ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Texas Health and Human Services Commission (HHSC) adopts amendments to Texas Administrative Code Title 1, Part 15, Chapter 353, Subchapter A (regarding General Provisions), §353.2, concerning Definitions; Subchapter G (regarding STAR+PLUS), §353.603, concerning Membership Participant; Subchapter H (regarding STAR Health), §353.702, concerning Member Participation; Subchapter I (regarding STAR), §353.802, concerning Member Participation; and Subchapter N (regarding STAR Kids), §353.1203, concerning Member Participation. HHSC also adopts new Subchapter G (regarding STAR+PLUS), §353.609, concerning Service Coordination. The amendments and new rule are adopted without changes to the proposed text as published in the May 12, 2017, issue of the Texas Register (42 TexReg 2455), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

Under the 2014-15 General Appropriations Act (Senate Bill 1, 83rd Legislature, Regular Session, 2013, Article II, Health and Human Services Commission, Rider 51(b)(15)), HHSC was directed to improve care coordination through a capitated managed care program for remaining Medicaid fee-for-service populations. As a result, HHSC will transfer the Adoption Assistance (AA), Permanency Care Assistance (PCA), and Medicaid Breast and Cervical Cancer (MBCC) populations from traditional fee-for-service Medicaid (FFS) to Medicaid managed care on September 1, 2017. The amendments to §§353.603, 353.802, and 353.1203 add the AA, PCA, and MBCC populations as mandatory groups for the appropriate managed care programs.

The amendments to §§353.603, 353.702, and 353.1203 also impact Former Foster Care Children (FFCC) in a 1915(c) waiver.

Adoption Assistance (AA)

The Department of Family and Protective Services (DFPS) AA program facilitates the adoption of children with special needs by providing certain adoption assistance benefits to families. One of the benefits provided is Medicaid health coverage for the child being adopted. The Medicaid AA population consists of approximately 44,500 children who were adopted from DFPS conservatorship. This population currently receives Medicaid services through the FFS delivery model, and will start to receive Medicaid services through the managed care delivery model on September 1, 2017. Specifically, the child to be adopted will receive Medicaid services either through the STAR or STAR Kids program, as appropriate.

Permanency Care Assistance (PCA)

The DFPS PCA program provides benefits to certain individuals who assume managing conservatorship of a child who was previously in the temporary or permanent managing conservatorship of DFPS. One of the benefits provided is Medicaid health coverage for the child under conservatorship. The PCA program consists of approximately 1,935 children who were previously under the temporary or permanent managing conservatorship of DFPS. This population currently receives Medicaid services through the FFS delivery model and will start to receive Medicaid services through the managed care delivery model on September 1, 2017. Specifically, the child under conservatorship will receive Medicaid services either through the STAR or STAR Kids program, as appropriate.

Medicaid for Breast and Cervical Cancer (MBCC)

The HHSC MBCC program provides full Medicaid coverage to women who are screened and found to need treatment for breast or cervical cancer. Services are not limited to the treatment of breast and cervical cancer, and continue as long as the Medicaid provider certifies that active treatment is required for breast or cervical cancer. As of June 2015, there were approximately 4,785 MBCC recipients. This population currently receives Medicaid services through the FFS delivery model and will start to receive Medicaid services through the managed care delivery model on September 1, 2017. Specifically, the MBCC recipients will receive Medicaid services through the STAR+PLUS program.

Former Foster Care Children (FFCC)

The FFCC is a Medicaid eligibility type for young adults who aged out of the conservatorship of DFPS. FFCC individuals ages 18-20 in a 1915(c) waiver are in STAR Health today. The amendments allow this population to choose to remain in STAR Health or opt into STAR Kids. FFCC individuals ages 21-26 in a 1915(c) waiver are currently in fee-for-service Medicaid. The amendments make this population mandatory for STAR+PLUS.

In addition to amending rules for the transition to managed care, HHSC adopts new §353.609 regarding service coordination for the STAR+PLUS program.

COMMENTS

The 30-day comment period ended June 12, 2017. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.2

STATUTORY AUTHORITY
The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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 August 9, 2017.
TRD-201703030
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 462-6385

SUBCHAPTER G. STAR+PLUS
1 TAC §353.603, §353.609
STATUTORY AUTHORITY
The amendment and new section are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

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SUBCHAPTER H. STAR HEALTH
1 TAC §353.702
STATUTORY AUTHORITY
The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER I. STAR
1 TAC §353.802
STATUTORY AUTHORITY
The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER N. STAR KIDS
1 TAC §353.1203
STATUTORY AUTHORITY
The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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 355. REIMBURSEMENT RATES
SUBCHAPTER H. REIMBURSEMENT
METHODOLOGY FOR 24-HOUR CHILD CARE
FACILITIES

1 TAC §355.7103
The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements. The amended rule is adopted with changes to the proposed text as published in the June 23, 2017, issue of the Texas Register (42 TexReg 3213), and therefore will be republished.

BACKGROUND AND JUSTIFICATION
The amended rule complies with the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017).

The 2018-19 General Appropriations Act (the Act) appropriated general revenue for general payment rate increases for the 24-Hour Residential Child Care (24 RCC) program as described in Department of Family and Protective Services (DFPS) Rider 42.

In addition, the Act appropriated general revenue for a new Intensive Plus service level for General Residential Operations/Residential Treatment Centers (GRO/RTCs) and for the new services Treatment Foster Family, Integrated Care Coordination Placement, Integrated Care Coordination Case Management and Temporary Placement. Amended §355.7103 adds the new rates for the 24 RCC program and adds a reimbursement methodology for the new services.

Also, the amended rule adds a one percent risk corridor for rates for Single Source Continuum Contractors (SSCCs) under the Community-based Foster Care program. Rates for SSCCs are determined using the official forecast of case mix for paid foster care for the catchment area in which the SCC operates that is available when the payment rates are determined. Once the SCC rates are determined, they do not change unless rates for legacy 24 RCC are updated. SCC rates do not vary by the child's level of need, while legacy rates do vary by level of need. As a result, changes in case mix and associated changes in provider costs are accounted for in the legacy system but are not accounted for in the Community-based Foster Care program.

The addition of a risk corridor will allow HHSC to update SCC rates to recognize changes in a catchment area’s case mix when the impact of such changes exceeds a certain percentage, either positive or negative.

COMMENTS
The 30-day comment period ended July 23, 2017. During this period, HHSC received comments regarding the proposed rule from four commenters, including the Texas Alliance of Children and Family Services (TAFCS), Child Protective Services (CPS) staff at DFPS, and provider agencies New Horizons and Prairie Harbor. A summary of comments relating to the rule and HHSC's responses follow.

Comment: Three of the commenters stated that the child-placing agency (CPA) retainage is not sufficient to increase capacity and improve the quality of care to children in State conservatorship. The commenters stated that the distribution of the CPA rate between the CPA retainage and the Foster Family Pass Through components does not reflect the costs incurred by the CPA. One of the commenters suggested one-time verification payments, longevity payments, and outreach and advertising payments as potential ways to alleviate this discrepancy in costs.

Response: The rate increases for the 24 RCC program were specified by service and level of care in DFPS Rider 42 and, therefore, cannot be revised. Implementation of one-time verification payments, longevity payments, or outreach and advertising payments is a policy decision and, as such, is part of DFPS' authority as the operating agency. HHSC will not revise the rule in response to this comment.

Comment: One commenter stated that emergency shelters are full, but they did not receive a rate increase, which may lead to issues with capacity. The commenter suggested that emergency shelters be part of a longer-term continuum of service.

Response: The rate increases for the 24 RCC program were specified by service and level of care in DFPS Rider 42 and, therefore, cannot be revised. The inclusion of emergency shelters as part of a continuum of service is a policy decision and, as such, is part of DFPS' authority as the operating agency. HHSC will not revise the rule in response to this comment.

Comment: Three of the commenters recommended changes to the GRO/RTC rate structure, with two of the commenters recommending a single, blended rate and the third recommending a single rate for the Specialized and Intense levels of care. The commenters stated that this approach would address the issue that a GRO/RTC's costs do not change when a child's level of care is reduced.

Response: The rate increases for the 24 RCC program were specified by service and level of care in DFPS Rider 42 and, therefore, cannot be revised. The revision of the level care system for GRO/RTCs is a policy decision and, as such, is part of DFPS' authority as the operating agency. HHSC will not revise the rule in response to this comment.

Comment: Two of the commenters, including CPS staff at DFPS, recommended reducing the risk corridor for the Community Based Foster Care program to one percent.

Response: As the operating agency, DFPS has final authority regarding policy decisions, including the risk corridor percentage. HHSC will revise the rule from five percent to one percent in response to this comment.

Comment: One commenter stated that the requirement for a GRO/RTC provider to continue to provide care to a child at a lower level of care while waiting for the child to be placed in a less restrictive environment can result in a significant loss of revenue for the provider. The commenter suggested replacing the payment for placements with payments for beds with limitations on rejection/ejection of children placed in the facility.

Response: The rate increases for the 24 RCC program were specified by service and level of care in DFPS Rider 42 and, therefore, cannot be revised. Providing payments for beds as opposed to placements is a policy decision and, as such, is part of DFPS' authority as the operating agency. HHSC will not revise the rule in response to this comment.

Comment: Three of the commenters suggested that HHSC review the rate setting methodology and consider contracting for a study to evaluate the methodology to ensure it aligns with modern foster care provider practice.

Response: Pursuant to House Bill 5, 85th Legislature, Regular Session, 2017, (HB 5), DFPS will separate from the Health
and Human Services system effective September 1, 2017. Although HB 5 requires DFPS to contract with HHSC for the provision of administrative support services, including rate setting, decision-making authority concerning the methodology will rest with DFPS, not HHSC, after September 1, 2017. As a result, HHSC will not revise the rule in response to this comment.

Comment: One commenter stated that cost reports standardize costs that are different for each provider, and some costs that are necessary to operate are unallowable. Therefore, the costs that are allowable do not represent true costs to operate; this commenter suggested replacing the current system of allowable and unallowable costs with reasonable cost ranges.

Response: Texas obtains matching funds through Title IV-E of the Social Security Act for the 24 RCC program. Title IV-E has specific guidelines regarding allowable and unallowable costs and the percent of matching funds available for specific types of costs. The details in the cost report and the associated rules regarding allowable and unallowable costs are necessary to ensure that Texas appropriately requests Title IV-E matching funds; failure to do so can jeopardize federal funding for the program. HHSC will not revise the rule in response to this comment.

The following minor editorial changes were made:

Section 355.7103(d)(3)(C) was revised to change "institution for mentally retarded" to "intermediate care facility for individuals with an intellectual disability or related conditions."

Section 355.7103(l)(6) was revised to remove the word "prospective."

In §355.7103(f)(4), (p), (l)(1), and (u)(1), rule cross-references were updated.

HHSC received other comments that pertained to the related rule proposal in Title 40 of the Texas Administrative Code (40 TAC) Chapter 700, relating to Child Protective Services. These comments are addressed elsewhere in this issue of the Texas Register.

STATUTORY AUTHORITY

The amended rule is adopted under Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) The following is the authority and process for determining payment rates:

(1) For payment rates established prior to September 1, 2005, the Department of Family and Protective Services (DFPS; formerly the Department of Protective and Regulatory Services) reviewed payment rates for providers of 24-hour residential child care services every other year in an open meeting, after considering financial and statistical information, DFPS rate recommendations developed according to the provisions of this subchapter, legislative direction, staff recommendations, agency service demands, public testimony, and the availability of appropriated revenue. Before the open meeting in which rates were presented for adoption, DFPS sent rate packets containing the proposed rates and average inflation factor amounts to provider association groups. DFPS also sent rate packets to any other interested party, by written request. Providers who wished to comment on the proposed rates could attend the open meeting and give public testimony. Notice of the open meeting was published on the Secretary of State’s web site at http://www.sos.state.tx.us/open. DFPS notified all foster care providers of the adopted rates by letter.

(2) For payment rates established September 1, 2005 and thereafter, the Health and Human Services Commission (HHSC) approves rates that are statewide and uniform. In approving rate amounts HHSC takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter. However, HHSC may adjust staff recommendations when HHSC deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Reimbursement amounts will be determined coincident with the state's biennium. HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will be furnished to anyone who requests it.

(b) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for foster homes serving Levels of Care 1 through 4 children as follows:

(1) For all Level of Care 1 rates, DFPS analyzes the most recent statistical data available on expenditures for a child published by the United States Department of Agriculture (USDA) from middle income, dual parent households for the "Urban South." USDA data includes costs for age groupings from 0 to 17 years of age. An age differential is included with one rate for children ages 0-11 years, and another rate for children 12 years and older. Foster homes providing services to Level of Care 1 children receive the rate that corresponds to the age of the child in care.

(A) DFPS excludes health care costs, as specified in the USDA data, from its calculations since Medicaid covers these costs. USDA specified child-care and education costs are also excluded since these services are available in other DFPS day-care programs.

(B) DFPS includes the following cost categories for both age groups as specified in the USDA data: housing, food, transportation, clothing, and miscellaneous.

(C) The total cost per day is projected using the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) Index from the period covered in the USDA statistics to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(2) For Levels of Care 2 through 4 rates, DFPS analyzes the information submitted in audited foster home cost surveys and related documentation in the following ways:

(A) A statistically valid sample of specialized (therapeutic, habilitative, and primary medical) foster homes complete a cost survey covering one month of service if they meet the following criteria:

(i) the foster home currently has a DFPS foster child(ren) residing in the home; and

(ii) the number of children in the home, including the children of the foster parents, is 12 or fewer.

(B) For rates covering the fiscal year 2002-2003 biennium, child-placing agency homes are the only foster homes that com-
plete a cost survey because the children they serve are currently as-
signed levels of care verified by an independent contractor. By Septem-
ber 1, 2001, children served in DFPS specialized foster homes will also
be assigned levels of care verified by an independent contractor. All
future sample populations completing a one-month foster home cost
survey will include both child-placing agency and DFPS specialized
foster homes. As referenced in subsection (f) of this section, during the
2004-2005 biennium, when the rate methodology is fully implemented,
DFPS specialized foster homes and child-placing agency foster homes
will be required to receive at a minimum the same foster home rate as
derived by this subsection.

(C) Cost categories included in the one-month foster
home cost survey include:

(i) shared costs, which are costs incurred by the enti-
tire family unit living in the home, such as mortgage or rent expense
and utilities;

(ii) direct foster care costs, which are costs incurred
for DFPS foster children only, such as clothing and personal care items.
These costs are tracked and reported for the month according to the
level of care of the child; and

(iii) administrative costs that directly provide for
DFPS foster children, such as child-care books, and dues and fees for
associations primarily devoted to child care.

(D) A cost per day is calculated for each cost category
and these costs are combined for a total cost per day for each level of
care served.

(E) A separate sample population is established for each
type of specialized foster home (therapeutic, habilitative, and primary
medical). Each level of care maintenance rate is established by the
sample population's central tendency, which is defined as the mean, or
average, of the population after applying two standard deviations above
and below the mean of the total population.

(F) The rates calculated for each type of specialized fos-
ter home are averaged to derive one foster care maintenance rate for
each of the Levels of Care 2 through 4.

(G) The total cost per day is projected using the IPD-
PCE Index from the period covered in the cost report to September 1
of the second year of the biennium, which is the middle of the biennium
that the rate period covers. Information on inflation factors is specified
in subsection (h) of this section.

(c) For payment rates in effect for state fiscal year (SFY) 2002
and 2003, DFPS develops rate recommendations for Board considera-
tion for child-placing agencies serving Levels of Care 1 through 4
children as follows:

(1) The rate-setting model defined in subsection (g) of this
section is applied to child-placing agencies' cost reports to calculate a
daily rate.

(2) At a minimum, child-placing agencies are required to
pass through the applicable foster home rate derived from subsection
(b) of this section to their foster homes. The remaining portion of the
rate is provided for costs associated with case management, treatment
coordination, administration, and overhead.

(3) For rate-setting purposes, the following facility types
are included as child-placing agencies and will receive the child-plac-
ing agency rate:

(A) child-placing agency;
(B) independent foster family/group home;
(C) independent therapeutic foster family/group home;
(D) independent habilitative foster family/group home;
and
(E) independent primary medical needs foster family/group home.

(d) For payment rates in effect for state fiscal year (SFY) 2002
and 2003, DFPS develops rate recommendations for Board considera-
tion for residential care facilities serving Levels of Care 1 through 6 as
follows:

(1) For Levels of Care 1 and 2, DFPS applies the same rate
paid to child-placing agencies as recommended in subsection (c) of this
section.

(2) For Levels of Care 3 through 6, the rate-setting model
derived in subsection (g) of this section is applied to residential care
facilities' cost reports to calculate a daily rate.

(3) For rate-setting purposes, the following facility types
are included as residential care facilities and will receive the residential
care facility rate:

(A) residential treatment center;
(B) therapeutic camp;
(C) intermediate care facility for individuals with an intel-
tlectual disability or related conditions;
(D) basic care facility;
(E) halfway house; and
(F) maternity home.

(e) For payment rates in effect for state fiscal year (SFY) 2002
and 2003, DFPS develops rate recommendations for Board considera-
tion for emergency shelters as follows:

(1) DFPS analyzes emergency shelter cost report informa-
tion included within the rate-setting population defined in subsection (f)
of this section. Emergency shelter costs are not allocated across levels
of care since, for rate-setting purposes, all children in emergency shel-
ters are considered to be at the same level of care.

(2) For each cost report in the rate-setting population, the
total costs are divided by the total number of days of care to calculate a
daily rate.

(3) The total cost per day is projected using the IPD-PCE
Index from the period covered in the cost report to September 1 of the
second year of the biennium, which is the middle of the biennium that
the rate period covers. Information on inflation factors is specified in
subsection (h) of this section.

(4) The emergency shelter rate is established by the popu-
lation's central point or central tendency. The measure of central ten-
dency is defined as the mean, or average, of the population after ap-
plying two standard deviations above and below the mean of the total
population.

(f) For payment rates in effect for state fiscal year (SFY) 2002
and 2003, level of care rates for contracted providers including child-
placing agencies, residential care facilities, and emergency shelters are
dependent upon provider cost report information. The following crite-
ria applies to this cost report information:

(1) DFPS excludes the expenses specified in §700.1805
and §700.1806 of this title (relating to Unallowable Costs and Costs
Not Included in Recommended Payment Rates). Exclusions and
adjustments are made during audit desk reviews and on-site audits.
(2) DFPS includes therapy costs in its recommended payment rates for emergency shelters and for Levels of Care 3 through 6, and these costs will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions applies. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee-for-service Medicaid;
(B) the necessary therapy is not a service allowable under Medicaid;
(C) service limits have been exhausted and the provider has been denied an extension;
(D) there are no Medicaid providers available within 45 miles that meet the needs identified in the service plan to provide the therapy; or
(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transition period not to exceed 90 days or 14 sessions, whichever is less. Any exception beyond the 90 days or 14 sessions must be approved by DFPS before provision of services.

(3) DFPS may exclude from the database any cost report that is not completed according to the published methodology and the specific instructions for completion of the cost report. Reasons for exclusion of a cost report from the database include, but are not limited to:

(A) receiving the cost report too late to be included in the database;
(B) low occupancy;
(C) auditor recommended exclusions;
(D) days of service errors;
(E) providers that do not participate in the level of care system;
(F) providers with no public placements;
(G) not reporting costs for a full year;
(H) using cost estimates instead of actual costs;
(I) not using the accrual method of accounting for reporting information on the cost report;
(J) not reconciling between the cost report and the provider's general ledger; and
(K) not maintaining records that support the data reported on the cost report.

(4) DFPS requires all contracted providers to submit a cost report unless they meet one or more of the conditions in §355.105(b)(4)(D) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(g) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, a rate-setting model is applied to child-placing agencies' and residential care facilities' cost report information included within the rate-setting population defined in subsection (f) of this section. Three allocation methodologies are used in the rate-setting model to allocate allowable costs among the levels of care of children that are served. The methodologies are explained below and are applied as follows:

(1) The first methodology is a staffing model, validated by a statistically valid foster care time study, driven by the number of direct care and treatment coordination staff assigned to a child-placing agency or residential care facility to care for the children at different levels of care. The staffing model produces a staffing complement that is applied to direct care costs to allocate the costs among the levels of care.

(A) Staff positions reported on the direct care labor area of the cost report are grouped into the following categories to more clearly define the staffing complement required at each level of care:

(i) case management;
(ii) treatment coordination;
(iii) direct care;
(iv) direct care administration; and
(v) medical.

(B) A categorized staffing complement for each Level of Care 1 through 6 is derived as follows:

(i) A 14-day foster care time study is applied to a representative sample of residential care facilities and child-placing agencies that completed a cost report.

(ii) Contracted staff, or employees, within the sampled facilities complete a foster care time study daily activity log that assigns half-hour units of each employee's time to the individual child(ren) with whom the employee is engaged during the time period. By correlating the distribution of the employee's time with the level of care assigned to each child, the employee's time is distributed across the Levels of Care 1 through 6.

(iii) The foster care time study daily activity log also captures the type of activity performed. The total amount of time spent in each of these activities is a component in determining the number of staff needed in each of the categories included in the staffing complement. The activities performed include:

(I) care and supervision;
(II) treatment planning and coordination;
(III) medical treatment and dental care; and
(IV) other (administrative, managerial, training functions, or personal time).

(iv) An analysis of the cumulative frequency distribution of these time units by level of care of all children served in the sample population, by category of staff performing the activity, and by type of activity, establishes appropriate staffing complements for each level of care in child-placing agencies and in residential care facilities. These time units by level of care are reported as values that represent the equivalent of a full-time employee. The results are reported in the following chart for incorporation into the rate-setting model:

Figure: 1 TAC §355.7103(g)(1)(B)(iv) (No change.)

(v) The foster care time study should be conducted every other biennium, or as needed, if service levels substantially change.

(C) Staff position salaries and contracted fees are reported as direct care labor costs on the cost reports. Each staff position is categorized according to the staffing complement outlined for the time study. The salaries and contracted fees for these positions are grouped into the staffing complement categories and are averaged for child-placing agencies and residential care facilities included in the rate-setting population. This results in an average salary for each
staffing complement category (case management, treatment coordination, direct care, direct care administration, and medical).

(D) The staffing complement values, as outlined in the chart at paragraph (1)(B)(vii) of this subsection, are multiplied by the appropriate average salary for each staffing complement category. The products for all of the staffing complement categories are summed for a total for each level of care for both child-placing agencies and residential care facilities. The total by level of care is multiplied by the number of days of service in each level of care, and this product is used as the primary allocation statistic for assigning each provider's direct care costs to the various levels of care.

(E) Direct care costs include the following areas from the cost reports:

(i) direct care labor;
(ii) total payroll taxes/workers compensation; and
(iii) direct care non-labor for supervision/recreation, direct services, and other direct care (not CPAs).

(2) The second methodology allocates the following costs by dividing the total costs by the total number of days of care for an even distribution by day regardless of level of care. This amount is multiplied by the number of days served in each level:

(A) direct care non-labor for dietary/kitchen;
(B) building and equipment;
(C) transportation;
(D) tax expense; and
(E) net educational and vocational service costs.

(3) The third methodology allocates the following administrative costs among the levels of care by totaling the results of the previous two allocation methods, determining a percent of total among the levels of care, and applying those percentages:

(A) administrative wages/benefits;
(B) administration (non-salary);
(C) central office overhead; and
(D) foster family development.

(4) The allocation methods described in paragraphs (1) - (3) of this subsection are applied to each child-placing agency and residential care facility in the rate-setting population, and separate rates are calculated for each level of care served. Rate information is included in the population to set the level of care rate if the following criteria are met:

(A) Providers must have at least 30% of their service days within Levels of Care 3 through 6 for residential settings. For example, for the provider's cost report data to be included for calculating the Level of Care 3 rate, a provider must provide Level of Care 3 services for at least 30% of their service days.

(B) For Levels of Care 5 and 6, a contracted provider could provide up to 60% of "private days" services to be included in the rate-setting population. They must provide at least 40% state-placed services.

(5) Considering the criteria in paragraph (4) of this subsection, the rate-setting population is fully defined for each level of care. Based on this universe, each level of care rate will be established by the group's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(6) The total cost per day for each child-placing agency and residential care facility is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(h) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS uses the Implicit Price Deflator - Personal Consumption Expenditures (IPD-PCE) Index, which is a general cost inflation index, to calculate projected allowable expenses. The IPD-PCE Index is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. DFPS uses the lowest feasible IPD-PCE Index forecast consistent with the forecasts of nationally recognized sources available to DFPS when the rates are prepared. Upon written request, DFPS will provide inflation factor amounts used to determine rates.

(i) All reimbursement rates will be equitably adjusted to the level of appropriations authorized by the Legislature.

(j) There will be a transition period for the fiscal year 2002-2003 biennium. During this period current rates will not be reduced, and any increased funding will be applied to those levels of care that are less adequately reimbursed according to the methodology. Since increased funding was appropriated at a different percentage for each year of the 2002-2003 biennium, the rates will be set separately for each year instead of setting a biennial rate, and inflation factors will be applied to the middle of each year of the biennium.

(k) For the SFY 2004 through 2005, DFPS determines payment rates using the rates determined for SFY 2002 and 2003 from subsections (a) - (h) of this section, with adjustments for the transition from a six level of care system to a four service level system of payment rates.

(l) For the state fiscal year 2006 through 2007 biennium, the 2005 payment rates in effect on August 31, 2005 will be adjusted by equal percentages based on a prorata distribution of additional appropriated funds.

(m) For the state fiscal year 2008 through 2009 biennium, rates are paid for each level of service identified by the DFPS. For foster homes, the payments effective September 1, 2007 through August 31, 2009 for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2007 plus 4.3 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2007, through August 31, 2009 for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2007, plus 4.3 percent. Additional appropriated funds remaining after the rate increase for foster homes and CPAs shall be distributed proportionally across general residential operations and residential treatment centers based on each of these provider type's ratio of costs as reported on the most recently audited cost report to existing payment rates.

(n) HHSC may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(o) To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement
one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by the executive director. Rates are subject to adjustment as allowed in subsections (a) and (m) of this section.

(p) Payment rates for psychiatric step-down services are determined on a pro forma basis in accordance with §355.105(h) of this chapter. Payment rates for psychiatric step-down services effective September 1, 2017, will be equal to the rates in effect on August 31, 2015.

(q) Definitions.

(1) Child-placing agency (CPA)--Child-placing agencies as defined in 40 Texas Administrative Code (TAC) §745.21.

(2) Community-based Care--Community-based Care as defined in 40 TAC §700.108.

(3) CPA retainage--The portion of the rate that includes the CPA's costs for administering the service, including, but not limited to recruiting and training foster families, matching children with foster families, monitoring foster families and foster homes, and the associated overhead costs.

(4) Emergency Care Services--Emergency care services as defined in 40 TAC §748.61.

(5) Foster home--Foster home as defined in 40 TAC §749.43 and §750.43.

(6) General Residential Operation (GRO)--General residential operations as defined in 40 TAC §748.43.

(7) Integrated Care Coordination (ICC)--Integrated Care Coordination as defined in 40 TAC §700.110.

(8) Levels of service--Levels of service as described in 40 TAC Chapter 700, Subchapter W.

(9) Residential Treatment Center (RTC)--Residential treatment center as defined in 40 TAC §748.43.

(10) Temporary Emergency Placement (TEP)--Temporary Emergency Placement as defined in 40 TAC §700.1337.

(11) Treatment Foster Care (TFF)--Treatment Foster Care as defined in 40 TAC §700.1335.

(r) Rates effective September 1, 2015. Rates are paid for each level of service identified by DFPS.

(1) For CPAs, the rate consists of a foster home payment described in paragraph (2) of this subsection and a CPA retainage. Effective September 1, 2015, the CPA retainage for each level of service will be equal CPA retainage for that level of service in effect August 31, 2015:

(A) plus 9.39 percent for the basic level of service;

(B) plus 1.14 percent for the moderate level of service;

(C) plus 0.42 percent for the specialized level of service; and

(D) plus 0.01 percent for the intense level of service.

(2) For foster homes, the minimum daily rate to be paid to a foster home effective September 1, 2015, for each level of service will be equal to the rate for that level of service in effect August 31, 2015:

(3) For GROs and RTCs, the rates effective September 1, 2015, will be equal to the rates paid to GROs and RTCs in effect August 31, 2015:

(A) plus 9.58 percent for the specialized level of service;

(B) plus 0.3 percent for the intense level of service; and

(C) unchanged for other levels of service.

(4) For emergency care services the rates effective September 1, 2015, will be equal to the rates in effect August 31, 2015, plus 6.0 percent.

(s) Rates effective September 1, 2017. Rates are paid for each level of service identified by DFPS.

(1) For CPAs, the rate consists of a foster home payment described in paragraph (2) of this subsection and a CPA retainage. Effective September 1, 2017, the combined CPA retainage and foster home payment for each level of service will be:

(A) $48.47 for the basic level of service;

(B) $85.46 for the moderate level of service;

(C) $109.08 for the specialized level of service; and

(D) $186.42 for the intense level of service.

(2) For foster homes, the minimum daily rate to be paid to a foster home effective September 1, 2017, for each level of service will be:

(A) $27.07 for the basic level of service;

(B) $47.37 for the moderate level of service;

(C) $57.86 for the specialized level of service; and

(D) $92.43 for the intense level of service.

(3) For GROs and RTCs, the rates effective September 1, 2017, will be:

(A) $45.19 for the basic level of service;

(B) $103.03 for the moderate level of service;

(C) $197.69 for the specialized level of service;

(D) $277.37 for the intense level of service; and

(E) $400.72 for the intense plus level of service.

(4) For emergency care services, the rate effective September 1, 2017, will be $129.53.

(5) For treatment foster care, the rate effective September 1, 2017, will be $277.37.

(t) Community-based Care.

(1) Initial payment rates for a defined rate period for Single Source Continuum Contractors under Community-based Care are determined on a pro forma basis in accordance with §355.105(h) of this chapter using the official forecast of case mix for paid foster care for each specific catchment area for the rate period available at the time the payment rates are calculated.

(2) HHSC will recalculate payments rates whenever a new official forecast of case mix for paid foster care is available.
(3) HHSC will compare the payment rates calculated using actual paid foster care case mix data for each catchment area to the payment rates in place for the rate period to determine the percentage difference between the two sets of payment rates.

(4) If the payment rates calculated using actual paid foster care case mix data for a catchment area are at least 1% greater than the initial payment rates for the rate period, HHSC will increase the catchment area payment rates.

(5) If the payment rates calculated using actual paid foster care case mix for a catchment area are at least 1% less than the initial payment rates for the rate period, HHSC will reduce the catchment area payment rates;

(6) Calculations and rate adjustments, if any, will be performed separately for each catchment area.

(u) Treatment Foster Family, Integrated Care Coordination Placement, Integrated Care Coordination Case Management, and Temporary Emergency Placement.

(1) The payment rates for these services are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(h) of this chapter. The information in §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter also applies.

(2) Reporting of cost. To gather adequate financial and statistical information upon which to base reimbursement, HHSC may require a contracted provider to submit a cost report for one or more of these services.

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 August 10, 2017.

TRD-201703049

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Effective date: August 30, 2017
Proposal publication date: June 23, 2017
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1 TAC §355.7109

The Texas Health and Human Services Commission (HHSC) adopts new §355.7109, concerning Reimbursement Methodology for Residential Child Care Case Management and Family-Based Safety Services. New §355.7109 is adopted with changes to the proposed text as published in the June 23, 2017, issue of the Texas Register (42 TexReg 3215), and therefore will be republished.

BACKGROUND AND JUSTIFICATION

New §355.7109 is necessary to comply with Senate Bill 11, 85th Legislature, Regular Session, 2017, which transfers the case management functions related to children in state custody from the Department of Family and Protective Services (DFPS) to community-based, nonprofit entities. HHSC, under its authority and responsibility to administer and implement rates, adopts new §355.7109 to codify the reimbursement methodology for Residential Child Care Case Management Services and Family-Based Safety Services provided by community-based, nonprofit entities.

COMMENTS

The 30-day comment period ended July 23, 2017. During this period, HHSC received one comment regarding the proposed rule from three commenters, including the Texas Alliance of Child and Family Services (TACFS), and provider agencies New Horizons and Prairie Harbor. The comment and HHSC’s response follow.

Comment: The commenters suggested that HHSC review the rate setting methodology and consider contracting for a study to evaluate the methodology to ensure it aligns with modern foster care provider practice.

Response: Pursuant to House Bill 5, 85th Legislature, Regular Session, 2017 (HB 5), DFPS will separate from the Health and Human Services system effective September 1, 2017. Although HB 5 requires DFPS to contract with HHSC for the provision of administrative support services, including rate setting, decision-making authority concerning the methodology will rest with DFPS, not HHSC, after September 1, 2017. As a result, HHSC will not revise the rule in response to this comment.

The following minor editorial changes were made to new §355.7109:

In the title and in subsection (a), Family-Based Supportive Services was changed to Family-Based Safety Services to be consistent with a related DFPS rule.

Also in subsection (a), "title" was changed to "chapter" in rule cross-references, and "applies" was changed to "apply."

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.


(a) The payment rates for residential child care case management and family-based safety services are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(b) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures). The information in §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter also apply.

(b) Reporting of cost. To gather adequate financial and statistical information upon which to base reimbursement, HHSC may require a contracted provider to submit a cost report.

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 August 10, 2017.

TRD-201703051
The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8052, concerning Inpatient Hospital Reimbursement. The amended rule is adopted without changes to the proposed text as published in the June 23, 2017, issue of the Texas Register (42 TexReg 3216), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §355.8052 revises the definition of a rural hospital.

The amendment is consistent with the 2018-19 General Appropriations Act (Article II, S.B. 1, 85th Legislature, Regular Session, 2017, Rider 180), which allocates certain funds appropriated to HHSC to provide increased reimbursement for rural hospitals. The rider contains a definition of a rural hospital for purposes of allocating the appropriated funds that differs from the definition prescribed by the two previous legislatures. By revising the definition of "rural hospital" in §355.8052, HHSC is ensuring consistent categorization of hospitals across multiple Medicaid reimbursement programs. A hospital will not be reimbursed as "rural" for providing inpatient services while being reimbursed as "urban" for providing outpatient services.

The amendment is also consistent with the 2018-19 General Appropriations Act (Article II, S.B. 1, 85th Legislature, Regular Session, 2017, Rider 202), which requires HHSC to evaluate Medicaid funding initiatives for rural inpatient and outpatient hospital services. This rider contains the same definition of a rural hospital as Rider 180.

To be consistent with the definition of "rural hospital" in the riders mentioned above, the amended rule defines a rural hospital as

(1) a hospital located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or
(2) a hospital designated by Medicare as a Critical Access Hospital (CAH), Sole Community Hospital (SCH), or a Rural Referral Center (RRC) that is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or
(3) a hospital that
(a) has 100 or fewer beds, (b) is designated by Medicare as a CAH, SCH, or RRC, and (c) is located in an MSA.

COMMENTS

Following publication of the proposed amendment, HHSC received comments from the following commenters: the Texas Hospital Association, United Regional Health Care System, Northwest Texas Healthcare System, South Texas Health System, Laredo Medical Center, Baptist Hospital of Southeast Texas and the Texas Organization of Rural and Community Hospitals. A summary of comments relating to the rule amendment and HHSC's responses follows.

Comment:

Commenters do not agree with the application of the definition of rural hospitals in rider 180 to hospitals that are already designated as RRCs or SCHs. The commenters suggest amending proposed §355.8052 to include one of the following options:

(a) Grandfather those RRCs and SCHs that are major safety net hospitals and only impose the new definition moving forward.

(b) Implement transition periods for impacted hospitals to alleviate some of the burden that will result from the rural hospital re-classification. Some commenters suggested a transition period of three years. Commenters state that a phase down period would provide impacted hospitals time to prepare for the decrease in reimbursement rates. Commenters also indicated that HHSC should be more specific about the timing of the suggested changes.

Response:

(a) HHSC disagrees that "major safety net hospitals" should be grandfathered. First, being a safety-net hospital is not currently, and never has been, a factor in determining the eligibility of a hospital to be reimbursed by Medicaid using "rural" hospital methodologies. The public policies that support higher reimbursement for rural hospitals, including ensuring access to critical services in remote areas, do not apply to "major safety net providers" located in large urban areas. Additionally, it would be illogical to categorize hospitals as rural on the basis of being a "major safety net hospital" when the term "safety-net hospital" is defined in §355.8052(b)(31) as an "urban or children's hospital" that is eligible for the Disproportionate Share Hospital program.

Under the rule, safety-net hospitals are eligible for an add-on that rural hospitals are not eligible to receive. Rider 180 specifically allocates significant add-on funds for urban Safety-Net hospitals in the upcoming biennium. Eight of the nine hospitals affected by the change proposed in this rule are eligible to receive the Safety-Net Add-on if classified as an urban hospital. The Safety-Net Add-on for FY 2018 will see a substantial increase over FY 2017. The increased add-on for the impacted RRCs and SCH will help mitigate the reduction in Medicaid reimbursement that results from the rule amendment.

For these reasons, HHSC made no change to the rule in response to this comment.

(b) HHSC disagrees that a transition period should be provided for the impacted hospitals to adjust back to reimbursement as urban hospitals. The requested three year period for transition out of the rural hospital reimbursement is not reasonable. All of the non-state-owned hospitals that are affected by the change in the definition of a rural hospital transitioned to the rural methodology within the last 12 months. The proposed amendment was published in June, 2017, at least three months before the beginning of the 2018 hospital fiscal year for most of the impacted hospitals, and as much as six months before others, providing an opportunity to make adjustments to their budgets. Additionally, as explained above, increased safety-net add-on amounts are anticipated to mitigate the reduction in reimbursement resulting from the rule amendment.

The amended definition of rural hospital will be effective on September 1, 2017. For any hospital impacted by the amendment, the state-wide SDA with add-ons calculated for that
hospital will apply for inpatient fee-for-service claims for services provided beginning September 1, 2017.

HHSC made no change in response to this comment.

Comment:
One commenter requested that HHSC request clarification of the legislative intent of Rider 180, and whether the intent was to impact SCHs and CAHs in MSAs given the Medicare requirements for these hospitals.

Response:
No CAH is impacted by the rule amendment, because the designation for Medicare purposes is limited to hospitals of 25 beds or fewer. With regard to SCHs, HHSC believes that it is the intent of the legislature that hospitals located in large urban areas not be reimbursed as rural hospitals. That intent is indicated in the language of Rider 180, which directs HHSC's expenditures of certain appropriated funds and does not include SCHs located in MSAs in the definition of "rural hospital." It would be unreasonable for HHSC to use a different definition of the term for expenditures of other appropriated funds. Additionally, the appropriations for hospital reimbursement do not appear to include amounts for the higher cost-based SDA currently paid to the SCH impacted by this rule change. For these reasons, no changes were made to the rule in response to this comment. If HHSC receives clarification that the legislative intent of Rider 180 was to continue to treat the SCH as a rural hospital, a subsequent rule amendment will be proposed.

Comment:
One commenter states that one SCH will be treated differently than all other SCHs under the proposed rule. The commenter suggests that HHSC should treat all SCHs with the same Medicaid payment methodologies, regardless of bed size and MSA status.

Response:
HHSC disagrees with this comment. The proposed definition is consistent with Rider 180, which treats an SCH located in an MSA different from rural SCHs. The Rider definition is similar to the definition that was used for rural hospitals prior to September 1, 2013. By continuing to allow large urban hospitals to be reimbursed under a cost based Standard Dollar Amount (SDA) applicable to hospitals in rural areas, the intent of the statewide SDA methodology would not be followed. No changes to the rule were made in response to this comment.

Comment:
Commenters point out that hospital budgets are created six to nine months in advance of their fiscal year and the reduction in payments could result in a corresponding decrease in expenses, including for services or staff and therefore adversely impact Medicaid recipients.

Response:
HHSC recognizes the timing of budgeting and understands the difficulties of this modification to the Medicaid reimbursement. However, the non-state-owned hospitals impacted by the change in definition have only been receiving the increased reimbursement for a period of one year or less. As noted in a previous response, most of the hospitals were aware of the proposed change at least three months before the beginning of the hospitals' 2018 fiscal year, and some as much as six months, providing an opportunity to make adjustments to their budgets. Additionally, increased safety-net add-on amounts are anticipated to mitigate the reduction in reimbursement resulting from the rule amendment. For these reasons, HHSC made no change in response to this comment.

Comment:
One commenter suggested that HHSC delay adoption of the proposed rule to accommodate public review and access to care.

Response:
HHSC disagrees with this comment. The only hospitals that will be reclassified from rural to urban status as a result of this rule amendment are hospitals located in large urban areas. The public policies that support higher reimbursement for rural hospitals, including ensuring access to critical services in remote areas, do not apply to hospitals located in large urban areas. HHSC provided the legally required public notification of the change in administrative rule and a 30-day public comment period.

Comment:
One commenter stated that the rider language regarding rural hospitals has historically sought to protect small, rural hospitals and they feel that it still meets that primary objective.

Response:
HHSC agrees that the rider language continues to protect rural hospitals, as well as CAHs and small RRCs and SCHs located inside of MSAs.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC’s duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

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

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DIVISION 14. FEDERALLY QUALIFIED HEALTH CENTER SERVICES

1 TAC §355.8261

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8261, concerning Federally Qualified Health Center Services Reimbursement. The amended rule
is adopted without changes to the proposed text as published in the June 23, 2017, issue of the Texas Register (42 TexReg 3220), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments to §355.8261 are necessary to comply with Legacy Community Health Services, Inc. v. Janek, 184 F. Supp. 3d 407 (S.D. Tex. 2016), which requires changes to the FQHC payment process.

Under federal law (42 U.S.C. §1396a(bb)), Federally Qualified Health Centers (FQHCs) must be paid for services provided to Medicaid clients in an amount that is equal to the average of the FQHC's per visit costs. This amount is called its encounter rate.

If an FQHC provides services under a contract with a managed care organization (MCO) or dental maintenance organization (DMO) (also referred to in §355.8261 as dental managed care organization), 42 U.S.C. §1396a(bb)(5) requires the state to make a supplemental, or "wrap," payment to the FQHC in the amount of the difference between the federally required encounter rate and the amount of the payments provided under the contract. Since September 1, 2011, HHSC has required MCOs and DMOs, for both Medicaid and Children's Health Insurance Program (CHIP) services, to pay FQHCs their full encounter rate, rather than a contracted rate, thus eliminating the need for a wrap payment.

Legacy Community Health Services, an FQHC, filed suit against HHSC in January 2015, claiming HHSC's reimbursement policy with respect to Medicaid services violates the Medicaid Act, 42 U.S.C. ch. 7, subch. XIX. In May 2016, the United States District Court for the Southern District of Texas held that HHSC had improperly delegated its payment obligations to MCOs by requiring them to pay the full encounter rate. In February 2017, the Court granted a joint motion that permits HHSC to implement a wrap payment process, and thus be in compliance with the initial court order, no later than September 1, 2017. As a result, HHSC amends §355.8261 to describe how the agency will operationalize the Court's ruling.

COMMENTS

The 30-day comment period ended July 23, 2017. During this period, HHSC received comments regarding the proposed rule from one commenter, the Texas Association of Community Health Centers. A summary of comments relating to the rule and HHSC's responses follows.

Comment: The commenter supported the amendment to §355.8261(b)(11), regarding the FQHC wrap payment process.

Response: HHSC appreciates the commenter's support for the amendment.

Comment: The commenter expressed concern that the payment dispute resolution process in §355.8261(c) lacks sufficient specificity, including timeframes for an MCO or DMO to resolve an appeal or comply with HHSC direction and for HHSC to respond to an unresolved dispute. The commenter also cited the rule's lack of a required mechanism for an MCO or DMO to communicate a decision to an appealing FQHC and its undefined HHSC complaint process.

Response: HHSC disagrees that the payment dispute resolution process in §355.8261(c) requires additional information. Details of the dispute process are provided in section 8.2.4.2 of the Uniform Managed Care Contract, Appeal of Provider Claims, including that "the MCO must respond fully and completely to each Medicaid Provider's claims payment appeal" and that "the MCO is subject to liquidated damages if at least 98 percent of Provider Appeals are not resolved within 30 calendar days of the MCO's receipt." These same requirements are applied to DMOs through section 8.2.3.2 of the Dental Services Contract.

HHSC maintains internal guidelines for complaints resolution that vary based on the complexity and urgency of the complaint. Section 3.28 of the Uniform Managed Care Manual provides timeframes for MCO resolution of HHSC-referred issues and complaints.

Comment: The commenter noted that §355.8261(a)(8) references the Independent Rural Health Clinic/Freestanding FQHC Cost Report (Form CMS 222-92), which was replaced on October 1, 2014, with the Freestanding FQHC Cost Report (Form CMS 224-14). The commenter requested that this reference and relevant surrounding language be updated and provided suggested amendments to this subsection.

Response: HHSC declines to make the suggested change at this time because it is outside the scope of revisions to §355.8261(c). HHSC appreciates the comment, however, and may include the update in a future rule amendment.

STATUTORY AUTHORITY

The amended rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.02192(b)(2), which requires HHSC to ensure that FQHCs are paid in accordance with 42 U.S.C. §1396a(bb).

The amendment implements Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

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 August 9, 2017.
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Karen Ray
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TITLE 13. CULTURAL RESOURCES
PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CHAPTER 6. STATE RECORDS
SUBCHAPTER C. STANDARDS AND PROCEDURES FOR MANAGEMENT OF ELECTRONIC RECORDS
13 TAC §§6.91 - 6.97
The Texas State Library and Archives Commission adopts repeal of 13 TAC §§6.91 - 6.97, regarding standards and procedures for management of electronic records, without changes to the proposed text as published in the May 26, 2017, issue of the Texas Register (42 TexReg 2795). The repealed rules will be replaced at the same time by the adoption of new rules with updated standards and procedures for management of electronic records.

The repeal will allow the commission to adopt new rules relating to the management, retention and disposition of state agency records in electronic format. In part, the repealed rules are too specific to technology that rapidly changes.

No comments were received regarding the proposed repeal.

Statutory authority for this subchapter is provided in Texas Government Code §§441.189(a), 441.190, and 441.199.

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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**13 TAC §§6.91 - 6.98**

The Texas State Library and Archives Commission (TSLAC) adopts 13 TAC §§6.91 - 6.98, regarding standards and procedures for management of electronic records, with changes to §§6.92 - 6.95 in the proposed text as published in the May 26, 2017, issue of the Texas Register (42 TexReg 2795) and those sections are republished below. Section 6.91 and §§6.96 - 6.98 are adopted without changes. The adopted rules replace repealed rules with updated standards and procedures for management of electronic records.

The Texas State Library and Archives Commission is adopting rules for the creation, protection, maintenance, preservation and storage of electronic state records. The rules address standards and reflect practices in electronic records management necessary to strengthen state government records management.

Comments were received from two state agency Records Management Officers (RMO) during the comment period. They are in favor of the rules. Comments and responses follow.

Comment: An RMO stated that TSLAC should continue to require visual QC check on every scanned document.

Response: No change. These rules no longer address scanning requirements.

Comment: An RMO stated that the enumeration from section to section is inconsistent. Some sections' main paragraphs are numbered (1), (2), (3), whereas other sections use (a), (b), (c). All sections should be numbered consistently.

Response: No change. If a rule does not have a (b) section, then it is an implied (a) and the sections are numbered (1), (2), (3), etc. at Secretary of State's instruction.

Comment: An RMO stated that §6.92(12) should be changed by deleting "s" after "records" in "records series" and adding a comma between "associated" and "filed."

Response: TSLAC reviewed and changed text to match definition of a records series as cited from §6.1(13). Updated text does not need "s" removed nor does it need a comma.

Comment: Both RMOs stated that if §6.92(15) a definition is provided for "unstructured data" but this term is never used in the rules.

Response: Agency agrees with commenters; definition has been removed.

Comment: An RMO stated that §6.93(1)(G) should be reviewed for clarity.

Response: Agency agrees with commenter; changed in (G) "must" to "shall" and deleted "shall be trained to" in (i) and (ii).

Comment: Both RMOs stated that in §6.93(1)(G)(ii) the term "decision makers" is vague. There is no need to distinguish a "decision maker" from an "end user" unless this term is explicitly defined. Staff at any level can "make a decision": what kind of decision does this refer to? Purchasing decisions? Personnel management decisions and how is this defined?

Response: No change. Any staff may make various decisions and all need to be trained. Each agency's policies can enumerate training levels as needed.

Comment: An RMO stated that in §6.93(2) and (3) TSLAC should fix grammar. Paragraph (1) reads as a list of complete sentences, whereas paragraphs (2) and (3) are sentence fragments.

Response: Agency agrees with commenter; added "An agency's policies and procedure shall" at the beginning of each paragraph.

Comment: An RMO stated that in §6.94(a)(2), (5) and (6) the rules use IT terms that are not defined by rule. TSLAC should provide definitions for the terms "designated community," "cloud computing," "authenticity," "integrity," "reliability," and "usability" to assist agencies in complying with the sections that refer to these terms. TSLAC should plan on releasing guidelines (pursuant to §6.96) that explain how agencies would be expected to maintain ownership/responsibility of data that is typically owned by 3rd-party services.

Response: No change. The agency is determined to minimize definitions referenced to outside standards. TSLAC will instead include terms in companion materials.

Comment: Both RMOs stated that in §6.94(a)(8) TSLAC should fix the grammar in (a)(8), which reads "Each state agency must do not use system backups" and delete the word "do."

Response: Agency agrees with commenters; change beginning to "ensure that system backups" and add "are not used" before "to satisfy."

Comment: An RMO stated that in §6.95(1)(A)(ii)(III) agency security considerations may supersede an agency's ability to provide TSLAC with a full folder structure.

Response: No change. TSLAC determined that the Archives division only needs file folder structure of what is transferred to the Archives and not security details. Work with Archives on a case-by-case basis.
Comment: An RMO stated that in §6.95(1)(B) TSLAC needed to review for clarity; it is quite awkwardly worded. Texas Government Code 441.186(e) was meant to be a contingency for records that TSLAC could not accept because they were electronic. The way it reads now, it requires this level of documentation for records by assuming that TSLAC can't accept them. Is this not be the case with the TDA?

Response: No change. Applies to archival electronic records in agency custody as in GC §441.186(e). This section is based on statute. Even with the Texas Digital Archives, there may be situations when TSLAC cannot accept certain electronic archival records.

Comment: An RMO stated that §6.95(1)(B)(iv) should be revised as it currently reads "the state agency must Redacted records are not..." and this does not follow the form of the others.

Response: Agency agrees with commenter; changed to follow on from the "agency must" in (B) to say "not redact the record copy but may store redacted copies with the record copy."

Comment: Both RMOs stated that in §6.95(2)(A)(i) the rules should cite the specific statutes than an agency would be expected to consult; it is inappropriate for administrative rules to include the phrase "Check the statutes." and consider rewording--"Check the statutes" seems strangely informal.

Response: Agency agrees with commenters; changed to "Refer to Government Code Chapter 441."

Comment: An RMO stated that §6.96 seems to remove some of the authority of these guidelines. Does TSLAC Legal feel that these guidelines hold the same weight as the rest of the requirements in the TAC?

Response: No change. Future guidelines will have to be reviewed individually to identify which may need to be adopted as formal rules.

Comment: An RMO stated that §6.97(c) only applies to confidential information, but this implies that it applies to all electronic records.

Response: No change. Does not only apply to confidential information. DIR offers information on: Sale or Transfer of Computers and Software and in the Security Controls Catalog, including Item MP-6.

The new sections are adopted under the authority of Texas Government Code §§441.189(a), 441.190, and 441.199 that provide the Commission the authority to establish standards and procedures for management of electronic records.

Statutory authority for this subchapter is provided in Texas Government Code §§441.189(a), 441.190, and 441.199.

§6.92. Definitions.
The following words, terms, acronyms, and concepts when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms defined in Texas Government Code §441.180 shall have the meaning assigned by statute.

(1) Archival state record--Archival state record has the meaning as defined in Texas Government Code §441.180(2).

(2) ARIS--Archives and Information Services division of the commission.

(3) Digital Rights Management--Various access control technologies that are used to restrict usage or access of proprietary hardware, software, or copyrighted works by controlling the use, modification and distribution of records, as well as systems within devices that enforce these policies.

(4) Electronic state record--Information that meets the definition of a state record in the Texas Government Code §§441.031 and §441.180, and is maintained in electronic format for computer processing, including the product of computer processing of the information. Any state record may be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the commission as authorized by Texas Government Code §441.189.

(5) Essential state record--See Vital state record.

(6) Final disposition--Final processing of state records by either destruction or archival preservation by the commission, by a state agency, or by an alternate archival institution as permitted by Texas Government Code Chapter 441, Subchapter L and 13 TAC §6.1(10).

(7) Information systems--The combination of information, technology, processes, and people brought together to support a given business objective.

(8) Institution of higher education--SEE State agency.

(9) Metadata--Data that summarizes basic information about a record, and which can facilitate tracking, locating, verifying authenticity, or working with specific records or data. Examples include but are not limited to author, date created, date modified, file extension, and file size.

(10) Migration--In a computer environment, the act of moving data or records in electronic form from one hardware or software system or configuration to another so that they may continue to be understandable and usable for as long as they are needed.

(11) Records management program--The program of a state agency undertaken on a continuing and active basis (i.e. not a project) to apply management techniques to the creation, use, maintenance, retention, preservation, and destruction of state records as required by Texas Government Code §441.183.

(12) Records series--A group of identical or related records that are normally used and/or filed together, and that permit evaluation as a group for retention scheduling purposes as defined in 13 TAC §6.1(13).

(13) State agency--State agency has the meaning as defined in Texas Government Code §441.180(9).

(14) Structured data--Data that resides in fixed fields within a record or file. Relational databases and spreadsheets are examples of structured data.

(15) Vital state record--Vital state record has the meaning as defined in Texas Government Code §441.180(13).

State agency heads or designees shall approve and institute written policies and procedures that communicate an enterprise-wide approach for electronic state records management practices, and that create accountability and auditability for the execution of these policies and procedures. Refer to Guidelines (§6.96) for recommended electronic records management best practices and standards to satisfy requirements specified under this subchapter.

(1) An agency's policies and procedures required by this section shall include the following:

(A) Establish a component of the agency's active and continuing records management program to address the management of electronic state records that includes the management of electronic state records created, received, retained, used, transmitted, or disposed
of electronically, including those electronic state records in the possession of the state agency, vendors, or other third parties (i.e., telecommunication, social media, etc.);

(B) Integrate the management of electronic state records with other records and information resources management programs of the state agency;

(C) Incorporate electronic state records management objectives, responsibilities, and authorities in pertinent state agency directives;

(D) Address electronic state records management requirements, including retention requirements and final disposition;

(E) Address the use of new technologies adequate to fulfill the agency's duty to identify, manage, retain, and make final disposition of electronic state records;

(F) Ensure transparency by documenting in an open and verifiable manner the processes and activities carried out in the management of electronic state records; and

(G) Require that records management concepts and requirements be included in agency training on information systems and resources. Also, an agency's information resources personnel shall receive training on records management issues as they relate to electronic information systems, electronic mail systems, the operation, care, and handling of information, and the hardware, software, and media used to ensure that:

(i) Information resources personnel understand the records management implications of selecting, purchasing, developing, installing, deploying, modifying, and retiring technology hardware, software, etc., and

(ii) Decision makers and end users understand their responsibilities to create, protect, and manage electronic state records anywhere.

(2) An agency's policies and procedures shall adhere to 1 TAC 202 requirements regarding security programs; and

(3) An agency's policies and procedures shall follow privacy requirements for information that must be protected from unauthorized use or disclosure as required by applicable state or federal law (e.g. constitutional, statutory, judicial, and legal agreement requirements).

§6.94. Minimum Requirements for all Electronic State Records.

(a) Each state agency must:

(1) Manage electronic state records according to the state agency's records management program and certified records retention schedule regardless of format, system, or storage location;

(2) Maintain state agency ownership and responsibility for state records regardless of where the record originates or resides, including but not limited to cloud computing services and social media sites;

(3) Develop and maintain up-to-date documentation about electronic records systems adequate to identify, retain, read, process, or migrate the records and ensure the timely, authorized final disposition of electronic state records;

(4) Ensure that electronic state records remain readily retrievable and readable for as long as they are maintained by the state agency by migration or by maintaining any software, hardware, and documentation required to retrieve and read the electronic state records;

(5) Maintain descriptive and technical metadata required for electronic state records to be fully understandable by the appropriate designated community, including metadata necessary to adequately support the authenticity, integrity, reliability, and usability as well as the preservation of a record;

(6) Preserve the authenticity, integrity, reliability, and usability of the records;

(7) Ensure that electronic state records are readily retrievable and readable independently of other records in the information or storage system;

(8) Ensure that system backups that are required for disaster recovery are not used to satisfy records retention requirements unless indexed for ready retrievability and tested on a regular basis; and

(9) Require all third-party custodians of records to provide the state agency with descriptions of their business continuity and/or disaster recovery plans as regards to the protection of the state agency's vital state records.

(b) Any technological component for electronic state records developed, used, or acquired by a state agency must meet the following requirements:

(1) Support the state agency's ability to meet the minimum requirements in subsection (a) of this section to preserve and make readily retrievable and readable any electronic state record or to extract or migrate the record in as complete a form as possible for its full retention period; and

(2) Provide security to ensure the authenticity of the records in accordance with 1 TAC 202 regarding security programs.

§6.95. Additional Record Requirements for Archival, Permanent, and Vital Electronic State Records.

In addition to the minimum requirements in §6.94, the following requirements apply to electronic state records that are archival for the State Archives, archival for an agency archives, permanent, and vital:

(1) Archival for the State Archives: Archival electronic state records indicated by records series that are marked with "A" (Archival) or "R" (Archival Review) codes in the state agency's certified records retention schedule, must be:

(A) Offered to the commission for review or transferred to the custody of the commission when retention requirements are met, the administrative need of the state agency ends, or earlier as required and in accordance with Texas Government Code §441.186, unless the law requires the records to remain with the state agency. A transfer or review must include the following:

(i) The state agency must contact the commission to coordinate transfer or review of the archival electronic state records;

(ii) Each records series to be transferred must contain, at minimum, the following metadata:

(I) Series title (from records retention schedule);

(II) Inclusive dates covered by the transfer;

(III) Arrangement (folder structure) of the records in the transfer;

(IV) File format(s) represented;

(V) Creating application; and

(VI) Date of last modification;

(iii) Each individual record transferred must include, at minimum, the following metadata:
(I) Title or subject;
(II) Creator (could be a person, office, division, and/or state agency); and
(III) Date of creation;
(iv) Metadata must be embedded in the records or provided in a separate file at the time of transfer;
(v) The state agency must maintain the integrity of the record through use of checksums on each record transferred;
(vi) The state agency must remove any encryption or other Digital Rights Management prior to transfer or provide the commission with method(s) for doing so; and
(vii) The state agency must follow procedures published on the commission's website for transferring or reviewing archival electronic state records.

(B) Identified as archival electronic state records in the custody of the state agency because the commission cannot immediately accept custody of the records in accordance with Texas Government Code §441.186(e) and the state agency must:

(i) Maintain documentation for the operating environment in which the records were created or are being maintained;
(ii) For structured data, also maintain all metadata required to understand the structure of the records;
(iii) Store records in standard formats as identified in procedures published on the commission's website, or else:

(I) If business requirements necessitate use of non-standard formats, the records must be converted to standard formats before transfer to the commission or before going into long-term storage; and

(II) If the records are stored in a proprietary system, the state agency must retain all licenses required to access records;
(iv) Not maintain redacted records as the record copy, but may store redacted records with the record copy; and
(v) Follow the commission procedures published on the commission's website for storing archival electronic state records until transfer to or review by the commission.

(2) Archival for agency archives: For archival electronic state records indicated by records series that are marked with "A" or "I" (Archival) or "R" or "O" (Archival Review) codes in the state agency's certified records retention schedule.

(A) This paragraph applies to:

(i) The small number of agencies which are allowed by statute to maintain a state agency archive instead of transferring their archival state records to the commission. Refer to Government Code Chapter 441 and confirm with the State Archives before implementing a state agency archives; and

(ii) Archival electronic state records described in records series marked as "I" (Archival) or "O" (Archival Review) in a university's certified records retention schedule, which must be transferred to or reviewed by the university's archives.

(B) Each state agency must:

(i) Have policies and procedures to properly identify, maintain, migrate, and preserve archival electronic state records; and

(ii) Adhere to the requirements listed in paragraph (3) of this section and as issued in commission guidelines.

(3) Permanent: Electronic state records with permanent retention periods but that are not archival ("A", "I", "O" or "R") on the state agency's certified records retention schedule:

(A) Must meet the requirements listed in paragraph (1)(B) or (2) of this section, as applicable;
(B) Must be documented and migrated when necessary to ensure that they remain permanently accessible and readable; and
(C) May be indexed and converted to microfilm for permanent retention.

(4) Vital: Vital electronic state records must be included with special provisions in state agency records management policies and procedures and the state agency records management program and the state agency must:

(A) Identify records series containing vital electronic state records on the state agency's certified records retention schedule;
(B) Create written policies for the protection of vital electronic state records in all formats and storage locations;
(C) Create written disaster recovery procedures for accessing vital electronic state records during a disruptive event;
(D) Address vital electronic state records in continuity of operations, business continuity, and/or disaster recovery plans as part of the state agency's overall continuity program, as required in Texas Labor Code §412.054; and
(E) Require all third-party custodians of records holding records on behalf of the agency to provide the state agency with descriptions of their business continuity and/or disaster recovery plans as regards to the protection of the state agency's vital electronic state records.

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 August 11, 2017.
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 Nanette Pfeister
 Program Planning & Research Specialist
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For further information, please call: (512) 463-5477

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

The Texas Lottery Commission (Commission) adopts the repeal of existing 16 TAC §401.315 ("Mega Millions" On-Line Game Rule) without changes, and adopts the new rule 16 TAC...
§401.315 ("Mega Millions" Draw Game Rule), with changes to the proposed text as published in the June 16, 2017, issue of the Texas Register (42 TexReg 3056). The adopted version of the new rule makes non-substantive changes to the proposed rule including the following: (1) changing the name of the new rule to add the term "Draw"; (2) formatting changes that restructure subparagraph (d)(1)(A)(i) to (d)(1)(A) and adding "of this section"; (3) revising language in (d)(3) from "subsection (d)(3)(c) below to "subparagraph (C) of this paragraph below"; (4) revising language in (g)(4)(C) from "paragraph (a) of this subsection to "subparagraph (A) of this paragraph"; (5) revising language in (k)(9)(B) from "subpart (C) below to "subparagraph (C) of this paragraph below"; (6) adding subparagraph indicators (i) and (ii) to subparagraph (1)(6)(B); (7) revising language in paragraph (1)(1) from "(a) thru (j)" to "(a) through (j)"; (8) moved Figure: 16 TAC §401.315(k)(7) to the end of subparagraph (k)(7); (9) added figure title above subparagraph (k)(8) as 16 TAC 401.315(k)(8); (10) adding the word "Plays" to (b)(5) to rename the definition as "MegaPlier Plays"; (11) clarification of the prize pool percentage calculation in Figure: 16 TAC §401.315(d)(2); and (12) revising the language for the ticket validation conditions in subparagraph (g)(3)(E).

The purpose of the new rule is to conform the play of the Mega Millions lottery game in Texas to the game changes recently adopted by the group of U.S. lotteries operating under an agreement to sell the Mega Millions draw game ("Mega Millions Lotteries"). These changes include (i) an increase in the purchase price from $1 to $2 per Play; (ii) changing the game matrix from 5/75 (selection of five numbers from a field of 75 numbers) plus 1/15 (one number from a field of 15 numbers) to 5/70 (five numbers from a field of 70 numbers) plus 1/25 (one number from a field of 25 numbers); and (iii) offering a new optional jackpot-only wager called Just the Jackpot™, in which a player may purchase two chances to win the Grand Prize for the reduced rate of $3, but will forego the option to win any secondary (non-jackpot) prizes. The increased price per ticket and the matrix change anticipate larger and faster growing jackpots, resulting in increased ticket sales and revenue to the Foundation School Fund. The Commission anticipates the new Mega Millions game changes to be implemented on October 28, 2017.

The new rule also includes language updates regarding the Mega Millions game, including notice that the Texas Lottery is selling the Mega Millions game pursuant to the rules and procedures of the Multi-State Lottery Association ("MUSL") and subject to a Cross-Sell Agreement between MUSL and the non-MUSL Mega Millions Lotteries, and language to facilitate the potential future sale of lottery tickets using Commission-approved third-party point-of-sale ("POS") systems. Finally, the adopted rule language conforms to the required percentage of sales contributions by the Texas Lottery to be held in certain prize reserve and prize pool funds maintained by MUSL. Because of the number of changes necessary to conform the Commission's rule to MUSL's Mega Millions rule, the Commission adopts the repeal of its existing Mega Millions rule at §401.315 and adopts the new rule language as new §401.315.

The Commission received one written comment from an individual on the proposed new rule during the public comment period. This individual was against increasing the price of a Mega Millions Play to $2.00. In response, the agency notes that the Mega Millions game is authorized to be conducted by the executive director under the conditions of the Cross-Sell Agreement, MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. Authority to participate in the Mega Millions game is provided to the Texas Lottery by MUSL through the Cross-Sell Agreement. The decision to increase the price of a Mega Millions Play was determined by the Mega Millions Lotteries.

16 TAC §401.315

This repeal is adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery; §466.451, which authorizes the Commission to adopt rules relating to a multi-jurisdiction lottery game; and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

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 August 8, 2017.

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

16 TAC §401.315

The new rule is adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery; §466.451, which authorizes the Commission to adopt rules relating to a multi-jurisdiction lottery game; and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.


(a) Mega Millions. The Multi-State Lottery Association ("MUSL") has entered into an Agreement ("Cross-Sell Agreement") with those U.S. lotteries operating under an agreement to sell a draw game known as Mega Millions ("Mega Millions Lotteries") to permit the MUSL Party Lotteries who are members of the MUSL Mega Millions Product Group ("Product Group"), including the Texas Lottery Commission, to sell the Mega Millions lottery game. The purpose of the Mega Millions game is the generation of revenue for Mega Millions Lotteries and Product Group members participating under the Cross-Sell Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. The Mega Millions game is authorized to be conducted by the executive director under the conditions of the Cross-Sell Agreement, MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary.
to conform the conduct and play of the Mega Millions game to the requirements of the MUSL rules and the Cross-Sell Agreement, if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. To be clear, the authority to participate in the Mega Millions game is provided to the Texas Lottery by MUSL through the Cross-Sell Agreement. The conduct and play of the Mega Millions game must conform to the Product Group's Mega Millions game rules ("MUSL MM Rules"). Further, if a conflict arises between this section and §401.304 of this chapter, this section shall have precedence. In addition to other applicable rules contained in Chapter 401, this section and definitions herein apply unless the context requires a different meaning or is otherwise inconsistent with the intent of the MUSL MM Rules adopted by the Product Group.

(b) Definitions. In addition to the definitions provided in §401.301 of this subchapter (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) "Agent" or "retailer" means a person or entity authorized by the Texas Lottery Commission to sell lottery Plays.

(2) "Drawing" refers collectively to the formal draw event for randomly selecting the winning numbers that determine the number of winning Plays for each prize level of the Mega Millions game and Megaplier Promotion.

(3) "Game ticket" or "ticket" means an acceptable evidence of Play, which is a ticket produced in a manner that meets the specifications defined in the MUSL rules or the rules of each Selling Lottery, and is a physical representation of the Play or Plays sold to the player as described in subsection (g) of this section (Ticket Validation).

(4) "Just the Jackpot™ Play" ("JJ Play") shall refer to a wager purchased which includes two (2) Plays as part of the Just the Jackpot Promotion as described in subsection (l) of this section.

(5) "Megaplier Plays" shall refer to Plays purchased as part of the Megaplier Promotion described in subsection (k) of this section.

(6) "Mega Millions Lotteries" refers to those lotteries that have joined under the Mega Millions Lottery Agreement and that have entered into the Cross-Sell Agreement with MUSL for the selling of the Mega Millions game by the Product Group. "Mega Millions Finance Committee" refers to a Committee of the Mega Millions Lotteries that determines the Grand Prize amount (cash value option and annuity).

(7) "Mega Millions Plays" ("MM Plays") shall refer to Plays purchased as part of the Mega Millions game, but shall not include JJ Plays or Megaplier Plays.

(8) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Lotteries.

(9) "MUSL Board" means the governing body of the MUSL, which is comprised of the chief executive officer of each Party Lottery.

(10) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and, in the context of the Product Group rules, has joined in selling the games offered by the Product Group. "Selling Lottery" or "Participating Lottery" shall mean a state lottery or lottery of a political subdivision or entity that is participating in selling the Mega Millions game and that may be a member of either the Product Group or the Mega Million Lotteries.

(11) "Play" means a set of six (6) numbers, the first five (5) from a field of seventy (70) numbers and the last one (1) from a field of twenty-five (25) numbers, that appear on a ticket as a single lettered selection and are to be played by a player in the game. As used in this section, unless otherwise indicated, "Play" includes both Mega Millions Plays ("MM Plays") and Just the Jackpot Plays ("JJ Play"). "Megaplier Plays" are separately described in subsection (k) of this section.

(12) "Playslip" means a physical or electronic means by which a player communicates their intended Play selection to the retailer as defined and approved by the Texas Lottery. A Playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(13) "Prize" means an amount paid to a person or entity holding a winning ticket. The terms "Grand Prize" or "Jackpot" may be used interchangeably and shall refer to the top prize in the Mega Millions game. "Advertised Grand Prize" or "Advertised Jackpot" shall mean the estimated annuitized Grand Prize amount as determined by the Mega Millions Finance Committee and communicated through the Selling Lotteries prior to the next Mega Millions Drawing. The Advertised Grand Prize is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount, except in circumstances where there is a guaranteed Grand Prize amount as described in subsection (f)(1) of this section.

(14) "Product Group" means the MUSL Party Lotteries who are members of the MUSL Mega Millions Product Group and who offer the Mega Millions game product pursuant to the terms of the Cross-Sell Agreement between MUSL and the Mega Millions Lotteries, and in accordance with the Multi-State Lottery Agreement and the MUSL MM Rules.

(15) "Set Prize" or "low-tier prize" means all other prizes, except the Grand Prize and, except in instances outlined in this section, or the MUSL MM Rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(16) "Terminal" means a device authorized by the Texas Lottery for the purpose of issuing Mega Millions game tickets and as defined in §401.301 (General Definitions) of this chapter.

(17) "Winning Numbers" means the indicia or numbers randomly selected during a Drawing event which shall be used to determine the winning Plays for the Mega Millions game contained on a game ticket.

(c) Game Description. Mega Millions is a five (5) out of seventy (70) plus one (1) out of twenty-five (25) lottery game drawn on the day(s), time(s) and location(s) as determined by the Mega Millions Lotteries, and which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined by the Mega Millions Finance Committee on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis. During the Drawing event, five (5) numbers shall be drawn from the first set of seventy (70) numbers, and one (1) number shall be drawn from the second set of twenty-five (25) numbers, which shall constitute the Winning Numbers.

(1) Mega Millions Play. To play Mega Millions, a player shall select (or request a Quick Pick) five (5) different numbers, from one (1) through seventy (70) and one (1) additional number from one (1) through twenty-five (25). The additional number may be the same as one of the first five numbers selected by the player. MM Plays can be purchased for two dollars (U.S. $2.00), including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery Play. Plays may be purchased from a Party Lottery approved...
sales outlet in a manner as approved by the Party Lottery and in accordance MUSL rules.

(2) Claims. A ticket shall be the only proof of a game Play or Plays and is subject to the validation requirements set forth in subsection (g) of this section. The submission of a winning ticket to the Texas Lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A Playslip has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected.

(3) Cancellations Prohibited. A Play may not be voided or canceled by returning the ticket to the selling sales agent or to the Texas Lottery, including tickets that are printed in error. A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for a reason acceptable to the Selling Lottery. No Play that is eligible for a prize can be returned to the lottery for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.

(5) Entry of Plays. Plays may only be entered manually using the lottery retailer terminal keypad or touch screen, by means of a Playslip approved by the Texas Lottery, or by such other means as approved by the Texas Lottery, including authorized third-party point-of-sale ("POS") systems. Retailers shall not permit the use of Playslips that are not approved by the Texas Lottery. Retailers shall not permit any device to be physically or wirelessly connected to a lottery terminal to enter Plays, except as approved by the Texas Lottery. A ticket generated using a selection method that is not approved by the Texas Lottery is not valid. A selection of numbers for a Play may be made only if the request is made in person. Acceptable methods of Play selection may include:

(A) using a self-service terminal;

(B) using a Playslip;

(C) using a previously-generated "Mega Million" ticket provided by the player;

(D) requesting a retailer to use a Quick Pick to select numbers;

(E) requesting a retailer to manually enter numbers; or

(F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the Texas Lottery.

(6) Maximum Purchase. The maximum number of consecutive drawings on a single Play purchase is ten (10).

(7) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) Mega Millions Prize Pool. The prize pool for all prize categories offered by the Party Lotteries shall consist of up to fifty-five percent (55%) of each Drawing period's sales, inclusive of any specific statutorily-mandated tax of a Party Lottery to be included in the price of a MM Play, and inclusive of contributions to the prize pool accounts and prize reserve accounts, but may be higher or lower based upon the number of winning Plays at each prize level, as well as the funding required to meet a guaranteed Annuity Grand Prize as may be required by subsection (f)(1) of this section.

1) Mega Millions Prize Pool Accounts and Prize Reserve Accounts. The Product Group shall set the contribution rates to the Prize Pool and Prize Reserve Accounts established by this section.

(A) The following Prize Reserve Account for the Mega Millions game is hereby established: the Prize Reserve Account (PRA) which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason, to fund deficiencies in the Set-Aside Pool, and to fund pari-mutuel prize deficiencies as defined and limited in subsections (d)(3)(A) and (k)(9)(B)(i) of this section.

(B) The following Prize Pool Accounts for the Mega Millions game are hereby established:

(i) The Grand Prize Pool (GPP), which is used to fund the current Grand Prize;

(ii) The Set Prize Pool (SPP), which is used the fund the Set Prizes. The SPP shall hold the temporary balances that may result from having fewer than expected winners in the Set Prize (aka low-tier prize) categories. The source of the SPP is the Party Lottery's weekly prize contributions less actual Set Prize liability, and

(iii) The Set-Aside Pool (SAP), which is used to fund the payment of the awarded minimum starting Annuity Grand Prizes and the minimum Annuity Grand Prize increase, if necessary (subject to the limitations in this section or the MUSL MM Rules), as may be set by the Product Group. The source of the SAP funding shall accumulate from the difference between the amount in the Grand Prize Pool at the time of a Grand Prize win and the amount needed to fund Grand Prize payments as determined by the Mega Millions Lotteries.

(C) The above Prize Reserve Account shall have maximum balance amounts or balance limiter triggers that are set by the Product Group and are detailed in the Comments to MUSL MM Rule 28. The maximum balance amounts and balance limit triggers are subject to review by the MUSL Board Finance and Audit Committee. The Finance and Audit Committee shall have two weeks to state objections, if any, to the approved maximum balance amounts or balance limiter triggers. Approved maximum balance amounts or balance limiter triggers shall become effective no sooner than two weeks after notice is given to the Finance and Audit Committee and no objection is stated or sooner if the Committee affirmatively approves the maximum balance amounts or balance limiter triggers. The Product Group may appeal the Committee's objections to the full Board. Group approved changes in the maximum balance amounts or balance limiter triggers set by the Product Group shall be effective only after the next Grand Prize win.

(D) The contribution rate to the GPP from MM Plays shall be 37.6509% of sales. An amount up to five percent (5%) of a Party Lottery's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery play, shall be added to a Party Lottery's Mega Millions Prize Pool contribution and placed in trust in one or more prize pool and prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the PRA is below the amounts designated by the Product Group. Details shall be noted in the Comments to MUSL MM Rule 28.

(E) The Product Group may determine to expend all or a portion of the funds in the prize pools (except the GPP) and the prize reserve accounts:

(i) for the purpose of indemnifying the Party Lotteries in the payment of prizes to be made by the Selling Lotteries; and

(ii) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion, subject to the approval
of the Board's Finance & Audit Committee or that Committee's failure to object after given two weeks' notice of the planned action, which actions may be appealed to the full Board by the Product Group.

(F) The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and sales percentage shares of the Party Lotteries.

(G) A Party Lottery may contribute to its sales percentage share of prize reserve accounts over time, but in the event of a draw down from a reserve account, a Party Lottery is responsible for its full sales percentage share of the prize reserve account, whether or not it has been paid in full.

(H) Any amount remaining in the Mega Millions prize pool accounts or prize reserve accounts when the Product Group declares the end of the game shall be returned to the lotteries participating in the prize pool and prize reserve accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Prize Payout Percentages. The Grand Prize payout shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as single payment prizes. All prize payouts are made with the following expected prize payout percentages, which does not include an additional amount held in prize reserves, although the prize payout percentages per draw may vary:

Figure: 16 TAC §401.315(d)(2)

(A) The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Grand Prize.

(B) The SPP (for payment of single payment prizes of one million dollars ($1,000,000.00) or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(3) Pari-mutuel Prize Determinations. Except as otherwise provided for in subparagraph (C) of this paragraph below:

(A) If the total of the Mega Millions Set Prizes (as multiplied by the respective Megaplier multiplier, if applicable) awarded in a drawing exceeds the percentage of the prize pool allocated to the Mega Millions Set Prizes, then the amount needed to fund the Mega Millions Set Prizes, including Megaplier prizes, awarded shall be drawn from the following sources, in the following order:

(i) the amount available in the SPP and the Megaplier Prize Pool, if any;

(ii) an amount from the PRA, if available, not to exceed forty million dollars ($40,000,000.00) per drawing.

(B) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes, including Megaplier prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, including Megaplier prizes, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning MM Plays in proportion to their respective prize percentages. Mega Millions and Megaplier prizes will be reduced by the same percentage.

(C) By agreement with the Mega Millions Lotteries, the Mega Millions Lotteries shall independently calculate their set pari-mutuel prize amounts. The Party Lotteries and the Mega Millions Lotteries shall then agree to set the pari-mutuel prize amount for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(4) Except as may be required by subsection (f)(1) of this section, the official advertised Grand Prize annuity amount is subject to change based on sales forecasts and/or actual sales.

(5) Subject to the laws and rules governing each Party Lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the Mega Millions Lotteries, for promotional purposes. Such change shall be announced by Mega Millions Lotteries.

(e) Probability of Winning Mega Millions Prizes. The following table sets forth the probability of winning and the probable distribution of winning Plays in and among each prize category for MM Plays, based upon the total number of possible combinations in Mega Millions.

Figure: 16 TAC §401.315(e)

(f) Mega Millions Prize Payment.

(1) Mega Millions Grand Prize. The prize money allocated from the current Mega Millions prize pool for the Grand Prize, plus any previous portions of prize money allocated to the Grand Prize category in which no matching MM Plays or JJ Plays were sold will be divided equally among all Grand Prize winning MM Plays and JJ Plays in all Participating Lotteries. The Annuity Grand Prize amount will be paid in thirty (30) graduated annual installments. Grand Prizes won shall be funded by the Selling Lotteries in accordance with the formula set by the Mega Millions Lotteries. The Mega Millions Lotteries may set a minimum guaranteed annuitized Grand Prize amount that shall be advertised by the Selling Lotteries as the starting guaranteed annuitized Grand Prize amount. At the time of ticket purchase, a player must select a payment option of either a single cash value payment or annuitized payments of a share of the Grand Prize if the Play is a winning Play. A player's selection of the payment option at the time of purchase from the Texas Lottery is final and cannot be revoked, withdrawn, or otherwise changed. If no selection is made, payment option will be as described in the chart below:

Figure: 16 TAC §401.315(f)(1)

(2) Mega Millions Prize Rollover. If in any Mega Millions Drawing there are no MM Plays or JJ Plays that qualify for the Grand Prize category, the portion of the prize fund allocated to such Grand Prize category shall remain in the Grand Prize category and be added to the amount allocated for the Grand Prize category in the next consecutive Mega Millions Drawing.

(3) A player(s) who elects a cash value option payment shall be paid his/her share(s) in a single cash payment upon completion of validation procedures determined by the Texas Lottery. The cash value option amount shall be determined by the Mega Millions Lotteries.

(4) All annuitized prizes shall be paid annually in thirty (30) graduated annual installments upon completion of validation procedure determined by the Texas Lottery. The initial payment shall be paid upon completion of the validation procedures and the subsequent twenty-nine (29) payments shall be paid annually to coincide with the winning draw date, and shall escalate by a factor of 5% annually. Prize payments may be rounded down to the nearest one thousand dollars ($1,000) increment. The annuitized option prize shall be determined by multiplying the winning Play's share of the Grand Prize by the
annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts.

(5) If individual shares of the Grand Prize Pool funds held to fund an annuity is less than $250,000.00, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize Pool.

(6) Funds for the initial payment of an annuitized prize or the lump sum cash value option payment shall be made available by MUSL for payment by the Party Lottery on a schedule approved by the Product Group. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full cash value option payment amount may be delayed pending receipt of funds from the Party Lotteries or other lotteries participating in the Mega Millions game. A Party Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

(7) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(8) Prize Payments. All prizes shall be paid through the Selling Lottery that sold the winning Play(s). All low-tier cash prizes (all prizes except the Grand Prize) shall be paid in cash or warrants in accordance with Texas statutes and these rules. A Selling Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(9) Prizes Rounded. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(10) Limited to Highest Prize Won. The holder of a winning MM Play may win only one (1) prize per Play in connection with the Winning Numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category. A JJ Play is not eligible to win non-Grand Prize category prizes. All liabilities for a Mega Millions prize are discharged upon payment of a prize claim.

(11) Claim Period. Prizes must be claimed no later than 180 days after the draw date, or in accordance with Texas Government Code §466.408(e).

(g) Ticket Validation.

(1) To be a valid Play and eligible to receive a prize, a Play's ticket shall satisfy all the requirements established by the Texas Lottery for validation of winning Plays sold through the computer gaming system, as well as any other validation requirements adopted by the Product Group, the MUSL Board and published as the Confidential MUSL Minimum Game Security Standards. The MUSL and the Party Lotteries shall not be responsible for Plays or tickets that are altered in any manner.

(2) Under no circumstances will a claim for any prize be paid without an official Mega Millions ticket issued as authorized by the Texas Lottery and matching all game Play, serial number and other validation data residing in the Texas Lottery's computer gaming system and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming such prize.

(3) In addition to the above, in order to be deemed a valid, winning Mega Millions Play, all of the following conditions must be met:

(A) The validation data must be present in its entirety and must correspond, using the computer validation file, to the number selections printed on the ticket for the drawing date(s) printed on the ticket;

(B) The ticket must be intact;

(C) The ticket must not be mutilated, altered, reconstituted, or tampered with in any manner;

(D) The ticket must not be counterfeit or an exact duplicate of another winning ticket;

(E) The ticket must have been issued by an authorized Texas Lottery sales agent, on official Texas Lottery paper stock or, for third-party point-of-sale systems approved by the Texas Lottery, printed on paper stock or otherwise issued in a manner approved by the Texas Lottery to provide tangible evidence of participation;

(F) The ticket must not have been stolen, to the knowledge of the Texas Lottery;

(G) The ticket must be submitted for payment in accordance with the prize claim procedures of the Texas Lottery as set out in §401.304 of this subchapter and any internal procedures used by the Texas Lottery;

(H) The Play data on the ticket must have been recorded on the computer gaming system prior to the drawing and the Play data must match this computer record in every respect. In the event of a contradiction between information as printed on the ticket and as accepted by the Texas Lottery's computer gaming system, the wager accepted by the Texas Lottery's computer gaming system shall be the valid wager;

(I) The player or Quick Pick number selections, validation data and the drawing date(s) of an apparent winning Play must appear on the official file of winning Plays, and a Play with that exact data must not have been previously paid;

(J) The Play must not be misregistered, and the Play's ticket must not be defectively printed or printed or produced in error to an extent that it cannot be processed by the Texas Lottery;

(K) The ticket must pass confidential validation tests in accordance with the MUSL MM Rules. In addition, the ticket must pass all other confidential security checks of the Texas Lottery;

(L) In submitting a ticket for validation, the claimant agrees to abide by applicable laws, all rules and regulations, instructions, conditions and final decisions of the executive director of the Texas Lottery;

(M) There must not be any other breach of the MUSL MM Rules, or this subchapter, in relation to the Play, which, in the sole and final opinion of the executive director of the Texas Lottery, justifies invalidation.

(N) The Ticket must be submitted to the Texas Lottery, or the Selling Lottery that issued it.

(4) A Play submitted for validation that fails any of the preceding validation conditions shall be considered void, subject to the following determinations:

(A) In all cases of doubt, the determination of the Texas Lottery shall be final and binding; however, the Texas Lottery may, at
its option, replace an invalid Play with a Mega Millions Play of equivalent sales price;

(B) In the event a defective ticket is purchased or in the event the Texas Lottery determines to adjust an error, the claimant's sole and exclusive remedy shall be the replacement of such defective or erroneous ticket(s) with a Mega Millions Play of equivalent sales price;

(C) In the event a Mega Millions Play is not paid by the Texas Lottery and a dispute occurs as to whether the Play is a winning Play, the Texas Lottery may, at its option, replace the Play as provided in subparagraph (A) of this paragraph. This shall be the sole and exclusive remedy of the claimant.

(h) Ticket Responsibility.

(1) Prize Claims. Prize claim procedures shall be governed by the rules of the Texas Lottery. The MUSL and the Selling Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the Texas Lottery.

(2) Stolen Plays. The Product Group, the MUSL, the Party Lotteries and the Texas Lottery shall not be responsible for lost or stolen Plays.

(3) The Party Lotteries shall not be responsible to a prize claimant for Mega Millions Plays redeemed in error by a Texas Lottery sales agent.

(4) Winning Plays are determined by the numbers drawn and certified by the independent auditor responsible for auditing the Mega Millions draw. MUSL, the Party Lotteries and the Texas Lottery are not responsible for Mega Millions winning numbers reported in error.

(i) Ineligible Players.

(1) A Play, or share of a Play, for a MUSL game issued by the MUSL or any of its Party Lotteries shall not be purchased by, and a prize won by any such Play, or share of a Play, shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm;

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subsections (a), (b), and (c) of this section and residing in the same household.

(2) Those persons designated by the State Lottery Act, Texas Government Code, Chapter 466, as ineligible to play its games shall also be ineligible to play any MUSL lottery game sold in the state of Texas.

(3) A Play, or share of a Play, of the Mega Millions game may not be purchased in any lottery jurisdiction by any Party Lottery board member; commissioner; officer; employee; or spouse, child brother, sister or parent residing as a member of the same household in the principle place of residence of any such person. Prizes shall not be paid to any persons prohibited from playing Mega Millions in a particular jurisdiction by rules, governing law, or any contract executed by the Selling Lottery.

(j) Applicable Law.

(1) In purchasing a Play, or attempting to claim a prize, purchasers and prize claimants agree to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Texas Lottery and by directives and determinations of the executive director of the Texas Lottery. Additionally, the player shall be bound to all applicable provisions in the MUSL MM Rules.

(2) A prize claimant agrees, as its sole and exclusive remedy, that claims arising out of a Play can only be pursued against the Party Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Play was purchased and only against the Party Lottery that issued the Play. No claim shall be made against any other Party Lottery or against the MUSL.

(3) Nothing in this section or the MUSL MM Rules shall be construed as a waiver of any defense or claim the Texas Lottery, which issued the Play, any other Party Lottery, or MUSL may have in any litigation, including in the event a player or prize claimant pursues litigation against a Party Lottery or MUSL, or their respective officers, directors or employees.

(4) All decisions made by the Texas Lottery, including the declaration of prizes and the payment thereof and the interpretation of MUSL MM Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Play was issued.

(5) Unless the laws, rules, regulations, procedures, and decisions of the Texas Lottery, which issued the Play, provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of this section, the MUSL MM Rules, or the laws, rules, regulations, procedures, and decisions of the Texas Lottery; any such prize claimed but unpaid shall constitute an unclaimed prize under this section and the laws, rules, regulations, procedures, and decisions of the Texas Lottery.

(k) Mega Millions Megaplier Promotion

(1) Promotion Description. The Mega Millions Megaplier Promotion is a limited extension of the Mega Millions game and is conducted in accordance with the MUSL MM Rules and other lottery rules applicable to the Mega Millions game except as may be amended herein. The Promotion will begin at a time announced by the Texas Lottery and will continue until discontinued by the Texas Lottery. The Promotion will offer to the owners of a qualifying Megaplier Play a chance to multiply or increase the amount of any of the Set Prizes (the prizes normally paying two dollars ($2.00) to one million dollars ($1,000,000.00) won in a Drawing held during the Promotion. The Grand Prize is not a Set Prize and will not be multiplied or increased by means of the Megaplier Promotion or the Just the Jackpot Promotion.

(2) Qualifying Megaplier Play. A qualifying Megaplier Play is any single Mega Millions Play for which the player pays an extra one dollar ($1.00) for the Megaplier option and that is recorded at on the Texas Lottery's computer gaming system as a qualifying Megaplier Play. Just the Jackpot Plays do not qualify to purchase a Megaplier Play.

(3) Prizes To Be Multiplied Or Increased. A qualifying Megaplier Play that wins one of the Set Prizes will be multiplied by the number selected, either two, three, four, or five (2, 3, 4, or 5), in a separate random Megaplier Drawing announced in a manner approved by the Product Group.

(4) Megaplier Draws. MUSL will either itself conduct, or authorize a U.S. Lottery to conduct on its behalf, a separate random "Megaplier" Drawing. Before each Mega Millions Drawing a single number (2, 3, 4 or 5) shall be drawn. The Product Group may change
one or more of the multiplier features for special promotions from time to time. In the event the Megaplier Drawing does not occur prior to the Mega Millions Drawing, the multiplier number will be a 5 (five), which shall solely be determined by the lottery authorized to conduct the "Megaplier" Drawing.

(5) Megaplier Prize Pool.

(A) The Megaplier Prize Pool (MPP) is hereby created, and shall be used to fund Megaplier prizes. The MPP shall hold the temporary balances that may result from having fewer than expected winning Megaplier Plays. The source of the MPP is the Party Lottery's weekly prize contributions less actual Megaplier Prize liability.

(B) Up to fifty-five percent (55%) of each Drawing period's sales, as determined by the Product Group, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, shall be collected for the payment of Megaplier prizes.

(C) Prize payout percentages per draw may vary. The MPP shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Megaplier prizes awarded in the current draw and held in the MPP.

(6) End of Game. Any amount remaining in the MPP when the Product Group declares the end of this game shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction law.

(7) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as single payment Set Prizes. Instead of the Mega Millions Set Prize amounts, qualifying Megaplier Plays will pay the amounts shown below when matched with the Megaplier number drawn. In certain rare instances, the Mega Millions Set Prize amount may be less than the amount shown. In such case, the Megaplier prizes will be a multiple of the changed Mega Millions prize amount announced after the draw. For example, if the Match 4+1 Mega Millions set prize amount of ten thousand dollars ($10,000.00) becomes two thousand dollars ($2,000.00) under the rules of the Mega Millions game, then a Megaplier player winning that prize amount with a 4X multiplier would win eight thousand dollars ($8,000): two thousand dollars multiplied by four ($2,000.00 x 4). Figure 16 TAC §401.315(k)(7)

(8) Probability of Winning. The following table sets forth the probability of the various Megaplier numbers being drawn during a single Mega Millions Drawing. The Product Group may elect to run limited promotions that may modify the multiplier features.

Figure: 16 TAC §401.315(k)(8)

(9) Limitation on Payment of Megaplier Prizes.

(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Megaplier Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw or may be held in a prize reserve account.

(B) Pari-Mutuel Prizes--All Prize Amounts. Except as otherwise provided for in subparagraph (C) of this paragraph below:

(i) If the total of the original Mega Millions Set Prizes and the Megaplier prize amounts awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the Set Prizes (including the Megaplier prize amounts) awarded shall be drawn from the following sources, in the following order:

(II) the amount available in the SPP and the MPP, if any;

(ii) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including Megaplier prize amounts), then the highest Set Prize (including the Megaplier prize amounts) shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize (including the Megaplier prize amount) shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning MM Plays in proportion to their respective prize percentages. Mega Millions and Megaplier prizes will be reduced by the same percentage.

(C) By agreement with the Mega Millions Lotteries, the Mega Millions Lotteries shall independently calculate their set pari-mutuel prize amounts, including the Megaplier prize amounts. The Party Lotteries and the Mega Millions Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(10) Prize Payment. All Megaplier prizes shall be paid in one single payment through the Party Lottery that sold the winning Megaplier Play(s). A Party Lottery may begin paying Megaplier prizes after receiving authorization to pay from the MUSL central office. Prizes that, under this section, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the MPP for the next drawing.

(i) Just the Jackpot™ Promotion.

(1) Promotion Description. The Mega Millions Just the Jackpot Promotion is a limited extension of the Mega Millions game and is conducted in accordance with the MUSL MM Rules and other lottery rules applicable to the Mega Millions game except as may be amended herein, and any other lottery rules applicable to this Promotion. All rules applicable to the Mega Millions game in subsections (a) through (j) of this section are applicable to the Just the Jackpot Promotion unless otherwise indicated. The Promotion will begin at a time announced by the Texas Lottery and will continue until discontinued by the Texas Lottery. The Promotion will offer to players a chance to purchase a Just the Jackpot Play ("JJ Play") which will qualify a player for two (2) chances (each a "Play") to win the Grand Prize, and no other prize levels. If the player matches any non-Grand Prize (any prize level other than the Grand Prize) numbers with his or her JJ Play(s), the player who purchased the JJ Play is not eligible to win or claim the non-Grand Prizes in the Just the Jackpot Promotion.

(2) Winning JJ Plays will be paid the Mega Millions Grand Prize, at the election of the player made in accordance with subsection (f) of this section or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined in accordance with subsection (f)(4) of this section. All provisions in subsections (a) through (j) of this section regarding payment of the Mega Millions Grand Prize are applicable to winning JJ Play(s). The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Grand Prize.
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Lottery Commission
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SUBCHAPTER E. RETAILER RULES

16 TAC §401.371

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.371 (Collection of Delinquent Obligations for Lottery Retailer Related Accounts) with changes to the proposed text as published in the June 16, 2017, issue of the Texas Register (42 TexReg 3064). The purpose of the amendments is to update the existing procedure regarding mailing demand letters and to update the referenced citation to the Texas Commissioner of Public Accounts' Accounting Policy Statement 28. The adopted version of the rule corrects two typographical errors in subsection (b)(10), adding a comma and a closing parenthesis.

The Commission received no written comments on the proposed amendments during the public comment period.

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.


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

(1) Debtor--Any person or entity liable or potentially liable for an obligation owed to the commission or against whom a claim or demand for payment has been made, for Lottery Retailer related obligations.

(2) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(3) Make demand--To deliver or cause to be delivered by United States mail, first class, a writing setting forth the nature and amount of the obligation owed to the commission. A writing making demand is a "demand letter."

(4) Obligation--Any debt, judgment, claim, account, fee, fine, tax, penalty, interest.

(5) Security--Any right to have property owned by an entity with an obligation to the commission, for Lottery Retailer related obligations, sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the State of Texas.
and/or the commission against another entity and/or that entity's property, typically, certificates of deposits and agency agreements pursuant to assignments of certificates of deposit, but, could include other security such as a bond, letter of credit, or other collateral that has been pledged to the commission to secure an obligation.

(b) Before referring any obligation to the attorney general, the commission will:

(1) Attempt to determine the liability of each person responsible for the obligation, whether that liability can be established by statutory or common law. Provide the attorney general with the name of the registered agent, and the address of the registered office of any business organization for which a registered agent is required, and, if known, the name and address of the principal officers of the business entity. If the debtor is an individual, the commission will provide the attorney general with the name and last known business address and residence address of the individual.

(2) All demand letters will be mailed in an envelope bearing the notation "Return Service Requested." If an address correction is provided by the United States Postal Service, the demand letter will be re-sent to that address prior to the referral to the attorney general. Demand will be made upon every debtor prior to referral of the account to the attorney general. The final demand letter will include a statement, where practical, that the debt, if not paid, will be referred to the attorney general.

(3) If state law allows the commission to record a lien securing the obligation, the commission will file the lien in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law. The lien will be filed as soon as practicable after determining that the account is delinquent. After referral of the delinquency to the attorney general, any lien securing the indebtedness will not be released, except on full payment of the obligation, without the approval of the assistant attorney general representing the commission in the matter.

(4) Where practicable, the commission will maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and his assets, and other information pertinent to collection of the delinquent account.

(5) Prior to referral of the obligation to the attorney general, the commission will (except in the case where a jeopardy determination has been made):

(A) verify the debtor's address and telephone number;

(B) transmit no more than two demand letters to the debtor at the debtor's verified address. The first demand letter will be sent no later than 30 days after the obligation becomes delinquent. The second demand letter will be sent no sooner than 30 days, but not more than 60 days, after the first demand letter;

(C) verify that the obligation is not legally uncollectible or uncollectible as a practical matter. The commission will use its best efforts to ensure that referred obligations are not uncollectible, including but not limited to actions in the following circumstances:

(i) Bankruptcy. The commission will prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor, subject to reasonable tolerances adopted by the commission. Copies of all such proofs of claims filed should be sent to the attorney general absent direction by the attorney general to the contrary. The commission will maintain records of notices of bankruptcy filings, dismissals and discharge orders received from the United States bankruptcy courts to enable the commission to ascertain whether the collection of the claim is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been discharged. The commission will seek the assistance of the attorney general in bankruptcy collection matters where necessary, including the filing of a notice of appearance and preparation of a proof of claim.

(ii) Limitations. If the obligation is subject to an applicable limitations provision that would prevent suit as a matter of law, the obligation will not be referred unless circumstances indicate that limitations has been tolled or is otherwise inapplicable.

(iii) Corporations. If a corporation has been dissolved, has been in liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, has its certificate of authority revoked, the obligation will be referred unless circumstances indicate that the account is clearly uncollectible.

(iv) Out-of-state debtors. If the debtor is an individual and is located out-of-state, or outside the United States, the matter will not be referred unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of commission funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified.

(v) Deceased debtors. If the debtor is deceased, the commission will file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded, and there are no remaining assets of the decedent available for distribution, the delinquent obligation will be classified as uncollectible and will not be referred. In cases where a probate administration is pending, or where no administration has been opened, all referred obligations will include an explanation of any circumstances indicating that the decedent has assets available to apply toward satisfaction of the obligation.

(6) In the case, where factors come to the attention of the commission, which indicate that the collection of the debt due to the state is jeopardized, or where the property and assets of the commission entrusted to the debtor are in jeopardy, the commission may issue a jeopardy determination stating the amount due and that the collection is in jeopardy, and that the amount due the commission is immediately due and payable.

(7) Not later than the 180th day after the date an obligation becomes delinquent, the commission will report the uncollected and delinquent obligation to the attorney general for further collection efforts as hereinafter provided.

(8) In the case of a jeopardy determination, the account may be referred to the attorney general at any time after the expiration of 20 days after service by personal service or by mail.

(9) The commission will adopt reasonable tolerances, in consultation with the attorney general, below which an obligation shall not be referred. Factors to be considered in establishing tolerances include: the size of the debt; the existence of any security; the likelihood of collection through passive means such as the filing of a lien where applicable; expense to the commission and to the attorney general in attempting to collect the obligation; and the availability of resources both within the commission and within the Office of the Attorney General to devote to the collection of the obligation.

(10) The commission will utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by the Texas Government Code, §403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid. (See Accounting Policy Statement 28, "Reporting of State Debts and Hold Offset Procedures," is-
sued November 22, 2005, updated September 18, 2015, and as it may be amended, available on the Comptroller of Public Accounts' website, at https://fmx.cpa.texas.gov/fm/pubs/aps/).

(c) Referral to the attorney general.

(1) The commission will refer individual accounts to the attorney general after the procedures set forth in subsection (a)(6) - (8) of this section have been exhausted and an obligation remains. Individual accounts referred to the attorney general will include the following:

(A) copies of all correspondence between the commission and the debtor;

(B) a log sheet (see subsection (a)(5) of this section) documenting all attempted contacts with the debtor and the result of such attempts;

(C) a record of all payments made by the debtor and, where practicable, copies of all checks tendered as payment;

(D) any information pertaining to the debtor's residence and his assets; and

(E) copies of any permit application, security, final orders, contracts, grants, or instrument giving rise to the obligation.

(2) Delinquent accounts upon which an uncollected bond or other security is held shall be referred to the attorney general no later than 180 days after becoming delinquent. All such accounts where the principal has filed for relief under federal bankruptcy laws will be referred to the attorney general immediately.

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-201702994
Bob Biard
General Counsel
Texas Lottery Commission
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Proposal publication date: June 16, 2017
For further information, please call: (512) 344-5392

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER G. APPLY TEXAS ADVISORY COMMITTEE

19 TAC §1.131

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.131, Apply Texas Advisory Committee, concerning the abolition date of the Apply Texas Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2383). The intent of the amendment is to continue this advisory committee for four more years. This Committee provides the Board with advice and recommendations regarding the Apply Texas Common Application System.

There were no comments received regarding this amendment. The amendment is adopted under the Texas Government Code, §2110.008, which provides the Coordinating Board with the authority to amend the abolition date for this advisory committee.

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 August 10, 2017.
TRD-201703054
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: May 5, 2017
For further information, please call: (512) 427-6104

SUBCHAPTER H. CERTIFICATION ADVISORY COUNCIL

19 TAC §1.138

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.138, concerning the abolition date of the Certification Advisory Council, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2383). The intent of this amendment is to continue this advisory committee four more years. The Committee provides the Board with advice and recommendations regarding standards and procedures related to certification of private postsecondary educational institutions that are nonexempt; assists the Commissioner in the examination of individual applications for Certificates of Authority; and performs other duties related to certification that the Board finds to be appropriate.

There were no comments received regarding this amendment. The amendment is adopted under the Texas Government Code, §2110.008, which provides the Coordinating Board with the authority to amend the abolition date for this advisory committee.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

SUBCHAPTER I. FAMILY PRACTICE RESIDENCY ADVISORY COMMITTEE

19 TAC §1.145
The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.145, Family Practice Residency Advisory Committee, concerning the abolishment date of the Family Practice Residency Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2384). The intent of the amendment is to continue this advisory committee four more years. The Committee provides the Board with advice and recommendations regarding the Family Practice Residency Program.

There were no comments received regarding this amendment.

The amendment is adopted under the Texas Government Code, §2110.008, which provides the Coordinating Board with the authority to amend the abolishment date for this advisory committee.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

SUBCHAPTER N. GRADUATE EDUCATION ADVISORY COMMITTEE

19 TAC §1.181

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.181, Graduate Education Advisory Committee, concerning the abolishment date of the Graduate Education Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2384). The intent of the amendment is to continue this advisory committee for four more years. The Committee provides the Board with advice and recommendations regarding graduate education.

There were no comments received regarding this amendment.

The amendment is adopted under the Texas Government Code, Chapter 2110, §2110.008, which provides the Coordinating Board with the authority to amend the abolishment date for this advisory committee.

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-201703056

SUBCHAPTER P. LOWER-DIVISION ACADEMIC COURSE GUIDE MANUAL ADVISORY COMMITTEE

19 TAC §1.195

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.195, Lower-Division Academic Course Guide Manual Advisory Committee, concerning the abolishment date of the Lower-Division Academic Course Guide Manual Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2385). The intent of the amendment is to continue this advisory committee four more years. The Committee provides the Board with advice and recommendations.
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 30, 2017
Proposal publication date: May 5, 2017
For further information, please call: (512) 427-6104

SUBCHAPTER R. UNDERGRADUATE EDUCATION ADVISORY COMMITTEE
19 TAC §1.209
The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.209, Undergraduate Education Advisory Committee, concerning the abolishment date of the Undergraduate Education Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2387). The intent of the amendment is to continue this advisory committee four more years. The Committee provides the Board with advice and recommendations regarding undergraduate education.

There were no comments received regarding this amendment.

The amendment is adopted under the Texas Government Code, §2110.008, which provides the Coordinating Board with the authority to amend the abolishment date for this advisory committee.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

SUBCHAPTER Q. COMMUNITY AND TECHNICAL COLLEGE LEADERSHIP COUNCIL
19 TAC §§1.201, 1.202, 1.204, 1.205
The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§1.201, 1.202, 1.204, and 1.205, Community and Technical College Leadership Council, concerning the abolishment date of the Community and Technical College Leadership Council, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2386). The intent of the amendments is to continue this advisory committee four more years and to allow additional flexibility concerning the membership of the council. The Council provides the Commissioner and the Board with advice and recommendations on issues relevant to community, technical, and state colleges.

There were no comments received regarding these amendments.

The amendments are adopted under the Texas Government Code, §2110.008, and Texas Education Code, §61.062 which provides the Coordinating Board with the authority.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS
SUBCHAPTER C. TEXAS SUCCESS INITIATIVE
19 TAC §4.57
The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.57 concerning the Texas Success Initiative without changes to proposed text as published in the May 26, 2017, issue of the Texas Register (42 TexReg 2799). The intent of the amendments is to incorporate into existing rules changes that address the college readiness benchmark for the writing section of the Texas Success Initiative Assessment.

The following public comments were received and Coordinating Board staff responses are provided.
Comment: Comments were received from the following: Austin Community College (15 comments); Dallas County Community College District (1 comment); Houston Community College (4 comments); Lone Star College (1 comment); Stephen F. Austin State University (1 comment); Tyler Junior College (1 comment); and University of North Texas - Dallas (1 comment). Respondents stated that changing the benchmarks will greatly increase likelihood of failure for students. Concerns were raised about the literacy and writing skills for current students. Several noted that correcting the problem with K-12 should be the focus.

Staff Response: Best practices support basing benchmarks on the most current, reliable, and valid statewide data available. The validity study conducted by The College Board provides the appropriate data and evidence based on actual student performance to support the proposed changes to the TSIA college readiness benchmarks. The study reviewed the data of all first time in college (FTIC) students in 2013 and 2014 who took the TSI Assessment in writing and enrolled in English 1301 or 1302 in their first semester. Researchers looked at the number of those students who then successfully completed the course with an A, B, or C. The analysis showed that students meeting the current benchmarks of at least 350 (placement score) and 5 (essay) or at least 363 and 4 successfully completed the course at 75 and 80 percent, respectively. Further analyses show that changing the benchmark to 340 and 4 would meet the 70 percent threshold and reduce placement error rates (i.e., placing students who could pass English 1301 in developmental education). Please note that most institutions require students to be college ready in both reading and writing before enrolling them in English 1301; in those cases, students’ TSI status in reading is still applicable. Note there is no proposal to change the TSIA reading benchmark. The Coordinating Board staff updated the validity study with 2015 data using the same methodology. The results included slight variations but were consistent with the College Board’s findings. The sample size was twice as large as the sample in the original study; therefore, no changes to the proposed rules based on these comments.

Comment: Comments were received from the following: Austin Community College (1 comment); Dallas County Community College District (1 comment); Houston Community College (1 comment); Lone Star College (2 comments); South Texas College (2 comments); and Sul Ross State University (1 comment). Some respondents were concerned about a considerable number of institutional changes and stakeholder meetings needed to comply with the proposal. Additional concerns focused on more time to understand the study and proposal. Comments suggested implementing gradually or postponing the implementation date until 2018.

Staff Response: Coordinating Board staff acknowledges the administrative and technical concerns a fall 2017 implementation date may cause. Furthermore, staff acknowledges that it takes time and effort to make even the slightest change in campus culture. Despite these challenges, state and school administrators are obliged to determine the highest priorities. Requiring students to enroll in, complete, and pay for unnecessary additional courses negatively impacts completion rates, especially among students of color and low-income students. Ultimately, these students would be asked to do more and pay more for their degree, if the state were to decline to make the changes in a timely fashion. According to recent estimates, this could affect between ten (10) and thirty (30) percent of students who under current benchmarks would not be considered ready to enroll in entry-level, credit-bearing college English. Although the timing is not ideal, to continue to reduce time to degree and minimize student debt under 60x30TX, THECB needs to ensure students enroll in credit-bearing courses as soon as possible. No changes to the proposed rules based on these comments.

Comment: Comments were received from the following: Austin Community College (2 comments); Houston Community College (2 comments); Howard College (1 comment); Lone Star College (1 comment); San Jacinto College (1 comment); and South Texas College (1 comment). Respondents requested to reconsider the proposal to allow further debate, use the IES RAND study findings to inform the process, or wait to align with the implementation of House Bill 2223 (requiring co-requisite models for certain underprepared students) in Fall 2018.

Staff Response: Coordinating Board staff provided a link to the validity study for review. The validity study conducted by The College Board provides the appropriate data and evidence based on actual student performance to support the proposed changes to the TSIA college readiness benchmarks. With this evidence, delaying implementation would have an adverse effect on students that have demonstrated college readiness. Although informative, the RAND study is a randomized control trial for a limited number of schools to examine a specific instructional/placement strategy and is not equivalent to a validity study. Students who are deemed college ready by the TSIA would not be impacted by House Bill 2223. No changes to the proposed rules based on these comments.

Comment: Comments were received from the following: Austin Community College (2 comments); Lone Star College Austin Community College (1 comment); and South Texas College (1 comment). Respondents questioned the reliability and accuracy of the validity study findings.

Staff Response: The study designed and conducted by The College Board meets industry standards and relies on a sample size greater than that typically required. The validity study provides the appropriate data and evidence based on actual student performance to support the proposed changes to the TSIA college readiness benchmarks. No changes to the proposed rules based on these comments.

Comment: Comments were received from the following: Alamo Colleges (1 comment); Austin Community College (3 comments); Blinn College (1 comment); Collin College (1 comment); Dallas County Community College District (1 comment); Del Mar College (1 comment); Eagle Pass ISD (1 comment); El Paso Community College (1 comment); San Jacinto College (1 comment); South Texas College (1 comment); Tarrant County College (1 comment); The University of Texas at Austin (2 comments); and Victoria College (1 comment). Respondents requested additional information on the proposal and/or a copy of the study.

Staff Response: Coordinating Board staff provided a link to the validity study for review and clarity on the implementation of the rules. No changes to the proposed rules based on these comments.

Comment: Comments were received from the following: Harlandale ISD (1 comment); North East ISD (1 comment); Northside ISD (1 comment); Scarborough ISD (1 comment); Tyler ISD (1 comment); and Tyler Junior College (1 comment). Respondents generally supported the proposal noting it would provide greater access for students.
Staff Response: No staff response necessary. No changes to the proposed rules based on these comments.

The amendments are adopted under Texas Education Code (TEC), §§51.3062 which provides the Coordinating Board with the authority to establish policies and procedures relating to the TSI, and §51.307, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Chapter 51, Subchapter F of the TEC.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.23

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.23, concerning the Provisions for the Tuition Equalization Grant (TEG) Program, without changes to the proposed text as published in the June 23, 2017, issue of the Texas Register (42 TexReg 3223). Specifically, the amendment to §22.23(a)(5) would allow the Coordinating Board to renew twice, rather than once, the two-year temporary approval for an independent or private institution of higher education to continue to participate in the TEG Program. This amendment will align program rules with a new provision enacted by Senate Bill 331, 85th Texas Legislature, Regular Session.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code §61.229, which authorizes the Coordinating Board to adopt rules to implement the Tuition Equalization Grant Program.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS

SUBCHAPTER B. TEACH FOR TEXAS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §23.36

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §23.36, concerning Teach for Texas Loan Repayment Assistance Program, without changes to the proposed text as published in the May 12, 2017, issue of the Texas Register (42 TexReg 2514). Specifically, §23.36(2) adds language permitting the Commissioner to delegate responsibility for determining the annual loan repayment amount and aligns the description for determining the amount with the description used for other loan repayment programs.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code §56.352, which authorizes the Coordinating Board to adopt rules for the administration of Texas Education 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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

CHAPTER 27. FIELDS OF STUDY

SUBCHAPTER L. MULTI AND INTERDISCIPLINARY STUDIES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.321 - 27.327

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§27.321 - 27.327, Fields of Study, Multi and Interdisciplinary Studies Field of Study Advisory Committee, concerning Multi and Interdisciplinary Studies Field of Study Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2387). The intent of these new rules is to authorize the Board to create an advisory committee to develop a Multi and Interdisciplinary Studies field of study. The newly added rules will affect students when the Multi and Interdisciplinary Studies field of study is adopted by the Board.

There were no comments regarding the new sections.

The new rules are adopted under Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the
committee and describe the manner in which the committee will report to the agency.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

Subchapter M. General Psychology Field of Study Advisory Committee

19 TAC §§27.341 - 27.347

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§27.341 - 27.347, Fields of Study, General Psychology Field of Study Advisory Committee, concerning the General Psychology Field of Study Advisory Committee without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2388). The intent of these new rules is to authorize the Board to create an advisory committee to develop a General Psychology field of study. The newly added rules will affect students when the General Psychology field of study is adopted by the Board.

There were no comments received regarding these new sections.

The new rules are adopted under Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

Subchapter O. Accounting Field of Study Advisory Committee

19 TAC §§27.381 - 27.387

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§27.381 - 27.387, Fields of Study, concerning the Accounting Field of Study Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2391). The intent of these new rules is to authorize the Board to create an advisory committee to develop an Accounting field of study. The newly added rules will affect students when the Accounting field of study is adopted by the Board.

There were no comments received regarding the new sections.

The new rules are adopted under Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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

ADOPTED RULES August 25, 2017 42 TexReg 4303
The committee adopts new §§27.401 - 27.407, Fields of Study, concerning Kinesiology and Exercise Science Field of Study Advisory Committee, without changes to the proposed text as published in the May 5, 2017, issue of the Texas Register (42 TexReg 2392). The intent of these new rules is to authorize the Board to create an advisory committee to develop a dance field of study. The newly added rules will affect students when the Dance field of study is adopted by the Board.

There were no comments received regarding these new sections.

The new rules are adopted under Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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

The Texas Education Agency adopts new §151.1001, concerning passing standards for educator certification examinations. The new section is adopted without changes to the proposed text as published in the June 30, 2017, issue of the Texas Register (42 TexReg 3342) and will not be republished. The adopted new rule implements the requirements of the Texas Education Code (TEC), §21.048(a), for the commissioner to determine the satisfactory level of performance required for each certification examination.

SUBCHAPTER P. KINESIOLOGY AND EXERCISE SCIENCE FIELD OF STUDY ADVISORY COMMITTEE

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

SUBCHAPTER Q. DANCE FIELD OF STUDY ADVISORY COMMITTEE
following Texas Examinations of Educator Standards (TExES), which were previously approved by the SBEC 2.0 CSEM below the recommendation of the standard-setting committee convened prior to the approval of the current standards:

- 801 Core Subjects EC-6 English Language Arts and Reading and the Science of Teaching Reading
- 802 Core Subjects EC-6 Mathematics
- 803 Core Subjects EC-6 Social Studies
- 804 Core Subjects EC-6 Science
- 805 Core Subjects EC-6 Fine Arts, Health, and Physical Education
- 806 Core Subjects 4-8 English Language Arts and Reading
- 807 Core Subjects 4-8 Mathematics
- 808 Core Subjects 4-8 Social Studies
- 809 Core Subjects 4-8 Science

Beginning September 1, 2017, passing standards increase by 0.5 CSEM for the following TExES, which were previously approved by the SBEC 1.0 CSEM below the recommendation of the standard-setting committee convened prior to the approval of the current standards:

- 115 Mathematics 4-8 TExES
- 116 Science 4-8 TExES
- 117 Social Studies 4-8 TExES

Beginning September 1, 2017, passing standards increase by 1.0 CSEM for the following TExES, which were previously approved by the SBEC 1.0 CSEM below the recommendation of the standard-setting committee convened prior to the approval of the current standards:

- 114 Mathematics/Science 4-8 TExES
- 160 Pedagogy and Professional Responsibilities EC-12 TExES
- 161 Special Education EC-12 TExES
- 184 American Sign Language TExES

The following tests expire before the September 1, 2017, effective date of the adopted new rule, so they are not included in the corresponding figures:

- 139 Technology Applications 8-12 TExES
- 141 Computer Science 8-12 TExES
- 142 Technology Applications EC-12 TExES
- 179 Dance 8-12 TExES

Adopted new 19 TAC §151.1001 organizes the passing standards into three subsections. Subsection (b) includes passing standards for classroom teacher examinations, subsection (c) includes passing standards for student services examinations, and subsection (d) includes passing standards for administrator examinations.

The average passing standard reflected in the adopted new rule is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 30, 2017, and ended July 31, 2017. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §21.048(a).

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

Filed with the Office of the Secretary of State on August 10, 2017.
TRD-201703072
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 1, 2017
Proposal publication date: June 30, 2017
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 23. TEXAS REAL ESTATE COMMISSION
CHAPTER 533. PRACTICE AND PROCEDURE
SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE
22 TAC §533.8
The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §533.8, Motions for Rehearing, in Chapter 533, Practice and Procedure, without changes, as published in the May 19, 2017, issue of the Texas Register (42 TexReg 2660).

The amendments to §533.8 clarify the ways a motion for rehearing may be filed with the Commission.

The reasoned justification for the amendments is better understanding by respondent's and their counsel on how the Commission can be served with a Motion for Rehearing.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.
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 August 8, 2017.
TRD-201702993
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: August 28, 2017
Proposal publication date: May 19, 2017
For further information, please call: (512) 936-3092

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.53

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.53, Business Entity; Designated Broker, in Chapter 535, General Provisions, without changes, as published in the May 19, 2017, issue of the Texas Register (42 TexReg 2660).

The amendments to §535.56 relocate the complete list of course options for the 630 related classroom hours for a broker's license from §535.64(c) for greater clarity for applicants and providers.

The reasoned justification for the amendments is greater clarity in the rules to avoid confusion by applicants and providers.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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Proposal publication date: May 19, 2017
For further information, please call: (512) 936-3092

SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions, without changes as published in the June 9, 2017, issue of the Texas Register (42 TexReg 2995).

The amendments to §535.64 add course content guidelines for Real Estate Appraisal, Real Estate Investment, Real Estate Law and Residential Inspection for Real Estate Agents and relocates the complete list of course options for the 630 related classroom hours for a broker's license from §535.64(c) to §535.56 for greater clarity for applicants and providers.

The reasoned justification for the amendments is increased standards for the listed courses leading to better educated license holders.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics
for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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-201702997

Kerri Lewis
General Counsel
Texas Real Estate Commission

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Proposal publication date: May 19, 2017
For further information, please call: (512) 936-3092

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SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.91

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.91, Renewal of a Real Estate License, in Chapter 535, General Provisions without changes as published in the May 19, 2017, issue of the Texas Register (42 TexReg 2661).

The amendments to §535.91 establish a deadline for submission of an application and supporting documentation to be considered a timely filing. This will allow time for review by staff and the opportunity for curing any deficiencies by the entity prior to the license expiration date. It also clarifies the authorized positions by type of entity and sets out the statutory requirement that the entity be authorized to transact business in Texas in the list of what is required for renewal of an entity license for greater clarity for the license holder.

The reasoned justification for the amendments is greater clarity in the rule and to allow adequate time to receive and review documentation required to accompany an entity renewal so that the entity will not be in danger of going inactive.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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-201702998

Kerri Lewis
General Counsel
Texas Real Estate Commission

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Proposal publication date: May 19, 2017
For further information, please call: (512) 936-3092

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), adopts amendment §700.108 and new §§700.110, 700.1335, 700.1337, 700.2365, and 700.2367, in Title 40, Texas Administrative Code (TAC), Chapter 700, relating to Child Protective Services, in Subchapters A relating to Administration, M relating to Substitute Care Services, and W, relating to Service Level System. New §700.2365 is adopted with changes to the proposed text in the June 23, 2017, issue of the Texas Register (42 TexReg 3256) and will be republished. The amendments to §700.108 and new §§700.110, 700.1335, 700.1337, and 700.2367 are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendment and new sections are necessary to comply with the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017).

HHSC Rate Setting will be setting new rates and DFPS needs to develop corresponding rules in order to describe the underlying pilots, services, and rate.

COMMENTS

The 30-day comment period ended July 23, 2017. During this period, DFPS received comments regarding the adoption of these sections from the Texas Alliance of Child and Family Services and a Residential Treatment Center. The commenters had numerous questions and comments about the proposed rules.

Comments concerning §700.110(a)(1) relating to the Integrated Care Coordination (ICC) pilot: The commenters expressed support for the ICC program and requested clarification of the phrase "responsibility for all child welfare related tasks and activities under federal and state law" in §700.110(a)(1), specifically inquiring as to whether the term included all court-related work and permanency recommendations.

Response: DFPS adopts this rule without changes. The department appreciates the interest of the provider community in the ICC program, and intends for the term in question to include all court-related and permanency-related functions, with DFPS retaining some authority to potentially review or object to a permanency goal. A dispute resolution process will be put in place for when the ICC provider and DFPS do not agree.
Comments concerning §700.1335(b) relating to the Treatment Foster Family Care Program and the requirement that caregivers who participate in the program have "specialized training" in providing services to certain children: The commenters questioned whether DFPS would issue more guidance regarding how the training will be developed and whether there would be specified requirements for the training.

Response: DFPS adopts this rule without changes. DFPS intends to further develop specific requirements as part of the procurement and contracting process.

Comments concerning §700.1335(b)(1) and the requirement that caregivers who participate in the Treatment Foster Family Care Program have specialized training in providing services to certain children, including 24-hour supervision to ensure the child's safety. The commenters requested clarification of whether 24-hour supervision included awake night caregivers.

Response: DFPS adopts this rule without changes. DFPS agrees that the program would be utilized only in foster family homes, which under current law do not specifically require awake night supervision.

Comments concerning §700.1335(b)(3) and the requirement that caregivers who participate in the program be able to provide time-limited services which include wrap-around services designed to transition children to a permanent and stable placement, inquiring as to whether this refers to a specific clinical methodology or the general concept of wrap-around services.

Response: DFPS adopts this rule without changes. The department will further develop specific requirements as part of the procurement and contracting process.

Comments concerning §700.1335(c) relating to the Treatment Foster Family Care Program and the total number of children that can be allowed in the home, including biological and adopted children: The commenters were concerned that limitations in those areas would significantly impact foster parent recruitment options.

Response: DFPS adopts this rule without changes. Other than the stipulations that relate to the foster family home definition which limits foster family homes to no more than 6 total children, the only additional stipulation specific to the program is the two-foster-child maximum set forth in the rule in §700.1335(c)(2).

DFPS has concluded that the two-foster-child limit is appropriate given the focus of the program and the need for additional supervision and care.

Comments concerning §700.1335(d)(3) relating to the Treatment Foster Care Program and the requirement that child placing agencies providing Treatment Foster Care Services have a standardized case load to support this population of children, requesting information regarding what the standardized requirement will be.

Response: DFPS adopts this rule without changes. The department will further develop any specific case load requirements as part of the procurement and contracting process.

General comment inquiring as to "what is the required pass-thru amount for foster parents?"

Response: DFPS will not address this matter in the rule. The department will further develop specific requirements as part of the procurement and contracting process.

Comments concerning §700.2365(2) relating to the Intense Plus Service Level and the requirement that providers deliver therapies "including but not limited to" certain specified therapies: The commenters are concerned that the listed therapies are extremely costly and very limited statewide, with minimal access to Medicaid providers who deliver these services, and requested clarification regarding whether Medicaid billing is eligible for various therapy requirements.

Response: DFPS agrees the rule as proposed was unclear and will be making changes to this paragraph. The intent was to specify that if Medicaid funds a research supported program, the provider should utilize it but not to require each provider to provide all of the listed services. The language has been modified accordingly.

Comments concerning §700.2365(3) relating to the service level and the requirement that providers continue to care for a child following psychiatric or medical hospitalization: The commenters request clarification regarding whether the bed would remain open when the child is in the hospital and whether the provider would be reimbursed to keep the bed open in order to provide continued care and coordinated transition back from the hospital.

Response: DFPS adopts this rule without changes to this paragraph. It is the agency's intent that the bed would generally remain open as long as it is in the child's best interest to return to the placement in order to facilitate the continued care and coordinated transition as suggested by the commenters.

Comments concerning §700.2365(4) relating to the service level and the requirement that providers offer step down care, which includes long-term discharge and aftercare planning: The commenters request clarification regarding what will be required in the way of "after care services."

Response: DFPS adopts this rule without changes to this paragraph. The requirements around discharge and aftercare planning will be further developed and outlined in the residential contract.

SUBCHAPTER A. ADMINISTRATION

40 TAC §700.108, §700.110

STATUTORY AUTHORITY

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment and new section implement the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services; Senate Bill 1, 85th Legislature, Regular Session, 2017) and Senate Bill 11, 85th Legislature, Regular Session.

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 August 11, 2017. TRD-201703082
The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017) and Senate Bill 11, 85th Legislature, Regular Session.

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-201703084
Audrey Carnical
General Counsel
Department of Family and Protective Services
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Proposal publication date: June 23, 2017
For further information, please call: (512) 438-5112

SUBCHAPTER W. SERVICE LEVEL SYSTEM
DIVISION 5. INTENSE PLUS SERVICE LEVEL
40 TAC §700.2365, §700.2367

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017) and Senate Bill 11, 85th Legislature, Regular Session.

§700.2365. What is the description of the Intense Plus Service Level?

The Intense Plus Service Level consists of the highest degree of structure, and meets all of the requirements in §700.2361 of this title (relating to What is the description of the Intense Service Level?), in addition to the requirements of this section. Services and treatment at the Intense Plus Level must be provided in a therapeutic residential setting by caregivers with specialized training as further outlined in contract for the provision of services to a child at the Intense Plus Service Level. In addition to any such contractual requirements, a provider serving a child at the Intense Plus Service Level must:

1. offer single child and sibling group placement;
2. deliver an appropriate number of medical and therapeutic services that are research-supported, reimbursable by Medicaid or other funding sources, and readily available in the community, including but not limited to daily therapy sessions, individual and group therapy, and specialized therapies such as Eye Movement Desensitization and Reprocessing Therapy, Applied Behavior Analysis (certified); and Treatment for Anorexia/Bulimia/Eating Disorders, and others as appropriate;
3. provide continued care for a child following psychiatric or medical hospitalization; and
4. offer "step down" from the Intense Plus Service Level, which includes long-term discharge and aftercare planning.

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 August 11, 2017.

TRD-201703087
Audrey Carnical
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2017
Proposal publication date: June 23, 2017
For further information, please call: (512) 438-5112

SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS
DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), adopts amendments to §§700.1003, 700.1005, 700.1007 and 700.1009, and the repeal of §700.1011, in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter J, relating to Child Protective Services, Assistance Programs for Relatives and Other Caregivers. Amendment to §700.1007 is adopted with changes to the proposed text in the June 23, 2017, issue of the Texas Register (42 TexReg 3259) and will be republished. The amendments to §§700.1003, 700.1005 and 700.1009, and the repeal of §700.1011 are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendments and repeal are necessary in order to implement legislation enacted and appropriations made by the 85th Regular Session of the Texas legislature that take effect September 1, 2017. Specifically, House Bill 4 (H.B. 4) enacted revisions to the assistance program for relatives and other designated caregivers (also known as kinship caregivers) who are providing care to a child or children in the managing conservatorship of DFPS. Senate Bill 1 (S.B. 1), the General Appropriations
Act for Fiscal Years 2018-2019, provided funding to implement the revisions contemplated by H.B. 4 (see Sec. 18.01 of S.B. 1).

H.B. 4 replaced a one-time payment to integrate the child into the caregiver's home, as well as an annual reimbursement of up to $500 for child-related expenses while the child is in the managing conservatorship of DFPS, with monthly payments in amounts up to 50 percent of the daily basic foster care reimbursement rate paid to a foster family home. The monthly payments are time-limited and may be paid for up to twelve months. If DFPS determines there is good cause for an exception, payments may be made for up to an additional six months. In addition, the legislation authorized annual reimbursements of up to $500 if the kinship caregiver assumes permanent legal responsibility for the child. The annual reimbursements may be made for up to three years or until the child's 18th birthday, whichever occurs sooner. Finally, the legislation made additional changes not addressed in rule, such as the creation of civil and criminal penalties for fraudulently receiving assistance from the program. DFPS may at a later date adopt rules concerning the determination of whether fraudulent activity has occurred.

COMMENT

The 30-day comment period ended July 23, 2017. During this period, DFPS received one comment from the Texas Alliance of Child and Family Services (TACFS) regarding the adoption of these sections.

Comment: The commenter expressed support for the kinship caregiver assistance program and the additional resources that will be provided to caregivers through the program. The commenter offered that relatives caring for children requiring more support, including children with higher levels of need, who choose to go through the verification process shall have the added support and oversight of a child placing agency (CPA), as a CPA could help such kinship caregivers meet the child's needs.

Response: The comment does not relate to any particular language in the proposed rulemaking. Accordingly, the amendments and repeal are adopted without changes relevant to this comment. However, DFPS appreciates the commenter's support and agrees that verification can offer additional stability and services outside of the traditional kinship assistance program. Among other eligibility requirements, kinship caregivers in the kinship assistance program must not be a licensed or verified foster home or group foster home (see §700.1003(b)(4) of this title (relating to What are the eligibility requirements for caregiver assistance)). If a caregiver chooses to go through the verification process, then that caregiver will no longer be eligible for the kinship assistance program. However, the caregiver receives monthly foster care reimbursement as a verified home and may become eligible for the Permanency Care Assistance (PCA) Program. The PCA Program provides cash assistance and other supports for eligible caregivers who become a verified foster parent through CPS or a private Child Placing Agency (see §700.1031 of this title (relating How does a person become eligible for receipt of foster care reimbursement on behalf of a child for at least six consecutive months)).

DFPS is making a nonsubstantive change to §700.1007 as proposed, not in response to any comment, but to clarify how DFPS would implement H.B. 4. Specifically, as proposed, subsection (a)(3) implied that caregivers with whom DFPS placed children prior to September 1, 2017, and who are receiving cash assistance under the current kinship assistance program, would be ineligible under the program as amended by H.B. 4 as of September 1, which is not accurate. The wording could potentially have created confusion regarding legislative intent and agency implementation. The subsection was updated accordingly.

40 TAC §§700.1003, 700.1005, 700.1007, 700.1009

STATUTORY AUTHORITY

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.


§700.1007. How do caregivers receive the monthly cash payment?

(a) Caregivers meeting the eligibility requirements specified in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) are eligible only if:

(1) the household income of the caregiver does not exceed 300% of poverty, as determined by federal poverty guidelines;

(2) the caregiver continues to comply with the signed caregiver assistance agreement; and

(3) the children were placed in the caregiver's home by DFPS.

(b) The monthly cash payment must be distributed to a caregiver on behalf of a child in the managing conservatorship of DFPS in the same manner as to a foster parent receiving foster care reimbursement.

(c) The monthly cash payment may not exceed 50% of the DFPS daily Basic Foster Care Rate paid to a foster home in accordance with §355.7103 of Title 1 (relating to Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements). The amount of the monthly cash payment will be published on the DFPS website, and is paid per child in the managing conservatorship of DFPS who is placed in the home of the eligible caregiver.

(d) The monthly cash payment is provided to the caregiver for 12 months, except that DFPS may extend the monthly cash payment for an additional 6 months if DFPS determines good cause exists for the extension. "Good cause" refers to circumstances in which it is in the child's best interest to remain in the home of a caregiver who is receiving monthly cash payments and is generally comprised of actions and steps necessary in order to achieve positive permanency for the child. Good cause may include:

(1) the identification, release, or location of a previously absent parent of the child;

(2) awaiting the expiration of the timeline for an appeal of an order in a suit affecting the parent-child relationship;

(3) the provision of additional time for the caregiver to complete the approval process for adoption of the child;

(4) awaiting the approval of a child's placement from another state pursuant the Interstate Compact on the Placement of Children, as provided in Subchapter B, Chapter 162, Texas Family Code;

(5) a delayed determination of the child's Indian Child status, or awaiting the approval of the Indian Child's Tribe, pursuant the Indian Child Welfare Act, 25 U.S.C. §1901, et seq.; and
any other circumstance surrounding the child or the caregiver that DFPS deems to necessitate the extension.

(e) Any one-time integration payment received by a caregiver who qualified for the payment between June 1, 2017, and September 1, 2017, under rules in existence at that time, must be offset against monthly cash payments for which the caregiver qualifies on or after September 1, 2017.

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 August 11, 2017.

TRD-201703090
Audrey Carmical
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2017
Proposal publication date: June 23, 2017
For further information, please call: (512) 438-4760

40 TAC §700.1011

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.


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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40 TAC §700.1011