acknowledgment of the estimated costs, the provider cannot be required to participate in mediation, so long as the billed amount is lower than or equal to the amount quoted in the estimate.

Further, Chapter 1467 requires providers to include in their billing statements notice of the opportunity for mandatory mediation. Once a provider has been informed of a mediation request, the provider may not seek collection activities against the insured individual while the claim is pending resolution. Chapter 1467 also requires the imposition of an administrative penalty on providers who are found to have participated in mediation in bad faith.

The proposed new section is necessary to implement the requirements of Chapter 1467 and to provide notice to the Board's licensees of their responsibilities under the chapter.

Changes to the Adopted Text. The Board received two written comments on the proposal. These comments were considered by the Board at its July 2018 meeting. In response to the written comments on the published proposal, the Board has made changes to the title of the section and subsections (b), (c), and (d)(2). None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes these changes address the majority of the commenters' concerns.

How the Sections Will Function.

Adopted §217.23(a) identifies the purpose of the new section, which is to implement the requirements of Chapter 1467 and to notify licensees of their responsibilities under that chapter.

Proposed new §217.23(b) clarifies that the new section only applies to a facility-based or emergency care provider, as those

terms are defined in §1467.001, who bills an enrollee covered by a preferred provider benefit plan offered by an insurer under the Insurance Code Chapter 1301 or a health benefit plan, other than a health maintenance organization plan, under the Insurance Code Chapters 1551, 1575, or 1579, for out-of-network emergency care or health care or medical service or supply provided on or after January 1, 2018. Further, the subsection clarifies that the rule only applies to facility-based providers and emergency care providers that are subject to the Board's jurisdiction.

Proposed new §217.23(c) sets forth the specific responsibilities of a licensee subject to the section's requirements. Proposed new §217.23(c)(1) prescribes the licensee's responsibilities related to a mediation under Chapter 1467.

First, an enrollee, as that term is defined in §1467.001(3), may request mediation of a settlement of an out-of-network health benefit claim if: (i) the amount for which the enrollee is responsible to a facility-based or emergency care provider, after co-payments, deductibles, and co-insurance, including the amount unpaid by the administrator or insurer, is greater than \$500; and (ii) the health benefit claim is for emergency care or a health care or medical service or supply provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator.

Second, if an enrollee requests mediation under Chapter 1467, the facility-based or emergency care provider, or their representative, must participate in good faith in the mediation.

Third, prior to participation in a mediation, all parties, including the facility-based or emergency care provider, or their representative, must participate in an informal settlement teleconference not later than the 30th day after the date on which the enrollee submits the request for mediation. If the informal settlement teleconference is unsuccessful in resolving the matter, a mediation must be conducted in the county in which the health care or medical services were rendered.

Fourth, in a mediation under Chapter 1467, the parties must evaluate: (i) whether the amount charged by the facility-based or emergency care provider for the health care or medical service or supply is excessive; (ii) whether the amount paid by the insurer or administrator represents the usual and customary rate for the health care or medical service or supply or is unreasonably low; and (iii) as a result of those amounts, the amount, after co-payments, deductibles, and co-insurance are applied, for which the enrollee is responsible to the facility-based or emergency care provider.

Fifth, the fees of a mediation under Chapter 1467 are required to be borne equally between the facility-based or emergency care provider and the insurer or administrator.

Sixth, in the event a mediation is unsuccessful, the matter must be referred to a special judge for resolution, as set forth in §1467.057.

Finally, a facility-based provider will not be required to participate in mediation to mediate a billed charge if, prior to providing a health care service or supply, the facility-based provider makes a written disclosure, as described further in paragraph (2) of subsection (c), and obtains the enrollee's written acknowledgment of that disclosure, so long as the billed amount is less than or equal to the maximum amount projected in the disclosure.

Proposed new §217.23(c)(2) sets forth a licensee's responsibilities with regard to billing notices.

First, except in the case of an emergency, and if requested by an enrollee, a facility-based provider must provide a complete disclosure to the enrollee, prior to providing the health care or medical service or supply, that: (i) explains that the facility-based provider does not have a contract with the enrollee's health benefit plan; (ii) discloses projected amounts for which the enrollee may be responsible; and (iii) discloses the circumstances under which the enrollee would be responsible for those amounts.

Second, a facility-based or emergency care provider must include a conspicuous, plain-language explanation of the mediation process available under Chapter 1467, as set forth in §1467.0511, in a bill sent to each enrollee by the facility-based or emergency care provider for an out-of-network health benefit claim (balance bill) eligible for mediation under Chapter 1467.

Proposed new §217.23(c)(3) sets forth a licensee's responsibilities with regard to collection notices.

On receipt of notice from the Texas Department of Insurance that an enrollee has made a request for mediation meeting the requirements of Chapter 1467, the facility-based or emergency care provider may not pursue any collection efforts against the enrollee for amounts other than co-payments, deductibles, and co-insurance, before the earlier of: (i) the date the mediation is completed; or (ii) the date the request to mediate is withdrawn.

Proposed new §217.23(d) addresses complaint investigation and resolution. First, except for good cause shown, and in compliance with §1467.102, on a report of a mediator and appropriate proof of bad faith mediation, the Board is required to impose an administrative penalty. As set forth in §1467.101, the following conduct constitutes bad faith mediation: (i) failing to participate in the mediation, if participation in the mediation was required; (ii) failing to provide information the mediator believes is necessary to facilitate an agreement; or (iii) failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement. Failure to reach an agreement is not conclusive proof of bad faith mediation.

Second, a complaint may be filed with the Board by a mediator against a licensee or by an enrollee who is not satisfied with a mediated agreement. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or has committed a violation of the Nursing Practice Act, Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

Summary of Comments Received

General Comments

Summary of Comment: A commenter representing the APRN Alliance suggests adding a provision notifying licensees that, by law, they are not subject to discipline for failing to disclose the amount for which the enrollee may be responsible prior to providing the service, nor for failing to include a conspicuous explanation of the mediation process in a bill. The commenter states that, while the APRN Alliance agrees that licensees should provide this information, they should not fear discipline if they fail to do so.

A commenter representing the Texas Medical Association states that the Board's rules are silent as to the consequences of a licensee's failure to comply with required disclosures, which stands in stark contrast to the Insurance Code §1467.151(d),

which clearly indicates that any failure to provide the required disclosures is not subject to discipline by the appropriate regulatory agency. The commenter suggests adding a statement to the rule that specifies that a licensee is not subject to discipline for failure to provide the required disclosures.

Agency Response: The Board declines to make these suggested changes. A licensee is required under the Insurance Code §1467.051(c), if requested by an enrollee, to provide a complete disclosure to the enrollee before providing a health care or medical service or supply, as specified in that statutory subsection. Further, §1467.0511(a) requires all bills for out-of-network health benefit claims eligible for mediation sent to enrollees by a facility-based provider or emergency care provider to contain a conspicuous explanation of the mediation process, as specified in that statutory subsection. Nonetheless, the Board recognizes §1467.151(d), which precludes disciplinary action based upon a licensee's failure to provide a disclosure under §1467.051 or §1467.0511. No provision of the rule runs contrary to that statutory provision or implies otherwise. The Board, however, does not find it necessary to repeat the statutory prohibition in the rule.

Summary of Comment: A commenter representing the APRN Alliance suggests clarifying that licensees may send a representative to an informal settlement conference and mediation. The commenter cites to the statutory definition of "party" in §1467.001(7) to support this suggestion. The commenter states that the rule text as proposed may raise questions as to whether the rule requires more than the law requires.

A commenter representing the Texas Medical Association points out that the statute permits a provider's representative to participate in mediation. The commenter recommends that the rule be amended for consistency with this provision.

Agency Response: The Board agrees that Chapter 1467 allows a representative to attend an informal settlement conference or mediation on the licensee's behalf and has added clarifying language to subsection (c) of the rule text as adopted.

Summary of Comment: A commenter representing the Texas Medical Association recommends changing the title of the new section to read "Out-of-Network Health Benefit Claim Dispute Resolution". The commenter states that the suggested title better describes the subject matter of the rule section and will help avoid confusion by members of the regulated community and lay persons. The commenter also states that this change would be more consistent with the manner in which the Texas Medical Board has historically identified its rules implementing the Insurance Code Chapter 1467.

Agency Response: The Board agrees that the subject matter of the section relates to out-of-network claim dispute resolution, also known as "balance billing", and has, therefore, changed the title as adopted to "Balance Billing Dispute Resolution". The Board does not agree that the phrase "balance billing" is confusing or misrepresents the context of the section or the intent of the Insurance Code Chapter 1467. To the contrary, the Board believes this phrase will be easier for enrollees, licensees, and the general public to understand. As such, the Board declines to make further changes to the section's title.

Summary of Comment: A commenter representing the Texas Medical Association recommends including definitions in the rule for the terms that are defined in the Insurance Code Chapter 1467 and also appear in the rule.

Agency Response: The Board agrees and has added the commenter's suggested language to the rule as adopted.

§217.23(a). *Purpose.*

Summary of Comment: A commenter representing the Texas Medical Association notes that the term "licensee" is not defined in the new section or Chapter 217 of the Board's rules. The commenter suggests, in the interest of clarity, that the Board include a specific definition of the term "licensee" in the rule.

Agency Response: The Board declines to make this change. The Board does not believe the term is confusing within the context of the section, and the Board acknowledges it only has jurisdiction over its own licensees.

§217.23(b). *Applicability.*

Summary of Comment: A commenter representing the APRN Alliance states that it would be helpful if the Board included the types of coverage that the rule applies to in the applicability section. The commenter states that the balance billing law applies to coverage issued by an insurer as a preferred provider benefit plan or administered by an administrator of a health benefit plan, other than a health maintenance organization plan. The commenter further states that the provisions of the rule do not apply to all health benefit plan enrollees, and providing a clear and accurate applicability section will help licensees understand their responsibilities under the rule.

Agency Response: The Board agrees and has added clarifying language to subsection (b) of the rule text as adopted.

Summary of Comment: A commenter representing the Texas Medical Association states that the use of the phrase *any* "facility-based provider" and "emergency care provider" in the subsection could be interpreted to include physicians, as well as nurses. The commenter re-iterates that the Board does not have jurisdiction over physicians and objects to any rule that imposes any requirement on or otherwise regulates any physician. The commenter suggests clarifying that the rule only applies to a Board licensee that is also a "facility-based provider" or "emergency care provider", as those terms are defined in the Insurance Code §1467.001.

Agency Response: The Board agrees in part and disagrees in part. Because the Board only has jurisdiction over its own licensees, an interpretation of this subsection that seeks to expand that jurisdiction is unlikely and without merit. Nevertheless, the Board has added language to the subsection as adopted to clarify that the section only applies to individuals over which the Board has jurisdiction.

§217.23(c)(1). *Mediation.*

Summary of Comment: A commenter representing the Texas Medical Association states that subsection (c)(1) of the rule text is unnecessarily duplicative of the statutory language in the Insurance Code Chapter 1467. Further, the commenter states that the Texas Medical Board has not historically repeated the basic requirements for mediation in its rules, and instead, has focused on the physician's responsibilities with regard to disclosures/billing notices and complaints (e.g., bad faith mediation and improper billing). The commenter recommends that the language in (c)(1) be stricken in its entirety.

Agency Response: The Board declines to make this change. The Board believes it is important to re-iterate in its own rules a licensee's primary obligations under the Insurance Code Chapter 1467 in an easily comprehensible manner.

§217.23(c)(1)(A).

Summary of Comment: A commenter representing the Texas Medical Association recommends that, if the Board retains subsection (c)(1), that the Board separate the provisions of (c)(1)(A)(ii). The commenter contends that separating the clause into two subclauses will aid the regulated community in understanding which claims are eligible for mediation and will ensure that the rule language more closely tracks the statute.

Agency Response: The Board agrees and has amended the text as adopted in subsection(c)(1)(A)(ii) accordingly.

§217.23(c)(1)(B).

Summary of Comment: A commenter representing the Texas Medical Association states that the Board imposes a "good faith" standard on mediation participants that is not found in the statute. The commenter further states that this addition is unnecessary because subsection (d)(1) of the rule proposal specifically addresses bad faith mediation by tracking the statute's language. The commenter recommends deleting (c)(1) in its entirety or striking the term "good faith" from (c)(1)(B).

Agency Response: The Board agrees and has removed the phrase "good faith" from the rule text as adopted.

§217.23(c)(1)(D).

Summary of Comment: A commenter representing the Texas Medical Association recommends stylistic changes to the subparagraph. The commenter recommends adding "as a result of the amounts described by clause (i), determine the" at the beginning of clause (ii) of the subparagraph. The commenter also suggests adding statutory language regarding the goal of mediation found in the Insurance Code §1467.056(d).

Agency Response: The Board agrees in part and disagrees in part. The Board agrees that the rule text could more closely track the statutory language in §1467.056(a) and has made changes to the rule text as adopted accordingly. The Board declines to include the additional language suggested by the commenter. This language is not necessary and does not address any additional licensee responsibility or obligation.

§217.23(c)(1)(E).

Summary of Comment: A commenter representing the Texas Medical Association suggests that the rule text be changed to reflect that the mediator's fees (and not any other costs associated with mediation) are to be split evenly and paid by the insurer or administrator and the facility-based provider or emergency care provider.

Agency Response: The Board agrees and has changed the text of the rule as adopted accordingly.

§217.23(c)(1)(F).

Summary of Comment: A commenter representing the Texas Medical Association suggests that the phrase "for resolution" be struck from the rule text to more closely track the statutory language.

Agency Response: The Board agrees and has changed the text of the rule as adopted accordingly.

§217.23(c)(1)(G).

Summary of Comment: A commenter representing the Texas Medical Association suggests that the phrase "participate in mediation to" be stricken from the subparagraph and the phrase

"under the Insurance Code Chapter 1467" be added to the subparagraph.

Agency Response: The Board declines to make this change. The purpose of the section is to implement the requirements of the Insurance Code Chapter 1467 and notify licensees of their responsibilities under that chapter. It is clear that the requirements of the section regarding a mediation apply in that context.

§217.23(c)(2)(A)

Summary of Comment: A commenter representing the Texas Medical Association suggests adding the phrase "out-of-network" before "facility-based provider". The commenter states that only out-of-network facility-based providers should be required to meet the disclosure obligation, since the first element of the disclosure obligation is a requirement to explain that the provider does not have a contract with the enrollee's health benefit plan.

Agency Response: The Board agrees and has amended the rule text as adopted accordingly.

§217.23(c)(2)(B)

Summary of Comment: A commenter representing the Texas Medical Association states that the rule contains overly broad language in that it would require a facility-based or emergency-care provider to include the explanation on *any* bill sent to an enrollee, and would not be limited to out-of-network bills subject to mediation under the Insurance Code Chapter 1467, and would even apply to in-network bills. The commenter recommends that the Board narrow the scope of the requirement by including reference to an "out-of-network health benefit claim eligible for mediation under Insurance Code Chapter 1467" in the rule text.

Agency Response: The Board agrees that additional clarification is needed in this subparagraph and has amended the rule text as adopted accordingly.

§217.23(c)(3)

Summary of Comment: A commenter representing the Texas Medical Association suggests that the rule be modified to clarify that the mediation request must meet the requirements of the Insurance Code Chapter 1467 in order to trigger the responsibility not to pursue collection efforts.

Agency Response: The Board agrees that the suggested change tracks the statutory language and has made the changes to the rule text as adopted accordingly.

§217.23(d)(2).

Summary of Comment: A commenter representing the APRN Alliance suggests modifying the language of the rule to read "improper billing practices *that violate* the Nursing Practice Act" instead of "improper billing practices *or* has committed a violation of the Nursing Practice Act". The commenter states that the proposed language implies that the Board's investigation of an improper billing complaint will extend to unrelated practice violations.

Agency Response: The Board declines to make the change. If a licensee's conduct constitutes a violation of the Nursing Practice Act, Chapter 1467, or other applicable law, such as the Health and Safety Code §311.0025, the Board is authorized to review that conduct and take appropriate disciplinary action. A licensee's conduct may only implicate a singular statute or rule, but it may also implicate more than one. In such event, the Board

retains authority to review the conduct pursuant to all applicable standards.

Summary of Comment: A commenter representing the Texas Medical Association suggests that the paragraph include language that denotes that a complaint made by a mediator must concern bad faith mediation. Further, the commenter suggests adding language regarding improper billing practices under the Health and Safety Code §311.0025, in that the Board shall not open investigations relating to complaints of a single instance of improper billing, but shall open investigations on facility-based or emergency care providers who are alleged to have engaged in improper billing in multiple instances. The commenter adds that this addition would better align with The Texas Medical Board's historic interpretation of the same statutory provisions.

Agency Response: The Board agrees in part and disagrees in part. The Board agrees with the suggestion of the commenter to include language that denotes "bad faith mediation" and has made the change to the adopted rule text accordingly. However, the Board declines to include the additional suggested language regarding improper billing practice under the Health and Safety Code §311.0025. The Board retains authority to investigate a licensee's conduct and take disciplinary action where such conduct violates statutory standards or Board rules. This includes instances of improper billing practices. However, the Board is bound by statutory prohibitions such as those found in §311.025 and would not initiate disciplinary action based upon such conduct. The Board does not find it necessary to re-iterate those statutory prohibitions in the rule as adopted.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: The APRN Alliance; The Texas Medical Association.

Neither for nor against, with changes: None.

Statutory Authority. The new section is adopted under the authority of the Insurance Code §1467.003 and the Occupations Code §301.151.

Section 1467.003 authorizes the Board to adopt rules as necessary to implement its respective powers and duties under that chapter.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§217.23. *Balance Billing Dispute Resolution.*

(a) Purpose. The purpose of this section is to implement the requirements of the Insurance Code Chapter 1467 and notify licensees of their responsibilities under that chapter.

(b) Definitions and Applicability of Section.

(1) Definitions. Terms defined in the Insurance Code §1467.001 have the same meanings when used in this section, unless the context clearly indicates otherwise.

(2) Applicability. This section applies to any facility-based provider or emergency care provider, as those terms are defined in the Insurance Code §1467.001, who bills an enrollee covered by a preferred provider benefit plan offered by an insurer under the Insurance Code Chapter 1301 or a health benefit plan, other than a health maintenance organization plan, under the Insurance Code Chapters 1551, 1575, or 1579, for out-of-network emergency care, health care, or medical service or supply provided on or after January 1, 2018. This section is limited to facility-based providers and emergency care providers that are subject to the Board's jurisdiction.

(c) Responsibilities of Licensee.

(1) Mediation.

(A) An enrollee, as that term is defined in the Insurance Code §1467.001(3), may request mediation of a settlement of an out-of-network health benefit claim if:

(i) the amount for which the enrollee is responsible to a facility-based or emergency care provider, after co-payments, deductibles, and co-insurance, including the amount unpaid by the administrator or insurer, is greater than \$500; and

(ii) the health benefit claim is for:

(I) emergency care; or

(II) a health care or medical service or supply provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator.

(B) If an enrollee requests mediation under the Insurance Code Chapter 1467, the facility-based or emergency care provider or their representative must participate in the mediation.

(C) Prior to participation in a mediation, all parties, including the facility-based or emergency care provider, or their representative, must participate in an informal settlement teleconference not later than the 30th day after the date on which the enrollee submits the request for mediation. If the informal settlement teleconference is unsuccessful in resolving the matter, a mediation must be conducted in the county in which the health care or medical services were rendered.

(D) In a mediation under the Insurance Code Chapter 1467, the parties must:

(i) evaluate whether:

(I) the amount charged by the facility-based or emergency care provider for the health care or medical service or supply is excessive; and

(II) whether the amount paid by the insurer or administrator represents the usual and customary rate for the health care or medical service or supply or is unreasonably low; and

(ii) as a result of the amounts described by clause (i) of this subparagraph, determine the amount, after co-payments, deductibles, and co-insurance are applied, for which the enrollee is responsible to the facility-based or emergency care provider.

(E) The mediator's fees for a mediation under the Insurance Code Chapter 1467 shall be split evenly and paid by the facility-based or emergency care provider and the insurer or administrator.

(F) In the event a mediation is unsuccessful, the matter must be referred to a special judge, as set forth in the Insurance Code §1467.057.

(G) A facility-based provider will not be required to participate in mediation to mediate a billed charge if, prior to providing a health care service or supply, the facility-based provider makes a

disclosure, as set forth in paragraph (2) of this subsection, and obtains the enrollee's written acknowledgment of that disclosure, so long as the billed amount is less than or equal to the maximum amount projected in the disclosure.

(2) Billing Notices.

(A) Except in the case of an emergency, and if requested by an enrollee, an out-of-network facility-based provider must provide a complete disclosure to the enrollee, prior to providing the health care or medical service or supply, that:

(i) explains that the facility-based provider does not have a contract with the enrollee's health benefit plan;

(ii) discloses projected amounts for which the enrollee may be responsible; and

(iii) discloses the circumstances under which the enrollee would be responsible for those amounts.

(B) Each bill sent to an enrollee by a facility-based or emergency care provider for an out-of-network health benefit claim (balance bill) eligible for mediation under the Insurance Code Chapter 1467 must include a conspicuous, plain-language explanation of the mediation process available under Chapter 1467, as well as the information specified in §1467.0511.

(3) Collection Notices. On receipt of notice from the Texas Department of Insurance that an enrollee has made a request for mediation that meets the requirements of the Insurance Code Chapter 1467, the facility-based or emergency care provider may not pursue any collection efforts against the enrollee for amounts other than co-payments, deductibles, and co-insurance, before the earlier of the date the mediation is completed or the date the request to mediate is withdrawn.

(d) Complaint Investigation and Resolution.

(1) Bad faith.

(A) Except for good cause shown, on a report of a mediator and appropriate proof of bad faith mediation, the Board shall impose an administrative penalty.

(B) The following conduct constitutes bad faith mediation:

(i) failing to participate in the mediation, if participation in the mediation was required;

(ii) failing to provide information the mediator believes is necessary to facilitate an agreement; or

(iii) failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement.

(C) Failure to reach an agreement is not conclusive proof of bad faith mediation.

(2) Complaint process. A complaint may be filed with the Board by a mediator against a licensee for bad faith mediation or by an enrollee who is not satisfied with a mediated agreement. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or has committed a violation of the Nursing Practice Act, Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

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 20, 2018.

TRD-201803154

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: August 9, 2018

Proposal publication date: June 1, 2018

For further information, please call: (512) 305-6822



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.83

The Texas State Board of Public Accountancy adopts an amendment to §501.83, concerning Firm Names, without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2703). The rule will not be republished.

The amendment to §501.83(a)(4)(B) deletes a reference to repealed §513.2 and replaces it with the correct reference: §901.355 of the Act, because the Board no longer registers foreign CPAs but issues a certificate based upon reciprocity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 19, 2018.

TRD-201803142

J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

Effective date: August 8, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 305-7842



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 416. MENTAL HEALTH COMMUNITY-BASED SERVICES SUBCHAPTER C. JAIL-BASED COMPETENCY RESTORATION PROGRAM

The Health and Human Services Commission (HHSC) adopts the repeal of Subchapter C in its entirety: §416.76, concerning Purpose; §416.77, concerning Application; §416.78, concerning Definitions; §416.79, concerning Program Eligibility; §416.80, concerning Program Standards; §416.81, concerning Admission, Assessment, and Reassessment; §416.82, concerning Written Policies and Procedures; §416.83, concerning Staff Member Training; §416.84 LMHA, LBHA, or MCO Responsibilities; §416.85, concerning Treatment Planning; §416.86, concerning Program Staffing; §416.87, concerning Participant's Rights; §416.88, concerning Competency Restoration Services; §416.89, concerning Competency Restoration Training Module; §416.90, concerning Transition Services; §416.91, concerning Discharge Planning; §416.92, concerning Compliance with Statutes, Rules, and Other Documents; and §416.93, concerning Outcome Measures, without changes as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2252).

HHSC adopts new §416.76, concerning Purpose; §416.77, concerning Application; §416.81, concerning Provider Staff Member Training; §416.86, concerning Treatment Planning; §416.87, concerning Competency Restoration Education; §416.90, concerning Outcome Measures; and §416.91, concerning Compliance with Statutes, Rules, and Other Documents, without changes to the proposed text as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2252). Therefore, these rules will not be republished.

HHSC adopts new §416.78, concerning Definitions; §416.79, concerning Program Eligibility Requirements; §416.80, concerning Service Standards; §416.82, concerning Policies and Procedures; §416.83, concerning Individual Eligibility; §416.84, concerning Admission; §416.85, concerning Rights of Individuals Receiving JBCR Services; §416.88, concerning Procedures for Determining Competency Status in a JBCR Program; and §416.89, concerning Preparation for Discharge from a JBCR Program, with changes to the proposed text as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2252). Therefore, these rules will be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 1475, 83rd Legislature, Regular Session, 2013, permitted the Department of State Health Services (DSHS) to establish a pilot program to provide jail-based competency restoration (JBCR) services and directed the agency to adopt rules governing such services. DSHS adopted the rules currently codified in Subchapter C of this chapter. S.B. 1326, 85th Legislature, Regular Session, 2017, provides authority for a county or counties to implement a JBCR program and directs HHSC to adopt rules as necessary for a county to develop and implement a JBCR program. In addition, S.B. 1326 revised statutory requirements for the operation of a JBCR pilot program.

Previous rules did not reflect the current statutory requirements for operating a county-based JBCR program. In addition, the

previous rules did not reflect an integrated approach to care to include serving individuals with mental illness or an intellectual disability (ID).

The new adopted rules:

- (1) clarify that providers of JBCR services must be a local mental health authority (LMHA), a local behavioral health authority (LBHA), an LMHA or LBHA subcontractor, a private provider, a local unit of general purpose government or city unit of government, or a subcontractor of the unit of government;
- (2) outline the requirements for operating a JBCR pilot program or county-based JBCR program;
- (3) in accordance with the Texas Code of Criminal Procedure, Chapter 46B, provide greater flexibility in operating a JBCR pilot program, including removing the 3.7:1 staff to defendant ratio;
- (4) reflect an integrated approach to care by authorizing individuals with mental illness or an ID to receive services; and
- (5) increase readability.

COMMENTS

The 30-day comment period ended May 13, 2018.

During this period, HHSC received 11 comments regarding the proposed rules from three commenters, including Meadows Mental Health Policy Institute, Disability Rights Texas, and one individual. A summary of comments relating to the rules and HHSC's responses follows.

Comment: The commenter supports establishing JBCR rules and supports the rules as proposed.

Response: HHSC acknowledges and appreciates the commenter's support of rules governing the provision of JBCR services.

Comment: Regarding proposed §416.80(b)(2), Service Standards, the commenter suggested amending the rule to delete the reference to a psychologist, because a psychologist does not have the authority to provide medication-related treatment.

Response: HHSC agrees with the commenter and revised the rule as suggested.

Comment: Regarding proposed §416.83(b)(1) and (2), Individual Eligibility, the commenter suggested "there is an inherent conflict of interest" if a JBCR program is also used to screen and determine that the individual is not eligible for outpatient competency restoration.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The determination of who is eligible for bail, thus eligible for outpatient competency restoration (OCR), is independent of admission to an OCR or JBCR program.

Comment: Regarding proposed §416.83(c), Individual Eligibility, the commenter suggested the "language infers that there will be timely communication with an outpatient competency restoration provider when an individual needs to be screened for outpatient competency restoration, but that expectation is not reflected elsewhere in this document and perhaps should be."

Response: HHSC disagrees and declines to revise the rule in response to this comment. Rules in this subchapter outline standards for the delivery of JBCR services. HHSC will develop standards governing the provision of OCR services through a separate rulemaking project.

Comment: Regarding proposed §416.83(c), Individual Eligibility, the commenter suggested adding language clarifying "it is permissible to use the resources of an outpatient competency restoration provider, even if they are outside the local service area if agreement can be reached with all the entities involved."

Response: HHSC agrees with the commenter and revised the rule as suggested.

Comment: Regarding proposed §416.88(a)(1) - (3), Procedures for Determining Competency Status in a JBCR Program, a commenter stated that the requirement for at least two full psychiatric or psychological evaluations for each individual is overly burdensome and not likely to lead to improved treatment or outcomes.

Response: HHSC declines to revise the rule in response to this comment. The rule aligns with Texas Code of Criminal Procedure, Articles 46B.090(i) and 46B.091(g).

Comment: Regarding proposed §416.88(a)(3), Procedures for Determining Competency Status in a JBCR Program, the commenter suggested revising the language to read, "Subsequent to evaluations completed in (1) and (2) above, a separate report for each psychiatric or psychological evaluation must be promptly issued and submitted to the court."

Response: HHSC agrees with the commenter and revised the rule as suggested.

Comment: Regarding proposed §416.88(b), Procedures for Determining Competency Status in a JBCR Program, the commenter suggested clarifying the determination about the individual's restoration to competency can be made any time within that 60-day period. The commenter also stated, "By the end of the 60th day," can be interpreted that this decision must wait until the 60th day.

Response: HHSC agrees with the commenter and revised the rule as suggested.

Comment: Regarding proposed §416.88(b)(3)(A), Procedures for Determining Competency Status in a JBCR Program, a commenter stated, "it is clearer to use the language currently in law. Please insert, 'without unnecessary delay in accordance with §46B.091(i)(2)(A).'"

Response: While HHSC agrees with the sentiment expressed, unavailability of an inpatient bed is an unavoidable delay. HHSC disagrees and declines to revise the rule in response to this comment.

Comment: Regarding proposed §416.88(b)(3)(B), Procedures for Determining Competency Status in a JBCR Program, a commenter suggested revising the language to read, "and transfer the defendant without unnecessary delay, to the appropriate mental health facility or residential care facility for the remainder of the period under the extension."

Response: While HHSC agrees with the sentiment expressed, unavailability of an inpatient bed is an unavoidable delay. HHSC disagrees and declines to revise the rule in response to this comment.

Comment: Regarding proposed §416.89, Preparation for Discharge from a JBCR Program, the commenter suggested clarifying the language "this collaboration occurs at any time it is determined that the person has been restored to competency."

Response: HHSC agrees with the commenter and revised §416.89(a) as suggested.

HHSC staff also made non-substantive editorial changes to clarify §416.78(8), (10) - (12), (14) - (15), and (19), Definitions; §416.79, Program Eligibility Requirements; §416.82(3), Policies and Procedures; and §416.84(a)(2), Admission.

25 TAC §§416.76 - 416.93

STATUTORY AUTHORITY

The adopted repeals are authorized by the Texas Code of Criminal Procedure, Chapter 46B, relating to Incompetency to Stand Trial, Articles 46B.090 and 46B.091, to adopt rules as necessary to implement the JBCR Pilot Program and for a county to develop and implement a JBCR Program; Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC and for the administration of Texas Health and Safety Code, Chapter 1001.

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 17, 2018.

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25 TAC §§416.76 - 416.91

STATUTORY AUTHORITY

The adopted rules are authorized by the Texas Code of Criminal Procedure, Chapter 46B, relating to Incompetency to Stand Trial, Articles 46B.090 and 46B.091, to adopt rules as necessary to implement the JBCR Pilot Program and for a county to develop and implement a JBCR Program; Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC and for the administration of Texas Health and Safety Code, Chapter 1001.

§416.78. Definitions.

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

(1) Competency restoration--The treatment and education process for restoring an individual's ability to consult with the individual's attorney with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings and charges against the individual.

(2) Competency restoration training module (training module)--An HHSC-reviewed training module used by provider staff members to provide legal education to an individual receiving competency restoration services.

(3) Court--A court of law presided over by a judge, judges, or a magistrate in civil and criminal cases.

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

(5) ID--Intellectual disability. Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before age 18.

(6) Individual--A person receiving services under this subchapter.

(7) Inpatient mental health facility--A mental health facility providing 24-hour residential and psychiatric services and is:

(A) a facility operated by HHSC;

(B) a private mental hospital licensed by HHSC;

(C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for an individual with mental illness is provided and is licensed by HHSC; or

(F) a hospital operated by a federal agency.

(8) IST--Incompetent to stand trial. A situation when an individual does not have:

(A) sufficient present ability to consult with the individual's lawyer with a reasonable degree of rational understanding; or

(B) a rational as well as factual understanding of the proceedings against the individual.

(9) JBCR--Jail-based competency restoration. Competency restoration conducted in a county jail setting provided in a designated space separate from the space used for the general population of the county jail.

(A) County-based program--A jail-based competency restoration program developed and implemented by a county or joint counties in accordance with the Texas Code of Criminal Procedure, Article 46B.091.

(B) Pilot program--A jail-based competency restoration pilot program implemented in accordance with the Texas Code of Criminal Procedure, Article 46B.090.

(10) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(11) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code, §533A.035.

(12) LMHA--Local mental health authority. An entity designated as the local mental health authority by the executive commissioner of HHSC in accordance with Texas Health and Safety Code, §533.035(a).

(13) Local unit of general purpose government--The government of a county, municipality, township, Indian tribe, or other unit of government (other than a state) which is a unit of general government as defined in 13 United States Code §184.

(14) LPHA--Licensed practitioner of the healing arts. A person who is:

(A) a physician;

(B) a physician assistant;

(C) an advanced practice registered nurse;

(D) a licensed psychologist;

(E) a licensed professional counselor;

(F) a licensed clinical social worker; or

(G) a licensed marriage and family therapist.

(15) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia, substance use disorder, or ID) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

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

(16) Provider--An entity that contracts with HHSC or a county to provide JBCR program services.

(17) Provider staff member--An employee or person whom the provider contracts or subcontracts for the provision of JBCR program services. A provider staff member includes specially trained security officers, all licensed and credentialed staff, and other persons directly contracted or subcontracted to provide JBCR services to an individual.

(18) QIDP--Qualified intellectual disability professional as defined in 42 CFR §483.430(a).

(19) QMHP-CS--Qualified mental health professional-community services. As defined in Chapter 412, Subchapter G, of this title (relating to Mental Health Community Services Standards).

(20) Residential care facility--A state supported living center or the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF-IID) component of the Rio Grande State Center.

(21) Serious injury--An injury determined by a physician to require medical treatment by a licensed medical professional (e.g., physician, dentist, physician's assistant, or advance practice nurse) or requires medical treatment in an emergency department or licensed hospital.

(22) Significantly sub-average general intellectual functioning--Consistent with Texas Health and Safety Code, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the test used.

(23) Specially trained jailer--A person appointed or employed as a county jailer assigned to work for the JBCR provider.

(24) State mental health facility--A state hospital or a state center with an inpatient psychiatric component.

(25) Subcontractor--A person or entity that contracts with the provider of JBCR program services.

(26) Texas Commission on Jail Standards--The regulatory agency for all county jails and privately operated municipal jails in the state, as established in the Texas Government Code, Chapter 511.

§416.79. *Program Eligibility Requirements.*

(a) The JBCR pilot program must meet the standards set forth in the Texas Code of Criminal Procedure, Article 46B.090, and upon operation of program services, the provider of the JBCR pilot program must be:

(1) an LMHA:

(A) in good standing with HHSC; and

(B) that demonstrates a history of successful competency restoration outcomes; or

(2) a private provider or a local unit of general purpose government or city unit of government, or a subcontractor of the unit of government:

(A) certified by a nationwide nonprofit organization that accredits health care organizations and programs;

(B) that maintains the accreditation in subparagraph (A) of this paragraph while under contract with HHSC to provide competency restoration services under this subchapter;

(C) that demonstrates a history of successful JBCR program outcomes; and

(D) has previously provided JBCR services for one or more years.

(b) The county-based JBCR program must meet the standards set forth in the Texas Code of Criminal Procedure, Article 46B.091 and upon operation of program services, the provider of the county-based JBCR program must be:

(1) an LMHA or LBHA in good standing with HHSC; or

(2) a subcontractor of an LMHA or LBHA in good standing with HHSC.

(c) An LMHA or LBHA that contracts with a county to provide jail-based competency restoration services must comply with the rules found in Chapter 412, Subchapter B of this title (relating to Contracts Management for Local Authorities) and the contract management and oversight requirements of the Texas Comptroller of Public Accounts.

§416.80. Service Standards.

(a) A JBCR pilot program must:

(1) use a multidisciplinary treatment team to provide clinical treatment:

(A) focused on the objective of restoring the individual to competency to stand trial; and

(B) similar to the clinical treatment provided as part of a competency restoration program at an inpatient mental health facility;

(2) employ or contract for the services of at least one psychiatrist;

(3) use QMHP-CSs or QIDPs to provide JBCR program services; and

(4) provide weekly competency restoration hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility.

(b) A county-based JBCR program must:

(1) use a multidisciplinary treatment team:

(A) focused on the objective of restoring the individual to competency to stand trial; and

(B) similar to other competency restoration programs;

(2) employ or contract for the services of at least one psychiatrist;

(3) use QMHP-CSs or QIDPs to provide JBCR program services;

(4) provide weekly competency restoration hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility;

(5) ensure coordination of general health care;

(6) provide mental health treatment, ID services, and substance use disorder treatment, as necessary, for competency restoration; and

(7) through contract, obligate a subcontractor to comply with this subchapter.

§416.82. Policies and Procedures.

A provider must develop and implement written policies and procedures:

(1) describing eligibility, intake and assessment, and treatment planning as described in §416.86 of this subchapter (relating to Treatment Planning), and transition and discharge processes to include coordination and continuity of care planning with an LMHA, LBHA, or LIDDA, or an LMHA, LBHA, or LIDDA subcontractor;

(2) describing how an individual is assessed for:

(A) suicidality and homicidality;

(B) the degree of suicidality and homicidality; and

(C) the development of an individualized suicide and homicide prevention plan;

(3) outlining a provider staff member's ability to monitor and report to the court an individual's restoration to competency status and readiness for return to court as specified in the Texas Code of Criminal Procedure, Article 46B.079; and

(4) addressing how a provider staff member ensures ongoing care, treatment, and overall therapeutic environment during evenings and weekends, including behavioral health crisis or physical health crisis consistent with §412.321(a) and (e) of this title (relating to Crisis Services).

§416.83. Individual Eligibility.

(a) To be eligible to participate in a JBCR program, the court must determine the individual as IST pursuant to the Texas Code of Criminal Procedure, Chapter 46B.

(b) An LMHA, LBHA, or an LMHA or LBHA subcontractor must:

(1) screen an individual for outpatient competency restoration; and

(2) determine an individual ineligible for those services before the individual is admitted into the JBCR program.

(c) If an outpatient competency restoration provider is not within the LMHA's or LBHA's local service area or contracted to provide outpatient competency restoration services for the area to participate in screening an individual for outpatient competency restoration services, the JBCR provider must admit the individual to the JBCR program, if eligible.

§416.84. Admission.

(a) When a provider determines an individual is eligible for a JBCR program:

(1) the provider must ensure the individual will receive competency restoration services no later than 72 hours after arriving at the JBCR program; or

(2) the provider must inform the court that the JBCR program is at capacity, and immediately report the individual's name to HHSC for placement on the Clearinghouse, which HHSC uses to track the list of pending admissions of criminal code commitments for non-violent offenses.

(b) A provider must, when necessary, seek a court order for psychoactive medications in accordance with Texas Health and Safety Code, §574.106 and the Texas Code of Criminal Procedure, Chapter 46B.

§416.85. Rights of Individuals Receiving JBCR Services.

A provider of JBCR services must:

(1) inform the individual receiving JBCR services of the individual's rights in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services) or 40 TAC Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), as applicable;

(2) provide the individual with a copy of the rights handbook published for an individual receiving mental health services or an individual with an ID; and

(3) explain to the individual receiving JBCR services how to initiate a complaint and how to contact:

(A) the HHS Office of the Ombudsman for complaints against the JBCR provider;

(B) the Texas Commission on Jail Standards for complaints against the county jail; and

(C) the Texas protection and advocacy system.

§416.88. Procedures for Determining Competency Status in a JBCR Program.

(a) The psychiatrist for a JBCR pilot program, or psychiatrist or psychologist for a county-based JBCR program, must conduct at least two full psychiatric or psychological evaluations for each individual. The psychiatrist or psychologist must:

(1) conduct the first evaluation no later than the 21st day after the date JBCR program services began;

(2) conduct the second evaluation no later than the 55th day after the date JBCR program services began; and

(3) subsequent to evaluations completed in paragraphs (1) and (2) of this subsection, promptly submit a separate report for each psychiatric or psychological evaluation to the court.

(b) At any time during the commitment for JBCR services consistent with the Texas Code of Criminal Procedure, Article 46B.091(h), but no later than the 60th day after the date JBCR services begin, the psychiatrist for a JBCR pilot program, or psychiatrist or psychologist for a county-based JBCR program, must determine if the individual is restored to competency, is unlikely to be restored to competency in the foreseeable future, or has not been restored to competency but will likely be restored in the foreseeable future. If the psychiatrist or psychologist determines the individual:

(1) is restored to competency, the psychiatrist or psychologist must send a report to the court demonstrating this determination;

(2) is unlikely to be restored to competency in the foreseeable future, the psychiatrist or psychologist must send a report to the

court demonstrating this determination, and coordinate with provider staff members, the court, and the county jail to ensure the transfer or release of the individual pursuant to the court's action to:

(A) proceed under the Texas Code of Criminal Procedure, Chapter 46B, Subchapter E or Subchapter F; or

(B) release the defendant on bail under the Texas Code of Criminal Procedure, Chapter 17; or

(3) has not been restored to competency but will likely be restored in the foreseeable future, if the individual is charged with:

(A) a felony offense, the psychiatrist or psychologist must coordinate with provider staff members, the court, and the county jail to ensure the transfer of the individual to the first available mental health facility or residential care facility for the remainder of the commitment period; or

(B) a misdemeanor offense, the psychiatrist or psychologist must coordinate with provider staff members, the court, and the county jail to ensure the transfer or release of the individual pursuant to the court's action to:

(i) order a single extension under the Texas Code of Criminal Procedure, Article 46B.080 and transfer of the individual to the first available mental health facility or residential care facility;

(ii) proceed in accordance with the Texas Code of Criminal Procedure, Chapter 46B, Subchapter E or Subchapter F;

(iii) release the defendant on bail in accordance with the Texas Code of Criminal Procedure, Chapter 17; or

(iv) dismiss the charges in accordance with the Texas Code of Criminal Procedure, Article 46B.010.

§416.89. Preparation for Discharge from a JBCR Program.

(a) At any time an individual is restored to competency, the psychiatrist or psychologist must collaborate with provider staff members to coordinate the individual's continued services and supports after discharge from the JBCR program to:

(1) the county jail;

(2) the LMHA;

(3) the LBHA;

(4) the LIDDA; or

(5) another mental health provider.

(b) If the individual is charged with a misdemeanor or felony and the individual is unlikely to be restored to competency in the foreseeable future, the psychiatrist or psychologist must collaborate with provider staff members to coordinate the individual's continued services and supports after discharge from the JBCR program to:

(1) a mental health facility;

(2) a residential care facility;

(3) the LMHA;

(4) the LBHA;

(5) the LIDDA;

(6) another mental health provider; or

(7) the care of a responsible person.

(c) If an individual is not restored to competency by the 60th day, the psychiatrist or psychologist must, if the individual is charged with:

(1) a felony, coordinate with provider staff members to link the individual for continued services and supports post discharge from the JBCR program to:

- (A) a mental health facility; or
- (B) residential care facility; or

(2) a misdemeanor, coordinate with provider staff members to link the individual for continued services and supports post discharge from the JBCR program to:

- (A) the county jail,
- (B) a mental health facility;
- (C) a residential care facility;
- (D) the LMHA;
- (E) the LBHA;
- (F) the LIDDA; or
- (G) another mental health provider.

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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TRD-201803105

Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 838-4346



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER G. DEFINITION OF TERMS

37 TAC §141.111

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC, Chapter 141, Subchapter G, §141.111, concerning definitions. The amended rule is adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2717). The text of the rules will not be republished.

The amendment to §141.111 is to add the definition for Remain Set, regarding a parole vote related to a special review.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under Sections 508.036, 508.0441, and 508.045, 508.141 and 508.149, Government Code. Section 508.036 authorizes the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Sections 508.0441 and 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision and to act on matters of release to parole or mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

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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